

Family Unity in U.S. Immigration Policy, 1921-1978

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ABSTRACT

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“Family unity” is often upheld as the principle of U.S. immigration policy, central to the making and self-understanding of the U.S. as a “nation of immigrants.” However, family-based immigration system was only born of struggles of immigrant families against the regime of restriction. As the era of open immigration ended in the U.S. in 1921, there emerged a fundamental tension between claims of immigrant families and the regime of immigration restriction. Much of what current immigration law recognizes as family, or how it matters, originated in the post-1921 era, born out of struggles by immigrant families.

This dissertation examines the period between 1921 and 1978 from two perspectives. One is as an era of the three-tiered regulatory system created in the 1920s that lasted until the 1960s to the 1970s: 1) quotas restriction applied to European immigrants 2) exclusion of Asian immigrants, and 3) administrative regulation of immigration from Mexico without a firm ceiling. Another is as the formative years of contemporary immigration control that lasts today. The three-tiered system marked by explicit ethno-racial hierarchization closed first in 1965 by abolition of the quotas system in the Eastern Hemisphere, and finally in 1978 when Congress placed all countries including the Western Hemisphere under a worldwide ceiling. But the end of the quotas era was not a return to an era of open immigration, but an onset of alternative form of immigration restriction and regulation.

With particular attention to linkage between ideas about family and ethno-racial composition of the U.S., the dissertation will discuss how claims of family, selective admission

and restriction of family immigration, created, reinforced, and unmade the three-tiered immigration restriction regime. To date there has been no comprehensive historical study of the concept of the "family" in immigration law -- how it is defined, who is eligible as a family member and who is not, under what conditions families may be united or separated, and how family-based policies varied according to ethno-racial origin. This lack has resulted in a static and naturalized view of the family rather than a dynamic and contested concept in immigration law and policy. This dissertation explains the changes in definitions of family in immigration, deportation, and nationality law during the quotas era, shows how they are the product of challenges raised by immigrant families, and how they were inherited to the era of formally neutral and at the same time global immigration restriction.

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Introduction

On December 8, 1925, President Calvin Coolidge referred to the Immigration Act of 1924 in his annual message, and emphasized immigration restriction as an exercise of sovereignty: “no alien, inhabitant of another country, has any legal rights whatever under our Constitution and laws.” At the same time, however, Coolidge asked whether the 1924 Act deprived “our own inhabitants” of “the comfort and society of those bound to them by close family ties.”¹ As the era of open immigration to the U.S. ended with the imposition of first numerical ceiling on European immigration in 1921, Coolidge expressed the tension between the nascent regime of immigration restriction and claims of families.

As philosopher Joseph Carens states, claims of family unification has its strength in being “moral claims of insiders not outsiders” and “the state’s obligation to admit outside family members is derived not so much from the claims of those seeking to enter as the claims of those they seek to join.”² At the same time, whether and to what extent claims for admission of one’s family members is recognized is a marker of who are deemed to be insiders in the polity. According to political scientist Daniel J. Tichenor, immigration politics has two dimensions, one regarding “alien admission” and “alien rights.” However, family-based admission defies such clear divisions, because it involves the rights of U.S. citizens and residents regarding admission of foreigners.³

¹ Calvin Coolidge: "Third Annual Message," December 8, 1925. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=29566>.

² Joseph Carens, “Who Should Get In?: The Ethics of Immigration Admissions,” *Ethics and International Affairs* 17, no.1 (2003): 96-97, 107.

³ According to Tichenor, “cosmopolitans” support expansion of both alien admission and rights, whereas “classic exclusionists” demand restriction of both. “Free-market expansionists” insist on expansive admission but restrictive rights, while “nationalist egalitarians” emphasize vice versa. *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002), 16-17, 36-37.

Scholars have often described family unification in the U.S. in terms of “the routine mechanism of recruiting new wanted immigrants” to a “classic settler nation.”⁴ Yet, much of what current immigration law recognizes as family, or how it matters, originated in the post-1921 era, out of struggles by immigrant families that had to face a fundamental tension between their claims and the regime of immigration restriction. Looking into the period between 1921 and 1978, at one level, this dissertation examines the place of family in relation to the three-tiered regulatory system created in the 1920s: 1) quotas restriction applied to European immigrants 2) exclusion of Asian immigrants, and 3) administrative regulation of immigration from Mexico without a firm ceiling. Beginning with significant changes in definitions of “family” in immigration, deportation, and nationality law during the era, this dissertation will discuss how both selective admission and selective restriction of certain familial relation made, reinforced, and unmade this regime.

At another level, this dissertation examines the 1921-1978 period as the formative period of contemporary immigration control. The three-tiered system marked by explicit ethno-racial hierarchization closed first in 1965 by abolition of the quotas system, and finally in 1978 when Congress placed all countries under a worldwide ceiling. But this was not the end of restriction. According to Guillermina Jasso and Mark R. Rosenzweig, immigration regulation in the U.S. can be divided into four eras: “Pre-restriction Era (1789-1874),” “Era of Qualitative Restrictions (1875-1920),” “Era of Qualitative Restrictions Plus Quantitative Restrictions on the Eastern Hemisphere (1921-1964), and the “Era of Both Qualitative and Quantitative Restrictions on Both

⁴ Christian Joppke, *Immigration and the Nation-State: The United States, Germany, and Great Britain* (New York: Oxford UP, 1999) 19-20; The case of post-WWII Europe is generally explained as unwelcoming governments having to accept rights of long-term foreign workers. See Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge: Harvard University Press, 1992); Andrew Geddes, *The Politics of Migration and Immigration in Europe* (London: Sage, 2003).

Hemispheres” since 1965.⁵ More than restriction by quotas, this periodization emphasizes 1) the critical divide between pre-1921 and post-1921 era, or the transition from the era of qualitative restriction to the era of quantitative restriction, and 2) successive tightening of immigration control, or continuity between 1921-1965 era and post-1965 era. This characterization reflects recent reevaluation of the period after drastic reduction of European immigration by quota restriction imposed in the 1920s until abolition of the quotas system in the 1960s. This dissertation will contribute to our understanding of this era, which was once the most neglected period in immigration history.

The main reasons for relative inattention to the quotas period have been the low volume of total immigration, especially immigration from Europe, and the European immigrant centered paradigm of the field. Compared with the pre-1920s and the post-1960s (with annual immigration of some one million), total immigration was small. In fact, migration from the Western Hemisphere such as Mexico was large,⁶ but immigration from Europe, which marked fifteen million during the first two decades of the century, trickled down to less than six million in the following four decades. Save for studies on refugees,⁷ the 1920s was the epilogue of many

⁵ Guillermina Jasso and Mark R. Rosenzweig, “Characteristics of Immigrants to the United States: 1820-2003,” in *A Companion to American Immigration*, ed. Reed Ueda (Malden, MA: Wiley-Blackwell, 2011), 331-337; It should be noted that description of pre-1874 era as the pre-restriction era is subject to contestation. Although the Immigration Act of 1875 was the first federal immigration law, state governments had sought to control migration through various means including deportation. Gerald L. Neuman, “The Lost Century of American Immigration Law (1776-1875),” *Columbia Law Review* 93 (1993): 1833-1901.

⁶ Literature on Bracero Program is large. Early monographs include Ernesto Galarza, *Merchants of Labor: The Mexican Bracero Story* (Charlotte, California: McNally and Loftin, 1964), Richard B. Craig, *The Bracero Program: Interest Groups and Foreign Policy* (Austin: University of Texas Press, 1971); For a more recent work, Deborah Cohen, *Braceros: Migrant Citizens and Transnational Subjects in the Postwar United States and Mexico* (Chapel Hill: University of North Carolina Press, 2011); On workers from the British West Indies, Cindy Hahamovitch, *No Man’s Land: Jamaican Guestworkers in America and the Global History of Deportable Labor* (Princeton: Princeton University Press, 2011)

⁷ David Wyman, *Paper Walls: America and the Refugee Crisis, 1938-1941* (Amherst: University of Massachusetts Press, 1968); Gil Loescher and John A. Scanlan, *Calculated Kindness: Refugees and*

historical works on European immigration.⁸ Another large body of scholarship concerns the post-1960s, as both authorized and unauthorized immigration increased, partly due to abolition of the quotas system, and as Latin America (8.4 million) and Asia (4.98 million) had surpassed Europe (4.35 million) as the origin of the foreign-born population in the U.S. by 1990.⁹

Conventional scholarship described the quotas era as that of restrictionism, the end of the quotas era as re-opening of the gate, and moreover depicted the era as that of anomaly in the history or tradition of “nation of immigrants.” As historian Mae Ngai has argued, this view reflected the formulation of the narrative of the U.S. as “nation of immigrants” after World War II as part of the struggle of Southern and Eastern European immigrants and their descendants for cultural and political recognition, in which the emergent field of immigration history played a central role. Led by works such as Oscar Handlin’s *Uprooted* (1951), immigration history or history of immigrants became a legitimate subfield of U.S. history. In a celebratory tone, John F. Kennedy’s *A Nation of Immigrants* (1958), and Lyndon Johnson’s designation of Ellis Island as national monument (1965) sent a message of recognition to immigrants from Southern and Eastern Europe and their descendants.¹⁰ In this context, abolition of the quotas system appeared

America’s Half-Open Door, 1945-Present (New York: Free Press, 1983); Richard Breitman and Alan Kraut, *American Refugee Policy and European Jewry, 1933-1945* (Bloomington: Indiana University Press, 1987); More recently, Michael Gill Davis, “The Cold War, Refugees, and U.S. Immigration Policy, 1952-1965,” (Ph.D. Dissertation, Vanderbilt University, 1996); Carl Bon Tempo, *Americans at the Gate: The United States and Refugees during the Cold War* (Princeton: Princeton University Press, 2008)

⁸ An example is the classic 1955 work on nativism by John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (New Brunswick: Rutgers University Press, 1955); For works that discussed absence of new immigration, integration of immigrants and the second-generation in relation to changing industrial and labor needs, see for example Lizbeth Cohen, *Making a New Deal: Industrial Workers in Chicago, 1919-1939* (New York: Cambridge University Press, 1990)

⁹ David Reimers, *Still the Golden Door: The Third World Comes to America* (New York: Columbia University Press, 1992); For a collection of essays on post-1965 immigration, Mary C. Waters et al. eds., *The New Americans: A Guide to Immigration since 1965* (Cambridge: Harvard University Press, 2007).

¹⁰ Mae Ngai, “The Unlovely Residue of Outworn Prejudices: The Hart Celler Act and the Politics of Immigration Reform, 1945-1965,” in *Americanism: New Perspectives on the History of an Ideal* eds., Michael Kazin et al, (Chapel Hill: University of North Carolina Press, 2006), 108-127; Mae Ngai, “Oscar

as a triumph over restrictionism based on ethno-racial hierarchization.¹¹ Moreover, reformers of the 1960s depicted restriction by quotas as anomaly and divergence from the ideals of the U.S., and its abolition as “reaffirmation of old principles.”¹²

Family immigration was central to the formulation of this narrative. At one level, as this dissertation shows, the call for family unity and demands for expansion of family-based admission played a significant part in eroding the quotas system, which sought to conform immigration to a rigid ethno-racial ratio. At another level, as a political statement, the narrative that the U.S. had always valued family immigration was central to the portrayal of the U.S. as a settler immigrant nation and as a nation of immigrants. Yet, powerful as it was as a political statement, this also left scholars of the generation engaged in the reform movement to place importance of the family as a matter of uncontested principle in the nation of immigrants without further inquiry. For instance, Edward P. Hutchinson (1986) wrote in his comprehensive survey of immigration legislation through 1790 to 1965 that family unification had “never been a controversial or debatable issue,” reasoning that Congress always favored immigrants “with the intention of remaining permanently, becoming a citizen, and bringing his family or establishing it after arrival.”¹³ This discourse entirely overlooked how exclusion of families was central to Asian exclusion that lasted until 1952, or how prevention of permanent settlement and family was central to labor recruitment from Mexico and the Caribbean since World War II, or how

Handlin and Immigration Policy Reform in the 1950s and 1960s,” *Journal of American Ethnic History* 32, no. 3 (2013): 62-63; Oscar Handlin, *The Uprooted: The Epic Story of the Great Migrations that Made the American People* (Boston: Little Brown, 1951); John F. Kennedy, *A Nation of Immigrants* (New York: Anti-Defamation League of B’nai B’rith, 1958).

¹¹ This literature emphasizes World War II as a critical turning point toward dropping of the barrier. Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants since 1882* (New York: Hill and Wang, 2004), chapter 4.

¹² John F. Kennedy, *A Nation of Immigrants* (New York: Harper, 2008), 50.

¹³ Edward P. Hutchinson, *Legislative History of American Immigration Policy, 1798-1965* (Philadelphia: University of Pennsylvania Press, 1981), 595.

“family separation” was a constant complaint by Southern and Eastern European immigrants during the quotas era.

Recent historians have shed new light on the era between two periods of great migration. Studies paying attention to women migrants have examined how immigration and nationality law assumed economic dependence of women on their husbands and fathers, and how a husband’s merit as immigrant determined the immediate family’s chance of admission, exclusion, or deportation.¹⁴ While acknowledging the waning of explicit racial nativism, significant changes in idea about race and ethnicity, or transformation of immigration pattern after 1965, recent works have also called attention to the shaping of alternative boundaries in addition to disappearance of boundaries, and the continuity in gatekeeping. For example, they have shown how reconfiguration of ethno-racial lines occurred among European immigrants, but how racial boundaries of white/non-white survived or was even reinforced.¹⁵ Whereas early studies on post-war immigration reform emphasized “death” of the quotas system,¹⁶ recent works have instead discussed the shaping of alternative ideas of immigrant selection.¹⁷ From a more long-

¹⁴ Candice Lewis Bredbenner, *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (Berkeley: University of California Press, 1998); Eithne Luibhéid, *Entry Denied: Controlling Sexuality at the Border* (Minneapolis: University of Minnesota Press, 2002); Martha Gardner, *The Qualities of a Citizen: Women, Immigration, and Citizenship, 1870-1965* (Princeton: Princeton University Press, 2005).

¹⁵ For a discussion of how immigration restriction reconfigured racial lines to categorize European immigrants as “Caucasian” or “white,” with less distinctions among European immigrants, Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge: Harvard University Press, 1998); Mae Ngai, “The Architecture of Race in American Immigration Law: A Reexamination of the Immigration Act of 1924,” *Journal of American History* 86, no. 1 (1999): 67-92; Gary Gerstle, *American Crucible: Race and Nation in the Twentieth Century* (Princeton: Princeton University Press, 2001); David Roediger, *Working toward Whiteness: How America’s Immigrants Became White* (New York: Basic Books, 2005)

¹⁶ Stephen Thomas Wagner, “The Lingering Death of the National Origins Quotas System: A Political History of United States Immigration Policy, 1952-1965.” (Ph.D. dissertation, Harvard University, 1986); Betty K. Koed, “The Politics of Reform: Policymakers and the Immigration Act of 1965.” (Ph.D. dissertation, University of California, Santa Barbara, 1999).

¹⁷ Philip Eric Wolgin, “Beyond National Origins: The Development of Modern Immigration Policymaking, 1948 -1968.” (Ph.D. dissertation, University of California, Berkeley, 2011).

term perspective, scholars such as Mae Ngai, Aristide Zolberg, and Daniel Kanstroom have examined the post-1920s as formative years of contemporary immigration regulation, with attention to both admission and expulsion of immigrants as central to the regime.¹⁸ Indeed, most importantly, belief in numerical restriction sank deep roots, and grounds for exclusion and deportation expanded throughout the era along with government institutions to enforce the regime. From this perspective, this dissertation examines contestations over family-based admission from 1921 to 1978 in relation to the making and unmaking of ethno-racial boundaries in the period of formal hierarchization among immigrants, and in relation to formation of contemporary immigration regulation that continues until today.

Numerical restriction since 1921 no longer allowed immigrants to practice family immigration in diverse ways as they had previously. Surely, during the mass migration period leading up to the first quota act, Congress had sought to control immigration by favoring family formations of certain immigrant groups over others, and favoring certain family relations over others. This was especially true with regard to Asian Americans, against whom immigration laws and court cases increasingly narrowed admission of families and attempted to prevent settlement and increase of Asian population.¹⁹ The late 19th-century immigration laws based on Victorian norms of morality and family also expressed the idea that women were dependent on their husband / father as well as the idea that men had the right to have his family in the

¹⁸ Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004); Aristide Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (New York: Russell Sage, 2006); Daniel Kanstroom, *Deportation Nation: Outsiders in American History* (Cambridge: Harvard University Press, 2007); For a comparative work that discusses the modern passport control system, John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge: Cambridge University Press, 1999)

¹⁹ Erika Lee, *At America's Gate: Chinese Immigration during the Exclusion Era, 1882-1943*. (Chapel Hill: University of North Carolina Press, 2003), especially Chapter 3.

household. For instance, immigration authorities cast suspicion on single women as prostitutes, one of the excludable classes.²⁰ Nevertheless, the actual rate of exclusion remained low, and separation by U.S. immigration acts was not as central a factor to consider in migration strategies for most European immigrants as it would become after 1921.

Furthermore, U.S. immigration laws did not govern the decision of whether and when the following family members would or could join in the U.S. Lack of numerical ceiling facilitated circular and temporary migration, since there was no fear of being barred entry upon return to the U.S. for lack of an annual spot. Likewise, migrants did not necessarily send for the nuclear family or in the order of degree of consanguinity as modern immigration laws favor. Immigrants often formed split households, where males immigrated to the U.S. first, either with or without the intention to settle permanently, and sent home remittances. Such strategy involving “separation of men from women during migration,” as historian Donna Gabaccia argues, “proved not only economically feasible but in many cases more advantageous than transplantation in family groups,” since it reduced the risks of migration.²¹ ²² Moreover, relations beyond the nuclear family, such as siblings, nephews / nieces, or cousins, played a crucial part in migration network extending from villages and countries of origins to the U.S.

Numerical restriction since 1921 limited the pattern of family immigration first by adopting a narrow definition of family, and second by fundamentally changing the significance

²⁰ Luibhéid, Eithne. *Entry Denied: Controlling Sexuality at the Border* (Minneapolis: University of Minnesota Press, 2002), chapter 2.

²¹ Donna Gabaccia, “When the Migrants are Men: Italy’s Women and Transnationalism as a Working Class Way of Life,” in Sharpe, Pamela ed. *Women, Gender, and Labour Migration: Historical and Global Perspectives* (New York: Routledge, 2001), 195.

²² Dino Cinel, *From Italy to San Francisco: The Immigrant Experience* (Stanford: Stanford UP, 1982); Mark Wyman, *Round-Trip America: The Immigrants Return to Europe, 1880-1930* (Ithaca: Cornell UP, 1993); Drew Keeling, *Repeat Migration between Europe and the United States, 1870-1914*. UC Berkeley: Institute of European Studies, 2009. Retrieved from: <http://escholarship.org/uc/item/56g1k33h>

of how laws defined family for immigration purpose. For instance, when Congress imposed a literacy test in 1917 in order to reduce immigration from Southern and Eastern Europe, Congress exempted certain family members of U.S. citizens and of any “admissible alien.” Considering men as labor competition, Congress applied a more rigid standard to men than to women, and mandated all men between the age of 16 and 55 to pass the literacy test. Yet, once over the age of 55, the 1917 Act treated them as dependent on their children and grandchildren, and exempted fathers and grandfathers. For women, Congress exempted wives, mothers, grandmothers, and daughters of any age as long as she was unmarried or widowed.²³ But later immigration laws have never recognized relations such as grandparents and grandchildren as family for admission purpose.

The importance of how immigration laws recognized families also became critically different. Under qualitative restriction, even if Congress did not recognize certain family relations for immigration purpose, the prospective immigrant could still immigrate to the U.S. as long as one met all the tests such as health conditions. Admission instead of exclusion was the norm, and family-specific clause mattered primarily for those who fell into one of the excludable categories. This was no longer the case after 1921, when exclusion became the norm. Post-1921 restriction was not about qualifications in terms of health, financial conditions, literacy or any other conditions. The point of numerical restriction by annual ceiling was to make otherwise qualifying immigrants wait until a spot became available. Non-recognition of family relations, or absence of family-based exemption from numerical restriction, meant a lengthy if not

²³ Section 3, Immigration Act of 1917 (34 stat. 874): When the literacy test was proposed in 1896, one version required all immigrants above 14 to pass the test, while the other version required only male between 16 and 60 to pass the test. As a compromise, all immigrants over 16 were required to pass the test, but male immigrant’s wife, children, and aged parents were exempted. Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge: Harvard University Press, 2000), 141, 155.

indefinite wait for admission. The only way of circumventing the wait was unauthorized immigration, which would place the immigrant in the state of permanent alienage. The concept of “family unification” in post-1921 immigration was developed out of contestation between restrictionist framework that disallowed immigrants to practice family immigration in diverse and expansive ways as they had previously before 1921. The compromises that result from this contestation include the limited definition of family-relations in terms of admission.

In the following sections, Part 1 looks into the emergence of the restriction regime in the 1920s. Chapter 1 examines the closing of era of open migration for European immigrants. The question of whose and which family mattered acquired utmost importance, as post-1921 regime held all non-recognized relations to be *prima facie* inadmissible. It argues that quotas system was invented as an antithesis to family-based admission, which was believed to favor Southern and Eastern European immigrants, and with a specific purpose of minimizing the importance of familial relations in immigrating to the U.S.

Chapter 2 discusses the second pillar of post-1920s regime: racial exclusion of Asian immigrants as “aliens ineligible to citizenship.” Whereas the issue for immigrants from Southern and Eastern Europe was to what extent rights of citizens and immigrants could be recognized, for Asian Americans the question in the late 1920s was whether wholesale racial exclusion trumped all claims of U.S. citizens to bring one’s family. This chapter discusses the challenge of Chinese-Americans against the exclusion of their family members. It examines how both admission and exclusion of certain family relations reinforced ideas about miscegenation, and discusses the racial boundary of family rights, drawn between “Caucasian /white family” and others.

Part 2 examines the Great Depression era, and claims of immigrant families facing deportation. As the third tier of post-1920s immigration regulation, the Western Hemisphere remained outside the quotas system. Absence of a formal ceiling on Mexico was not grounded in the same idea that gave Great Britain the largest share of quotas as “origin” of the United States, but was seen more as a means to reserve flexible access to labor. At its core was non-recognition of Mexican immigrants as permanent members. Chapter 3 discusses Mexican American repatriation in various localities in the West and the Midwest as a specifically family-targeted repatriation, involving Mexican and Mexican American families. The chapter discusses the effect of repatriation across generations, involving Mexican immigrants, their families formed in the U.S., and families formed in Mexico after repatriation, and their struggles to return to the U.S.

In contrast with deportation and repatriation drive against Mexican and Mexican Mexican Americans, deportation in cities with large European immigrant population invited sharp criticism. Chapter 4 examines the reform movement led by immigrant aid agencies and the Secretary of Labor Frances Perkins, and the resulting deportation system that gave certain recognition to familial ties of deportable immigrants. It also shows how the movement ultimately failed to question the foundation of immigration restriction. The chapter will also discuss how Congress withdrew this privilege specifically from Mexican immigrants after the war, and discusses how non-recognition of family was central to concurrent recruitment of “temporary” workers.

Chapter 5 looks into the decade after the Immigration and Nationality Act of 1952 Often seen as a period without little change in the quotas system, this chapter shows how the nuclear family model of family-based admission was challenged, and argues that the basic framework of

what would be considered a “family” in 1965 was determined. With particular attention to Italian Americans, this chapter discusses their challenge against the nuclear family based model of family-based admission and the lasting change in immigration achieved by the movement.

Chapter 6 examines the final phase of the abolition of the national origins quotas in the Eastern Hemisphere, and the onset of the era of global immigration restriction including the Western Hemisphere. It discusses how breaking down of explicit hierarchization of European nationalities created a different understanding of “national origins,” and how the national origins quotas and family-based admission, which were originally conceived to be exact opposites, came to be seen as companions. Next, it will examine how the notion of equality, especially formal equality for families under the Immigration Act of 1965 and in the post-quotas regulation turned into a formal numerical restriction on the Western Hemisphere.

Part I. Family Exemption and Family Exclusion

On December 8, 1925, in his annual message, President Calvin Coolidge asked whether the Immigration Act of 1924 was “working a needless hardship upon our own inhabitants.” Coolidge upheld the act as a whole and stressed that the U.S. had the sovereign right to restrict immigration: “no alien, inhabitant of another country, has any legal rights whatever under our Constitution and laws. It is only through treaty, or through residence here that such rights accrue.” The only proposal of Coolidge was to amend the 1924 Act for families of “our own inhabitants.” “If it deprives them of the comfort and society of those bound to them by close family ties,” Coolidge suggested, “such modifications should be adopted as will afford relief.”¹

Coolidge’s message pointed to some key contested issues surrounding family immigration after 1924. Chapter 1 examines the quota restrictions imposed on European immigrants. The chapter first discusses how the quotas system was invented as an antithesis to family-based admission and with a specific purpose of minimizing the importance of familial relations in immigrating to the U.S. Still, quotas restriction imposed on European immigrants gave certain consideration to families of U.S. citizens. Once numerical restriction began, one of the key questions was whether U.S. citizenship and naturalization should be the prerequisite for family unification. In speaking of family hardship, Coolidge specifically chose the term “inhabitant” because the issue was whether family unification was reserved exclusively for U.S. citizens. Such question only had relevance for Southern and Eastern European immigrants, since large quotas instead of family-specific legislation ensured prompt immigration from countries such as Britain and Germany. Initially, the issue was discussed strictly in relation to

¹ Calvin Coolidge: "Third Annual Message," December 8, 1925. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=29566>.

immigration from Eastern and Southern Europe and as a matter of little importance to Western and Northern European immigrants, and the chapter will examine where the national origins quotas and family unification converged.

Chapter 2 looks into racial exclusion of Asian immigrants as “aliens ineligible to citizenship,” which involved a very different question. Unlike in the case of European immigrants, the question was not whether citizenship should be a pre-requisite for family unification, but whether relation to a U.S. citizen mattered at all, or whether U.S. citizenship could trump racial exclusion. As Coolidge referred to “treaty,” only foreign treaties protected families “ineligible to citizenship” from wholesale exclusion. This chapter first discusses how by 1927 racial exclusion was affirmed as the foremost bar that trumped any familial connections to U.S. citizens, and how family-based admission was made into a racially limited right. With exclusion of “aliens ineligible to citizenship” completed, the chapter next examines exclusionist attempt to reduce immigration from Asia targeting citizenship acquired at birth by foreign-born U.S. citizens of Asian descent. With particular attention to the ideas about racial discrimination held by advocates for Southern and Eastern European immigrants, the chapter discusses the racial boundary of family rights.

Chapter 1: Quotas versus Families, 1921-1934

The Emergency Quota Act of 1921, the first numerical restriction of European immigrants, marked the beginning of immigration regulation built on the premise that all foreigners would be subjected to numerical restriction unless explicitly exempted, a critical departure from previous immigration regulation established in 1882 that assumed everyone to be admissible unless specifically provided as excludable. Limitation took the form of annual quotas varying widely in size depending on the country of birth of the immigrant. The first quotas system was imposed in 1921, the second in 1924, and the national origins quotas that took effect in 1929 lasted until 1965. As a corollary, the quotas system included certain consideration for European immigrant families in two forms: exemption from quota restriction or priority (preference) over others within the annual quotas of each country.

Since quotas were not only a ceiling but a guaranteed reserve for each country, the importance of whether immigration law considered certain family relations varied greatly among countries. For immigrants born in countries with small quotas, of utmost importance was exemption from quota restriction, followed by preference within the quotas. Without either, there was little chance of immigrating to the U.S. without a lengthy if not indefinite wait. Both in terms of absolute number and in proportion to immigration from each country, family-specific legislation mattered most for Southern and Eastern European immigrants. By contrast, where large quotas ensured prompt admission to the U.S., family-specific legislation made little difference in the timing or possibility of immigration, and immigration through the formal channel of family-based admission was rare.

Scholarship on post-1924 immigration debate has most paid attention to the national origins quotas debate between 1927 and 1929. The issue of family is only mentioned in passing

in this literature.¹ However, the two debates that proceeded concurrently involved different interests. The most divisive issue in the national origins quotas debate was distribution of quotas among countries in Northern and Western Europe, whereas family-based admission concerned immigrants from Southern and Eastern Europe. On the other hand, in studies on women's rights and female immigrants, the relation between family-based admission and the quotas system, or the ethnoracial dimension of the debate has not been fully explored.² Most generally, since family-based admission was small in proportion to total immigration from Europe, because families from favored countries chose the easier immigration path of quota visas, the importance of family-based admission under the quotas system had been discounted.³ However, as this dissertation shows, it was a matter of premier importance for Southern and Eastern European immigrants, and their struggles was critical in the shaping of family-based admission and its boundaries.

The two quota acts of 1921 and 1924 curtailed new admission, but immigrants already living in the U.S. and their families in Europe were quite another matter. The issue of family separation and family unification became acute immediately after the quotas were imposed. At the core of family unification debates in the late 1920s were the rights of those who had immigrated before 1924 and their families. This chapter particularly pays attention to the

¹ For example, Robert Divine, *American Immigration Policy, 1924-1952* (New York: Da Capo Press, 1972), 26-51; Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 34; Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (New York: Russell Sage Foundation, 2006), 267; Desmond King, *Making American: Immigration, Race, and the Origins of the Diverse Democracy* (Cambridge: Harvard University Press, 2002), 199-229; A work that discusses both aspects is Sheldon Morris Neuringer, *American Jewry and United States Immigration Policy, 1881-1953* (New York, Arno Press, 1971).

² Candice Lewis Bredbenner, *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (Berkeley: University of California Press, 1998); Martha Gardner, *The Qualities of a Citizen: Women, Immigration, and Citizenship, 1870-1965* (Princeton: Princeton University Press, 2005).

³ For example, Gardner, *The Qualities of a Citizen*, 29.

Donna Gabaccia, *From the Other Side: Women, Gender, Immigrant Life in the U.S. 1820-1990* (Bloomington: Indiana University Press, 1994), 38;

linkage of family-based admission to formal U.S. citizenship, and to families of non-citizens. Family rights of non-citizen immigrants have gathered less attention from historians than that of citizens, partly because the line between a citizen and a permanent resident is not a hard boundary in the U.S., where eligibility to naturalization is part of permanent residency. But the question had particular importance in the 1920s, the decade of large number of naturalizations as well as emigration, when 11.8 million people born in Europe resided in the U.S., with as many noncitizens (45.8 percent / 5.4 million) as naturalized citizens (49.1 percent / 5.8 million).⁴ Moreover, what it meant to be an “immigrant” or “permanent resident” of the U.S. itself was in flux, as the era of open immigration era came to an end.

1.1 Quotas as an Antithesis to Family-based Admission

The Emergency Act of May 29, 1921, the first law to numerically restrict European immigration, marked a critical turning point in U.S. immigration history. Enforced on June 3, 1921, it was claimed to be a stopgap measure after World War I, but numerical restriction became a permanent policy thereafter. Using the most recent 1910 census, the 1921 Act limited annual immigration from each country in Europe to 3 percent of the number of U.S. residents born in the respective country, in other words the number of first-generation immigrants. Pre-

⁴ The total foreign-born population was 13.9 million in 1920 (13.2% of total population) and 14.2 million in 1930 (11.6 percent of total). European-born population was 11.7 million in 1930. By 1930, naturalized citizens increased to 60.1 percent (7.0 million), while noncitizens decreased to 36.6 percent (4.3 million), and 3.3 percent (389,000) unknown. United States Census Bureau, *Fifteenth Census of the United States-1930-Population, Volume II: General Report, Statistics by Subject*, (Washington D.C.: G.P.O, 1933), 406-407.

war immigration averaged one million annually, but the total quotas for Europe were reduced to a mere 355,000.⁵

Several aspects of the quota system have been neglected in scholarship. First, one of the initial purposes of quotas was to discount family ties as criteria for deciding admission to the U.S. The quota system was advanced specifically as a counter-proposal to family-centered restriction or admission scheme. Secondly, quotas were originally intended to be an absolute ceiling on annual immigration from each country. In its final form, numerical restriction was coupled with a system of permitting certain family members to immigrate outside the quotas, but this was quite different from the original intention. The final inclusion of non-quota family immigration resulted only after intense struggle from immigrant groups and their advocates.

After the outbreak of the war in Europe, annual immigration plummeted from one million to an average of 235,000 between 1915 and 1919. Despite the sharp drop, wartime anti-foreigner sentiment gave support for the restrictionists to finally introduce their long-desired literacy test in the Immigration Act of 1917, overriding the fourth Presidential veto, once by Grover Cleveland and Howard Taft, and twice by Woodrow Wilson. However, a sharp rise in post-war immigration -- from 430,000 in 1920 to 805,000 in 1921 -- revealed that the law did not have the expected effect of reducing immigration from Southern and Eastern Europe. Previously, qualitative restriction such as literary test was controversial enough, but the terms of restriction debates shifted in the course of the war and the Red Scare to a more rigid numerical restriction.⁶

⁵ Senate proposed 5 percent, but House insisted on 3 percent. John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (New Brunswick: Rutgers University Press, 2001), 308-311; Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants Since 1882* (New York: Hill and Wang, 2004), 48.

⁶ Immigration Act of February 5, 1917 (39 Stat. 874); When the literacy test was introduced, annual immigration had already dropped to less than 300,000 due to the war in Europe, and the effect of the literacy test was not clear. Higham, *Strangers in the Land*, 191-193, 202-203, 312-324; Daniel J.

Nativists advanced two schemes of immigration restriction. One was suspension of immigration, which was the idea of Representative Albert Johnson (R-Washington). The future author of the Immigration Act of 1924, Johnson became the chair of the House Immigration and Naturalization Committee in 1919. Johnson admired the eugenicist Madison Grant, the author of the *Passing of the Great Race* (1916), and Johnson himself was the president of the Eugenics Research Association. Grant's writing that acquired popularity in the 1920s preached that the human species could be "roughly divided into Negroes and Negroids, and the Mongols and Mongoloids," and the "European" or Caucasian." His focus was on the European, which Grant argued could be divided into "three main European races": "Alpine," the "Mediterranean," placing the "Nordic" on the top of the hierarchy. Rejecting the notion of the melting pot, Grant argued how the "mixing" of superior "race" with others diluted the nation and insisted that "the Great Race" would eventually be overwhelmed.⁷ As historian Matthew Frye Jacobson argues, the literacy test at least wore a "concealing cloak of the more environmentalist" view, but "the starker racial argument was in ascendance" in the 1910s.⁸

Insisting on the need to stop immigration from Southern and Eastern Europe, in 1919 Johnson proposed to suspend immigration altogether until Congress discussed more long-term policy. The proposal was backed by various patriotic societies and restrictionist organizations

Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002), 114-149; Bill Ong Hing, "'Translate This': The 1917 Literacy Law," chap. 3 in *Defining America through Immigration Policy* (Philadelphia: University Press, 2004); Aristide R. Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2006), 223-242

⁷ Desmond King, *Making Americans: Immigration, Race, and the Origins of the Diverse Democracy* (Cambridge: Harvard University Press, 2000), 166-195; Madison Grant, *Passing of the Great Race or The Racial Basis of European History* (New York: Scribner's Sons, 1916); On Madison Grant, Jonathan Peter Spiro, "Patrician Racist: The Evolution of Madison Grant." Ph.D. dissertation, University of California at Berkeley, 2000, especially chapter 12 for *Passing of the Great Race*, and chapter 15 for his influence on the quota acts.

⁸ Matthew Frye Jacobson, *Barbarian Virtues: The United States Encounters Foreign Peoples at Home and Abroad, 1876-1917*. (New York: Hill and Wang, 2000), 200.

including the American Federation of Labor, but there was also strong opposition that absolute suspension was too drastic and abrupt. To pacify such opposition, in 1920 he next proposed to suspend new admission with an exception of certain families of U.S. citizens and those who had filed the declaration of intention to become a U.S. citizen.⁹

Quotas restriction was a counter-proposal by Senator William P. Dillingham (D-Vermont), former chair of the United States Immigration Commission (1907-1911), which published a 41-volume study on immigrants in the U.S.¹⁰ The central feature of quotas was that they were ceilings of different sizes according to the country, and Dillingham had introduced the idea of quotas restriction as early as 1913.¹¹ In addition to finding suspension of immigration too extreme, the senator believed that Congress must achieve two ends through restrictive legislation but that Johnson's scheme served neither of these purposes. First, Dillingham insisted on the need to build a policy of numerical immigration restriction. Second, the target had to be Southern and Eastern European immigrants with minimal adverse effect on Northern and Western European immigrants.

On two levels, Johnson's scheme was different from numerical restriction. For one, numerical restriction admits only a certain number of immigrants in a given period by compelling otherwise qualifying immigrants to wait until a spot becomes available if ever. But exclusion or immediate admission were the only two options under Johnson's plan, with no mechanism to control the timing hence the volume of immigration. For another, it was impossible to predict the number of families that would possibly be exempted from suspension of immigration. Those who claimed to join their "relatives" in the U.S. accounted for 80 percent

⁹ Johnson bill, H.R. 66-14461 (1920); Higham, *Strangers in the Land*, 307; Hutchinson, *Legislative History*, 174-176.

¹⁰ King, *Making Americans*, 58-79.

¹¹ Daniels, *Guarding the Golden Door*, 46-47.

of all immigrants from 1911 to 1914 (3.3 of 4.1 million), and depending on the range, a majority of intending immigrants could potentially be exempted. In fact, one reason that the literacy test introduced in 1917 had little effect of reducing immigration from Southern and Eastern Europe was because many did not have to take the test thanks to the test's family exemption provision.¹²

Another problem with absolute suspension of immigration was that it would stop immigration from Northern and Europe as well, and could not specifically target immigrants from Southern and Eastern Europe. Most importantly, for Dillingham, even worse was the idea of family-based exemption, which he believed would have an entirely contrary effect that would “discriminate ... in favor of southeastern Europe, instead of northwestern Europe.” Drawing on the findings of the Dillingham Commission, the Senator argued, “The people in northwestern Europe are not dependent upon those who have preceded them to this country. Those who are in the country brought, in most cases, their families with them. Therefore the provision admitting relatives is largely inapplicable to northwestern European immigration.”¹³ Dillingham believed that families of immigrants from Northern and Western Europe were already residing in the U.S. and therefore there was no need to make a law to allow current residents to send for their families.¹⁴

The Dillingham Commission invented the term “old immigration” to refer to immigration from Northern and Western Europe and “new immigration” to refer to immigration from Southern and Eastern Europe since the late nineteenth century. The report began with the premise that there were differences between the two, and despite its numerous valuable findings, the overall conclusion only supported the premise that “new immigration” must be different from

¹² Another reason was the improved literacy rate, and most who actually took the test passed.

¹³ 60 Cong. Rec. 3447 (1921) (Senator William Dillingham)

¹⁴ H.R. 14461 (1920); *Temporary Suspension of Immigration* H.R. Rep. No. 66-1109 (1920), 7-8, 13; *Emergency Immigration Legislation* S. Rep. 66-789. (1920)

“old immigration.”¹⁵ The commission concluded that the “old immigration” was “essentially one of permanent settlers.” By contrast, the commission characterized “new immigration” as sojourners with “no intention of permanently changing their residence.” Among the factors that the commission pointed to was the return migration rate and gender ratio. The return migration rate was approximately 40 percent. The Commission also emphasized that 75 percent were men. “The great majority of some of these races are present in the United by single men or men whose wives and families are in their native country,” the Commission argued.”¹⁶ There were regional differences in immigration pattern, and this was not a characteristic shared by “new immigration. Before numerical restriction, migrants from certain countries such as Italy and Greece surely had a significantly high proportion of men, both married and single.¹⁷ With regard to sex ratio, 1924 was a turning point of immigration from Europe when women came to outnumber men. Previously, with the exception of 1922, men had constantly outnumbered women, although the gap was narrowing since World War I.¹⁸ While many returned to Europe after the war as new states came into being, others began to send for their families in the 1920s.

The idea that family-centered admission or family-based exemption from restriction would only benefit Eastern and Southern European immigrants was consistent throughout the

¹⁵ Oscar Handlin, *Race and Nationality in American Life* (Boston: Little, Brown and Company, 1948), 101-10; King, “Making America,” 59-60.

¹⁶ U.S. Immigration Commission, *Reports of the Immigration Commission: Vol 1. Abstracts of Reports of the Immigration Commission* (Washington, D.C.: G.P.O., 1911), 24, 42; On Dillingham Commission, Robert F. Zeidel, *Immigrants, Progressives, and Exclusion Politics: The Dillingham Commission, 1900-1927* (DeKalb, IL: Northern Illinois University Press, 2004); For hostility against return migration, Neil Larry Shumsky, “‘Let No Man Stop to Plunder!’ American Hostility to Return Migration, 1890-1924,” *Journal of American Ethnic History* 11, no. 2 (1992): 56-75.

¹⁷ Mark Wyman, *Round-Trip to America: The Immigrants Return to Europe, 1880-1930* (Ithaca: Cornell University Press, 1993), 9-12.

¹⁸ Marion F. Houston et al., “Female Predominance in Immigration to the United States since 1930: A First Look,” *International Migration Review* 18, no. 4 (1984): 908-63; With regard to total immigration to the U.S., the turning point was 1930, after migration from Mexico was curtailed through administrative measures.

1920s. Hence, quota system was a counter-scheme to family-only admission policy. Whereas family-based admission was considered to adversely affect Northern and Western European immigrants and work in favor of Southern and Eastern European immigrants, restriction by country quotas varying in size could specifically target Southern and Eastern European immigrants, depending on how the quotas were assigned.

Furthermore, Congress originally intended the quotas as the absolute maximum number of immigrants admitted from each country. As one Congressman put it, “opening the gates without knowing how many could come in” by making exceptions to quota restrictions would defeat the purpose of numerical restriction.¹⁹ The statement pointed to the fundamental tension between the emerging regime of numerical restriction and the claims of families. For families, the only way to immigrate to the U.S. when they desired and to minimize the period of separation was exemption from numerical restriction, which directly conflicted with the regime of numerical limitation that compels otherwise qualifying immigrants to wait indefinitely.

A brief look at the Immigration Act of 1917 shows significant narrowing of family-based admission. When the 1917 Act require a literacy test of all foreigners over 16, it also exempted certain relatives of a U.S. citizen and those of “any admissible alien.” In other words, if the head of the family passed the test, his family members did not have to. Expressing the idea that women were dependent on men, Congress applied family-based exemption more broadly to female relatives than to male relatives. The law exempted wife, mother, grandmother, as well as unmarried and widowed daughter from the literacy test. For women, the key was marital status, and the 1917 Act treated women as part of the family of the male breadwinner as long as she was married or when she lost her husband. Exemption for male relatives was narrower: father and

¹⁹ 61 Cong. Rec. 563 (1921) (Everett Sanders, IN)

grandfather over the age of 55, reflecting the idea that aged men no longer competed with labor but were dependent on their sons and daughters.²⁰

By comparison, the quotas restriction bill passed by both houses in the 66th Congress, pocket-vetoed by President Wilson, did not exempt any family of a citizen much less that of a non-citizen. Nor did the bill reported out by immigration committees in the following Congress.²¹ It should be noted here, however, that in 1921 exclusion of wives of U.S. citizens was not an issue. Under the Nationality Act of 1907, a woman automatically acquired U.S. citizenship upon her marriage to a U.S. citizen or upon naturalization of her husband. Thus, upon arrival at the ports of entry she was treated as a U.S. citizen. It was in 1922 when Congress abolished marital naturalization that wives of U.S. citizens began to arrive as a foreigner, and their excludability would raise an acute issue.²² Nevertheless, family exemption from the quotas

²⁰ Section 3, Immigration Act of 1917 (34 stat. 874): In his proposal to suspend immigration with the exception of certain families, Johnson adopted this clause in a modified form. First, for male relatives of U.S. citizens, he pointed to marital status and age as the two criteria, and suggested admitting grandson under 16, unmarried son under 21, fathers, and grandfathers. For female relatives of U.S. citizens, marital status was the sole criteria, and Johnson proposed to admit any granddaughter or daughter who was either unmarried or widowed, wife, mother, and grandmother. While the 1917 Act provided equal treatment to families of both U.S. citizens and of “any admissible alien,” Johnson insisted on lesser rights for non-citizens, with narrower exemption (unmarried or widowed daughter regardless of age, unmarried son under 21, and spouse), and limiting eligibility to families of those who had declared their intention to become a citizen (unmarried or widowed daughter regardless of age, unmarried son H.R. 14461 (1920); *Temporary Suspension of Immigration* H.R. Rep. No. 66-1109 (1920), 7-8, 13; *Emergency Immigration Legislation* S. Rep. 66-789. (1920)

²¹ *Restriction of Immigration* H. R. Rep. No. 67-4 (1921); *Emergency Immigration Legislation* S. Rep. No. 67-17 (1921).

²² According to Candice Lewis Bredbenner, between 1907 and 1911 whether marital naturalization applied to a wife who had never lived in the U.S., in other words whether she was already a U.S. citizen when she arrived at the ports, was a contested issue. The federal courts issued five major opinions on this question before it was concluded that woman acquired U.S. citizenship upon marriage and that at the time of her arrival in the U.S. she was already a citizen not a foreigner subject to immigration law.; With regard to children, the Nationality Act of 1907 stated that naturalization of fathers did not automatically confer U.S. citizenship to their minor children living outside the U.S. And shortly before the 1907 Act was enforced, *Zartarian v. Billings* 204 U.S. 170 (1907) ruled that the “minor children of a naturalized alien who were born abroad and remain abroad until after their parent's naturalization” are “aliens, subject as to their entrance to the United States to the provisions of the Alien Immigration Act.” *Nationality of Her Own*, 26, 39-40.

was only a last minute invention. The House rejected by large margins several proposals to exempt parents, siblings, children and grandchildren of citizens (no record); parents, siblings, and children of citizens (17 to 97), and parents and children under eighteen of citizens (9 to 78).²³ The only exception that Congress finally agreed on was children under eighteen, with the maximum number expected to be approximately 30,000 to 40,000.²⁴

Exclusion under the 1921 Act

In 1921, for the first time in U.S. history, quotas availability began to determine the timing or possibility of immigration to the U.S. Annual limitation overrode all other conditions such as financial capability of the family. While many intending immigrants could not even depart from Europe, what gathered most attention in the U.S. were those who were turned away from the U.S. ports. Exclusion in itself was hardly new, but exclusion of an otherwise qualifying immigrant simply for the reason that quotas were full was unprecedented. Prior to 1921, the most common reason for exclusion was “likely to become a public charge,” a nebulous term used for exclusion on various grounds. But in 1924, quota oversubscription was the most common grounds for exclusion.²⁵

²³ 61 Cong. Rec. 562, 563, 570 (1921)

²⁴ The vote was 110 to 22. 61 Cong. Rec. 579 (1921); Sec. 2(a), 2(d) Preference within the quotas was accorded to other families of citizens: wives, parents, siblings, and fiancées. Families of declarants and WWI veterans were also given preferences: children under eighteen, wives, parents, siblings, and fiancées

²⁵ For discussion of “likely to become a public charge,” Edith Abbott, “Federal Immigration Policies, 1864-1924 II.” *University Journal of Business* 2, no. 3 (1924): 347–357; Patricia Russell Evans, “Likely to Become a Public Charge’: Immigration in the Backwaters of Administrative Law, 1882-1933.” Ph.D. dissertation, George Washington University, 1987; For the usage of LPC clause in relation to diseases and medical inspection, Amy L. Fairchild, *Science at the Borders: Immigrant Medical Inspection and the Shaping of the Modern Industrial Labor Force*. (Baltimore: Johns Hopkins University Press, 2003); Gardner, “Qualities of a Citizen,” 87-99; *Annual Report of the Commissioner General of Immigration 1924*, 115.

Between 1922 and 1924, the Bureau of Immigration turned away 15,400 immigrants arriving from Europe on grounds of quota oversubscription. Congress provided only two weeks between passage and enactment of the new law, and exclusion at the ports of entry revealed that the immigration bureaucracy was unprepared to administer the new policy. The visa system first adapted in 1917 and formalized by the Passport Act of 1918 required all foreigners to obtain a visa before departing for the U.S.²⁶ Still, visas were not the primary means of numerical restriction until 1924. Under the 1921 Act, enforcement of numerical restriction was not the responsibility of the State Department, and consuls only took an approximate count of emigrants. A visa did not guarantee a quota slot, and passengers departed for the U.S. without knowing whether a spot will be available upon their arrival. It was at the ports of entry that the Bureau of Immigration under the Department of Labor charged arriving passengers against the quotas.²⁷

Newspapers reported sympathetically about exclusion for quotas oversubscription and resulting family hardship. For instance, in September 1921, the *Boston Globe* reported on a Polish family consisting of father, mother, and seven children, who arrived in New York. Although they arrived on the same ship, the immigration officials only admitted the mother and the children, but turned away the father because the Polish quotas became full.²⁸ Monthly quotas (maximum 20 percent of the annual quota) were often exhausted on the first day of the month, and when the clock turned midnight ships rushed in for inspection so that their passengers could make the monthly cut. The competition was so intense that on one occasion, New York immigration officials had to decide which of the two ships from Italy that came in “neck to neck”

²⁶ John Torpey, *The Invention of the Passport: Surveillance, Citizenship, and the State* (New York: Cambridge University Press, 2000), 117-121.

²⁷ Zolberg, *A Nation by Design*, 240-241; *Admissions of Aliens in Excess of Quota for June 1921* H. Rep. No. 67-169 (1921); *Admission of Certain Aliens in Excess of Quotas*. H. Rep. No. 67- 776 (1922).

²⁸ “Father Sent Back, Mother and Seven Children Stay,” *Boston Globe*, September 13, 1921.

first crossed the quarantine line between Fort Wadsworth and Fort Hamilton. Passengers on one ship or the other were to be turned away. On another occasion, four ships crossed the quarantine line shortly before midnight, and 1,900 passengers were denied entry as they were counted against the full quotas of the previous month.²⁹

The Cable Act of September 22, 1922 added to the turmoil at the ports of entry. As historian Candice Lewis Bredbenner discusses in detail, the Cable Act created an unforeseen problem for the Department of Labor and the Bureau of Immigration. In two ways, the law decoupled women's nationality from marriage or that of her husband's. The most important achievement was abolition of the practice of marital expatriation, which enabled U.S. citizen women to retain her citizenship after marrying a foreign national. At the same time, it also ended the practice of marital naturalization, which automatically accorded U.S. citizenship to a woman upon her marriage to a U.S. citizen or upon naturalization of her husband. The abolition of marital naturalization created a new problem; wives of U.S. citizens arriving at the ports were no longer citizens but foreigners subject to immigration law.³⁰ Because excludability of wives had not been an issue in 1921, Congress had only exempted children under eighteen from the quotas.

Rigid interpretation of the 1921 Act would have subjected citizens' foreign wives to quota restrictions. But the Department of Labor gave conflicting instructions on whether citizens' wives would be excluded once quotas were exhausted, which showed the strength of the idea that

²⁹ "2 Liners Claim Victory in Race to Land Aliens," *New York Tribune*, December 2, 1922; Twelve Ships Make a Midnight Rush with 10,000 Aliens, *New York Times*, July 1, 1923; "Rush at Ellis Island," *Interpreter* 2, no. 7 (July 1923), 4-5; "Alien on 4 Ships Too Soon to Enter," *New York Times*, September 2, 1923.

³⁰ Act of September 22, 1922 (42 Stat. 1021 - Cable Act); Cable Act did not affect the citizenship status of foreign women who had married citizens before September 22, 1922. Women who married citizens after that date no longer became U.S. citizens automatically but had to apply for citizenship independently. Gardner, *Qualities of a Citizen*, 127.

it was a man's right to have his wife and children together in the household. The Acting Secretary of Labor Carl Robe White expressed the double bind of the agency, "As a matter of law, we may not admit her, but as a matter of fact, they all are admitted, because, thus far, no public officer has been found able to stand up under the everlasting hammering of hundreds of public officers and millions of American citizens who are shocked beyond expression at the thought that the wife of an American citizen should be denied admission. They care not that the law prohibits it. The truth of the matter is, cases of this kind almost wreck the machinery of the immigration service."³¹ And in December 1923, the Department of Justice suggested that Congress should give the Commissioner General of Immigration discretionary power to admit immigrants regardless of the quotas if "the enforcement of the law requires the separation of a family, a result which seems to us abhorrent."³² As the next chapter will discuss, the notion that it was a male citizen's right to have one's wife and children in the same household only applied to "white" European immigrants. In the late 1920s, Congress and the Supreme Court would strip Asian-American families from immigrating to the U.S. regardless of whether they were wives and children of U.S. citizens or not.

1.2 Naturalization and Family Immigration

Whereas the nuclear family of U.S. citizen father/husbands was given certain consideration both under immigration law and through administrative discretion, families of noncitizens faced a much harsher treatment. In September 1921, Jacob Berman, a tailor from Poland, found that his 10-year-old daughter Freda was excluded at the port of New York. He had immigrated to the U.S. seven years earlier, and sent for his family after the end of World

³¹ Quoted in Bredbenner, *A Nationality of Her Own*, 118-119.

³² "Urges Amendment of Immigration Law," *New York Times*, December 9, 1923.

War I. Freda's mother passed away on the eve of sailing, and Freda crossed the Atlantic on her own. But when she arrived in the U.S., the monthly quota for Poland was already full. Although the 1921 Act exempted children of citizens from quotas restriction, Jacob was yet to become a U.S. citizen.³³

Between 1921 and 1924, 16,500 immigrants excluded for quota oversubscription appealed their cases.³⁴ The most important case concerning families of non-citizens regarded rabbi Solomon Gottlieb from Palestine, whose wife and four-month old son were excluded at the port of New York. Having arrived in the U.S. fourteen months earlier, Rabbi Solomon Gottlieb had already filed his declaration of intention to naturalization, but had four more years to fulfill the five-year residency requirement to be able to apply for final naturalization. Jewish organizations saw the case as a test case, and represented by prominent lawyers such as Louis Marshall, the Gottlieb family challenged the decision upon *habeas corpus* proceedings.³⁵

The issue contested in court was not the family rights of residents in general. Appellants emphasized the fact that as a rabbi Simon Gottlieb himself was not subject to quota restrictions. The 1921 Act exempted certain professions including religious ministers from quotas restriction.³⁶ Although the law exempted a minister from quota restrictions without reference to his wife and children, plaintiffs argued that it was inconceivable to admit a rabbi outside the quotas and at the same time to exclude his wife and children.

³³ "Harding Takes Up Aliens' Exclusion," *New York Times*, September 13, 1921.

³⁴ While 6,200 immigrants lost their cases, some 10,300 were admitted with or without bond. *Annual Report of the Commissioner General of Immigration 1922*, 122; *Annual Report 1923*, 137; *Annual Report 1924*, 136.

³⁵ Gardner, *Qualities of a Citizen*, 125-126.

³⁶ Aliens returning from a temporary visit abroad, artists, lecturers, singers, nurses, ministers of any religious denomination, professors for colleges or seminaries, aliens belonging to any recognized profession, or aliens employed as domestic servants. Section 2 d, Emergency Quota Act (42 stat. 5)

The lower courts ruled in favor of the family. Both the district court and the court of appeals ruled that silence of immigration law on the family did not mean that they should be subjected to quota restrictions. The district court ruled in March 1922 that “the separation of a man from his family is concededly a great hardship and dangerous to the welfare of society.”³⁷ The court of appeals pointed to the 1900 Supreme Court ruling *United States v. Gue Lim*, a case regarding wife of a Chinese merchant. Although a series of Chinese exclusion laws excluded virtually all Chinese from entering the U.S., the Burlingame Treaty of 1880 entitled merchant class Chinese to immigrate to the U.S., and the exclusion laws themselves exempted merchants, ministers, students and diplomats. The Supreme Court reasoned that wives of Chinese merchants were not subjected to the Chinese exclusion acts for two reasons. First, the court argued that by virtue of her husband’s status as a merchant, she also belonged to the exempt merchant class. Second, the court ruled that the wife had the right “by reason of the right of the husband.”³⁸ Likewise, for the Gottlieb family, the appeals court reasoned that Congress could not have intended to “create a condition so unreasonable and absurd as to admit a minister while at the same time excluding the members of his family.” The lower courts maintained that immigration status of a wife and child should follow that of the husband / father, regardless of whether the 1921 Act explicitly exempted them from quotas restriction.³⁹

Beyond the immediate issue of rabbi’s family, the appeals court ruling that it was “unreasonable and absurd as to admit a minister while at the same time excluding the members

³⁷ Quoted in “Holds Minister’s Family Exempt from Alien Law,” *New York Tribune*, March 5, 1922.

³⁸ *United States v. Gue Lim*, 176 U.S. 459 (1900); Sucheng Chan, “The Exclusion of Chinese Women, 1870-1943” in *Entry Denied: Exclusion and the Chinese Community in America, 1882-1943*, ed. Sucheng Chan (Philadelphia: Temple University Press, 1991), 114-118; Todd Stevens, “Tender Ties: Husband’s Rights and Racial Exclusion in Chinese Marriage Cases, 1882-1924,” *Law and Social Inquiry* 27, no. 2 (2002): 284 - 286.

³⁹ 285 Fed. 295; Gardner, *Qualities of a Citizen*, 127.

of his family” had wider significance for other non-citizens including those without profession-based non-quota status. In December 1923, the Department of Labor ordered that the Gottlieb ruling would apply to families of any person accorded non-quota status under section 2d, which included “aliens returning from a temporary visit abroad.” The purpose of quota restriction was to limit new immigration, and this clause was to prevent exclusion of U.S. residents on grounds of quotas oversubscription. Under the “returning resident” rule, the Department of Labor held that if a resident of the U.S. made a trip to Europe and returned with the family, the accompanying family should also be exempted from the quotas as if they were also previous residents of the U.S., sharing the same status as that of their husband/father. This opening in the 1921 Act did not mean that immigrants were free to send for the family when ready. Quotas restriction still applied if the wife and children set for the U.S. on their own, while the husband/father waited in the U.S. The “returning resident and the accompanying family” path was only open for those who could afford a return trip to Europe to bring the family together with him. Still, some 20,000 wives and minor children of U.S. residents immigrated under this rule.⁴⁰

However, this opening for families of non-citizens did not last for long. Five months later, both Congress and the Supreme Court drew a sharp line between U.S. citizens and noncitizens, and attached a high premium on naturalization, citizenship and familial relationship to citizens, while erecting a high wall against families of non-naturalized immigrants. On May 25, 1924, President Coolidge signed the Immigration Act of 1924, which did not give any consideration to families of non-citizens. And the following day, the Supreme Court ruled against the Gottlieb family.

⁴⁰ Gardner, *Qualities of a Citizen*, 127.

On May 26, 1924, the Supreme Court ruled against the Gottlieb family, deciding that since the 1921 Act only referred to religious ministers and was silent on their families, the judicial branch did not have the authority to admit the latter outside the quotas: “when the plain words of a statute leave no room for construction, the courts must follow it, however harsh the consequences.”⁴¹ It was up to Congress to decide whom to admit outside the quotas, and the court ruled that the judiciary branch must literally follow the immigration law. It was another instance where the Court deferred to the plenary power doctrine, which placed Congressional power to regulate immigration as a matter of sovereignty, not subject to judicial review.⁴²

In fact, it was not the immediate question of whether the quotas applied to a rabbi’s family that bore more importance after mid-1924. The Immigration Act passed in April and signed the day before the Supreme Court ruling included wives and unmarried children under eighteen of religious ministers among the exempted classes.⁴³ What was more fundamental was the ruling that quota restriction applied to everyone unless Congress clearly stated otherwise. Since the appeals court ruling on *Gottlieb*, the immigration officials had inferred that families of “aliens returning from a temporary visit abroad, artists, lecturers, singers, nurses, ministers of any religious denomination, professors for colleges or seminaries, aliens belonging to any recognized profession, or aliens employed as domestic servants” should be exempted from quotas restriction as well, although the clause did not specifically mention their families. But after the ruling, their families were all subjected to quotas. Family immigration through

⁴¹ *Commissioner of Immigration v. Gottlieb*, 265 U.S. 310 (1924)

⁴² For plenary power doctrine, see T. Alexander Aleinikoff, *Semblances of Sovereignty: The Constitution, the State and American Citizenship* (Cambridge: Harvard University Press, 2002), 12-18; Hiroshi Motomura, “Immigration Law after a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation.” *Yale Law Journal* 100, no. 3 (1990): 545-613.

⁴³ Section 4 d, Immigration Act of 1924 (43 stat. 153)

“returning resident and accompanying family” was no longer possible. Moreover, the 1924 Act was silent on families of non-citizens.

A month between the *Gottlieb* ruling and the enforcement of the 1924 Act on July 1 caused another family hardships. For example, immigration officials at New York detained a rabbi’s wife who arrived a few days after the Supreme Court ruling. Although she had non-quota status under the 1924 Act scheduled to take effect a month later, the 1921 Act was still in effect, under which *Gottlieb* held rabbi’s wife to be subjected to quotas.⁴⁴ Even more numerous were detention of families of residents who sought for admission under the “returning resident” rule. Three days after the Supreme Court ruling, 800 family members mostly from Italy were detained on Ellis Island, with the possibility of being deported. Their husband/fathers had returned to Europe to bring back the family with them, but by the time of their arrival, the Supreme Court ruling closed the “returning resident” path.⁴⁵ With Ellis Island packed with immigrant families who were caught by the sudden closing of the door by the Supreme Court, Congress agreed to pass a relief bill for those who had set sail for the U.S. before the ruling. However, the expiration of the relief bill and the enforcement of the 1924 Act on July 1, 1924 entirely closed the gate for non-citizens to send for their wives and children outside the quotas, limiting family-based admission to citizens.⁴⁶

Immigration Act of 1924

⁴⁴ “Rabbi’s Wife Fails to Enter Country,” *New York Times*, June 1, 1924.

⁴⁵ “800 Immigrants Face Deportation: Result of Supreme Court Ruling that Gottliebs Cannot Enter.” *New York Times*, May 28, 1924.

⁴⁶ “Gottlieb Case Reversal Jams Ellis Island.” *New York Times*, June 6, 1924; “Aliens Pour In, Uncertain of Their Status.” *New York Tribune*, June 9, 1924.

Quota restriction, claimed to have been temporary in 1921, was firmly established in 1924. Whether immigration law specifically exempted certain relations from quota restriction was not an important problem as long as quotas were large enough to meet demand, but the Immigration Act of 1924 further cut into quotas of Southern and Eastern Europe. Along with further quota reductions, the 1924 Act gave even less consideration to familial relations than the first quota act.

In 1921, nativists decided that making familial ties as the primary admission-criteria would disadvantage Northern and Western Europeans, and adopted the quota system instead. But both the proportion of quotas for Southern and Eastern Europe (45 percent) and total quotas of 355,000 were perceived to be still too large. Albert Johnson, now fully committed to the quotas scheme, insisted on moving back the base census year, arguing that quotas based on recent immigration (European-born population in the most recent census) was discriminatory against Northern and Western Europe. First, in order to assign higher percentage to Northern and Western Europe (85 percent), Johnson insisted on using the 1890 census, which entirely ignored “new immigration” over the past three decades. Second, in order to halve total quotas, Johnson set the quotas at 2 percent of the European-born population in 1890. Significantly, the terms of debate in 1924 was no longer whether or not to continue numerical restriction, retention of the 1921 Act was the best anti-restrictionists could demand, not return to the pre-1921 unlimited admission.⁴⁷

Important was the justification for the usage of the 1890 census. Johnson argued that quotas should be a reflection of ethno-racial make-up of the population in the United States including both the foreign-born and the native-born, which descended from Europe. Allegedly,

⁴⁷ Higham, *Strangers in the Land*, 319-321.

only 12 percent of the 1920 population descended from Southern and Eastern Europe, and the European-born population in the 1890 census was claimed to be the closest to that proportion. Yet, beginning with the doubtful grounds of such estimate, ignoring the past three censuses of 1900, 1910, and 1920 altogether was hard to justify. In order to curtail quotas for Southern and Eastern Europe in a more justifiable way, Senator David Reed (R-Pennsylvania) proposed to incorporate more recent censuses but in a different manner than under the 1921 Act or Johnson's proposal. Reed agreed with Johnson that immigration under the 1921 Act was too large, and proposed a total quota of 150,000. Congress assigned the census bureau with the almost impossible task of calculating how many people descended from the 1790 "native" population and from subsequent immigration from Europe: the national origins quotas concept. If X percent of the 1920 population descended from country Y, then X percent of 150,000 visas were to be allocated to country Y. As far as the ratio between Northern and Western Europe, and Southern and Eastern Europe was concerned, the 1890-census-based quotas and the national origins quotas were not expected to make much of a difference.⁴⁸

Along with rooting numerical restriction more deeply, the 1924 Act created a system under which visa and immigration status came to determine the rights that foreigners could expect in the U.S. even before their arrival. Visas now became the primary means of numerical restriction, as quotas were now charged by the number of visas issued instead of by actual arrival in the U.S. More importantly, along with distinctions between various immigration status and restrictions on changing status within the U.S., visa status predetermined the rights after arrival in the U.S.: how long one may remain in the U.S., whether one may seek for a work, whether one could send for one's families, and so on.

⁴⁸ Captain John Trevor, Johnson's unofficial advisor, advised this argument. Higham, *Strangers in the Land*, 318-324; Ngai, *Impossible Subjects*, 25-37.

The 1924 Act divided all foreigners into “nonimmigrants,” “non-quota immigrants,” and “immigrants.” Terms such as “nonimmigrants” and “non-quota immigrants” were entirely new terms under immigration law. They pointed to the most important characteristic of post-1924 immigration regulation: stark distinction between foreigners admitted for temporary residence and those admitted for permanent residence, with strict conditions imposed on changing status after arriving in the U.S., and numerical restriction of those seeking for permanent residence.⁴⁹

The 1924 Act first defined who may enter the U.S. as a “non-immigrant” (section 3). Most importantly, non-immigrants could only reside in the U.S. temporarily, and were barred from naturalization. At the same time, quota restrictions did not apply to those who sought for admission as non-immigrants.⁵⁰ As chapter 4 will discuss, since a non-immigrant was admitted outside the quotas on the condition of temporary residence, until 1952 Congress refused to allow non-immigrants to acquire permanent residency, even upon marriage to a U.S. citizen, which created a huge problem for families. Initially, the non-immigrant class was very limited, including government officials, tourists, seamen, and merchants. But during and after World

⁴⁹ For example, the 1921 Act only spoke of “aliens,” which had been the most common term used in immigration law. The 1921 Act broadly divided “aliens” into two classes: those exempted from quota restrictions and those who were not, with the former including various classes of foreigners from foreign government officials and minor children of U.S. citizens. Whereas the 1921 Act referred to both tourists and children of U.S. citizens as “aliens” exempted from quota restrictions, the 1924 Act classified the former as a non-immigrant and the latter as an immigrant.

⁵⁰ Section 3, Immigration Act of 1924 (43 stat. 153); Section 3 defined nonimmigrant as (1) a government official, his family, attendants, servants, and employees, (2) an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure, (3) and alien in continuous transit through the United States, (4) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory, (5) a bona fide alien seaman and (6) an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation.

Philip C. Jessup, “Some Phases of the Administrative and Judicial Interpretation of the Immigration Act of 1924.” *Yale Law Journal* 35, no. 6 (1926): 708-712.

War II, Congress and business interests would find the non-immigrant category as a convenient avenue to recruit for recruiting a large numbers of temporary workers without the rights attached to permanent residency.

Before 1924, there was no such sharp line between a permanent resident, those admitted for temporary residence, or those who were not formally admitted at all. For example, it was only in 1906 that the federal government began to keep records of the names of persons who were inspected at the ports of entry for permanent residence.⁵¹ Still, the original purpose of entry did not weigh heavily, since any number of persons could become permanent residents. There was no valid reason for prohibiting a person initially admitted temporarily from becoming a citizen.⁵²

Anyone not specifically classified as a “non-immigrant” was prima facie an “immigrant” and mandated to wait until a quota slot became available. As an exception to this fundamental rule, the 1924 Act next defined several classes of “non-quota immigrant” (section 4), who were admitted for permanent residence but without being subjected to quotas restriction.⁵³ This was the most valuable status, since no other status provided both 1) visa without waiting for a quota number and 2) permanent residence and the path to naturalization. For families, it was of utmost importance that certain family relations qualified for non-quota immigrant status. To accord

⁵¹ Naturalization Act of June 29, 1906 (34 Stat. 59); Before 1906, proof of five-year residence for naturalization depended on the testimony of two witnesses who were U.S. citizens. After 1906, the applicant had to request for a certificate of arrival for permanent residence. Nathaniel C. Fowler, *How to Obtain Citizenship* (New York: Scully and Kleinteich, 1913), 5-13.

⁵² In fact, such certificate was only necessary to apply for final naturalization. In order to apply for declaration of intention or the first paper, such certificate was not necessary, and declarant status was not tied to permanent admission.; In 1931, in a case on seaman who deserted the ship, the Supreme Court confirmed that the 1924 Act superseded any statute of limitations in previous laws. *Philippides v. Day* 283 U.S. 48 (1931).

⁵³ The exception was students, who were classified as immigrants but could only remain in the U.S. for the duration of one’s studies. And since 1952, students have been classified as nonimmigrants. Jessup, “Some Phases of the Administrative and Judicial Interpretation of the Immigration Act of 1924,” 719-721.

non-quota immigrant status to a wider range of family relations – through permanent revision of general immigration law or through temporary legislation – would become the central demand of immigrant families after 1924.⁵⁴

The 1924 Act inherited certain family provisions from the 1921 Act in two forms: 1) non-quota immigrant or 2) preference within the national quotas, but in a much narrower form than the first quota act. The 1924 Act inherited family-based exemption under the 1921 Act by including unmarried children under the age of eighteen, who had been exempted by the 1921 Act, and wives of U.S. citizens, whom the immigration officials had been admitting through administrative discretion after the Cable Act [Section 4 (a)] (non-quota family). Despite passage of the Cable Act, the 1924 Act accorded non-quota status to wives of citizens but only preference status within the quotas to husbands of citizens, privileging the male citizen's right. Otherwise, beginning with the fact that the quotas themselves were much smaller, the 1924 Act gave even less consideration for families than the 1921 Act. Whereas the 1921 Act provided preference to "wives, parents, brothers, sisters, children under eighteen" of U.S. citizens, of those who had applied for citizenship, and World-War I veterans, the 1924 Act only recognized unmarried children under twenty-one, parents, and husbands of citizens. [Section 6 (a)]⁵⁵ Whereas the 1921 Act at least considered families of non-citizens who had applied for citizenship, the 1924 Act only considered families of citizens. "Returning residents" (permanent residents who left the U.S. temporarily) were exempted from quota restrictions as before, but since the *Gottlieb* ruling closed the "returning resident and accompanying family" path, it was no longer possible for non-citizen immigrants to bring their families outside the quotas by making a trip to Europe.

⁵⁴ Anyone not listed as "non-immigrant" or "non-quota immigrant" was mandated to wait for a quota visa under the all-inclusive category of a "quota immigrant." (section 5)

⁵⁵ If the country had a quota of 300 and over, preference visas were shared with those "skilled in agriculture, and his wife, and his dependent children under the age of 16 years." ; .

The Citizenship Premium and Varying Importance of Family-based Admission

Reserving non-quota family-based admission for U.S. citizens alone, the 1924 Act placed a high premium on U.S. citizenship. Prior to the quota acts, U.S. citizenship was by no means a prerequisite for family immigration. But after 1924, for those who preceded their families to the U.S., naturalization became crucial so that their families could be placed ahead of the waiting list either as non-quota or preference families. Contemporaries observed that for immigrants from countries with small quotas family petitioning became one of the most compelling motives for naturalization.⁵⁶ Those with U.S. citizenship filed petitions, some applied for naturalization, while others took the first step to naturalization by filing a declaration of intention to naturalization.

Exemption from the quotas and preference within the quotas were crucial for immigrants from countries with small quotas. Table 1.3 shows the number of non-quota families admitted between 1924 and 1929, the first five years under the 1924 Act. It should be noted that since the minimum residency requirement for naturalization was five years, only pre-1924 immigrants could send for their families before 1929 as naturalized U.S. citizens. Between 1924 and 1929, non-quota families comprised 62.2 percent of the 63,133 immigrants from Italy, 32.5 percent of 46,595 immigrants from Poland, and 21.4 percent of 19,202 immigrants from Czechoslovakia.

⁵⁶ Florence C. Cassidy, "The Increasing Importance of Naturalization: Its Legal and Educational Significance," (paper, annual conference of International Institutes, 1925), 11-12, YWCA of the U.S.A. Records, reel 100 microdex 6, Sophia Smith Collection, Smith College; H. F. Gosnell, "Non-Naturalization: A Study in Political Assimilation," *American Journal of Sociology* 33, no. 6 (1928): 935-936.

From Greece, with a quota of only 100, 80.7 percent of 6,782 immigrants were non-quota families.⁵⁷ (Table 1.3: Non-quota Families from Europe, 1924-1929 on pages 75-76)

However, family-based numerical exemption or preference mattered little for countries with large quotas. Large quotas ensured admission to the U.S. A key characteristic throughout the quotas era from 1924 to 1965 was the large gap between countries of origin in the number and percentage of immigrants who sought formal family-based admission (family visa).

Between 1924 and 1965, out of 244,400 immigrants from Germany, with one-third of the total quotas, only 0.6 percent held non-quota family visas. Britain had a slightly higher rate, but non-quota families only accounted for 1.7 percent of 162,836, and in the case of Ireland, mere 0.2 percent of 141,247 immigrants. Such low figures were not because only few qualified for the status, but because it was more time-consuming to immigrate through the formal channel of family-based admission. For example, there was no need to wait for five years until naturalization to send for one's family as "non-quota family," when there was no waiting list for a quota visa. Naturalization was far from pre-requisite for family immigration. Moreover, as long as quotas were available, even for qualifying families quota immigration was a more rational choice, because family-based admission was more time consuming and costly.

Application for family visas (non-quota or preference) required a distinct procedure that embodied the idea that family-based admission was about U.S. citizens' rights rather than about the prospective immigrant. Since 1924 until today, family-based admission has been based on petition by the family on behalf of the prospective immigrant (initially with the Department of Labor, where the Bureau of Immigration was then placed), and has not allowed direct visa application by the immigrant himself or herself. This was not a matter of technicality, but as

⁵⁷ United States Department of Labor, *Annual Report of the Commissioner General of Immigration 1927* (Washington D.C.: G.P.O, 1927), 122-123

Assistant Secretary of State Wilbur J. Carr explained to Albert Johnson, grounded in the idea that family visas were “rights gained for them [immigrants] by American citizens.”⁵⁸ For example, a wife of a U.S. citizen could apply for a non-family visa (quota visa) at a consulate, but for a non-quota family visa petition of her husband was indispensable. Petitioning involved various requirements such as proof of U.S. citizenship of the petitioner, proof of familial relationship, information on employment status, affidavits of support, and statement of two citizens who had known the petitioner for more than a year to vouchsafe one’s character.⁵⁹ Between 1924 and 1929, U.S. citizens filed approximately 166,000 petitions hoping for prompt admission of their families, but 15 percent were rejected by the immigration bureau. (Table 1-2: Family Visa Petitions Filed by U.S. Citizens, 1925-1940 on page 73) Immigrants from countries with abundant quotas saw little point in going through the family-petitioning system, and much more the very question of who qualified was of little importance.

As discussed earlier, before the first quota act in 1921, Senator William Dillingham had opposed family-based admission, insisting that it would favor immigrants from Southern and Eastern Europe. Dillingham’s observation was based on the pre-war migration pattern, including a high proportion of men with families in Europe. The view was reinforced after 1924, but for another reason. What reinforced this view after 1924 was the low usage of formal family-based admission system by immigrants from Northern and Western Europe, who were guaranteed admission by large quotas.

One of the most restrictionist responses to post-1924 family immigration from Southern and Eastern Europe was the February 1925 direction of the Commissioner General of

⁵⁸ Wilbur J. Carr, Assistant Secretary of State, letter to Albert Johnson, January 2, 1926, reprinted in *Admission of Certain Relatives: Hearing before the House Committee on Immigration and Naturalization* 69th Cong. 20 (1926)

⁵⁹ Section 9, Immigration Act of 1924 (43 stat. 153)

Naturalization Raymond Christ. The bureau's annual report described immigration since the 1890s as comprised of "immigrants undesirable in European countries," whose eligibility to naturalization posed "a problem in the affairs of this country which probably has no equal." According to Christ, the remaining task after 1924 was to implement the 1924 Act with a "selective" naturalization policy. Christ directed naturalization examiners to prevent naturalization of men with families in Europe. "An alien whose family is in Europe," Christ wrote, "has never lived in the United States, no matter how many years he may have been here." The bureau insisted that physical presence in the U.S. did not suffice to fulfill the five-year residency requirement, unless the applicant's family was also residing in the U.S.⁶⁰ This should not be understood as an encouragement to family unification. The intention was to create a catch-22 situation for immigrants from Southern and Eastern Europe, for whom citizenship became the de facto prerequisite to be joined by their families by filing a petition for a family visa. However, this would not be possible if naturalization required the presence of family in the U.S.⁶¹ Christ's policy was widely criticized by immigrant aid organizations,⁶² and a federal

⁶⁰ *Annual Report of the Commissioner of Naturalization 1924*, 20; Bureau of Naturalization, Circular Letter No. 106. 23/1276, February 14, 1925, quoted in Adena Miller Rich, "Naturalization of Family Welfare: Doors Closed to the Noncitizen," *Social Service Review* 14, no. 2 (1940): 253-254 ; Naturalization examiners were responsible for conducting an administrative examination prior to naturalization hearing at the court, and also for preparing briefs for the U.S. government regarding the naturalization of the applicant. Henry B. Hazard, "The Trend toward Administrative Naturalization," *The American Political Science Review* 21, no. 2 (1927): 342-349.

⁶¹ Bredbenner, *A Nationality of Her Own*, 129.

⁶² Adena Miller Rich, "Separated Families: Pertinent Provisions of the Immigration Laws," in National Conference of Social Work, *Proceedings 1925* (Chicago: University of Chicago Press, 1925), 536; Cecilia Razovsky, "America's Present Immigration Policy: The Visa and the Quota Law as They Affect the Clients of Social Agencies," in National Conference of Social Work, *Proceedings 1925*, 601; George A. Green, "Problems of Naturalization: The Present Naturalization Law at Work," in National Conference of Social Work, *Proceedings 1925*, 610.

judge in Philadelphia eventually ruled that the direction had no grounding in naturalization law.⁶³ But the direction represented the broader restrictionist views about post-1924 family immigration.

Soon after the new law took effect, nativists began to insist that non-quota family immigration was undermining the quotas restriction by piercing the ceiling. It was not only the number but the ratio between Southern and Eastern European immigrants, and Northern and Western European immigrants, since there was very small non-quota immigration from the latter. Furthermore, for the most ardent nativists, immigration restriction consisted of limiting new admission and of inducing emigration from the U.S. Limiting the rights to send for one's family was an indirect way to induce immigrants to return to Europe instead of the families joining in the U.S. In the late 1920s, rigid restrictionists frequently disposed of appeals to family separation as a matter of individual choice of not having immigrated together to the U.S. or of not returning to Europe.⁶⁴

At the same time, however, drastic reduction of new immigration by the 1924 Act had an effect of relaxing the anti-immigration sentiment to a certain extent.⁶⁵ In addition to individual immigrant families struggling to send for their families, and organizations working with immigrants from Southern and Eastern Europe, especially Jewish organizations, another strong line of thought saw admission of families as a way to incorporate pre-1924 immigrants into the American society. For many, the question of how to incorporate the foreign-born, in the age of mass migration since the late nineteenth century until the early 1920s, lost its significance when the quota acts put an end to the age of large migration. Yet, the question never died completely. Social work organizations were especially prominent in the post-1924 call for family-based

⁶³ Rich, "Naturalization of Family Welfare: Doors Closed to the Noncitizen," 253-254.

⁶⁴ Roy L. Garis, "Is Our Immigration Policy Satisfactory?" *Annals of the American Academy of Political and Social Science* 156 (1931): 39-40.

⁶⁵ Higham, *Strangers in the Land*, 324-330.

admission. In August 1924, a month after the enforcement of the 1924 Act, sociologist Julius Draschler, the author of *Democracy and Assimilation* (1920), addressed the audience at the National Conference of Social Work:

It is not so much the *principle* of restriction of numbers that is objectionable or that can under present conditions, be objected to; it is the *method* of limitation, which is arbitrary, mechanical and discriminatory ... But the law is the law, and now nothing remains but to administer it effectively and humanely, until a change in public opinion will modify the policy underlying it ... The great reduction in the volume of immigration offers a new opportunity to turn for a while from the problem of admission to the second major problem, that of incorporation.⁶⁶

The passage is representative of how few people questioned the principle of numerical restriction of immigration after 1924. Restriction of immigration itself was there to stay, but what about the treatment of the foreign-born population already living in the U.S.? According to the 1920 Census, approximately 13.9 million U.S. residents were foreign-born (13.1% of the total population), and 6.6 million were noncitizens (47.6% of the foreign-born population).⁶⁷ With five-year minimum residency requirement for naturalization, only pre-1919 immigrants were eligible for naturalization when the 1924 Act went into effect, and it was not until 1929 that those who immigrated shortly before the 1924 Act became eligible for naturalization. In this context, family immigration of noncitizens had grave importance in the late 1920s.

1.3 Family-Oriented Reform and the National Origins Quotas Debate

Calls for uniting families whose immigration was thwarted by the quotas law were voiced on both sides of the Atlantic. In February 1926, thirty-five immigrant aid agencies from Europe and the U.S. that met in Geneva for the second International Conference of Private Organizations

⁶⁶ Julius Draschler, "The Immigrant and the Realities of Assimilation," *Interpreter* 3, no. 9 (Sep. 1924): 3-4.

⁶⁷ U.S. Census Bureau, "Citizenship Status of the Foreign-Born Population: 1890 to 1950 and 1970 to 1990." <http://www.census.gov/population/www/documentation/twps0029/tab11.html>

for the Protection of Migrants addressed separation of migrant families as an urgent problem. The organization classified family separation into several types. Some were personal such as seasonal migration to send remittances, or illness that prevented continuance of migration. Others were beyond personal control, such as war and political persecution, and among the latter was “the application of legislative measure.” The conference reported that “it is the American Law of 1924 which, by its characteristics, has most struck the Associations and public opinion in this matter.”⁶⁸

The same month, Senator James Wadsworth and Representative Nathan Perlman, both Republicans from New York, introduced a bill to expand family-based admission. First, the bill proposed to eliminate sexual discrimination in admission of spouse, and to put husbands on non-quota basis. Second, they proposed to raise the age of a non-quota child from eighteen to twenty-one. Third, the bill proposed to exempt parents of U.S. citizens from quotas (only a preference under the 1924 Act). In addition, they opposed limiting family-based admission to U.S. citizens, and suggested equal treatment to families of pre-1924 immigrants regardless of they were naturalized or not.⁶⁹

Advocates for family-oriented reform often differentiated between families of pre-1924 immigrants and post-1924 or future immigrants. Another popular proposal was to draw a line

⁶⁸ “International Conference of Private Associations,” *Monthly Record of Migration* 1, no. 40 (1926), 17-20; International Conference of Private Organisations for the Protection of Migrants, *Separation of Families of Migrants: Reports and Resolutions* (Geneva, 1926), 6-7; box 32, National Catholic Welfare Conference Department of Immigration General Correspondence, Collection 23, Center for Migration Studies.

⁶⁹ Sheldon Morris Neuringer, *American Jewry and United States Immigration Policy, 1881-1953*. (New York, Arno Press, 1971), 190-191; *Admission of Certain Relatives: Hearing before the Senate Committee on Immigration*, Hearing. 69th Cong. 17 (1926) (Henry Curran); *Admission of Certain Relatives: Hearing before the Senate Committee on Immigration*, 69th Cong. 49-50 (1926) (W. W. Husband, Second Assistant Secretary of Labor); *Admission of Certain Relatives: Hearing before the Senate Committee on Immigration*, 69th Cong. 54 (1926) (Representative Nathan Perlman).

between immigrants who had declared their intention to naturalization and those who had not, raising the hurdle higher by attaching importance to the act of indicating the intention to settle in the U.S. than in entry itself. Until 1952, naturalization was a two-step process. The first was to file a declaration of intention to naturalization, also called the “first paper.” In the era of numerically unlimited immigration, the first paper was a way to distinguish those who intended to live in the U.S. for a long time from temporary residents. Declaration of intention could be filed any time after entry but had to be filed at least three years before naturalization. Regardless of the total length of residence in the U.S., one did not formally embark on the path to citizenship until one had filed the first paper. A first paper was not only necessarily for naturalization but was also required to undertake certain occupations under state laws. While some argued that expansion of family-based admission was a matter of general right of citizens and immigrants, others argued that those who had already declared their intention before 1924, and hence already on the path to citizenship, should deserve more consideration. While exactly where to draw the line was contested, in the debate over admission of non-citizens, pre-1924 entry or pre-1924 filing of declaration were both common proposals in the 1920s.

Family-oriented criticism of the 1924 Act raised more concerns for the nativists than direct challenge to the law. For instance, return to the first quotas system that allocated 45 percent of the quotas for Southern and Eastern Europe was unlikely to gather support in Congress that passed the 1924 Act by a large margin (62 to 6 in the Senate and 223 to 61 in the House). But appeals to family separation did not directly question the criteria of quotas. The fact that Calvin Coolidge, who stated that “America must be kept American” in signing the 1924 Act, spoke of family hardship in his 1925 State of the Union message indicated that family-centered criticism was likely to gather sympathy. The Allied Patriotic Society wrote in 1926:

“The most plausible --- while at the same time the most dangerous---are the bills to admit outside of the quotas, relatives of immigrants already here, or to come in the future, *without numerical restriction* [emphasis in original].”⁷⁰ Restrictionists saw such amendment as a “beginning of an endless chain” that could “accumulate like a snowball rolling down the hill.”⁷¹

The two departments responsible for administration of immigration policy were divided over the issue. The Labor Department’s Bureau of Immigration wholly supported restriction of immigrants from Southern and Eastern Europe based on the 1890 census. Yet, the bureau also supported amending the 1924 Act for families. Commissioner Harry E. Hull (1925-1933) recommended extending non-quota status to children under 21, spouse, and parents of citizens.⁷² Henry Curran, Commissioner at the Port of New York (1922 - 1926), suggested according non-quota status to families of pre-1924 non-citizen immigrants.⁷³ By contrast, the State Department believed that liberalization of the 1924 Act would reopen large immigration from Southern and Eastern Europe. Whereas the Department of Labor estimated that Wadsworth-Perlman bill would allow 40,000 new admissions at most,⁷⁴ the State Department’s Visa Division insisted that the bill would invite 600,000 immigrants, and the figure quickly caught newspaper headlines.⁷⁵

⁷⁰ Divine, *American Immigration Policy*, 17; Allied Patriotic Societies, *Third Annual Report of the Committee on Immigration of the Allied Patriotic Societies* (New York, 1926), 8; folder 2, box 3, National Catholic Welfare Conference Department of Immigration, General Correspondence; Center for Migration Studies.

⁷¹ *Admission of Relatives, Soldiers, etc.: Hearing before the House Committee on Immigration and Naturalization* 69th Cong. 117 (1926) (Robert Bacon, Representative from New York).

⁷² *Annual Report of the Commissioner General of Immigration* 1925, 28; *Annual Report* 1926, 23.

⁷³ Henry Curran, Speech at the New York State Conference of Charities and Correction, December 17, 1925; Henry Curran, letter to Senator James Wadsworth, 7, 17 December 1925, box 17, James Wadsworth Family Papers, Library of Congress.

⁷⁴ *Admission of Certain Relatives: Hearing before the Senate Committee on Immigration* 69th Cong. 44-50 (1926) (W. W. Husband, Second Assistant Secretary of Labor).

⁷⁵ *Admission of Relatives, Soldiers, etc.: Hearing before the House Committee on Immigration and Naturalization*, 69th Cong 112-113, 117 (1926) (Coert DuBois, Chief of Visa Division, Department of State); *Admission of Certain Relatives: Hearing before the Senate Committee on Immigration*, 69th Cong.

The clash also involved rivalry between new immigration bureaucracy (Department of State) and the old immigration bureaucracy (Department of Labor), because family-based admission was a field of overlapping authority; the authority to issue visas rested with the Department of State, while authority to approve of family petitions rested with the Department of Labor. With its new role as a visa issuing agency, the Department of State carried additional weight in the making of immigration policy.⁷⁶ Any discussion about prospective immigration came to rely heavily on the number of visa applications and inquiries received by consulates. The State Department pointed out that potential demand was much larger than the formal backlog, and insisted that a relaxation of immigration law would encourage even more people who had given up their hope to apply for a visa.⁷⁷ Yet, how many visa applications involved families currently without any preferential status, such as families of noncitizens, to what extent visa applications would increase as a result of extending family-based admission was beyond anyone's knowledge.

Despite the impossibility of an accurate count, numbers were crucial to post-1924 immigration debates. Above all, the contested issue before the first quota act was whether there should be numerical limitation at all, but post-1924 anti-restrictionism rarely questioned that premise. The issue was the method of distributing the quotas, how strictly numerical restriction should be enforced, for instance size of the quotas or who should be exempted from the quotas.

38 (1926); "Bill Would Let in Alien Horde," *Los Angeles Times*, Feb. 25, 1926; "Proposed Alien Bill Would Admit 577450," *New York Times*, Feb 25, 1926; "Breaking down the Immigration Dike," *Chicago Daily Tribune*, Feb. 27, 1926.

⁷⁶ Tichenor, *Dividing Lines*, 152-175; Zolberg, *A Nation by Design*, 264-267; For rivalry between the Department of Labor and the Department of State, Richard Breitman and Alan M. Kraut. *American Refugee Policy and European and Jewry, 1933-1945* (Bloomington: Indiana University Press, 1987), 28-33.

⁷⁷ *Immigration of Wives and Child of Declarants: Hearing before the House Committee on Immigration and Naturalization*, 69th Cong. 22 (1926) (Coert DuBois, Chief of Visa Division, Department of State).

Some did argue that numbers were relatively unimportant, but not to the extent to question numerical limitation itself. Emanuel Celler, second-term Representative from New York and the future author of the Immigration Act of 1965 that abolished the quotas system, stated, “If the situation is a logical one, if it is logical to admit these for the purpose of uniting families, I think the number is really beside the point.”⁷⁸ Still, Celler did not advocate for return to pre-1921 numerically unrestricted admission. And most immigrant advocates made a more reserved statement. Louis Marshall, president of the American Jewish Congress and a prominent lawyer who had represented a number of immigration cases including the *Gottlieb* case, argued, “The question as to the number who will be affected is one which is secondary, and yet it should be considered.”⁷⁹

A large part of support for expanding family-based admission was based on the assumption that a limited revision of the 1924 Act would not lead to large immigration. Liberals could not entirely dispose of the number game. For example, Senator Wadsworth, sponsor of the bill, was by no means a pro-immigration Congressman. He strongly supported restriction of Southern and Eastern European immigrants on the 1890 census basis, stating that the U.S. “shall not hereafter be changed in racial or national make-up as a result of immigration.” But he thought that admission of small number of families would do no harm. The same was true of the Bureau of Immigration and the Department of Labor.⁸⁰ To argue that there was no knowing

⁷⁸ *Admission of Relatives, Soldiers, etc.: Hearing before the House Committee on Immigration and Naturalization* 69th Cong. 26 (1926) (Representative Emanuel Celler).

⁷⁹ *Admission of Certain Relatives: Hearing before the House Committee on Immigration and Naturalization*, 69th Cong. 12 (1926) (Louis Marshall, American Jewish Congress); Matthew Silver, *Louis Marshall and the Rise of Jewish Ethnicity in America* (Syracuse: Syracuse University Press, 2013); Neuringer, *American Jewry and U.S. Immigration Policy*, 195-196.

⁸⁰ 68 Cong. Rec. 422 (1926), H.R. 5268.

how many might come in and furthermore that it was entirely beside the point would undermine the basis of support.

Moreover, the most ardent restrictionists accused proposals to expand family-based admission, particularly non-quota admission, as an attempt to dismantle numerical restriction itself. Soon after the enforcement of the 1924 Act, nativists began to insist that non-quota family admission was eroding the quotas system by piercing the quotas. The Allied Patriotic Societies viewed the debate over family essentially as a “struggle between the Anglo-Saxon stock and the new immigration for control of our country.”⁸¹ Characteristic of such argument was its emphasis on the quotas rather than pre-quota immigration. It was true that more non-quota families arrived from Southern and Eastern Europe than from Northern and Western Europe, and in some cases non-quota immigration outnumbered quota immigration. For example, between 1924 and 1929, 62 percent of Italian immigrants were non-quota families. As a result, whereas the five-year quotas for Italy totaled 19,225, actual immigration was 63,000. Still, post-1924 immigration did not even come close to pre-quota acts immigration. In 1921, a year before the 1921 Act was enforced, 226,000 Italians immigrated to the U.S., more than forty times the quota imposed by the 1924 Act.⁸² Drastic reduction by quotas restriction was undeniable, but the ardent restrictionists measured the effect of restriction not in comparison to the level of pre-quota immigration but in comparison to the quotas, viewing any immigration outside the quotas as a potential threat both to the scheme of making immigration conform to the desired ethnoracial ratio and moreover to the regime of numerical immigration restriction.

Significant were the different meanings attached to non-quota admission. The most important characteristic of numerical immigration restriction is that it tied time until immigration

⁸¹ “Oppose Any Change in Immigration Law,” *New York Times*, April 8, 1926.

⁸² *Annual Report of the Commissioner General of Immigration 1921*, 28-29; *Annual Report 1924*, 36-37.

and the number of visas together. The concept of waiting is embedded in numerical restriction, and the wait could in fact be an indefinite wait. Reformers framed non-quota admission as a matter of shortening the period that family must live apart, since exemption from quota restrictions was the only way to avoid lengthy wait for a visa. By contrast, nativists framed non-quota admission as a matter of increasing the volume of immigration, and accused demand to expand family-based non-quota admission as a challenge to the principle of numerical immigration restriction itself.

National Origins Quotas Debate

In early 1927, family debate became entangled with the national origins quotas controversy. In 1924, Congress had agreed to adopt the national origins quotas proposed by Senator David Reed and to use the quotas based on the European-born population in 1890 census temporarily until July 1927. In January 1927, the details of the new quotas were announced, and Congress had two months before adjournment to decide whether to put the new quotas into effect as scheduled in July 1927. Eventually, the national origins quotas was revised twice and its enactment was postponed twice until July 1929.⁸³ Thus, by early 1927, Congress had two agendas regarding immigrants from Europe: the national origins quotas and expansion of family-based admission.

Controversy over the national origins quotas before the passage of the 1924 Act and after the details of the quotas were published in 1927 involved different lines of division. The central purpose of both 1890 census-based quotas and the national origins quotas were reduction of immigration from Southern and Eastern Europe. And the debate in 1924 centered around

⁸³ Since each nationality was guaranteed a minimum quota of 100, the total quotas for Europe added to 153,714.; Higham, *Strangers in the Land*, 322-323; Ngai, *Impossible Subjects*, 25-37.

distribution of quotas between Southern and Eastern Europe, and Northern and Western Europe. As expected, the national origins quotas reserved over 80 percent of the 150,000 quotas for Northern and Western Europe, and there was not a drastic difference from 1890 census-based quotas as far as Southern and Eastern Europe was concerned. What sparked the debate in 1927 was quota distribution among countries of Northern and Western Europe. The most controversial part was significant increase in the quotas for Great Britain, which was more than doubled from 34,007 to 73,309. Since the national origins formula was about the ratio of distribution and not about the total, the gain for Britain was immediate loss of other countries. Quotas were more than halved for Germany (51,227 to 23,428), Irish Free State (28,567 to 13,862), Sweden (9,561 to 3,259), Norway (6,453 to 2,267) and Denmark (2,789 to 1,044).⁸⁴

Organizations speaking for immigrants from Northern and Western Europe such as the Steuben Society, American Irish Republican League strongly opposed the national origins quotas and insisted on retaining the quotas based on the 1890 census. The two authors of the 1924 Act were divided. Johnson did not find the national origins quotas indispensable to the 1924 Act, because the 1890 census-based quotas served the purpose of curtailing immigration from Southern and Eastern Europe: “National origins’ plan serve to divide the Nordic, practically all of whom are restrictionists, who should not be divided, for we need a solid front in order to combat the foes of restriction.”⁸⁵

Whom Johnson called the “foes of restriction,” such as Adolph Sabath of Chicago (D) and Samuel Dickstein of New York (D), who would become the House Immigration and Naturalization Committee Chair after Johnson, strongly denounced the national origins quotas.

⁸⁴ Percentage of northern and western Europe slightly dropped from 85.6 percent to 82.1 percent.

⁸⁵ 68 Cong. Rec. 5785 (1927); King, *Making Americans*, 221-223.

But their opposition was different from that raised by German, Irish, and Scandinavian organizations, for whom the purpose of blocking the national origins quotas was to retain the 1890 census-based quota. Anti-restrictionists such as Sabath and Dickstein did not find any practical difference between the two in terms of size of quotas, but were more opposed to the fact that both dealt a heavy blow on immigrants from Southern and Eastern Europe.⁸⁶ Opposition to the national origins quotas in the late 1920s, as historian Robert A. Divine wrote, was based on a “strange alliance between restrictionists from the Midwest who favored German, Irish, and Scandinavian immigration and antirestrictionists from the Northeast.”⁸⁷

By contrast, family-based admission was discussed strictly in relation to Southern and Eastern European immigrants. Congress members speaking for immigrants from Southern and Eastern Europe denounced the national origins quotas and pushed for expanding family-based admission at the same time. But family-based admission gathered little support from organizations of Northern and Western European immigrants. Family separation was not an acute issue as long as large quotas were maintained. And regardless of whether one’s position, all agreed that the issue had little importance for immigrants from Northern and Western Europe. Advocates for family-oriented reform was very clear that they were not arguing that amendment to the 1924 Act would benefit all immigrants but that it was about immigrants from Southern and Eastern Europe.

Reed and Johnson, despite their divide over the national origins quotas, stood united in opposition to expanding family-based admission. In December 1926, the Senate agreed to provide a temporary relief measure for 35,000 families of pre-1924 declarants. As originally

⁸⁶ The new system slightly increased quotas for some countries in southern and eastern Europe such as Italy (3,845 to 6,091), Russia (2,248 to 4,781), and Austria (785 to 1,486). But quotas were reduced further for countries such as Poland (5,982 to 4,978) and Czechoslovakia (3,073 to 1,359)

⁸⁷ Divine, *American Immigration Policy*, 26.

introduced, the bill had proposed equal treatment to citizens and pre-1924 immigrants, as well as expanding the range of families. Congress added a ceiling since there was strong opposition to expanding non-quota admission without any conditions attached. Secondly, instead of entry, Senate placed emphasis on the filing a declaration of intention, whether one had already taken the first step to become a citizen before 1924. Senator Wadsworth reasoned that “these immigrants who were comparatively recent arrivals, had no warning indicating ... that a much severer set of restrictions would be imposed,” pointing to unexpectability of the law as the reason for relief.⁸⁸

Nevertheless, the restrictionist fear that the purpose of the call for expansion of family-based admission was an attack on the quotas system in disguise ran deeply. Reed accused the relief measure as an attempt to destroy the 1924 Act; “If this policy now so determinably adopted by the United States ... is going to be broken down, it cannot be broken down by a frontal attack and repeal of the law but obviously by amendments designed to ... relieve cases of seeming great hardship.”⁸⁹ Johnson echoed Reed that “to admit 35,000 would be to pave the way for a call for a bill for another 35,000” and buried the bill in the House committee.⁹⁰ According to the *Interpreter*, published by the Foreign Language Information Service, Congress was obsessed with “fear that even the slightest change in the existing law may have a liberalizing effect upon our whole immigration policy.”⁹¹ While how many immigrants may come to the U.S. under the immediate was surely a concern of the restrictionists, what they feared was that one amendment might lead to demand for another amendment, and the gradual expansion of non-quota admission.

⁸⁸ H.R. 5268, 68 Cong. Rec. 411 (1926); This was part of the bill that restored U.S. citizenship for U.S.-born women who had lost their citizenship by marrying a foreigner before the 1922 Cable Act. For declarant’s families, wives and children under 18 outside of the quotas

⁸⁹ 68 Cong. Rec. 422 (1926).

⁹⁰ 68 Cong. Rec. 5435 (1927).

⁹¹ “Congress and Immigration,” *Interpreter* 8, no. 2 (February 1928): 4.

1928 Amendment and Permanent Residents

“It is a strange price to put on American citizenship – making it the expedient for uniting husband and wife,” the Foreign Language Information Service criticized the 1924 Act for tying family-based admission to citizenship, “it is a strange preparation for citizenship ... those years of loneliness and despair.”⁹² Reformers understood that there was little chance for reform without pacifying the concern that admission of families would lead to rapid increase of immigration. At the same time, the situation needed to be publicized to gather sympathy and to raise support for Congressional relief. Survey of separated families was one of such methods. For example, in 1926, the Y.W.C.A. gathered some 520 cases from forty branches in fourteen states. The National Conference of Social Work’s Division of Immigrants conducted a nationwide survey of separated families, following the examples of similar survey conducted by some immigrant aid agencies. The National Conference sent questionnaires to community council, immigrant aid societies, family welfare agencies, travelers aid societies, Red Cross chapters in 140 cities. They also requested the Geneva-based International Association of Organizations for the Protection of Migrants to report cases from the European side, gathering reports from Austria, Hungary, Italy, and Czechoslovakia.⁹³

⁹² “Is the Quota More Sacred than the Family?” *Interpreter* 6 no. 8 (October 1927): 10.

⁹³ Cecilia Razovsky, “Humanitarian Effects of the Immigration Law,” in National Conference of Social Work, *Proceedings 1927*, 520.

“The Family of the Foreign-Born under Restrictive Immigration: A Study of One Hundred Separated Families from the Records of International Institutes,” *Immigration and Refugee Services of America, 1918-1985: From the Collection of Immigration History Research Center, University of Minnesota* (Woodbridge, CT: Primary Source Microfilm) Ethel Bird, *Separated Families and the Immigration Law* (New York: YWCA, 1927), 8, YWCA of the U.S.A. Records, reel 100 microdex 1, Sophia Smith Collection, Smith College

After the 69th Congress closed without taking any action, reformers began to make more coordinated efforts to gather support for family reunification. Representatives of organizations interested in immigrant welfare such as the American Jewish Committee, American Jewish Congress, Foreign Language Information Service, National Catholic Welfare Conference, National Council of Catholic Men, National Council of Catholic Women, National Council of Jewish Women, and the Y.W.C.A. frequently gathered to discuss a workable plan. Without doubt, non-quota admission was the only means to avoid lengthy wait for a visa. But as the fate of the Wadsworth-Perlman bill indicated, proposal to admit more families outside the quotas raised intense objections that there was no telling how many may qualify, and a more serious attack as an attempt to dismantle numerical restriction itself. While there seemed to be less opposition to changing preferences within each country's quota, as the Y.W.C.A. stated, "Preference in the quota is of practically no help to relatives of citizens whose native country has a small quota."⁹⁴

Importantly, the compromise measure put forward in the 70th Congress (December 1927) included a challenge to the foundation of the country-based quota system, a concept that would be incorporated four decades later by the Immigration Act of 1965. A reform bill that originated from the discussion by organizations gathered at the 1927 National Conference of Social Work proposed to change the method of distributing quotas instead of admitting more families outside the quotas. For the next two years, the bill proposed distributing half of the total quotas for Europe "without regard to country of birth" but according to the need of families, while retaining the other half for country-based quotas. Unlike proposals to expand non-quota admission, liberals contended that the appeal of this plan was that it would not change the total

⁹⁴ Aghavinie Yeghenian, "Separated Families: A New Foreign-Born Problem Growing out of Restricted Immigration," *Woman's Press* (November 1927), 157.

number of quotas. Hence, they hoped to refute the accusations that call for uniting families was an attempt to destroy numerical restriction itself.⁹⁵ However, although the proposal did not challenge numerical restriction itself, it included a challenge to the foundation of the quota system, which was not simply a cap on overall immigration from Europe. What mattered was not the total immigration from Europe but the country of origin, and unsurprisingly the proposal invited strong opposition. Raising alarm, the Patriotic Order Sons of America compared “the present agitation over the national origins estimate” to a “mere zephyr,” whereas proposal to issue visas for families regardless of nationality was a “cyclone.”⁹⁶ The issue in the national origins quotas debate was not the country-based quota system itself, but the criteria of distribution. The premise that the country of birth should be the primary admission criteria was unchallenged, whereas family-based admission questioned that premise.

In order to ward off attention from this controversial aspect, reformers also advanced arguments more appealing to the nativists. First was the idea that expansion of family-based admission would reduce overall immigration in the long run. Making U.S. citizenship or naturalization certainly prolonged the period of family separation, at the very least for five years, but not necessarily the number of future immigrants. They characterized permanent residents as a step from citizenship, pointing out that naturalization accompanied immigration outside quotas. Allowing pre-naturalization immigrants to send for families within the quotas would absorb future non-quota immigration, reducing total immigration in the long run, they argued.⁹⁷

⁹⁵ Cecilia Razovsky, letter to Max J. Kohler, March 20, 1928; “Memorandum on Relief for Separated Families,” 1928, folder 1, box 12, Max J. Kohler Papers, American Jewish Historical Society.

⁹⁶ *Amendments to Immigration Act of 1924, Non-quota and Preference Provisions: Hearing before the House Committee on Immigration and Naturalization*. 70th Cong 77 (1928) (James H. Patten, Patriotic Order Sons of America).

⁹⁷ Memorandum, March 27, 1928, folder “Legislation—70th Congress—MacGregor Bill,” box 41, National Catholic Welfare Conference Department of Immigration General Correspondence, Center for

Reserving quotas for families such as a wife of a permanent resident was also a way to screen out immigrants who may bring more families. For instance, if a quota was issued to a man with wife and children in the U.S., naturalization of the former would bring more non-quota immigration. But if the same quota was used by a wife or child of a permanent resident, there would not be additional non-quota immigration because family-based admission was confined within the nuclear family. Coupled with this argument was the idea family-based admission would reduce labor competition. Reformers argued that more quota visas to dependent families such as children would mean fewer visas for those who were likely to compete with American labor.⁹⁸ The appeals of reducing overall immigration in the long span and reducing labor competition won the support of the American Federation of Labor.

The resulting Act of May 29, 1928 was a mixed product. First, it expanded non-quota families to include children under twenty-one of U.S. citizens, instead of previous eighteen. Congress also agreed to grant non-quota status to husbands of U.S. citizens but only to those married before May 31, 1928. Next, within the quotas, Congress reserved all quotas for families of U.S. citizens or permanent residents. It provided first preference (50 percent of the quota) to husbands of citizens married after May 31, 1928 and parents of citizens. Since petitions for admission of parents were the most numerous, the immigration committees decided not to exempt parents from the quotas so as not to increase total immigration. Next, the law provided

Migration Studies; "Memorandum of Relief for Separated Families: The Quota Fund Plan," March 1928, folder 1, box 12, Max J. Kohler Papers.

⁹⁸ *Amendments to Immigration Act of 1924, Non-quota and Preference Provisions: Hearing before the House Committee on Immigration and Naturalization. 70th Cong 77 (1928)* (Edith Terry Bremer, Y.W.C.A.); *Amendments to Immigration Act of 1924, Non-quota and Preference Provisions: Hearing before the House Committee on Immigration and Naturalization. 70th Cong 20 (1928)* (Read Lewis, Foreign Language Information Service); "Relief for Separated Families," *Interpreter* 8, no. 4 (1928): 3-6.

any remainder to unmarried children under twenty-one and wives of permanent residents (second preference)

However, restrictionists removed the most important part of the liberal proposal: distribution of visas across national quotas. Reformers advocated for giving more preference to families and for distribution of visas across national quotas, but Albert Johnson and the House committee listened only to the former.⁹⁹ For the purpose of prompt admission, changing preferences solely within each country's quotas did little, especially for countries with nominal quotas. "It is of no relief to extend or add more classes of immigrants to the preferential class," Representative Fiorello La Guardia (D - New York) expressed strong dissatisfaction insisted, "because the quota number from countries like Poland, Czechoslovakia, Rumania, Russia, and Italy is so limited." Samuel Dickstein (D - New York) commented that the bill was better than nothing but that "in reality you are not uniting the families at all" and that "to leave the impression in this House that you are giving something away is wrong."¹⁰⁰ Still, immigrant aid agencies reported that soon after the 1928 Act came to be known, their offices were filled with affidavits from husbands and fathers in order for their wives and children to be placed on the waiting list.¹⁰¹

Despite its limited nature, the 1928 Act had a more lasting significance. The law spoke to the heightened value numerical immigration restriction had attached to permanent residency or admission to the U.S. as an immigrant. Aside from citizens, previous laws that gave certain considerations to families spoke of various stages of alienage, for example from any foreigner, those who had filed the declaration of intention to naturalization, to those who had applied for

⁹⁹ Act of May 29, 1928 (45 stat. 654). The bill was sponsored by Thomas Jenkins (Ohio), an ardent supporter of the national origins quotas. 69 Cong. Rec. 9395 (statement of Albert Johnson).

¹⁰⁰ 69 Cong. Rec. 2918 (1928) (Fiorello La Guardia); 69 Cong. Rec. 9391 (1928) (Samuel Dickstein).

¹⁰¹ Hazel G. Omsbee, "Jenkins Says Reunite," *Women's Press* 23, no. 7 (July 1929): 473-474.

naturalization.¹⁰² But no immigration law after 1924 spoke of stage of alienage other than that of permanent resident. As Adena Miller Rich of the Immigrants Protective League of Chicago wrote in 1940, “declaration of intention” (first paper) gradually became a “relic of the days before restriction of immigration.”¹⁰³

Importance attached to the first paper reflected that admission to the U.S. in itself was not of high value during the era of open admission. Return migration rate was high, and circular migration was also common. As long as one passed the inspection each time, there was no legal barrier that would prevent migrants from leaving the U.S. and returning after certain period. But the 1924 Act made admission to the U.S. in itself a privilege available only to a selected few. Leaving the U.S. for more than certain length led to loss of permanent resident / immigrant status, and meant being placed at the end of the waiting list to reenter the U.S.¹⁰⁴ Rich explained,

When there were no quotas and travel was open ... this “first paper” represented a personal decision as to whether the alien expected to settle down and make the United States his home. ... Now he makes that decision, if possible, before he leaves the mother-country and enters the United States accordingly – either as a “temporary visitor” or as an “immigrant alien for permanent residence.” His very choice of immigration status ... indicates his intention at the time of his visa application ... Men and women who enter for “permanent residence” may well be considered therefore to have made their declarations of intention.¹⁰⁵

To what extent those holding immigrant visas would actually “settle down” was another matter, but Rich’s passage captured the characteristics of the post-1924 regime, where the rights in the U.S. were predetermined by the type of visa even before leaving the U.S. And permanent

¹⁰² For example, the Immigration Act of 1903 allowed declarant’s wife or children with contiguous disease to land. Sec. 37, Act of March 3, 1903 (32 Stat. 1213); The 1917 Act exempted families of citizens and “any admissible alien” from the literacy test.; The 1921 Act accorded preference to families of citizens or those who had already applied for citizenship.; Sec.2.d. Emergency Quota Act of 1921

¹⁰³ Rich, “Naturalization and Family Welfare,” 260.

¹⁰⁴ Legal scholar Hiroshi Motomura argues that declarants were treated as “intending citizens” or citizens of the future, Hiroshi Motomura, *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States* (New York: Oxford University Press, 2006), 115-119.

¹⁰⁵ Rich, “Naturalization and Family Welfare,” 260.

residency or being an immigrant was not only numerically reserved privilege, but also a racially reserved privilege, as the next chapter will discuss. Various state laws still continued to distinguish between immigrants who had filed their intention and those who had not, but no immigration law passed after 1924 spoke of declarants or any other status of immigrants other than permanent resident or citizens.¹⁰⁶

For another, instead of limiting eligibility to families of pre-1924 immigrants, who had been the focal point of call for reform, the 1928 Act recognized families of all permanent residents regardless of whether they had immigrated to the U.S. before or after quotas restriction. At a practical level, relief for families of pre-1924 immigrants alone came to have less saliency as four years had already passed since the law went into effect, and in another year all pre-1924 immigrants fulfilled the five-year residency requirement for naturalization. But more importantly, a cut-off date would make sudden enforcement of the 1924 Act grounds for considering families of pre-naturalization immigrants. But the way it was written, the issue was no longer whether one could have expected the consequences of new law or not, but more as a general right accompanying permanent residency.

The arrival of the Great Depression in 1929 would also give new dimension to the 1928 Act. Status such as non-quota or preference family was primarily a matter of numerical preference, in other words who had priority over others in obtaining a quota number. But under the Great Depression, visa issuance was no longer solely a matter of quota availability. The State Department adopted a policy that presumed all prospective immigrants to be “likely to

¹⁰⁶ For the list of state laws limiting certain occupations to citizens or to those with first papers, Harold Fields, “Where Shall the Alien Work?” *Social Forces* 12 no. 2 (1933): 213-221.

become a public charge,” and refused a visa unless they could affirmatively prove otherwise, leaving many quota visas unissued.

1.4 “New Immigration” and “Family Immigration”

During the Great Depression, the distinction between “family immigration” and “new immigration” became the key determining factor for obtaining a visa.¹⁰⁷ Family preference for numerical restriction increasingly became tied with qualitative restriction. Qualifying for a family visa was originally an issue of numerical restriction, especially for immigrants from Southern and Eastern Europe, but it became a crucial weapon to counter both legislative and administrative restriction. After the onset of the Great Depression, family sponsorship became a crucial means for the State Department to refuse visas, and whether a family as defined by the 1924 Act could convince the consulates of their financial capability to support the immigrant was critical. And ironically, since visa issuance was no longer a matter of quota availability, family-based admission also became crucial for immigrants from Northern and Western Europe as well for whom the issue was previously of little relevance.

In the early days of the Great Depression, liberalization of the 1924 Act continued to be a significant agenda for liberals. Some observed a “positive proof” that their appeals realized legislative reform. Edith Terry Bremer of the International Institutes (Y.W.C.A) commented after the passage of the 1928 Act, “There is much to be learned and taken to heart from this experience, we ... with the cooperation of several other organizations ... through letters, telegrams, petitions to Representatives and Senators, and by your local publicity has actually

¹⁰⁷ Joint Conference on Immigration Legislation, minutes, December 3, 1930, folder 2, box 223, reel 136, Immigration and Refugee Services of America Records.

passed a new law.”¹⁰⁸ In 1930, Mary McDowell of the University of Chicago Settlement reminded the social workers gathered at the National Conference of Social Work that “Congress gave only partial relief through the Relatives’ Act passed in 1928” and that their next goal was to expand non-quota admission to other families such as parents, children, husbands and wives of permanent residents and citizens.¹⁰⁹

However, in the face of increasing pressure to further curtail immigration, a more urgent agenda was to protect existing rights and to prevent additional restrictions. The naturalization fee was raised from five dollars to twenty dollars in 1929. Various legislators sought for formal reduction of quotas or even suspension of immigration. Nativists such as the Allied Patriotic Societies and the Immigration Restriction League continued to lobby for further reduction of admission and restriction of noncitizen rights, distributing publications such as *The Alien in Our Midst* (1930) by Madison Grant, Harry Laughlin and others. Moreover, Herbert Hoover’s presidency posed a huge obstacle for advocacy groups. In September 1930, Hoover ordered the State Department to reduce immigration from Europe by applying a more rigid visa issuance standard, refusing visas on “likely to become a public charge” grounds under the 1917 Act. Administrative restriction cut visas by 90 percent, leaving many quotas unused. The Secretary of Labor William Doak, appointed in December 1930, not only supported formal reduction of quotas by Congress, but launched a campaign to deport immigrants out of the U.S. The two departments responsible for immigration administration were both staunchly restrictionist.¹¹⁰

¹⁰⁸ Edith Terry Bremer, “How the Congress Made up Its Mind,” *Women’s Press* 22, no. 8 (Aug. 1928): 527-529.

¹⁰⁹ Mary McDowell, “Quota Law and the Family,” in *Proceedings of the National Conference of Social Work 1930* (Chicago: University of Chicago Press, 1930), 478-485.

¹¹⁰ Administrative restriction through visa refusal was first devised to reduce immigrants from Mexico, whom quotas restriction did not apply to. In the first five months after the order, consulates denied 96,883 visas. Divine, *American Immigration Policy*, 78-79; Zolberg, *A Nation of Design*, 268-269.

Two months after the new visa policy went into effect, Albert Johnson and David Reed called for a more formal restriction, proposing to suspend immigration for a few years, with an exception of certain families who had already applied for a visa.¹¹¹ This motion was similar to what Johnson had suggested after World War I: to suspend immigration except for certain families. But the State Department raised strong objection. Secretary of State Henry Stimson supported legislative restriction itself, as formal quotas reduction would relieve the consuls of the responsibility to reduce immigration by refusing visas when quotas were still available. Like Senator Dillingham's opposition to Johnson's scheme, Stimson's opposition was pointed to the idea that family-only admission would favor Southern and Eastern European immigrants. Citing family visa applications statistics, he explained how family-based admission would bring about the "evil results" of undermining the national origins quotas system that aimed to make immigration "conform to the existing racial stocks of the country." Stimson insisted that the national origins quotas system was designed in order for immigration from Northern and Western Europe to outnumber that from Southern and Eastern Europe by "5 to 1," while family-only admission would upset the ratio to "1 to 13."¹¹²

Stimson reminded Congress that since 1924 immigrants from Northern and Western Europe had rarely sought family-based admission thanks to large quotas: "At the present moment any relative of a Nordic who wants to come in can come in, because no such number of relatives have applied." Therefore, the proposal to suspend immigration and to limit admission to family visa applicants on the waitlist would stop immigration from Northern and Western Europe, since there was no such waitlist. On the other hand, Stimson believed that that it would not reduce

¹¹¹ Divine, *American Immigration Policy*, 81-84; Hutchinson, *Legislative History*, 220.

¹¹² Between 1928 and 1930, some 8,000 visas were issued annually to first preference families, but less than 1,000 applications were pending in Northern and Western Europe.

immigration from Southern and Eastern Europe, since a long waiting list filled the quotas for many years to come. What must be kept in mind in any restrictive legislation, Stimson insisted, was how to maintain the “racial stock” according to the national origins formula. Instead, he recommended uniform 90 percent quotas reduction.¹¹³

Just as the 1921 Act paved the way for permanent restriction, a law initially claimed to be temporary was likely to take a more lasting turn.¹¹⁴ To counter both administrative and legislative restriction, liberals sought to take more coordinated action. Most notable as the broad coalition of immigrant advocacy groups was the Joint Committee of Immigration Legislation formed in early 1930, renamed Joint Conference on Alien Legislation in 1939. It would later become the basis of American Immigration Conference founded after World War II to abolish the national origins quotas. By 1934, the loose coalition included prominent organizations such as the American Civil Liberties Union, American Jewish Committee, American Jewish Congress, American Social Hygiene Association, B’nai B’rith, Federal Council of Churches, Foreign Language Information Service, Hebrew Sheltering and Immigrant Aid Society, Immigrant’s Protective League, International Migration Service, National Association of Travelers Aid Societies, National Catholic Welfare Council, National Council of Jewish Women, National Council on Naturalization and Citizenship, National Institute of Immigrant Welfare, National League for American Citizenship, YMCA, and the YWCA.¹¹⁵ Many of the organizations had already been cooperating in the late 1920s to expand family-based admission.

¹¹³ Divine, *American Immigration Policy*, 80-81; *Suspension for Two Years of General Immigration into the U.S.: Hearing before the Senate Committee of Immigration*, 71st Cong. 70-74 (1930)

¹¹⁴ Niles Carpenter, “The New American Immigration Policy and the Labor Market,” *The Quarterly Journal of Economics* 45, no. 4 (1931): 720-723.

¹¹⁵ Joint Conference on Immigration Legislation, minutes, December 3, 1930, folder 2, box 223, reel 136, Immigration and Refugee Services of America Records; Daniel Erwin Weinberg, “The Foreign Language Information Service and the Foreign Born, 1918-1939: A Case Study of Cultural Assimilation Viewed as

The Joint Conference wrote to Stimson, “We believe it [restriction] should apply to new immigration, not to the families of men and women already resident in the United States.” They insisted that family unification held higher grounds than national origins: “The integrity of the family and the sanctity of the home are principles basic to American life. Separation of families is quite as inhumane, anti-social and contrary to American interest in the case of the naturalized citizen and resident alien as in the case of our native born people.”¹¹⁶ As Read Lewis of the Foreign Language Information Service stated at a hearing, anti-restrictionists framed the issue as a matter of “immigrant already here.”¹¹⁷

Although the 1928 Act seemed limiting in terms of speedy admission of families, they found the law crucial in their challenge against further restriction. First, liberals emphasized the fact that since 1928 all the quotas were reserved for families of U.S. citizens and permanent residents, and argued that majority of the prospective immigrants waiting for a visa were families. Any restriction would adversely affect families, they argued.¹¹⁸ Secondly, liberals reasoned that by according preference status to families of permanent residents, the 1928 Act linked family unification to admission to the U.S. itself, with fuller rights after naturalization. Admission of one’s families was part of the right included in permanent residency or admission to the U.S. as

a Problem in Social Technology,” (Ph.D. diss., University of Minnesota, Minneapolis, 1973), 233-234; “Conference for Joint Action,” N.d. folder 6, box 8, Foreign Language Information Service. reel 4, Immigration and Refugee Services of America Records

¹¹⁶ Joint Conference on Immigration Legislation, letter to Henry A. Stimson, December 1930, folder 2, box 223; Joint Conference of Immigration Legislation, minutes, December 23, 1930, folder 2, box 223, reel 136, Immigration and Refugee Services of America Records.

¹¹⁷ *Suspension for Two Years of General Immigration into the U.S.: Hearing before the Senate Committee of Immigration*, 71st Cong. 15 (1930) (Read Lewis, Foreign Language Information Service).

¹¹⁸ *Suspension for Two Years of General Immigration into the U.S.: Hearing before the Senate Committee of Immigration*, 71st Cong. 23 (Edith Terry Bremer, Y.W.C.A.)

an immigrant. Formal reduction of quotas was equal to break the promise to immigrants and to prolong the problem of family separation.¹¹⁹

What deserves attention here is how migration from Southern and Eastern Europe was now seen primarily as that of family immigration joining their U.S. citizen and resident families. Quotas restriction made short-term and circular migration difficult, while family provisions favored women and children joining their husband/fathers, which prompted the long-term change in immigration pattern to settler immigration. Thus, arguments made for expanding family-based admission characterized future immigration as that of families of the U.S. citizens and permanent residents. To be sure, Stimson and the reformers drew different conclusions from the same observation. Stimson reasoned that because post-1924 immigration from Southern and Eastern Europe was that of families joining their relatives in the U.S., Congress should not attach importance to family ties, whereas liberals saw it as a reason for opposing to any further restriction. Nevertheless, the views of “new immigration” as that of temporary migration, which had prevailed in the times of the Dillingham Commission, had receded by the 1930s.

Family under Administrative Restriction

A change of leadership in the House immigration committee in December 1931 prevented a formal quota reduction by Congress. Although the House passed the 90 percent quota reduction bill by a large majority, the 71st Congress adjourned before Senate took action. And as a result of slight Democratic majority in the 72nd Congress, Samuel Dickstein (D - New York) replaced Albert Johnson as the chair of the House Immigration and Naturalization Committee. A

¹¹⁹ *Suspension for Two Years of General Immigration into the U.S.: Hearing before the Senate Committee of Immigration*, 71st Cong. 21 (1930) (Nathan Perlman, American Jewish Congress and the Independent Order of B’rith Abraham).

first generation immigrant from what is now Lithuania and a former justice of the New York Supreme Court, Dickstein had been one of the most vocal opponents of the 1924 Act since he was first elected to Congress in 1923. With the southern Democrats being staunchly restrictionist, change of the committee chair did not facilitate passage of more liberal bills, but Dickstein was more successful in blocking restrictive bills such as formal quota reduction from reaching the house floor.¹²⁰

However, visa refusal by the Department of State was an entirely different problem from formal legislative restriction by Congress. After all, the Department of State had already curtailed immigration by 90 percent without Congressional restriction. Since the 1924 Act went into effect, immigrant aid agencies had realized that while the new visa system reduced the chance of exclusion at the ports of entry, the foremost problem was lack of any formal mechanism to appeal a visa refusal. For exclusion at the ports of entry, it was possible to make an appeal often with the aid of an immigrant aid agency or counsel. The right to appeal to the Board of Special Inquiry was encoded in immigration law, and those with resource financial or otherwise could bring the case to federal court under *habeus corpus* proceedings, although the hurdle was higher. But absence of any formal visa review system kept consuls out of reach, and keeping the forefront of immigration control far away from the U.S. soil was exactly what Congress in 1924 had expected of visa system.¹²¹

¹²⁰ “Congress Faces Sharp Debate on Immigration,” *New York Herald Tribune* Nov. 1, 1931; Divine, *American Immigration Policy*, 81-88; Zolberg, *A Nation by Design*, 269, 274; For the Southern Conservatives, James T. Patterson, *Congressional Conservatism and the New Deal: The Growth of the Conservative Coalition in Congress, 1933-1939* (Lexington: University of Kentucky Press, 1967).

¹²¹ Zolberg, *A Nation by Design*, 265; Florina Lasker, “Likely to Become,” *Survey* January 15, 1931: 433-434; A. Warner Parker, “The Quota Provisions of the Immigration Act of 1924,” *American Journal of International Law*, 18, no. 14 (1924), 742.

Reformers argued that lack of review was especially problematic when it involved families of citizens and permanent residents. The State Department firmly insisted that foreigners had no right to enter the U.S. and therefore were not entitled to make an appeal. Importantly, the opposition reasoned that family-based admission was less about a foreigner's rights than about the rights of citizens and residents to be joined by their families. A witness of the Y.W.C.A. made the case, "The applicant for a visa is the prospective immigrant ... On the other hand Congress has granted that applicant the privilege of making an application because of her relationship to a citizen, or an alien of the United States. In other words, Congress had granted the privilege to the citizen here to bring over his wife and children or parents." By pointing to the mechanism of family petitioning, liberals emphasized the notion that admission of families was primarily about the residents of the U.S.¹²²

Intense oppositions induced the State Department to reconsider its visa policy to a limited degree. To head off Dickstein's efforts to introduce a bill for a visa review system, the State Department voluntarily relaxed its visa policies on families in order to diffuse criticisms and to avoid Congressional intervention that might impose a formal check on consular authorities.¹²³ In November 1931, Acting Secretary of State Wilbur J. Carr instructed consuls to review "all the cases of non-quota, first preference, and second preference relatives who have been refused visas as aliens likely to become a public charge" since the enforcement of the new visa policy in September 1930.¹²⁴ And another circular from July 1933 gave instructions on how to distinguish

¹²² *Review of the Action of Consular Officers in Refusing Immigration Visas: Hearing before the House Committee on Immigration and Naturalization, 72nd Cong., 1932* (Aghavine Yeghenian, Y.W.C.A.)

¹²³ Zolberg, *A Nation by Design*, 269.

¹²⁴ Wilbur J. Carr, Acting Secretary of State, "Reconsideration by Consular Officers of Cases Involving Alien Relatives of American Citizens and of Legally Admitted Aliens," November 30, 1931, diplomatic serial no. 2098, folder 15, box 13, Max Kohler Papers.

“members of an immediate family group,” “other relatives and aliens having close connections in the United States” and “other aliens.”¹²⁵

Invented primarily for Southern and Eastern European immigrants but now having significance for all immigrants from Europe, the State Department’s policy indicated how categories for family-based immigration, such as non-quota and preference status, imagined primarily as corollary to numerical restriction, also came to define the boundaries of family under administrative restriction. For non-quota families, and first and second preference families, the department instructed consuls to apply three tests to decide whether the applicant met the likely to public charge test: the sponsoring family had to have (1) employment which is not likely to terminate (2) an income to provide for the alien relative (3) resources for support in the event of a temporary disability. Those without any preference under the 1924 Act such as “adult children, sister, brother, nephew, niece, fiancée” had to meet much higher test to obtain a visa. And others were summarily excluded unless one had a “substantial personal resources ... or definite prospect of employment.”¹²⁶ While the visa refusal rate for non-quota and preference relatives remained at a relatively lower rate,¹²⁷ the presence of relatives who met the three criteria counted little unless such relation was recognized as “family” under the 1924 Act. Since the 1917 Act was still in effect, the State Department could have used a much wider definition of “family” under family-based exemption from the literary test, but such was not the case.

¹²⁵ Wilbur J. Carr, Acting Secretary of State, “Public Charge Provision of the Law,” July 8, 1933, folder 15, box 13, Max Kohler Papers.

¹²⁶ Wilbur J. Carr, Acting Secretary of State, “Reconsideration by Consular Officers of Cases Involving Alien Relatives of American Citizens and of Legally Admitted Aliens,” November 30, 1931, diplomatic serial no. 2098, folder 15, box 13, Max Kohler Papers.

¹²⁷ Between October 1930 to March 1933, rejection rate for a non-quota family visa was 2.3 percent (542 of the 23,516), with first preference families having a higher rejection rate of 15.5 percent (1,514 of the 9,763) *Review of Refusals of Visas by Consular Officers: Hearing before the House Committee on Immigration and Naturalization, 73rd Cong. 25-26 (1932)* (A. Dona. Hodgson, Chief of Visa Division, Department of State).

Also, on two levels, admission policies during the Great Depression further reinforced the view of immigration from Europe as that of families. For one, in the face of criticism, consuls reconsidered its visa refusal policy in cases involving those petitioned by their families, thus making family ties as central to immigration during the Great Depression as during the 1920s. Another consequence was dissociation of family immigration from immigration of laborers. As a matter of policy, those who could receive a visa were supposedly not seeking a job. While the most common grounds for visa refusal was “likely to become a public charge,” equally central to the visa refusal policy was to screen out immigrants who may compete with “American labor.” First of all, pre-arranged employment was illegal under the “contract labor” clause, and hinting that a job was on offer was grounds for immediate visa refusal. Limited admission of family and non-admission of labor put the two in a dichotomous relation, characterizing immigration from Europe as that of families and not that of labor.

However, while the post-1924 reform movement saw limited but certain confirmation of family rights for European immigrants, the period confirmed that call for family unification only mattered if such family was white. As the next chapter examines, the claims of citizens and permanent residents to family-based admission or for the right to live together was bound by race, reserved solely for persons defined as white.

Tables and Figures for Chapter 1

1-1: Legislations Regarding Family-based Admission, 1921-1928

Legislation	Sponsor	Beneficiary	Exempted or Preference within quotas
Emergency Quota Act of May 19, 1921 (42 Stat. 5)	Citizen	Child under 18	Non-quota
	Citizen Alien who has applied for citizenship WWI veteran	Wife, parents, siblings, children under 18 (not of citizens), fiancées	Preference
Immigration Act of May 6, 1924 (43 Stat. 153)	Citizen	Wife Unmarried children under 18 (Only if they are not “aliens ineligible to citizenship.”)	Non-quota
	Citizen-21 or over	Husband Unmarried children under 21 Parents	Preference
Alien Veterans Act of May 26, 1926 (44 Stat. 654)	WWI veteran alien	Spouse Unmarried children under 18	Non-quota
Act of May 29, 1928 (45 Stat. 1009)	Citizen	Wife Unmarried children under 21	Non-quota
	Citizen-Female-21 or over	Husband married prior to 1928/6/1	
		Husband married after 1928/6/1	Preference
	Citizen-21 or over	Parents	
	Resident Alien	Unmarried child under 21 Wife (not husband)	

1-2: Family Visa Petitions Filed by U.S. Citizens, 1925-1940

Fiscal year	Petitions filed	Petitions approved (approval rate)	Number of individuals covered	Non-quota	First Preference
1925	29,000	25,002 (86%)	50,000	No data	No data
1926	23,856	18,659 (78%)	30,000	No data	No data
1927	34,169	27,263 (80%)	39,043	25,500	13,543
1928	38,460	33,675 (88%)	No data	No data	No data
1929	40,774	36,032 (88%)	No data	No data	No data
1930	36,703	31,259 (85%)	No data	No data	No data
1931	22,444	19,376 (86%)	No data	17,846	No data
1932	14,295	10,839 (76%)	14,732	Wives 6,798 Children ¹²⁸ 3,752 Pre-1932 Husbands 422 ¹²⁹	Fathers 1,020 Mothers 1,769 Post-1932 Husbands 971
1933	13,302	9,455 (71%)	10,254	8,259	1,955
1934	15,230	No data	14,433	Wives 5,499 Children 3,703 Husbands 1,124	Fathers 1,120 Mothers 2,027 Husbands 966
1935	17,093	No data	16,107	Wives 6,041 Children 4,622 Husbands 926	Fathers 1,127 Mothers 2,081 Husbands 1,270
1936	15,344	11,080 (72%)	13,933	Wives 5,066 Children 3,802 Husbands 877	Fathers 1,026 Mothers 1,974 Husbands 1,308
1937	17,698	13,538 (77%)	16,695	Wives 5,654 Children 4,309 Husbands 1,199	Fathers 1,318 Mothers 2,271 Husbands 1,944
1938	16,163	14,532 (90%)	18,137	Wives 5,609 Children 4,711 Husbands 1,239	Fathers 1,436 Mothers 2,709 Husbands 2,433

¹²⁸ Before the Act of May 29, 1928, only unmarried child under 18 qualified as non-quota family. The 1928 Act expanded the range of non-quota child to unmarried child under 21.

¹²⁹ Initially the 1924 Act accorded only preference status to husbands of citizens. The Act of May 19, 1928 accorded non-quota status to husbands married before June 1, 1932, but left those married on or after the date in the preference category. The Act of July 11, 1932 accorded non-quota status to husbands married before July 1, 1932, but only preference status to those married on or after July 1932.

1939	17,254	11,228 (65%)	13,228	Wives 3,506 Children 1,930 Husbands 1,303	Fathers 1,536 Mothers 2,929 Husbands 2,024
1940	11,017	11,002 (99%)	12,691	Wives 3,829 Children 1,876 Husbands 1,095	Fathers 1,051 Mothers 2,027 Husbands 2,813

United States Department of Labor, *Annual Report of the Commissioner General of Immigration 1925* (Washington D.C.: G.P.O, 1925), 10; *Annual Report 1926*, 11-12; *Annual Report 1927*, 12; *Annual Report 1928*, 20; *Annual Report 1929*, 23; *Annual Report 1930*, 26; *Annual Report 1932*, 34; United States Department of Labor, *Annual Report of the Secretary of Labor 1933* (Washington D.C.: G.P.O, 1933), 63; *Annual Report 1934*, 70; *Annual Report 1935*, 94; *Annual Report 1936*, 103; *Annual Report 1937*, 93; *Annual Report 1938*, 108-109; *Annual Report 1939*, 106; *Annual Report 1940*, 117.

1-3: Non-quota Families from Europe, 1924-1929

Country	Annual quotas based on 1890 census	New immigrants, July 1924 – June 1929					Percentage non-quota families
		All immigrants ¹³⁰	Quota immigrant	Non-quota families			
Wife	Child ¹³¹			Husband ¹³²			
Northern and Western Europe, in descending order of quotas							
Germany	51,227	244,448	242,363	926	387	57	0.6%
Great Britain	34,007	162,836	148,660	2,094	498	146	1.7%
Irish Free State	28,567	141,247	140,467	214	92	4	0.2%
Sweden	9,561	44,833	44,276	150	86	10	0.5%
Norway	6,453	31,042	30,218	317	65	9	1.3%
France	3,954	18,713	17,730	338	164	10	2.7%
Denmark	2,789	13,494	13,114	216	35	11	1.9%
Switzerland	2,081	9,976	9,537	152	69	11	2.9%
Netherlands	1,648	8,120	7,699	163	65	24	6.8%
Finland	471	2,709	2,363	128	102	7	8.7%
Luxemburg	100	515	487	10	5	0	2.9%
Southern and Eastern Europe							
Poland	5,982	46,595	29,478	5,775	9,158	213	32.5%
Italy	3,845	63,133	17,558	19,934	19,228	136	62.2%
Czechoslovakia	3,073	19,202	14,668	1,858	2,137	110	21.4%
Russia	2,248	15,592	10,234	1,592	2,205	58	24.7%
Austria	785	5,142	4,213	324	401	19	14.5%
Yugoslavia	671	6,443	3,048	1,764	1,383	27	49.2%
Rumania	603	6,708	3,759	1,074	1,047	46	32.3%
Portugal	503	2,757	2,418	157	86	7	9.1%
Hungary	473	4,436	2,445	690	790	63	34.8%
Lithuania	344	3,337	1,846	504	367	20	26.7%
Danzig	228	1,090	1,065	13	10	1	2.2%
Latvia	142	2,167	728	145	98	3	11.4%
Spain	131	1,997	802	236	183	16	21.8%

¹³⁰ The number of all immigrants is not the sum of quota immigrants and non-quota families.; This table does not include other classes of non-quota immigrants such as professors, ministers, and students. Helen Eckerson, "Non-quota Immigration, Fiscal Years 1925-1944," *INS Monthly Review* 3 (August 1945): 185-190 includes a table on all non-quota immigrants but does not provide data specifically on non-quota families.

¹³¹ Before the Act of May 29, 1928, only unmarried child under 18 qualified as non-quota family. The 1928 Act raised the range of non-quota child to unmarried child under 21.

¹³² Before the Act of May 29, 1928, only wives were included in non-quota families. The 1928 Act extended non-quota status to husbands who were married prior to June 1, 1928.

Albania	100	1,539	472	357	257	1	40.0%
Andora	100	27	17	8	3	0	40.7%
Bulgaria	100	865	509	169	58	1	26.4%
Estonia	100	702	612	38	12	0	5.6%
Greece	100	6,782	737	4,193	1,262	17	80.7%
Iceland	100	323	300	5	3	0	2.5%
Lichtenstein	100	89	88	0	1	0	1.1%
Monaco	100	41	35	1	3	1	12.2%
Turkey	100	2,938	447	1,597	570	9	74.0%

Source: United States Department of Labor, *Annual Report of the Commissioner General of Immigration 1925* (Washington D.C.: G.P.O, 1925), 139-140; *Annual Report 1926*, 122-123; *Annual Report 1927*, 139-140; *Annual Report 1928*, 139-140; *Annual Report 1929*, 133-134.

Chapter 2: Families Ineligible to Citizenship, 1924-1934

On June 6, 1927, the Supreme Court upheld the deportation order of thirteen-year old Chin Bow as an “alien ineligible to citizenship” excludable under the Immigration Act of 1924. His father was Chin Dun, a Chinese-American U.S. citizen, and his grandfather Chin Tong, born in the U.S. in 1878, was one of the first generation of Chinese-Americans who acquired U.S. citizenship under the Fourteenth Amendment. His son Chin Dun was born in China in 1894. As nationality law since 1790 had recognized “derivative citizenship” of children born abroad to male U.S citizens, Chin Dun acquired U.S. citizenship from his father. In 1922, Chin Dun moved to the U.S. at the age of twenty-eight, while his wife and a son born in 1914 remained in China. And in 1924, when he sent for his ten-year-old Chin Bow, immigration officials at Seattle excluded his son.¹

Thirty years later, on November 18, 1957 the Supreme Court ruled that Lee You Fee was a U.S. citizen. Like the case of Chin Bow, Lee You Fee’s father Lee Q. Pon was a Chinese-born U.S. citizen, who derived his citizenship from his U.S.-born father. Lee Q. Pon moved to the U.S. in 1926, and his son was born in 1935 during his later visit to China. Lee Q. Pon returned to Wisconsin, while the mother raised Lee You Fee in Hong Kong. But in 1951, at the age of sixteen Lee You Fee lost his U.S. citizenship for not having taking residence in the U.S. before a certain age. It took six years for the family to recover his citizenship.²

Thirty years apart, both cases resulted from a renewed attempt after 1924 to further curtail immigration from China and to exclude persons of Asian descent regardless of their family ties to citizens. While imposing quotas restriction on immigrants from Europe, the 1924 Act racially excluded “aliens ineligible to citizenship,” euphemism for persons of Asian descent

¹ *Weedin v. Chin Bow* 274 U.S. 657 (1927)

² *Lee You Fee v. Dulles*, 236 F. (2d) 885, 355 U.S. 61 (1957)

who were barred from naturalization by a nationality law passed during the Reconstruction Era, which limited naturalization to “white” persons and persons of “African nativity and descent.”³ And *Chin Bow*, which involved interpretation of nationality law, was part of a series of post-1924 rulings and legislations that confirmed racial exclusion of “aliens ineligible to citizenship” as the foremost law of the land, firmly tying racial ineligibility to citizenship to exclusion of families.

For several years after the passage of the 1924 Act, whether racial exclusion trumped any familial connections—including family members of citizens who were themselves citizen — was contested. This chapter first examines a series of rulings and the challenge raised by Chinese Americans to amend the 1924 Act. With all Asian aliens excluded from the U.S., the late 1920s and the 1930s saw further exclusionist attacks now directed against U.S. citizens of Asian descent. Barred from naturalization, persons of Asian descent could only acquire citizenship at birth either 1) as a U.S.-born citizen as guaranteed by the Fourteenth Amendment (constitutional citizenship) or 2) by deriving citizenship from the U.S. citizen father under *jus sanguinis* rule as provided by nationality law (statutory citizenship). Loss of U.S. citizenship by Lee Q. Pon was result of amendment made to the nationality act in 1934. The latter half of the chapter examines attacks on *jus sanguinis* rule of citizenship. Focusing on the so-called Equal Nationality Act of 1934, it examines the idea of “equality” advanced by advocates for family of Southern and Eastern European immigrants, and the racial boundary of family.

2.1 Ineligible to Citizenship but Admissible

³ Naturalization Act of 1870 (16 Stat. 254); *Ozawa v. United States* 260 U.S. 178 (1922); *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923)

On July 11, 1924, eight days after the 1924 Act was enforced, immigration officials at San Francisco excluded Chinese passengers who arrived on steamship Lincoln, which had set sail for the U.S. before the new law went into effect. Among the passengers excluded as “aliens ineligible to citizenship” was Cheung Sum Shee, a wife of a Chinese merchant residing in the U.S. Also aboard was Chan Shee, wife of a U.S. citizen Chang Chan. In the next two months, immigration officials at Seattle, San Francisco, Boston, and New York similarly excluded families of Chinese merchants and Chinese-Americans.⁴

The 1924 Act barred practically all “alien ineligible to citizenship” – persons of Asian descent – from becoming a permanent resident of the U.S. (Sec 13 c) In contemporary usage, permanent residency in the U.S. and eligibility to apply for naturalization are interchangeable terms. A “permanent resident” status does not simply mean indefinite residence in the U.S. but also eligibility to apply for naturalization after fulfilling the minimum residency requirement. But historically they were distinct concepts. It was not until the abolition of racial bar to naturalization in 1952 that all permanent residents became eligible for naturalization. And what first coupled the two together in a more negative way was the 1924 exclusion of Asian immigrants, when Congress barred “aliens ineligible to citizenship” from taking permanent residence in the first place. Thus, it was by denying permanent residency to “aliens [racially] ineligible to citizenship [through naturalization]” and by granting permanent residency only to persons racially eligible to naturalization (white immigrants) that Congress tied post-1924 “permanent residency” with “eligibility to apply for naturalization.”

⁴ List of Alien Chinese Wives of United States Citizens Arriving after July 1, 1924, Denied Admission under the Immigration Act of 1924, Temporarily Admitted by the Department of Labor, May 1926, folder 55560/26, Entry 9, RG 85.

Under the 1924 Act, the only exception to this wholesale racial exclusion of Asian immigrants was “minister or professor, and his wife or unmarried children under 18” (4d – immigrant status with permanent residency).⁵ While there were other ways to enter the U.S. they were all temporary status: six classes of “non-immigrants” (section 3 temporary admission)⁶ and student (4e – categorized as immigrant but temporary admission).⁷ And status such as “student” had entirely different meaning before and after 1924. Prior to 1924, student status and education in the U.S. accompanied permanent residency, but that was no longer the case. Completion of studies terminated one’s residence in the U.S.⁸

Before 1924, families of Chinese merchants such as Cheung Sum Shee and wives of U.S. citizens such as Chan Shee were among the few classes of Chinese not subjected to wholesale exclusion by the Chinese Exclusion Act,⁹ although they had to go through long and intensive examinations that covered family history, relationship, lives in China, which were incomparable

⁵ For Europeans, the key difference between “non-immigrant” status and “immigrant” status was that the former lacked the right to naturalization (permanent residency), whereas the latter were eligible for naturalization. With regard to “aliens ineligible to citizenship,” nobody was eligible for naturalization regardless of one’s immigration status or the type of visa. For Europeans, eligibility to naturalization was a matter of immigration status, but for Asian immigrants, ineligibility to naturalization did not have to do with immigration status but with “race” and naturalization law.

⁶ Section 3 defined nonimmigrant as (1) a government official, his family, attendants, servants, and employees, (2) an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure, (3) an alien in continuous transit through the United States, (4) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory, (5) a bona fide alien seaman and (6) an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation.

⁷ Under the 1924 Act, “student” was the only status that was classified as an “immigrant” but did not accompany permanent residency. The Immigration and Nationality Act of 1952 reclassified “student” from “immigrant” to “nonimmigrant” status.

⁸ *Annual Report of the Commissioner General of Immigration 1928*, 15.

⁹ For immigration of women before the 1882 Exclusion Act, George Anthony Pepper, “Forbidden Families: Emigration Experiences of Chinese Women under the Page Law, 1875-1882,” *Journal of American Ethnic History* 6 (1986): 28-46.

to examination of immigrants from Europe.¹⁰ Between 1910 and 1924, a total of 36,200 Chinese immigrated to the U.S., out of which 43 percent were wives and minor children of merchants and wives of U.S. citizens.¹¹ However, the 1924 Act exempted merchants from racial exclusion as one class of “nonimmigrant,” but the law was silent on their wives and children. Also, whereas the 1924 Act exempted “unmarried children under eighteen, and wife” of a citizen from quotas restriction of European immigrants (section 4a), the law spoke nothing of citizen’s family in relation to racial exclusion. Once the 1924 Act went into effect, the Bureau of Immigration held all such relations no longer admissible.¹²

Family Exclusion Clause

There was no doubt that the primary target of section 13 c, which excluded “aliens ineligible to citizenship,” was families of Japanese immigrants.¹³ The clause is often referred to as the “Japanese exclusion clause,” but it was specifically aimed at excluding family members, especially wives. Since the Gentlemen’s Agreement of 1907, the Japanese government had only issued passports to wives, children and parents of U.S. residents, and set strict economic conditions for bringing one’s family members. In 1920, the Japanese government stopped

¹⁰ Erika Lee, *At America’s Gates: Chinese Immigration during the Exclusion Era, 1882-1943* (Chapel Hill: University of North Carolina Press, 2003), 116.

¹¹ The figure includes returning residents but does not include U.S. citizens (15,467). The largest group was sons of merchants, 9,341 (10 percent of total and 11 percent of men); wife of U.S. citizen (2,848 – 3 percent of total and 30 percent of woman), followed by wife of a merchant (2,756 – 2.9 percent of total and 28 percent of woman), and daughter of a merchant (522, 0.6 percent of total and 6 percent of woman). Erika Lee, *At America’s Gates*, “table 4. Chinese men Admitted, by Class, 1910 and 1924” and 98 and 115.

¹² Bureau of Immigration Circular of Instruction no. 55266 quoted in Parker, “Aliens Ineligible to Citizenship,” 32; Sucheng Chan, “The Exclusion of Chinese Women, 1870-1943” in *Entry Denied: Exclusion and the Chinese Community in America, 1882-1943*, ed. Sucheng Chan (Philadelphia: Temple University Press), 125-127; Candice Lewis Bredbenner, *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (Berkeley: University of California Press, 1998), 124-129.

¹³ For Japanese exclusion, Roger Daniels, *The Politics of Prejudice, the anti-Japanese Movement in California, and the Struggle for Japanese Exclusion* (Berkeley: University of California Press, 1962).

issuing passports to picture brides, but this did not satisfy the exclusionists such as Senator James D. Phelan of California (D), who was the principal advocate of terminating picture bride. Phelan saw the increase of the U.S.-born generation, with fuller rights denied to their parents, as a particular threat, and accused Japanese women of giving birth to children in the U.S. as well as of joining the labor force.¹⁴ The House report on the Johnson bill emphasized that the target of the “aliens ineligible to citizenship” clause was Japanese wives: “Under the agreement [Gentlemen’s Agreement] thousands of Japanese women have come in ... Even the stoppage of picture brides did not put an end to this immigration, for it continued to come.”¹⁵

During the Congressional debate and hearings on Japanese exclusion, exclusionists frequently used the term “family” but not in the context of whether or not family members should be exempted from restriction, or to refer to certain familial relations. This was distinct from debate on European immigrants, where reference to family was about how or which familial relation mattered. Nativists calling for exclusion of Japanese used the term “family” to depict the United States as an organic nation built through intermarriage of white persons, a “white Caucasian” nation. Senator Phelan proclaimed, “We will give them [Japan] equality as a nation among nations in the family of nations” but “we cannot take them into our own family, because ... they cannot by intermarriage become a homogeneous part.” Thus, while Phelan recognized Japan as a sovereign state in “the family of nations,” he rejected Japanese as part of

¹⁴ Yuji Ichioka, *The Issei: The World of the First Generation Japanese Immigrants, 1885-1924* (New York: Free Press, 1988), 164-175; Catherine Y. Lee, “‘Where the Danger Lies’: Race, Gender, and Chinese and Japanese Exclusion in the United States, 1870-1924,” *Sociological Forum* 25, no. 2 (2010): 248–271; Eithne Luibhéid, *Entry Denied: Controlling Sexuality at the Border*. (Minneapolis: University of Minnesota Press, 2002), 63-75.

¹⁵ *Restriction of Immigration* H.R. Rep. No. 68-350, at 8 (1924).

the U.S. society, which he represented as a racial “family” formed through marriage among white persons.¹⁶

Domestically, anti-miscegenation laws constructed the “white Caucasian” nation. At a Senate hearing, V.S. McClatchy of Japanese Exclusion League of California declared that he was going to “use the term ‘assimilation’ throughout my talk in the sense of amalgamation. There is no real assimilation unless it is amalgamation.” According to McClatchy, “The yellow and brown races do not intermarry with the white race” therefore were “unassimilable with the white race.” Although McClatchy spoke as if intermarriage was a proof of “assimilability” and moreover as if it was a matter of choice, he conveniently ignored that eleven states including his own state of California banned marriage between “white” persons and persons of Asian descent, with some states speaking of “Mongolians,” others using more specific terms such as “Chinese” and “Japanese.” Inter-racial marriage was a legal impossibility in his state since 1880, when the state legislature expanded its anti-miscegenation law that had prohibited marriage between “whites” and “negroes” and “mulattoes” to include “Mongolians,” initially with Chinese in mind and later applied to Japanese.¹⁷

Exclusionists repeated the idea that the U.S. was a “family” of the “Caucasian” race. Senator Samuel Shortridge (R-California) racially defined the “American citizen type” as

¹⁶ *Japanese Immigration Legislation: Hearing before the Senate Committee on Immigration*. 68th Cong. 10 (1924) (Senator James Phelan)

¹⁷ *Japanese Immigration Legislation: Hearing before the Senate Committee on Immigration*. 68th Cong. 4 (1924) (V.S. McClatchy, Japanese Exclusion League); California did not repeal its anti-miscegenation law until 1959. For anti-miscegenation laws against Asian-Americans, Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (New York: Oxford University Press, 2009), 85-93; For the list of terms used to label groups under anti-miscegenation laws, Deenesh Sohoni, “Unsuitable Suitors: Anti-Miscegenation Laws, Naturalization Laws, and the Construction of Asian Identities,” *Law & Society Review* 41, no. 3 (2007): 597; For discussion of how Chicago School sociologist measured “social distance” by sex and intermarriage, Henry Yu, *Thinking Orientals: Migration, Contact and Exoticism in Modern America* (New York: Oxford University Press, 2001), 50-62.

“Caucasian or Aryan branch of the human family,” to which the Japanese did not belong. Drawing on the 1922 Supreme Court ruling *Ozawa v. United States*, which decided that Japanese were ineligible to naturalization because they were not “Caucasian” and therefore not “white,” the Attorney General of California claimed that the world was divided into “two great groups; on the one side is placed the peoples of Caucasian descent ... on the other side is placed all the others, all races of color other than white.”¹⁸ As historian Mae Ngai has argued, the national origins quotas regime “divided Europe from the non-European world.”¹⁹

While discussion centered on Japanese immigration, the undeniable overall purpose was complete exclusion of Asian immigrants, which began with Chinese exclusion in the late nineteenth century, exclusion of natives of “the Asiatic Barred Zone” that covered most of continental Asia and the Pacific (1917),²⁰ Supreme Court rulings that reconfirmed racial bar to naturalization *Ozawa v. United States* (1922) on Japanese and *United States v. Bhagat Singh Thind* (1923) on Indian.²¹ *Thind* extended rule of racial ineligibility to citizenship to natives of all

¹⁸ *Japanese Immigration Legislation: Hearing before the Senate Committee on Immigration*. 68th Cong. 98 (1924) (Senator Samuel Shortridge, CA); *Takao Ozawa v. United States*, 260 U.S. 178 (1922); Ian Haney-López, *White by Law: The Legal Construction of Race* (New York: New York University Press, 2006), chapter 4; For a detailed analysis of the Ozawa case, Devon W. Carbado, “Yellow by Law,” *California Law Review* 97, no. 3 (2009): 633–692.

¹⁹ Ngai, *Impossible Subjects*, 27.

²⁰ The Asia Pacific Triangle exclusion applied to “natives of islands not possessed by the United States adjacent to the Continent of Asia, situate south of the twentieth parallel latitude north, west of the one hundred and sixtieth meridian of longitude east from Greenwich, and north of the tenth parallel of latitude south, or who are natives of any country, province or dependency situate on the Continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich and south of the fiftieth parallel of latitude north, except that portion of said territory situate between the fiftieth and the sixty-fourth meridians of longitude east from Greenwich and the twenty-fourth and thirty-eight parallels of latitude north.” Section 3. Act of February 5, 1917 (39 Stat. 874); “Except that portion ...” refers to Japan, which was not included in the zone because of the Gentlemen’s Agreement.

²¹ Jeff H. Lesser, “Always ‘Outsiders’: Asians, Naturalization and the Supreme Court,” *Amerasia Journal* 12, no. 1 (1985-1986): 83-100; For immigration from India, Gary R. Hess, “The ‘Hindu’ in America:

countries of 1917 barred zone. While Congress discussed the 1924 bill, the Japanese government requested for quotas restriction instead of wholesale exclusion. But to provide quota for Japan, exclusionists argued, was “to discriminate in favor of them [Japanese] as against the Chinese, the Hindus.” “The fairest” and “un-discriminatory” treatment of Japanese, the exclusionists insisted, was to subject them to wholesale exclusion just like other people in Asia.²² Although Congress did not discuss extensively in 1924 about immigration from other parts of Asia, this was only because they had already been virtually excluded and because Japanese were considered to be the last remaining target.

Merchant Families and Citizen’s Wives

Despite the unmistakable overall intention of Congress to complete the exclusion of Asian immigrants, when the Bureau of Immigration excluded families of Chinese merchants and Chinese-Americans in 1924, there were certain differences between admission of Japanese families and Chinese families that remained to be answered. For one, admission of Chinese merchant families involved a treaty between China as well as a 1900 Supreme Court ruling *United States v. Mrs. Gue Lim*. Amidst a series of Chinese exclusion laws excluded virtually all Chinese from entering the U.S., the Burlingame Treaty as revised in 1880 entitled those with merchant status to enter and reside in the U.S. The Supreme Court reasoned that wives of

Immigration and Naturalization Policies and India, 1917-1946,” *Pacific Historical Review* 38, no. 1 (1969): 59–79.; In *Ozawa*, the Court ruled that Japanese were not white because they were not Caucasian. In *Thind*, the Supreme Court used a different reasoning to deny that Indians were white. The Court ruled that although Indians were Caucasian in scientific term, he was not in the “understanding of the common man.” Lopez, *White by Law*, 90.

²² *Japanese Immigration Legislation: Hearing before the Senate Committee on Immigration*. 68th Cong. 119 (1924) (Senator James Phelan); Sidney L. Gulick, “American-Japanese Relations: The Logic of the Exclusionists,” *Annals of the American Academy of Political and Social Science* 122 (November 1925): 181–187.

Chinese merchants were entitled to enter the U.S. “by reason of the right of the husband.”²³

Congress expressed its intent to abrogate Gentlemen’s Agreement with Japan, but did it intend to nullify the treaty with China and the Supreme Court ruling as well?

Secondly, other than merchant wives, Chinese wives admitted before 1924 were married to U.S. citizens. This was different from the case of Japanese wives, since their husbands were first-generation immigrants without U.S. citizenship. Just like Chinese immigrants, first-generation Japanese immigrants were racially barred from naturalization.²⁴ As more recent immigrants, the second generation with birthright citizenship was yet to come of marrying age, and pre-1924 admission of Japanese wives did not involve claims of U.S. citizens.²⁵ Even before the Cable Act of 1922 abolished the practice of marital naturalization, marriage to a U.S. citizen did not make a Chinese wife a U.S. citizen, since marital naturalization only applied to women racially eligible to citizenship.²⁶ It was not by virtue of her citizenship but more as the right of a male citizen that immigration authorities had admitted Chinese wives. While there was no Supreme Court ruling on excludability of Chinese wives of U.S. citizens, after *Gue Lim*, the

²³ *United States v. Gue Lim*, 176 U.S. 459 (1900); Chan, “The Exclusion of Chinese Women,” 116-117.

²⁴ Chinese were barred from naturalization both by the Naturalization Act of 1870, which limited naturalization to “white” persons and persons of “African nativity or descent,” and by the Chinese Exclusion Act of 1882, which specifically stated that Chinese were not eligible for naturalization. Japanese immigrants were barred by the Naturalization Act of 1870 and by a series of court rulings leading to *Ozawa v. U.S.* (1922).

²⁵ According to a 1942 study carried out in internment camp, on average second-generation Japanese-Americans were born between 1918 and 1922, and reached adulthood in the late 1930s to the early 1940s. Evelyn Nakano Glenn, *Issei, Nisei, War Bride: Three Generations of Japanese American Women in Domestic Service* (Philadelphia: Temple University Press, 1986), 51; The average age of the second-generation was ten years old in 1930. Ronald Takaki, *Strangers from a Different Shore: A History of Asian Americans* (New York: Back Bay Books, 1998), 115.

²⁶ Martha Gardner, *The Qualities of a Citizen: Women, Immigration, and Citizenship, 1870-1965* (New York: Columbia University Press, 2005), 28.

immigration authorities inferred that if a non-citizen merchant was entitled to send for one's family, so was a U.S. citizen.²⁷

The post-1924 challenge against Japanese exclusion and Chinese exclusion also involved different claims. As historian Izumi Hirobe discusses in his study of the movement to repeal the exclusion clause for Japanese, post-1924 opposition to Japanese exclusion led by business interests, missionaries, and intellectuals was a "pro-quota movement." The demand centered around securing a quota for Japan, nominal as it may be, and not around family-based exemption from racial exclusion.²⁸ On the other hand, challenge to the exclusion clause with regard to Chinese had less to do with securing a quota for China, but was based on claims of families. What Chinese-Americans demanded was a return to the pre-1924 enforcement of the Chinese exclusion acts, which was less stringent than the 1924 Act.²⁹

The first phase of the struggle took place in court. On *habeas corpus* proceedings, Chinese families appealed their cases in federal court, which resulted in two Supreme Court rulings both decided on May 25, 1925: *Cheung Sum Shee v. Nagle* on merchant families and *Chang Chan v. Nagle* on citizens' wives.

Foreign-born Children: Citizenship jus sanguinis

In 1924, concurrent with exclusion of Chinese wives of U.S. citizens, the immigration officials at Seattle excluded Chin Bow, a ten-year old son of a Chinese-American father Chin Dun. One difference between *Cheung Sum Shee v. Nagle* and *Chang Chan v. Nagle* concerned

²⁷ *United States v. Gue Lim*, 176 U.S. 459 (1900); Chan, "The Exclusion of Chinese Women," 116-117.

²⁸ Japanese immigrants were not involved in this movement. Izumi Hirobe, *Japanese Pride, American Prejudice: Modifying the Exclusion Clause of the 1924 Immigration Act* (Palo Alto: Stanford University Press, 2001)

²⁹ Adam McKeown, *Melancholy Order: Asian Migration and the Globalization of Borders* (New York: Columbia University Press, 2011), 334.

the status of children. The question in *Cheung Sum Shee* was whether minor children and wives of Chinese treaty merchants were excludable under the 1924 Act. The question in *Chang Chan* was excludability of wives of U.S. citizens, and did not involve children. The legal status of a citizen's child differed crucially from that of their mother or children of Chinese merchants, since a foreign-born child with a U.S. citizen father – but not the mother – acquired U.S. citizenship on *jus sanguinis* rule, which had been recognized since the first Nationality Act of 1790. However, as this section will discuss in more detail, in 1924 immigration officials argued that although Chin Dun was a U.S. citizen, he had not met certain conditions to transfer his U.S. citizenship to his son, which made Chin Bow an “alien ineligible to citizenship” excludable under the 1924 Act. The challenge by the family resulted in the Supreme Court ruling *Weedin v. Chin Bow* (1927).³⁰

By the 1920s, transnational family formation and the migration strategy often found among Chinese-American families included U.S. citizen husband/father living in the U.S. and the wife/mother in China, with the Chinese-born children – mostly sons – immigrating to the U.S. at a certain age. The number of wife/mother moving to the U.S. to join her husband was increasing, but foreign-born children of U.S. citizens were the largest group of persons of Chinese descent admitted to the U.S. Between 1908 and 1924, some 16,400 foreign-born children immigrated to the U.S., far outnumbering 2,800 wives of U.S. citizens.³¹ (Table 2-1: U.S. Citizens of Chinese Descent and Chinese Wives of U.S. Citizens, 1906-1924 on page 125)

Immigration of Chinese-born children of the first generation of U.S.-born Chinese-Americans, who acquired U.S. citizenship under the Fourteenth Amendment, was small until the

³⁰ *Weedin v. Chin Bow*, 274 U.S. 657 (1927)

³¹ Lee, *At America's Gates*, 115-116.

early twentieth-century.³² By the 1890s, U.S. citizenship was almost the only certain protection for persons of Chinese descent to leave and reenter the U.S. In *Chae Chan Ping v. United States* (1889), the Supreme Court ruled that exclusion of Chinese laborers under the Scott Act of 1888 would apply even to pre-restriction residents returning from a temporary visit abroad.³³ In a similar vein, the immigration authorities sought to exclude U.S.-born citizens returning from visit abroad. But *United States v. Wong Kim Ark* (1898) affirmed that the Fourteenth Amendment accorded birthright citizenship to all U.S.-born persons irrespective of race, which included the right to move in and out of the U.S.³⁴ At the turn of the century, U.S.-born citizens returning from a visit abroad or former citizens of Hawaii who acquired U.S. citizenship after annexation comprised most of the entry by U.S.-citizens of Chinese descent.

In 1908, the immigration bureau called attention to a new pattern, reporting arrival of some 1,100 Chinese-born children of U.S.-born fathers.³⁵ One reason for the emergence of the new pattern had to do with generation. The first U.S. citizens of Chinese descent acquired birthright citizenship under the Fourteenth Amendment, and by the early twentieth century their Chinese-born children reached age to come to the U.S. Another factor was the 1906 San Francisco earthquake and fire, which destroyed all birth records in the city. Absence of birth records added to the prejudice of immigration officials that suspected all citizenship claims as

³² In 1907, most of the 1,660 U.S. citizens of Chinese descent entering the U.S. were U.S.-born citizens. 1,220 were born in the continental U.S. returning from a visit abroad. Majority of the remaining 389 were former citizens of Hawaii, who became U.S. citizens after annexation of Hawaii. The bureau only noted that “few were ... sons of American citizens.” *Annual Report of the Commissioner General of Immigration 1907*, 125, 158.

³³ Act of October 1, 1888 (25 Stat. 504, Scott Act); *Chae Chan Ping v. United States*, 130 U.S. 581 (1889); Lucy E. Salyer, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law*. (Chapel Hill: University of North Carolina Press, 1995), 22-23.

³⁴ *United States v. Wong Kim Ark*, 169 U.S. 649 (1898); Lee, *At America's Gates*, 103-106.

³⁵ Until 1907, the annual report of the Bureau of Immigration only included one category for U.S. citizens of Chinese descent: the U.S.-born citizens. In 1908, the Bureau of Immigration began to publish separate admission statistics for U.S.-born citizens (returning from a trip abroad) and Chinese-born citizens (children of U.S.-born citizens).

fraudulent. But it also created an opportunity for Chinese residents to claim to be a U.S.-born citizen regardless of their actual place of birth, which not only enabled them to establish their lives in the U.S. more securely, but also allowed them to send for their wives (wives of non-citizen Chinese laborers were excluded but wives of citizens were not) and their children.³⁶ Upon return from China, Chinese-American men with wives in China often reported birth of children while abroad. Such reports were necessary to reserve a future slot for their children to be admitted to the U.S. as foreign-born citizens. Reports of births of sons outnumbered those of daughters by more than ten times, which involved a strategy to secure a spot for other men (relatives or otherwise) to immigrate to the U.S. as the so-called “paper sons.”³⁷

As symbolized by the completion of San Francisco’s Angel Island inspection station in 1910, the immigration bureau subjected both native-born citizens returning from abroad and foreign-born citizens newly coming to the U.S. to arduous investigation.³⁸ Yet, in the exclusion of Chin Bow in 1924, what immigration officials at Seattle questioned was not whether Chin Bow was a true son of Chin Dun’s. Instead, the bureau pointed to a clause in the nationality act, which stated that *jus sanguinis* citizenship “shall not descend to the children whose fathers never resided in the United States.” The question raised in 1924 was whether the phrase “never resided” required a foreign-born citizen father to have resided in the U.S. before the birth of the child. This concerned third-generation citizenship derivation: the power of a foreign-born father who acquired his own U.S. citizenship at birth on *jus sanguinis* rule (second generation) from the U.S.-born father (first generation) to further pass on citizenship to one’s foreign-born child (third generation).

³⁶ Takaki, *Strangers on a Different Shore*, 234-235.

³⁷ Lee, *At America’s Gates*, 200-220; Estelle T. Lau, *Paper Families: Identity, Immigration Administration, and Chinese Exclusion* (Durham: Duke University Press, 2006)

³⁸ Lee, *At America’s Gates*, 126-131.

Chin Bow was a grandson of a U.S.-born citizen, and a son of a Chinese-born U.S. citizen. His grandfather Chin Tong was born in the U.S. in 1878, one of the first generation born under the Fourteenth Amendment. Chin Tong had a wife in China, and their son Chin Dun, who was born in China in 1894, acquired U.S. citizenship *jus sanguinis*. Chin Dun lived in China until 1922, when he moved to the U.S. at the age of 28. The same year, approximately 2,300 Chinese-born U.S. citizens like Chin Dun immigrated to the U.S. Before moving to the U.S., Chin Dun was already married and had a son born in 1914 (Chin Bow). When Chin Dun sent for his ten-year-old son in 1924, the Bureau of Immigration asserted that because Chin Dun had “never resided” in the U.S. *before* his son was born, his son had not acquired U.S. citizenship at birth. Therefore, the bureau insisted, Chin Bow was an “alien ineligible to citizenship” excludable under the 1924 Act.³⁹

At one level, as the Bureau of Immigration reported in its 1928 annual report, the case indicated that “the time has now been reached when the grandsons of Chinese born in the United States [under the Fourteenth Amendment] are old enough to apply ... for admission as citizens.”⁴⁰ However, Chin Bow was not the first of such case. According to Warner Parker, the first chief law officer of the Bureau of Immigration from 1906 to 1919, prior to 1924 “it had been the custom of the immigration officials to admit ... all children born abroad to American citizens ... irrespective of whether the children were born prior to subsequent to the acquirement of such residence by the father.” In other words, under pre-1924 policy, Chin Dun could first marry and have a child in China, then move to the U.S. and later send for his family. But the

³⁹ *Weedin v. Chin Bow* 274 U.S. 657 (1927); U.S. Department of Labor, Bureau of Immigration, “Chinese General Order no. 4,” August 7, 1924; folder “Department of Labor General Orders and Reports,” box 13; Max Kohler Papers.

⁴⁰ *Annual Report of the Commissioner General of Immigration 1928*, 16.

Department of Labor began to insist that such child was not a U.S. citizen and therefore inadmissible to the U.S.⁴¹

Exclusion of Chin Bow was the most recent exclusionist move to further curtail Chinese immigration. Prior to 1924, in addition to subjecting Chinese claiming U.S. citizenship to arduous investigation, the Bureau of Immigration had challenged the foundation of *jus sanguinis* citizenship. For instance, in 1916, the Secretary of Labor issued a departmental order that foreign-born children of U.S.-born Chinese Americans were not U.S. citizens, but the Department of Justice objected that nationality law did not distinguish between U.S. citizen fathers based on their race.⁴² While the immediate issue in *Chin Bow* was general rule on third-generation citizenship derivation, it was part of a larger post-1924 attempt to complete exclusion of Asian immigrants by debasing *jus sanguinis* citizenship.

District Court Rulings

Both with regard to wives and children of Chinese-Americans, the district courts disagreed with the Department of Labor. In October 1924, district courts in Seattle, Boston, and San Francisco ruled successively that Chinese wives of U.S. citizens, although ineligible to citizenship, should be admitted to the U.S. Lower courts maintained that racial ineligibility to citizenship and exclusion of “aliens ineligible to citizenship” did not trump familial relations or the right of a U.S. citizen male to send for one’s family.

The Department of Labor maintained that because the 1924 Act did not specifically exempt wife of a U.S. citizen from racial exclusion, the law “mandatorily excludes the wives of

⁴¹ Warner A. Parker, “Ineligible to Citizenship Provisions of the Immigration Act of 1924.” *American Journal of International Law* 19 (1925): 42; On Parker, see Salyer, *Laws Harsh as Tigers*, 224.

⁴² Lee, *At America’s Gates*, 104-105. *Weedin v. Chin Bow* 274 U.S. 657 (1927);

United States citizens of the Chinese race if such wives are of a race or persons ineligible to citizenship.” But the district courts disagreed with the Department of Labor. The courts maintained that citizens’ rights and family relations to a U.S. citizen held higher grounds than racial exclusion. The courts reasoned that in 1924 Congress “had only aliens in mind, and did not realize that the section as passed [section 13] diminished the rights of American citizens.” Furthermore, the courts reasoned that because Congress had specifically exempted “minor children under 18 and wife” of a citizen from quotas restriction of European immigrants, Congress must have “overlooked” that the law was not written in such a way as to exempt the same relations from racial exclusion.⁴³

Shortly after, district courts in Seattle and San Francisco, both of which had previously ruled in favor of Chinese wives, delivered their opinions on children of foreign-born Chinese-American fathers. The immediate issue was whether *jus sanguinis* citizenship derivation by father who required pre-birth U.S. residence of the father. On December 11, 1924, the court in San Francisco ruled that a child of a U.S. citizen father was a citizen regardless of whether the father had resided in the U.S. prior to the birth of the child. Thus, the lower courts disagreed with the Department of Labor both with regard to wives and children.⁴⁴

While district court in San Francisco recognized third-generation citizenship derivation, whether such a child acquired U.S. citizenship at birth and whether a citizen’s child should be subjected to racial exclusion involved different questions. An article that Warner Parker wrote shortly after the district court rulings speaks to this point. Parker observed that “even if the [Labor] Department’s view that children born under such circumstances are not American

⁴³ *Chang Chan v. Nagle* ; Chan, “Exclusion of Chinese Women,” 124-126.

⁴⁴ On December 1, 1924, the court in Seattle released Chin Bow without answering this question. Parker, “Ineligible to Citizenship Provisions of the Immigration Act of 1924,” 43.

citizens should be judicially sustained [by the upper courts], it would seem to be doubtful that any court will hold that such children, although aliens, are inadmissible under the new act.”

Parker held that the same principle governed wives and children of U.S. citizens. Since before 1924, admission of Chinese wives of U.S. citizens was not based on herself being a U.S. citizen (she was not) but because she was married to a U.S. citizen. And the three district courts sustained this understanding after 1924. Likewise, Parker reasoned that a child of a U.S. citizen should be admissible by virtue of family ties even if one did not hold U.S. citizenship. However, the Supreme Court would betray this observation.⁴⁵

2.2 Ineligible to Citizenship therefore Inadmissible

Supreme Court decisions from 1925 to 1927 firmly tied ineligibility to citizenship with physical exclusion from the U.S., and upheld racial exclusion as more important than family ties. The Court successively overturned the lower courts’ rulings on exclusion of Chinese wives, *jus sanguinis* citizenship and exclusion of children. In May 1925, the court delivered its opinion on *Cheung Sum Shee et al. v. Nagle* and *Chang Chan v. Nagle*, while it took another two years for the case of Chin Bow to reach the Court.

In *Cheung Sum Shee et al. v. Nagle*, the Supreme Court ruled in favor of families of Chinese merchants. The Court rejected the Bureau of Immigration’s claim that “neither the mercantile status of the husband and father, nor the applicant's relationship to him” mattered under the 1924 Act. The Department of State strongly objected to this interpretation, and argued before the court that the 1924 Act should not disturb existing treaties. First, the Court confirmed that there were certain exceptions to exclusion of “aliens ineligible to citizenship,” and

⁴⁵ Parker, “Ineligible to Citizenship Provisions of the Immigration Act of 1924,” 43.

confirmed that a Chinese treaty merchant held nonimmigrant status to which racial exclusion did not apply. Secondly, the court argued that although the 1924 Act did not specifically exempt families of Chinese merchant from racial exclusion, the law was not meant to disturb existing treaties. The Burlingame Treaty and *U.S. v. Mrs. Gue Lim* (1900) had entitled Chinese merchants to be joined by his families, and the Court ruled that this still held true after 1924.⁴⁶

Chang Chan v. Nagle

However, in *Chang Chan v. Nagle*, the Court did not find any positive importance in family ties to a U.S. citizen, and upheld exclusion of Chinese wives of U.S. citizens. Significantly, the ruling showed that unlike wives of merchants, a wife of a citizen was excludable precisely because her husband was a U.S. citizen. Court emphasized two key differences between families of Chinese merchants (noncitizens) and families of U.S. citizens. First, the treaty with China only protected families of Chinese treaty merchants. But, admission of families of U.S. citizens was governed solely by U.S. immigration law (the 1924 Act). The second difference was immigration status. The Court ruled that “Chinese wives, coming here to join their (U.S. citizen) husbands, are immigrants” seeking for permanent residence and thus could not be exempted from racial exclusion as a “nonimmigrant.” And most significantly, the Court ruled that because the wife of a citizen was an “immigrant” and because the 1924 Act did not specifically exempt Chinese wives from racial exclusion, race trumped any familial connections.⁴⁷

⁴⁶ Philip C. Jessup, “Some Phases of the Administrative and Judicial Interpretation of the Immigration Act of 1924,” *Yale Law Journal* 35, no. 6 (1926): 705–724.

⁴⁷ *Chang Chan et al. v. Nagle*, 268 U.S. 346 (1925); Chan, “The Exclusion of Chinese Women,” 125–126; Gardner, *A Nationality of Her Own*, 128.

Plaintiffs insisted that family-based non-quota status of an “unmarried child under 18 years of age, or the wife, of a citizen” accorded to European immigrants (section 4 (a)) should apply to Chinese as well. They asked whether the clause expressed a fundamental principle that family ties held higher grounds than immigration restriction. But the Court flatly dismissed their claim, ruling that families of U.S. citizens were “subject to the positive inhibition against all aliens ineligible to citizenship.” The foremost test was race of the immigrant not the rights of U.S. citizens to be joined by one’s families. Family relation to a U.S. citizen or U.S. citizen’s rights to bring one’s families held higher grounds than quota restriction of European immigrants, but was secondary to racial exclusion of Asian immigrants.

The 1925 Supreme Court ruling left the act of Congress as the only possibility for Chinese wives to immigrate to the U.S. Citing the plenary power doctrine, the court stated that solution rested solely with Congress.⁴⁸

Weedin v. Chin Bow

In March 1927, Chin Bow’s case reached the Supreme Court. The lower courts had ruled in favor of Chin Bow. The district court discharged Chin Bow without deciding on the question of whether the phrase in nationality law that stated *jus sanguinis* citizenship “shall not descend to the children whose fathers never resided in the United States,” required the father to have resided in the U.S. before having a child. When the district court released Chin Bow, the lower courts had ruled that a Chinese wife of a U.S. citizen was admissible despite her ineligibility to

⁴⁸ The court pointed to *Chung Fook v. White* (1924), a pre-1924 Act case of a Chinese wife excluded for contagious disease, and *Commissioner, etc. v. Gottlieb* (1924) discussed in the previous chapter. The former ruling held that even if a statute “unjustly discriminates against the native-born citizen, or is cruel and inhuman in its results, as forcefully contended, the remedy lies with Congress and not with the courts. Their duty is simply to enforce the law as it is written, unless clearly unconstitutional.” *Chung Fook v. White* (1924) 264 U.S. 443.

citizenship, dissociating racial eligibility to citizenship from excludability of families of U.S. citizens. But by the time the appeals court considered the case, Chin Bow's citizenship status and admissibility were more closely knit together by *Chang Chan*, which concluded that wives of U.S. citizens were subject to "positive inhibition against aliens ineligible to citizenship." Still, in late 1925, the appeals court ruled that pre-birth U.S. residence of the father was not necessary for Chin Bow to be a U.S. citizen on *jus sanguinis* rule and accordingly he should be admitted to the U.S. as a U.S. citizen.⁴⁹

However, on June 6, 1927, the Supreme Court reversed the lower courts' rulings and upheld the deportation order of Chin Bow. First, the court ruled, his father needed to have resided in the U.S. in order to have the power to transfer his U.S. citizenship on *jus sanguinis* rule. Because Chin Bow was already born before Chin Dun moved to the U.S., the Court concluded, Chin Dun did not acquire citizenship at birth. Secondly, the Court ruled that so long as Chin Bow was an alien ineligible to citizenship, he should be deported from the U.S.⁵⁰ The ruling had significance beyond interpretation of nationality act surrounding third generation citizenship derivation. Whether Chin Bow was a U.S. citizen and whether a U.S. citizen's child ineligible to citizenship should be excluded were not identical issues. But, the Supreme Court ruled that being a child of a U.S. citizen alone did not override racial exclusion and decided that immigration by children of Asian descent was only possible by virtue of one's own U.S. citizenship. By successively upholding racial exclusion of wives and children of U.S. citizens, *Chang Chan* and *Chin Bow* firmly tied racial ineligibility to citizenship with inadmissibility of families, and solidified the idea that family ties were secondary to racial exclusion.

⁴⁹ *Weedin v. Chin Bow* 274 U.S. 657 (1927)

⁵⁰ *Weedin v. Chin Bow* 274 U.S. 657 (1927)

2.3 Reform or Further Restriction: 1930 Amendment to the 1924 Act

After the May 1925 Supreme Court ruling, an act of Congress was the only possibility left for Chinese wives to come to the U.S. Chiu Shee, a wife of Ng Lim left Hong Kong on June 21, 1924, ten days before the 1924 Act was enforced, and arrived in Boston on July 28, 1924, where she was denied admission. The Bureau of Immigration nevertheless granted temporary admission under bond, and while the family brought their case to the court, Chiu Shee gave birth to a child. Whether she would be able to continue to reside in the U.S. with her husband and child depended solely on Congressional relief.⁵¹

With the court refusing to provide remedy, Chinese American organizations such as Chinese American Citizens Alliance – originally founded in 1895 as the United Parlors of the Native Sons of the Golden West – lobbied for legislative reform.⁵² The legislative demand by Chinese-American organizations was identical with what plaintiffs in *Chang Chan* argued: family-based exemption under section 4 (a) “unmarried children under 18 years of age, or the wife, of a citizen” should apply not only to European immigrants or to quota restriction, but to all persons irrespective of race and to racial exclusion.

The association pointed to the December 1925 State of the Union Message, where Coolidge stated that “no alien inhabitant of another country, has any legal rights whatever under our Constitution and laws. It is only through treaty or residence here that such rights accrue. But we should not, however, be forgetful of the obligations of a common humanity.” The President’s

⁵¹ John G. Sullivan, Attorney, to February 2, 1926, reprinted in *Admission of Wives of American Citizens of Oriental Ancestry: Hearing before the House Committee on Immigration and Naturalization*. 69th Cong. 23 (1926)

⁵² For Chinese American Citizens Alliance, Sau Fawn Chung, “Fighting for Their American Rights: A History of the Chinese American Citizens Alliance,” in *Claiming America: Constructing Chinese American Identities during the Exclusion Era* (Philadelphia: Temple University Press, 1998), Kevin Scott Wong and Sucheng Chan eds., 95-116.

reference to “treaty” concerned the Burlinghame Treaty and *Chung Shum Shee*. Citing the President, the Chinese American Citizens Alliance asked, “Are we not forgetful in of the obligations of a common humanity in depriving those citizens of our country and whose wives are of a race ineligible to citizenship of the comfort and society of their wives?”⁵³

Chinese-American families appealed to Congress about hardships caused by the 1924 Act. Mrs. J.W. Hoy of San Francisco wrote how her brother Hong Sic Poy “became insane” as a result of separation from his wife. Hong Sic Poy was born in 1900 in San Francisco, and married Leung Shee in China in 1919. After three years in China, he returned to the U.S. planning to send for his wife once he had enough savings. However, when he had “accumulated just about enough money to accomplish his purpose” the 1924 Act went into effect, barring Leung Shee from immigrating to the U.S. According to his sister, “sick and sore at heart over the situation that confronted him after having faithfully saved all he could ... for the one purpose of bringing his wife ... he constantly brooded over his trouble, and the hardship he suffered in his separation from his wife was such that he finally lost his mind.” His physician suggested that travelling to China to see his wife might be the solution, and accompanied by his brother, Hong Sic Poy set sail for China in 1928.⁵⁴

In the late 1920s, some Chinese wives managed to come to the U.S. as “nonimmigrants” but such status only allowed temporary residence. For families, what was necessary was permanent residency not temporary admission. For example, in December 1926, Ralph Quau, his wife Yow Hye Kam, and their infant daughter arrived in San Francisco from Canton. While

⁵³ United Parlor, Native Sons of the Golden State, Chinese American Citizens Alliance, “Plea for Relief.” Reprinted in *Wives of American Citizens of Oriental Race: Hearing before the House Committee on Immigration and Naturalization* 71st Cong. (1930) 563.

⁵⁴ Affidavit of Mrs. J.W. Hoy, reprinted in *Wives of American Citizens of Oriental Race, Hearing before the House Committee on Immigration and Naturalization* 71st Cong., (1930) 577.

Ralph Quau and his daughter landed as U.S. citizens – Ralph Quau as U.S. born citizen and his daughter as a Chinese-born child of a U.S. citizen – Yow Hye Kam was admitted only as a traveler. Ralph Quau was born in San Francisco in 1904. His grandfathers on both sides immigrated to the U.S. in the 1870s as merchants, and both of his parents were born in San Francisco. Ralph Quau made a visit to China in 1925 shortly before the 1924 Act was passed, and married Yow Hye Kam in Canton in February 1925, unaware that his wife was subject to exclusion under the 1924 Act. In 1926, in preparing for his return to the U.S. he went to the consulate to secure a paper for his wife, but was informed that the 1924 Act barred Yow Hye Kam from immigrating to the U.S. and that the only option that consul could offer was a permit for a traveler (tourist). After the original eight-month permit expired, the immigration authorities extended her bond for another six month, but without amendment to the 1924 Act she was required to depart from the U.S. leaving behind her husband and daughter.⁵⁵

While *Chang Chan* regarded families who had not already been married but also had set sail for the U.S. before the 1924 Act was enforced, for Chinese-American organizations unexpected consequences of the sudden enforcement of the new law was not the principal grounds of their claim. They argued that there were three types of hardship suffered by Chinese-American men as a result of 1924 exclusion of their wives. First were married men who were unable to send for their wives in China. Second were single men unable to find a wife in the U.S. because there were few Chinese women in the U.S. and because of anti-miscegenation law. Third were the most immediate cases of those who arrived in the U.S. shortly after the

⁵⁵ Affidavit of Ralph Quan, reprinted in *Wives of American Citizens of Oriental Race: Hearing before the House Committee on Immigration and Naturalization* 70th Cong. (1928) 18.

enforcement of the 1924 Act and were facing deportation. In other words, it was not a matter of whether one could have expected the consequences of the new law but as the rights of citizens.⁵⁶

They especially pointed to *Cheung Sum Shee*, and argued that it was anomalous that the “Chinese wife of an American citizen” was treated as “inferior to ... the alien Chinese wife of an alien Chinese merchant,” who could enter the U.S.⁵⁷ Indeed, prior to 1924 it was because immigration officials held that citizens should enjoy the rights enjoyed by merchants that Chinese wives were able to enter the U.S. By contrasting the right granted to a non-U.S. citizen and that denied to a U.S. citizen, Chinese-Americans highlighted the injustice of the 1924 Act. As discussed in the previous chapter, with regard to Southern and Eastern European immigrants, certain family unification rights granted to U.S. citizens became the grounds for reformers to demand rights for permanent residents as people who were on their path to citizenship. In the case of Chinese or Asian families, with no rights recognized for U.S. citizens, U.S. citizens had to make an appeal by pointing to rights enjoyed by non-citizens.

In lobbying for reform, Chinese-American organizations were more than aware that Congress was concerned not only about Chinese immigration but about Japanese immigration, and probably even more about the latter. “The real question,” You Chung Hong of Chinese American Citizens Alliance stated at a 1928 House hearing, “is whether this proposed amendment would nullify the Japanese exclusion feature in the immigration act of 1924.”⁵⁸ Witnesses argued extensively that their proposal had little to do with Japanese immigration,

⁵⁶ *Wives of American Citizens of Oriental Race: Hearing before the House Committee on Immigration and Naturalization* 70th Cong. (1928) 21 (Kenneth Y. Fung, Chinese Citizens Alliance, San Francisco Chapter)

⁵⁷ Chan, “Exclusion of Chinese Women,” 126-127.

⁵⁸ *Wives of American Citizens of Oriental Race: Hearing before the House Committee on Immigration and Naturalization* 70th Cong., (1928) 12 (You Chung Hong, Chinese Citizens Alliance, Los Angeles Chapter)

stressing that Japanese population in the U.S. was more balanced in terms of the number of men and women. For instance, Kenneth Y. Fung of the San Francisco Lodge of the Chinese Citizens Alliance emphasized that the issue was wives of U.S. citizens, and therefore concerned only the U.S.-born generation (not first generation Japanese immigrants). As of 1920, there were 15,000 U.S.-born Japanese American men and 14,000 U.S.-born Japanese American women, Fung argued, and that U.S.-born Japanese Americans should have less difficulty in finding a spouse.⁵⁹ In fact, among the first-generation Japanese immigrants there were around 20,000 single men, for whom it was no longer possible to marry in Japan and bring their wives to the U.S.⁶⁰ Yet, it was not that Chinese-American organizations pushed for a law solely for Chinese wives and Chinese Americans. The point of their argument was to make the case that in practice Chinese Americans were more likely to benefit from amendment to the exclusion clause for families of U.S. citizens. Their demand was to make family-based exemption available regardless of race as a matter of right of U.S. citizens.

Also crucial in their appeal was the issue of interracial marriage. By the late 1920s, eleven states (Arizona, California, Idaho, Missouri, Utah, Wyoming, Mississippi, Oregon, Nebraska, Texas, and Virginia) prohibited persons of Chinese descent from marrying white persons. Chinese-American organizations also pointed to prevailing fears of intermarriage to enable immigration of Chinese wives. If Congress did not amend the 1924 Act, the Chinese American Citizens Alliance argued, “the only solution of the problem” of Chinese American men not being able to find a wife might be the “marriage of the Chinese-American citizen resident here to a woman not of his own race,” since the number of women of Chinese descent in

⁵⁹ *Wives of American Citizens of Oriental Race, Hearing before the House Committee on Immigration and Naturalization* 71st Cong., (1930) 556 (Kenneth Y. Fung, Chinese Citizens Alliance, San Francisco Chapter)

⁶⁰ Ichioka, *Issei*, 251.

the U.S. was much smaller than men. Congress must consider whether it would not be “undesirable and inadvisable from the viewpoint of both white and Chinese,” if Chinese-American men sought for “white” wives as a result of continued exclusion of Chinese wives.⁶¹ And at the same time, they denounced the notion that “intermarriage” was related to “assimilation,” arguing how the scarcity of intermarriage had “nothing to do with assimilation by persons of the Chinese race of American customs and ideas, or with the question whether a Chinese child born and reared here become in every aspect a true American.”⁶² Thus, rejecting and exploiting the prevailing ideas about interracial marriage at the same time was an important part of their challenge to racial exclusion of families.

Administrative Concerns of the Bureau of Immigration

As Chinese-American organizations lobbied for legislative reform, the position of the Bureau of Immigration deserves attention. Despite having won their case in *Chang Chan*, the bureau did not raise objections to amending the 1924 Act for Chinese wives. While the bureau did not newly admit any Chinese wives, they refrained from deporting those who arrived in the U.S. shortly after the 1924 Act was enforced, and allowed temporary admission on bonds of five hundred to one thousand dollars. After *Chang Chan*, the bureau extended their bond while Congress discussed relief bills. As of June 1926, thirty-four Chinese wives waited in the U.S. for

⁶¹ “A Plea for Relief together with a Supplement Containing Some Arguments in Support Thereof,” reprinted in *Wives of American Citizens of Oriental Race: Hearing before the House Committee on Immigration and Naturalization* 71st Cong. 561 (1930)

⁶² “A Plea for Relief together with a Supplement Containing Some Arguments in Support Thereof,” reprinted in *Wives of American Citizens of Oriental Race: Hearing before the House Committee on Immigration and Naturalization* 71st Cong. 564 (1930)

Congressional relief: fourteen arrived at San Francisco, sixteen at Seattle, three in Boston, and one in New York. And the bureau also made favorable recommendations to Congress that the 1924 Act may be amended for Chinese wives.⁶³

However, the motive of the Bureau of Immigration was not entirely benign. Their views on Chinese wives must be understood in relation to their strong objections to immigration of Chinese-born children, which far outnumbered immigration of wives. After 1924, the bureau continued to cast deep suspicion on Chinese-born children and citizenship claims, especially pointing to the high proportion of sons. For example, the 1925 annual report wrote that between April and June 1925, 256 married Chinese-American men returned from China to San Francisco. All except three had wives in China, with a total of 719 children, out of whom 670 were sons (151 in the U.S. and 519 in China) and 49 were daughters (all in China). The disproportion was most likely due to reporting birth of daughters as sons or reporting more children than were actually born.⁶⁴ Importantly, unlike for wives, the bureau strongly objected to any revisions to the 1924 Act that may facilitate immigration of children.

The immigration officials' primary concern was the effect that continued exclusion of wives might have on immigration of paper sons. The Chinese Division of the Bureau of Immigration advised Congress that the bureau "would rather that the Chinese American citizens could be permitted to have their wives in the United States, as then we would know who their children are, as well as the relative number of boys and girls in each family, and the genuineness of the relationship." Children of Chinese American fathers were U.S. citizens regardless of the

⁶³ Chan, "Exclusion of Chinese Women," 126-127; Robt Carl White, Assistant Secretary, Department of Labor, to Albert Johnson, Chair of House Committee on Immigration and Naturalization, "Date of Expiration of Bond in Cases of Alien Chinese Wives of United States Citizens Arriving after July 1, 1924," June 16, 1926; 55560/26; RG 85.

⁶⁴ *Annual Report of the Commissioner General of Immigration 1925*, 22-23; Lee, *At America's Gates*, 99-100.

place of birth. As long as that was the case, immigration officials came to believe, it might be preferable if both parents lived in the U.S. and if the child was born in the U.S. In the U.S., it would be more difficult to report the birth of a daughter as son, or to claim more children than were actually born. As the 1928 annual report put it, “Since China is the birthplace of these applicants, it is difficult to determine the truth or falsity of asserted relationship.” Although the bureau did not claim that “the proposed privilege permitting Chinese American citizens to bring in their alien wives will eliminate the fraud ... in connection with their claims of large families of children which run almost exclusively to males,” the bureau at least expected “a beneficial effect.” Admission of wives was merely a return to the pre-1924 policy. As the pre-1924 male-predominant immigration indicated, return to the pre-1924 policy did not necessarily mean that families would decide to bear children in the U.S. But it was certain that exclusion of wives would leave no other option than for families to bear children in China. Therefore, the bureau expected that admission of wives might give the U.S. government stronger control over Chinese immigration, and perhaps reduce citizenship claims by foreign-born Chinese.⁶⁵

Thus, while the Department of Labor won both Supreme Court cases on wives of Chinese-Americans (*Chang Chan v. Nagle*) and on children of Chinese-Americans (*Weedin v. Chin Bow*), the department showed a marked difference in its response. While the department did not oppose amending the 1924 Act for Chinese wives, they were strongly against making any revisions to the law for children. Whereas Chinese American organizations lobbied for the same family-based exemption as provided for European immigrants, the bureau insisted that Congress must not accept such demand because non-quota family for European immigrants included not

⁶⁵ W. T. Watkins, Chinese Division, Bureau of Immigration, Memorandum for the Assistant Commissioner General of Immigration, January 15, 1927; file 55431/218C, RG 85; *Annual Report of the Commissioner General of Immigration 1928*, 15.

only wives but also children of U.S. citizens. To exempt children from racial exclusion, the bureau emphasized, was to “overthrow the Chin Bow decision that we fought years to get” in order to reduce immigration of Chinese-born children of U.S. citizens.⁶⁶

1930 Amendment to the Immigration Act of 1924

Five years after *Chang Chan*, on June 13, 1930, Congress made a limited amendment to the 1924 Act for Chinese wives of U.S. citizens, allowing “Chinese wife of an American citizen married prior to the approval of the Immigration Act of 1924 on May 26, 1924” to take permanent residence in the U.S.⁶⁷ The amendment marked a certain achievement for Chinese Americans, and some 60 wives immigrated to the U.S. each year between 1931 and 1941. However, it was at best an exception to racial exclusion of “aliens ineligible to citizenship.” The amendment was by no means a general rule exempting wives of U.S. citizens from racial exclusion. Moreover, the way it was written actually reinforced the idea that racial exclusion superseded any familial relation. (For post-1930 immigration of Chinese wives, Table 2.2: U.S. Citizens of Chinese Descent and Chinese Wives of U.S. Citizens, 1925-1940 on page 138.)

On several levels, the 1930 Amendment was fundamentally different from what Chinese-Americans advocated for. For one, Chinese-American organizations did not demand law exclusive to Chinese wives or for Chinese-American husbands that did not apply to other immigrants from Asia. In fact, in appealing for reform, they did argue that exclusion of wives created more hardship for Chinese Americans than for Japanese immigrants. But their legislative

⁶⁶ *Wives of American Citizens of Oriental Race, Hearing before House Committee on Immigration and Naturalization, 70th Cong. 551(1930)* (Edward Shaughnessy, Bureau of Immigration)

⁶⁷ Act of June 13, 1930 (46 Stat. 581 - Chinese Wives Act)

demand was to accord the same family-based exemption to all families regardless of race. Secondly, Chinese-American organizations did not call for a relief measure with any cutoff date. Surely, *Chang Chan* involved those who had set sail for the U.S. before the 1924 Act went into effect and arrived after its enforcement, but unexpected nature of the new law was not the grounds for their demands. And thirdly, their demand was the same family-based exemption as provided for European immigrants (Sec 4a), which included both unmarried children and wife, not just wives.

For specific reasons, Congress defeated each demand. First, Congress applied the 1930 amendment exclusively to “Chinese wives” and to no other Asian immigrants such as Japanese wives. Congress explicitly stated that the law was for Chinese wives only and that they would not “extend the same privilege to women of the Orient other than Chinese who, although wives of United States Citizens, are likewise barred from admission to the United States.”⁶⁸ To exempt all families was to place family ties to a U.S. citizen on higher grounds than racial exclusion, and by specifically writing the law for Chinese wives and for U.S. citizens of Chinese descent, Congress in fact reinforced the notion that racial exclusion was the foremost law of the land.

Secondly, Congress opened the door only to Chinese wives married before the passage of the 1924 Act. The immediate purpose of the 1930 law was to grant permanent residence to some thirty women who had arrived shortly after the enforcement of the 1924 Act and had been waiting for relief on bond. Congress admitted no wives married after 1924 until 1943, when Congress repealed the Chinese Exclusion Act as a gesture to China as a wartime ally. Even then, the quota system for Chinese was distinct from that for European immigrants. For one, European immigrants was charged against the quotas of the country of birth, but “Chinese” quota

⁶⁸ *Admission of Chinese Wives of Certain American Citizens*, S. Rep. No. 71-556, at 1 (1930)

of 105 was a worldwide racial quota that included person born anywhere in the world whose either parent was Chinese.⁶⁹ For another, whereas citizens' wives from Europe were "non-quota family," every Chinese wife was charged against the quota of 105. It was only after World War II, when a large number of U.S. soldiers married women in China, Japan, Korea, and the Philippines that Congress allowed non-Chinese wives from Asia to immigrate to the U.S. under the special legislation of the War Brides Act and also accorded non-quota status to Chinese wives.⁷⁰

Thirdly, Congress refused to exempt minor children from racial exclusion. Congress only held wives to be an exception to the fundamental rule of exclusion of "aliens ineligible to citizenship." The word "child" must not be included, the Bureau of Immigration insisted, if Congress were to exempt certain families of Chinese Americans. In fact, the gap between treatment of "white" children of U.S. citizens and children of Asian-Americans widened further since 1924. As discussed in the previous chapter, for European immigrants the 1928 amendment raised the age of eligibility of a non-quota child from eighteen to twenty-one. By contrast, regardless of age, Congress excluded all Chinese children of U.S. citizens, unless the child had acquired U.S. citizenship at birth on the *jus sanguinis* rule.

⁶⁹ Chinese Exclusion Repeal Act of 1943 (57 Stat. 600); Chan, "Exclusion of Chinese Women," 126-127; Xiahua Ma, "The Sino-American Alliance During World War II and the Lifting of the Chinese Exclusion Acts," *American Studies International*, 38, no. 2 (2000): 39-61; Karen J. Leong, "Foreign Policy, National Identity, and Citizenship: The Roosevelt White House and the Expediency of Repeal," *Journal of American Ethnic History* 22, no. 4 (2003): 3-30.

⁷⁰ Since some 60 Chinese wives had been immigrating to the U.S. under the 1930 Amendment, the quotas of 105 only added several dozen quotas to the previous level of immigration.; Act to Place Chinese Wives on a Non-quota Basis (60 Stat. 975); For post-war challenge by Chinese-American veterans to achieve non-quota status for Chinese wives, Christiana Lim and Sheldon Lim, "VFW Chinatown Eastbay Post #3956: A Story of the Fight for Non-quota Immigration in the Postwar Period," *Amerasia Journal* 24 no. 1 (1998): 59-83; For war-brides, Susan Zeiger, *Entangling Alliances: Foreign War Brides and American Soldiers in the Twentieth Century* (New York: New York University Press, 2010).

Taken together, *Chang Chan* (1925), *Weedin v. Chin Bow* (1927), and the 1930 Amendment confirmed that familial relationship did not suffice for persons of Asian descent to enter the U.S. Surely, *Weedin v. Chin Bow* did not deny U.S. citizenship *jus sanguinis* entirely, and foreign-born sons and daughters of U.S. citizens of Chinese descent were still able to immigrate to the U.S. But as the deportation of a non-citizen child of a U.S. citizen suggested, immigration to the U.S. was possible not because they were children of U.S. citizens but only by virtue of their own U.S. citizenship. And as the next section examines, following *Weedin v. Chin Bow*, exclusionists would renew their attack on acquisition of citizenship by children of Chinese Americans.

2.4 Racial Equality and Discrimination in Equal Nationality Act Debate

In its 1932 annual report, the Bureau of Immigration reported that since 1924 some 5,800 Chinese-Americans (including the U.S.-born and the foreign-born) entered the U.S. The bureau emphasized that those citizens claimed 11,878 sons and 944 daughters residing in China (total 15,580 sons and 1,048 daughters) who could come to the U.S. sometime in the future as foreign-born U.S. citizens. Describing immigration of citizen-sons as “competition with the Anglo-Saxon race,” the bureau emphasized how “the endless chain of citizenship will be increased by their own children.”⁷¹ (Table 2.2 “U.S. Citizens of Chinese Descent and Chinese Wives of U.S. Citizens, 1925-1940” on page 126)

After *Chin Bow*, exclusionists such as the American Federation of Labor shifted their attention to nationality law. Although immigration law could not exclude U.S. citizens, it was possible to raise the bar for children of Chinese Americans to acquire and to retain *jus sanguinis*

⁷¹ *Annual Report of the Commissioner General of Immigration 1932*, 38.

citizenship by rigid interpretation or revision of nationality law. And *Chin Bow* held Chinese children of U.S. citizens to be excludable as long as the children were not themselves U.S. citizens. Restriction of *jus sanguinis* citizenship only needed revision of nationality law, which was much easier than a Constitutional amendment to restrict *jus soli* citizenship. Revision of nationality law would shift contestation at the ports of entry over “paper sons” to a whole different level. Regarding exclusion of wives, the Court ruled in *Chang Chan* that “neither the citizenship of the alleged husband nor the relationship of the applicant to him has been investigated, for the reason that, even if it were conceded that both elements exist she would still be inadmissible.”⁷² If veracity of the alleged familial relationship was immaterial to admission – if foreign-born children no longer acquired citizenship and were subjected to wholesale exclusion – investigation of familial relationship would be entirely unnecessary.

Exclusionist attempts in the 1930s to further curtail Asian immigration by targeting children of Asian Americans have not been fully examined. For one, exclusionists did not fully achieve their objective of denying citizenship *jus sanguinis* to children of Asian-Americans. Instead, as this section will discuss, the amendments to nationality law were written in a language that was at surface race-neutral but in practice intended for Asian-Americans.

Another reason is the significant liberalization of nationality law in 1934 in one aspect: equalization of nationality rights between men and women. The Nationality Act of 1907 was based on the idea that nationality of the nuclear family should be based solely on the husband/father. As discussed in the previous chapter, a foreign woman automatically became a U.S. citizen upon her marriage to a U.S. citizen husband (marital naturalization) or upon the naturalization of her husband. Marital naturalization was coupled with marital expatriation,

⁷² *Chang Chan et al. v. Nagle*, 268 U.S. 346 (1925)

which deprived women of her U.S. citizenship upon her marriage to a foreigner. Abolition of both practices by the Cable Act of 1922 created households where the husband and wife held different nationalities, which underscored another inequality in nationality rights: citizenship of foreign-born children. As before, Congress allowed a foreign-born child to acquire U.S. citizenship on the *jus sanguinis* rule only when the father was a U.S. citizen.⁷³ After 1922, for organizations such as the National Women's Party, women's right to transfer one's nationality to children was one of the next reform goals in immigration and nationality-related issues. And the significant achievement in 1934 was that mothers became able to transfer one's U.S. citizenship on *jus sanguinis* rule.⁷⁴

However, extension of equal citizenship privileges to women was perceived as a racial threat.⁷⁵ Exclusionists were opposed to citizenship derivation by Chinese-American fathers in the first place and furthermore objected to extending the right to mothers. The AFL pointed to Chinese immigration as the principal reason for their opposition to enabling mothers to transfer her citizenship: "There are so many of those Chinese-born American citizens who were brought up in China ... This bill, by inserting into the law the words "or mother" leaves exactly the same opening for the female as at present exists for the male."⁷⁶ Yet, it is hardly surprising that

⁷³ If the parents were not formally married, the child derived citizenship from the mother and not the father.

⁷⁴ Linda K. Kerber, *No Constitutional Right to be Ladies: Women and the Obligations of Citizenship* (New York: Hill and Wang, 1998), 41-43. For women's organizations movement to realize equal nationality rights, Candice Lewis Bredbenner, *Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (Berkeley: University of California Press, 1998), especially chapter 6 for the Nationality Act of 1934; The Nationality Act of 1934 was not applied retroactively, and children born prior to May 24, 1934 to U.S. citizen mothers and non-U.S. citizen fathers were not accorded U.S. citizenship. *Montana v. Kennedy* 366 U.S. 308 (1961) Nancy F. Cott, "Marriage and Women's Citizenship in the United States, 1830-1934," *The American Historical Review* 103, no. 5 (1998): 1440-1474.

⁷⁵ Gardner, "The Qualities of a Citizen," 172.

⁷⁶ William C. Hushing, Legislative Representative, American Federation of Labor, to House Committee on Immigration and Naturalization, April 3, 1933, folder "H.R. 3673, 5 of 6," box 72, 73A-D11, RG 233.

nativists exploited the racial threat, and what is more important is how those in support of “equalizing” nationality rights explicitly invoked the racial argument.

Discrimination and Equality: “Discriminates against white American citizens”

Most notable on this score was Samuel Dickstein, the House Immigration and Naturalization Committee chair, considered a pro-immigrant Congressman and advocate for Southern and Eastern European immigrants. However, in appealing for the need to amend nationality law, Dickstein characterized the “inequality of the present law” lay not merely in the fact that women could not pass on her U.S. citizenship, but as discrimination against a “white child.” And he explicitly resorted to racist argument comparing a child of a “Chinaman” and “British.” During the House discussion, the first reason that he gave for revising the law was that white women were being denied the right enjoyed by Chinese-American men.

To illustrate the inequality of the present law, let us consider on the one hand the case of children born out of the United States to a couple, the man being of Chinese ancestry but a native-born American citizen and the woman an alien ineligible to citizenship, and on the other hand the case of children born out of the United States of the union between a native-born white woman and a Britisher. ... In the case of the Chinaman the children arriving at the port of entry ... are admitted as American citizens, whereas the white child of the native-born American woman married to the Britisher is held back and is called an “alien.”⁷⁷

A majority of the women’s organizations did not resort to such a racial argument, but Dickstein was not an isolated case. For example, at a 1933 House hearing, a witness from the Business Women’s Legislative Council of California emphasized the specific reason for women in California to feel the stigma of gender discrimination of not having the right to pass on their citizenship.

We who live in California, and especially in Southern California, have ever with us the reminder of the law as regards Japanese and Chinese. ... We feel that this law

⁷⁷ 78 Cong. Rec. 7329 (1934).

discriminates against white American citizens in favor of yellow United States citizens in that a Chinese man can bring back his children, while a white woman, a citizen of this country, cannot bring back hers. You are turning away a white child and letting in a yellow child.⁷⁸

It was not simply because women could not transfer her citizenship to her child while men could, but the issue was framed as “racial discrimination” that favored “yellow child” of a male citizen of Asian descent over a “white child” of a white female citizen. Deep racism against Asian immigrants and Asian-Americans held even by “pro-immigrant” congressman such as Dickstein, who strongly opposed any restriction of Eastern and Southern European immigrants, encouraged exclusionists such as the AFL to take advantage of the movement to revise nationality law to realize their agenda of further restricting immigration from Asia.

Formally Race-neutral but Intended for “Orientals”

The “equalization bill” reported out by the House Committee on Immigration and Naturalization included a clause that denied *jus sanguinis* citizenship to children of Asian-Americans altogether. While appealing for the need to amend the nationality law to equalize nationality rights between men and women, Dickstein argued simultaneously that Congress should put “a stop to this endless chain” of Chinese immigration by denying *jus sanguinis* citizenship to foreign-born children of Asian-American parents.⁷⁹ Although the explicit racial ban was eventually removed from the bill, the legislative battle deserves attention for several reasons. First, it reveals how the actual revisions made in 1934, written in a formally race-neutral term, were actually intended to reinforce racial exclusion. Second, justification for the

⁷⁸ *Relating to Naturalization and Citizenship Status of Children Whose Mothers Are Citizens of the United States: Hearing before the House Committee on Immigration and Naturalization, 73rd Cong. (1933) (Business Women’s Legislative Council of California); Gardner, The Qualities of a Citizen, 174.*

⁷⁹ 78 Cong. Rec. 7330 (1934)

explicit racial ban was deeply rooted in the ideas about what constituted racial discrimination, which in fact was modeled after how courts had upheld the constitutionality of anti-miscegenation laws.

The first 1934 amendment to the Nationality Law concerned citizenship derivation by the third generation. Whereas previous nationality law stated that U.S. citizenship “shall not descend to [foreign-born] children whose fathers never resided in the United States,” the 1934 Nationality Act required that “the citizen father or citizen mother” must have “resided in the United States previous to the birth of such child [emphasis added].” The purpose of this amendment was to solidify the Supreme Court ruling *Weedin v. Chin Bow* (1927) that citizenship derivation on *jus sanguinis* rule required the parent’s residence in the U.S. prior to the birth of the child.⁸⁰

Secondly, Congress added an entirely new condition on citizenship acquired on *jus sanguinis* rule, which applied to any foreign-born child regardless of whether the citizen parent was U.S.-born or foreign-born. The 1934 Act introduced an unprecedented rule that a foreign-born U.S. citizen would automatically lose one’s citizenship, unless one took up residence in the U.S. before a certain age. Specifically, the law mandated five-year residence in the U.S. immediately before one’s eighteenth birthday to retain citizenship acquired on *jus sanguinis* rule. In other words, if the parent did not bring the child to the U.S. or send for the child before reaching the age of thirteen, the child automatically lost his or her U.S. citizenship. Subsequent nationality laws raised the retention deadline several times, but it remained part of nationality law until 1973.⁸¹

⁸⁰ Section 1, Nationality Act of May 24, 1934 (48 Stat. 797)

⁸¹ Section 1, Nationality Act of May 24, 1934 (48 Stat. 797)

To consider these changes in relation to *Chin Bow*, the issue contested in the court was whether Chin Dun had the power to transfer his U.S. citizenship to his son Chin Bow, whether he had to move to the U.S. before his son was born. What was not contested was Chin Dun's own citizenship, which he derived from his U.S.-born father. However, the new retention requirement questioned Chin Dun's citizenship as well by pointing to the age that he first moved to the U.S., which was twenty-eight. Under the new law, foreign-born citizen like Chin Dun would lose citizenship at thirteen unless they entered the U.S. The 1934 Act was not retroactive and was not meant to deprive Chin Dun himself of his citizenship, but was applied to any foreign-born citizen after. The two amendments were general rules on citizenship derivation that were formally race-neutral, but had a radically different meaning for children of European descent and children of Asian descent. For the former, although whether one was a citizen at birth was a matter of immense importance, lack of U.S. citizenship at birth or loss of U.S. citizenship was still not equal to permanent bar from the U.S. For one, citizen children from Europe qualified for non-quota status until twenty-one, and could become a naturalized U.S. citizen after arrival in the U.S. Also, if born in a country with unfilled quotas, there was a fair chance to immigrate to the U.S. after reaching majority by applying for one's own visa. Neither was it possible for children of Asian Americans, for whom lack or loss of U.S. citizenship meant permanent exclusion from the U.S. as an alien ineligible to citizenship with no means of becoming a citizen again.⁸²

Moreover, Congress conceded the main target to be Asian-Americans. According to the House Committee, the current clause that "denies citizenship being derived by children born abroad whose citizen-father never had lived in the United States" was intended for "Orientals."

⁸² This retention deadline was raised to sixteen in 1940, and the first post-1934 Nationality Act generation reached their deadline in 1950.

The Committee argued, “The history of this clause of present law indicates a desire to prevent Orientals who had themselves acquired citizenship from citizen-fathers but who had never lived here, from transmitting citizenship to their children born abroad.” In fact, the parent’s residency requirement had been part of law since the first Nationality Act of 1790 – although until 1934 it never stated when such residency must take place – and was originally not intended for Chinese immigrants. But more important was how Congress in the 1930s understood the clause. And most fundamentally, the Committee did “not believe citizenship should be derived by indirection through birth when the child would not be able to become a citizen through naturalization procedure.” The real issue was not whether the parent was U.S.-born or foreign-born, where they grew up, or at what age they came to the U.S., but race.⁸³

Equality and Discrimination: “Not Discriminatory to Any Race”

The House Committee on Immigration and Naturalization attempted to impose a more explicit racial ban on *jus sanguinis* citizenship, and reported an “equal nationality” bill that 1) enabled both fathers and mothers to transfer his or her U.S. citizenship to a foreign-born child 2) but only if their spouse was racially eligible for citizenship.⁸⁴ This motion originated from the American Federation of Labor. The basic position of the AFL was that “the real and proper way to equalize the status of men and women in immigration and their offspring” was not by granting women the same right as men but by depriving men of the right to transfer one’s citizenship and by “denying automatic citizenship to any children born in foreign countries, unless both the Father and the Mother are citizens of the United States.” However, if revision was unavoidable,

⁸³ Memorandum for H.R. 7673, folder “H.R. 7673, 2 of 3,” box 71, 73A-D11, RG 233.

⁸⁴ Beatrice Loftus McKenzie, “American at birth: United States Birthright Citizenship in Nation and Empire, 1866 -1934,” (Ph.D. dissertation, University of Oregon, 2006), 195-196.

the AFL insisted, there should be multiple safeguards especially in order to reduce the number of U.S. citizens of Asian descent.⁸⁵

One purpose of the “spouse must be eligible to citizenship” requirement was to minimize the number of children who would derive U.S. citizenship from Asian American mothers as a result of extending nationality right to women.⁸⁶ But the more obvious target was child of a Chinese-American father and a Chinese mother. The number of Chinese-American women marrying outside the U.S. was much smaller than Chinese-American men, and it was an attempt to reduce both the Chinese population in the U.S. and U.S. citizens of Chinese descent.⁸⁷

Despite the gradual increase of women - 66,856 men and 4,675 women in 1910 to 59,802 men to 15,152 women in 1930 – the Chinese population was still overwhelmingly male, and the chance for Chinese-American men to find a Chinese spouse in the U.S. was small, which was the main point raised by Chinese American organizations that lobbied against the exclusion of wives.⁸⁸

New immigration of women was difficult for two reasons. For one, the 1924 Act and *Chang Chan* (1925) barred immigration of wives except for those married before 1924 (1930 Amendment). For another, since Chinese-American fathers had rarely reported birth of daughters in the past, there were few spots reserved for women to immigrate as daughters of U.S. citizens. These factors limited the number of future U.S.-born children. And the proposal to restrict *jus sanguinis* citizenship would make any children born outside the U.S. an alien

⁸⁵ William C. Hushing, Legislative Representative, American Federation of Labor, to House Committee on Immigration and Naturalization, April 3, 1933, folder “H.R. 3673, 5 of 6,” box 72, 73A-D11, RG 233.

⁸⁶ The Cable Act of 1922 abolished the practice of marital expatriation only for women married to a white husband but not for women married to a husband “ineligible to citizenship.” It was not until 1931 that a woman could retain her U.S. citizenship after marriage to a husband who was racially ineligible to citizenship. Gardner, *The Qualities of a Citizen*, 140-147.

⁸⁷ For marriage pattern of Chinese-American women, Huping Ling, “Family and Marriage of Late-Nineteenth and Early-Twentieth Century Chinese Immigrant Women,” *Journal of American Ethnic History* 19, no. 2 (2000): 43–63.

⁸⁸ Lee, *At America's Gates*, 114-116.

ineligible to citizenship, which would not only make him / her excludable under the 1924 Act and *Weedin v. Chin Bow* but stop U.S. citizenship descending to the next generation.

Notably, the Committee described this exclusionist scheme as only a minor change from the existing nationality law. According to the committee, the proposal that “denies derivation of citizenship from a citizen-parent when the other parent is an alien ineligible to citizenship” was “simply ... a provision stopping such citizenship derivation in the second generation, instead of in the third generation as in the case under the present provision of the law.”⁸⁹ It should be noted here that the existing rule on third-generation citizenship derivation was written in a formally race neutral language, but the committee linked it to the notion that Asians were not part of the U.S. polity, and claimed that the proposal was only making more explicit reference to race. Revision of nationality law was the next step to complete exclusion of “aliens ineligible to citizenship” under the 1924 Act.

When this motion became known, Chinese-American organizations filed a strong protest. The Oakland Lodge of Chinese American Citizens Alliance questioned how the bill that “originated to establish equality between male and female citizens in the matter of equality” was transformed into a bill that would bring “injustice to American citizens of Chinese race.”⁹⁰ The same was true of Japanese American organizations. The Seattle chapter of the Japanese American Citizens League, founded in 1929 as the U.S.-born second-generation came of age, protested that the “proposal would restrict consideration of American citizens of Japanese

⁸⁹ Memorandum for H.R. 7673, folder “H.R. 7673, 2 of 3,” box 71, 73A-D11, RG 233.

⁹⁰ Oakland Lodge of Chinese American Citizens Alliance, to Samuel Dickstein, April 14, 1934; folder “H.R. 7673, 2 of 3,” box 71, 73A-D11, RG 233.

ancestry as equally franchised citizens of this country and rights of citizens should not be measured by reason of race.”⁹¹

The justification offered by the House Committee Chair Samuel Dickstein, not only highlights the stark racial boundary drawn between white and non-white citizens and immigrants but also reveals the idea about what constituted racial discrimination. During the 1924 debate, “anti-restrictionists” such as Adolph Sabath and Samuel Dickstein expressed wholehearted support for exclusion of Japanese immigrants and made it clear that they were only against restriction of Southern and Eastern European immigrants. On two levels, Dickstein linked racial bar to naturalization, the 1924 exclusion, and racial restriction on *jus sanguinis* citizenship. Most fundamentally, all three were based on the idea that persons of Asian descent were not part of the American society. And even more revealing was the idea that none of this constituted racial discrimination.⁹²

First, Dickstein praised the bill as a progress for all female citizens. He emphasized that currently no woman had the right to transfer her citizenship on *jus sanguinis* rule, and despite the condition that her husband must be racially eligible to citizenship, it would be a “progressive step” from having no rights to having certain rights.⁹³ Deeply flawed as it was, the argument that citizens would acquire new rights certainly did not apply to Asian-American men. As the

⁹¹ George Ishihara, Seattle Progressive Citizens League (Seattle chapter of the Japanese American Citizens League), to Samuel Dickstein, May 25, 1933, folder “H.R. 7673, 5 of 6,” box 72, 73A-D11, RG 233; Takaki, *Strangers from a Different Shore*, 222.

⁹² Gary Gerstle, *American Crucible: Race and Nation in the Twentieth Century* (Princeton: Princeton University Press, 2002), 12.

⁹³ Memorandum for H.R. 7673, folder “H.R. 7673, 2 of 3,” box 71, 73A-D11, RG 233.

Chinese Y.W.C.A. of San Francisco wrote to Dickstein, “it does away the present rights of men citizens of Chinese descent and discriminates against women citizens of Chinese descent.”⁹⁴

Nevertheless, Dickstein insisted that deprivation of nationality rights from Asian-American men would not constitute discrimination. He insisted that a whether a law was restrictive and whether it was discriminatory were separate issues, and argued that the proposal was equal for both men and women and not discriminatory against any race.⁹⁵ First, he depicted the bill was equal in terms of gender, because both male and female citizens had to meet the condition that their spouse must be eligible to citizenship. It was “progressive” for women and “regressive” for men, the committee insisted, but nonetheless the equal condition applied to both men and women.

The primary measure of racial discrimination, according to Dickstein, was whether the law referred to the race of a U.S. citizen. Dickstein summarily considered racial discrimination against a foreign national as an acceptable exercise of the sovereignty of the United States. He argued that neither the 1924 Act nor the proposed racial ban on *jus sanguinis* citizenship spoke of the race of a U.S. citizen. As an immigration law, the 1924 Act excluded “aliens” not U.S. citizens. Likewise, he argued, the proposed nationality bill spoke of the race of the non-citizen spouse/parent but not of the race of the U.S. citizen parent.⁹⁶ Still, Dickstein conceded that exclusion of wives under the 1924 Act and the proposed restriction on citizenship derivation concerned citizen with a wife ineligible to citizenship. The argument that neither had to do with U.S. citizens contradicted Dickstein’s own advocacy for Southern and Eastern European immigrants that admission of families was about the interests of U.S. citizens and residents rather

⁹⁴ Chinese Y.W.C.A. of San Francisco, Executive Committee, to Samuel Dickstein, April 12, 1934; folder “H.R. 7673, 2 of 3,” box 71, 73A-D11, RG 233.

⁹⁵ Memorandum for H.R. 7673, folder “H.R. 7673, 2 of 3,” box 71, 73A-D11, RG 233.

⁹⁶ Memorandum for H.R. 7673, folder “H.R. 7673, 2 of 3,” box 71, 73A-D11, RG 233.

than about admission of foreigners. What Dickstein ultimately drew on was the argument that restrictive legislation was not racially discriminatory as long as it formally applied to all citizens. Drawing an example of “a white man who may marry a Chinese girl in China,” Dickstein argued that both the 1924 Act and racial restriction on citizenship derivation applied to “white” citizens married to an “alien ineligible to citizenship,” and therefore was not discriminatory against citizens of Asian descent in particular.⁹⁷

In fact, this line of justification was grounded in how courts upheld the constitutionality of anti-miscegenation laws since the late 19th century. For instance, in 1921, the Oregon Supreme Court ruled that prohibition of marriage between “white” persons and “Indians” was constitutional, because the law applied to “all persons, either white, negroes, Chinese, Kanaka, or Indian.”⁹⁸ Although legally sustainable at the time, such logic conveniently ignored that the number of “a white man who may marry a Chinese girl in China” was incomparable to Chinese-Americans with a wife in China, as well as the fact that the former was not the primary target. Together with the argument that one reason for equalizing nationality law was to end discrimination against “white women” with “white children” in favor of “yellow children,” in the name of equality Dickstein sought to deprive Asian-Americans of the right to transfer their U.S. citizenship.

The House eventually defeated the explicit racial bar on *jus sanguinis* citizenship, but the opposition was grounded no less in racist ideas but in anxiety about inter-racial marriage. The opposition argued that restriction of *jus sanguinis* citizenship on top of the existing exclusion of Chinese wives would potentially Chinese-American men to seek for a non-Chinese wife in the U.S. A Congressman from Oregon insisted, “We do not want him [a male Chinese or Japanese

⁹⁷ 78 Cong. Rec. 7330 (1934); McKenzie, “American at Birth,” 199.

⁹⁸ *Pace v. Alabama*, 106 U.S. 583 (1883); Pascoe, *What Comes Naturally*, 108.

citizen] to marry an American woman” by denying *jus sanguinis* citizenship in addition to excluding wives. Here, the word “American woman” was synonymous with “white woman.” “A male Chinese or Japanese citizen in California who goes to China and there marries a native wife” was “exactly what we want him to do.”⁹⁹ As in California, it was not legally possible for Chinese or Japanese to marry “white” women in Oregon. Oregon’s marriage law defined anyone with one Chinese grandparent as “Chinese” and barred him / her from marrying a white person.¹⁰⁰ Most recently, in 1933 California extended its longstanding bar since 1880 against marriage between “Mongolians” and white to include Filipinos by adding the word “Malay” after the court ruled that “Mongolians” did not include Filipinos. Fear of marriage between Asian men and white women ran deeply, and it was not the immediate possibility but the potential challenge against such racial order.¹⁰¹ The idea that absolute exclusion may not be the best course to pursue was similar to how the Bureau of Immigration expected that admission of wives may reduce citizenship claims by foreign-born sons.

The notion that one parent being an “alien ineligible to citizenship” would also make the child “alien ineligible to citizenship” did not find its way in nationality law. But it was resurfaced in immigration law in the post-exclusion era. Upon the repeal of Chinese exclusion in 1943, Congress defined anyone with one Chinese parent as “Chinese.” And regardless of which

⁹⁹ 78 Cong. Rec. 7349 (1934)

¹⁰⁰ Peggy Nagae, “Asian Women: Immigration and Citizenship in Oregon,” *Oregon Historical Quarterly* 113 no. 3 (2012): 334–359.

¹⁰¹ Constantine Panunzio, “Intermarriage in Los Angeles, 1924-1933,” *American Journal of Sociology* 47, no. 5 (1942): 690–701; Pascoe, *What Comes Naturally*, 154-159; For representation of Filipinos in California as male-dominated group that poses threats to the racial order by dating “white girls,” Ngai, *Impossible Subjects*, 109-116; For animosity among Japanese immigrants against intermarriage with Filipinos, Eiichiro Azuma, *Between Two Empires: Race, History, and Transnationalism in Japanese America* (New York: Oxford University Press, 2005), 188-193; For dating outside ethnic groups, Allison Varzally, “Romantic Crossings: Making Love, Family, and Non-Whiteness in California, 1925-1950.” *Journal of American Ethnic History* 23, no. 1 (2003): 3-54.

part of the world one was born in, a “Chinese” immigrant was charged against the worldwide “Chinese” quota of mere 105. When Congress subsequently abolished wholesale exclusion of other Asian immigrants, the same method of quota restriction was applied until 1965: a person whose either parent was of Asian descent was charged against the quotas against the country and region of ancestry (“Asia-Pacific Triangle”), regardless of one’s own place of birth.

The 1957 Supreme Court case of Lee You Fee’s citizenship was a legacy of racial exclusion. Lee You Fee was born in China in July 1935, and had been raised in Hong Kong since 1936. His father Lee Q. Pon was a Chinese-born U.S. citizen, who derived his citizenship from his U.S.-born father. Since Lee You Fee was born after the 1934 Nationality Act took effect, he was subjected to the retention deadline and lost his U.S. citizenship in 1951 at the age of sixteen. Lee You Fee was now subjected to a racial quota of 105 established after the repeal of exclusion in 1943, against which all immigrants of Chinese descent regardless of which part of the world they were born in were charged. When the retention deadline was later raised, the family brought the case to the federal court, but it took seven years for the family to recover Lee You Fee’s citizenship.¹⁰²

In the late 1920s, unlike in the case of European immigrants, questions such as whether family rights should accompany “immigrant” or “permanent resident” status instead of formal citizenship did not arise at all, since after 1924 “immigrant” and “permanent resident” status itself was not available for persons of Asian descent, except for pre-1924 immigrants. The struggle was whether U.S. citizenship mattered at all for the purpose of family immigration, with

¹⁰² *Lee You Fee v. Dulles*, 236 F. (2d) 885, 355 U.S. 61 (1957); The Department of Justice acknowledged that although the first 1934 Act generation had passed the deadline when the Immigration and Nationality Act went into effect, they had not when Congressional Committees first proposed to raise the maximum age, and that the original intent of the Congress was to raise the deadline before the 1934 Act reached their sixteenth birthday.

acquisition of citizenship itself being challenged. And the fact that critics of the national origins quotas system and advocates for Southern and Eastern Europeans such as Dickstein heartily supported exclusion of Asian immigrants, denying any racial discrimination, pointed to the deep racial boundary drawn between white families and non-white families. In the case of immigrants from Europe, despite the hierarchization among them, the claims of citizens and residents could trump immigration restriction as a matter of sovereignty controlling entry of foreigners. In the case of “aliens ineligible to citizenship,” any claim of citizens and residents was superseded by the notion that exclusion of families was a matter of restricting entry of “aliens.”

Tables and Figures for Chapter 2

2-1: U.S. Citizens of Chinese Descent and Chinese Wives of U.S. Citizens, 1906-1924

Fiscal Year	U.S.-born Citizens	Foreign-born Citizens	Total U.S. Citizens	Wives of U.S. Citizens
1906		No data	915	7
1907		No data	929	23
1908		“few”	1,220	37
1909	1,417	1,113	2,530	98
1910	1,328	781	2,109	110
1911	1,412	173	1,585	80
1912	1,396	258	1,654	88
1913	1,553	495	2,048	126
1914	1,373	725	2,098	122
1915	1,196	794	1,990	106
1916	1,202	818	2,020	108
1917	1,184	905	2,089	115
1918	735	331	1,066	132
1919	756	260	1,016	91
1920	1,038	843	1,881	141
1921	1,426	2,067	3,493	290
1922	1,938	2,292	4,230	396
1923	2,539	2,399	4,938	387
1924	2,795	2,136	4,931	396

Source: U.S. Department of Commerce and Labor, *Annual Report of the Commissioner General of Immigration 1906-1907*, table 2 “Chinese Seeking Admission to the United States”; *Annual Report 1908*, table 6 “Native-born Chinese”; *Annual Report 1909 - 1912*, table 3 “Chinese Claiming American Citizenship”; *Annual Report Table 3* “Chinese Claiming American Citizenship by Birth, or to be the Wives or Children of American Citizens.”

2-2: U.S. Citizens of Chinese Descent and Chinese Wives of U.S. Citizens, 1925-1941

Fiscal Year	Returning Citizens (U.S.-born and Foreign-born living in the U.S.)	Foreign-born Citizens Arriving for the First Time)	Total U.S. Citizens	Wives of U.S. Citizens
1925	No data	No Data	3,023	Excluded
1926	No data	No Data	2,396	Excluded
1927	No data	No Data	3,176	Excluded
1928	No data	No Data	3,276	Excluded
1929	No data	No Data	3,534	Excluded
1930	No data	No Data	3,220	Excluded
1931	No data	No Data	3,584	19
1932	2,384	868	3,252	99
1933	2,054	731	2,785	43
1934	2,421	476	2,897	19
1935	2,651	643	3,294	41
1936	2,437	874	3,311	38
1937	2,366	1,132	3,498	55
1938	3,606	1,790	5,396	82
1939	2,301	2,027	4,328	112
1940	1,316	2,035	3,351	99
1941	1,211	1,436	2,647	66

Source: United States Department of Labor, *Annual Report of the Commissioner General of Immigration 1925* (Washington D.C.:G.P.O., 1925), 179; *Annual Report 1926*, 161; *Annual Report 1927*, 182; *Annual Report 1928*, 182; *Annual Report 1929*, 176; *Annual Report 1930*, 192; *Annual Report 1931*, 210; *Annual Report 1932*, 192;

United States Department of Labor, *Annual Report of the Secretary of Labor 1933* (Washington D.C.: G.P.O., 1925), 59; *Annual Report 1934*, 67; *Annual Report 1935*, 87; *Annual Report 1936*, 97; *Annual Report 1937*, 88; *Annual Report 1938*, 104; *Annual Report 1939*, 100; *Annual Report 1940*, 112;

United States Department of Justice, *Annual Report of the Attorney General 1941* (Washington D.C.:G.P.O., 1941), 233-234.

Part II. Families Formed in the U.S.

In January 1931, Secretary of Labor William Doak announced that as a partial solution to unemployment due to the worsening Great Depression, the Bureau of Immigration planned to deport 100,000 immigrants within the next couple of years. Doak claimed that 400,000 immigrants were residing unlawfully in the U.S., and that although 300,000 were no longer deportable due to statute of limitations, 100,000 were still deportable. Voicing support for the plan, *Washington Post* wrote that “an emergency act excluding all immigration this year would not relieve the unemployment situation nearly so much as would deportation of all foreigners who are unlawfully in the United States.”¹⁰³

On February 15, in New York City, immigration and police officers raided the dance party of the Finnish Worker’s Education Association on Fifth Avenue, and questioned more than 700 people gathered there.¹⁰⁴ On February 26, in Los Angeles, immigration officers raided the La Placita and apprehended 400 Mexicans.¹⁰⁵ Doak’s deportation drive across the continent invited very different responses. The raid in Los Angeles was hailed by local officials, and prompted a repatriation campaign in various localities in the West and the Midwest targeting Mexican and Mexican American families. On the other hand, deportation campaign in cities with large European immigrant population such as New York prompted a reform movement that questioned not only Doak’s deportation drive but the harshness of immigration law and deportation law.

¹⁰³ “400,000 Aliens in U.S. Illegally, Doak Estimates,” *New York Herald Tribune*, January 6, 1931.

“Deportation of Aliens,” *Washington Post*, January 7, 1931.

¹⁰⁴ “Wagner Decries ‘Czarist Tactics’ in Alien Drive,” *New York Herald Tribune*, February 22, 1931.

¹⁰⁵ Francisco E. Balderrama and Raymond, *Decade of Betrayal: Mexican Repatriation in the 1930s* (Albuquerque: University of New Mexico Press, 2006), 67-68.

The following two chapters examine how immigrants facing deportation made claims of family ties as a yoke to remain in the U.S. Chapter 3 discusses Mexican American repatriation as a specifically family-targeted repatriation. Looking also at nationality law, the chapter examines the consequence of Mexican American repatriation across generations, involving Mexican immigrants, their families born or formed in the U.S., and families formed in Mexico after repatriation, and their struggles to return to the U.S. in the 1940s and the 1950s.

Chapter 4 examines the deportation reform movement that immigrant aid agencies based in New York and the Secretary of Labor Frances Perkins engaged in during the 1930s, which created a system that gave certain consideration to deportees with U.S. citizen and permanent resident families. It will consider how the movement ultimately failed to question the foundation of numerical immigration restriction. It will also discuss how Congress in the 1940s and the 1950s explicitly excluded Mexican immigrants from the system, refusing to recognize any family hardship of Mexican families, which was part of the attempt to recruit Mexican workers on temporary basis without permanent residency.

Chapter 3: Mexican-American Repatriation: Across Generations

In September 1956, the Board of Immigration Appeals (BIA) ruled that Alberto Martínez [pseudonym] should be deported to Mexico for having entered the U.S. without inspection or a visa. Born in Huanuzco, Zacatecas in 1935, he first came to the U.S. with his parents in 1946 at the age of eleven. He was deported to Mexico six years later, but reentered the U.S. the following day and lived in the U.S. for another four years until he was apprehended again. The question raised before the BIA in 1956 was whether he was actually a U.S. citizen. His birth in Mexico was undisputed, and the issue was the birthplace of his mother. While his father was Mexican, his mother claimed to be a U.S.-born citizen, in which case Alberto Martínez was also a U.S. citizen at birth and not subject to deportation.¹

Alberto Martínez's mother was one of the Great Depression repatriates. At the age of around ten, she left the U.S. with her parents and five younger siblings in 1931, the peak year of repatriation. Between 1929 and 1940, half to one million persons of Mexican descent left the U.S. through federal deportation, voluntary departure, and repatriation.² Many were mixed status families, and Francisco E. Balderrama and Raymond Rodriguez estimate that as many as 60 percent may have been U.S. citizens who accompanied their spouse or parents to Mexico.³

The repatriation program of Mexican immigrants was specifically pointed to expel people of Mexican-descent who were not only legal residents but also families including U.S. citizens. Far from hardly making any effort to distinguish immigrants and U.S. citizens, the campaigns

¹ *Matter of A-M-*, 7 I&N Dec. 332 (BIA 1956).

² The figure of 500,000 –Abraham Hoffman, *Unwanted Mexican Americans in the Great Depression: Repatriation Pressures, 1929-1939* (Tucson: University of Arizona Press, 1974), Camille Guerin-Gonzalez, *Mexican Workers and American Dreams: Immigration Repatriation, and California Farm Labor, 1900-1939* (New Brunswick: Rutgers University Press, 1996), 8; Francisco E. Balderrama and Raymond Rodriguez estimates that at least 1,000,000 repatriated to Mexico. *Decade of Betrayal: Mexican Repatriation in the 1930s* (Albuquerque: University of New Mexico Press, 2006).

³ Balderrama and Rodriguez, *Decade of Betrayal*, 266.

carried out by local governments often claimed that repatriation of families was the whole purpose. Paying attention to nationality laws, this chapter will argue that repatriation was not only about the immediate generation that experienced the repatriation but also the future generation of derivative citizens born in Mexico. The latter half of the chapter examines how the former repatriates and their families navigated through the web of immigration and nationality laws, as the U.S. government cast suspicion on their claims as illegitimate and often as unauthorized immigrants.

3.1 Administrative Restriction to Repatriation

In 1934, Cleofas Calleros, the director of the National Catholic Welfare Conference's El Paso / Juarez office argued at a meeting of the Texas State Committee on Mexican Problems that the state should not repeat the mistake that Los Angeles and other counties in California had made in launching repatriation campaign for Mexicans and Mexican Americans because they "just wanted to get rid of person of Mexican descent regardless of their condition in life or anything else." Several cities and counties in Texas had already undertaken similar programs, and Calleros condemned that at the heart of the thinking that "it would be a good idea to repatriate Mexican descent persons back to Mexico" is a "race prejudice" in Texas that "prevails in every community referring to Mexicans as Mexicans and also referring to them as people of another color." Pointing to a series of Congressional hearings over the past decade to impose

quotas restriction on Mexico, he argued that the testimonies gave “a very clear picture of what most communities think of so called ‘Mexicans’ ... as something to be exploited.”⁴

The Immigration Act of 1924 categorically placed natives of independent countries of the Western Hemisphere outside the quotas restriction system. This regional non-quota status continued until January 1, 1968, when the Immigration Act of 1965 imposed a prefixed numerical limitation on immigration from the Western Hemisphere for the first time. Since there was no formal ceiling before 1968, absent was the system of numerical preference, family or otherwise. It was not until 1976 when Congress imposed a numerical ceiling on all countries of the Western Hemisphere that family-based admission became operative in the Western Hemisphere.

However, lack of formal quota for Mexico was grounded in entirely different reasoning from why Congress accorded the largest share of quotas to immigrants from Britain. In the late 1920s, various bills to impose a quota on Mexico were introduced, and six hearings were held between 1925 and 1930.⁵ The most vocal proponent of a Mexico quota was John C. Box (D-Texas), congressman from eastern Texas. He insisted on applying the 2 percent of 1890 census formula, which would have assigned the quota of only 1,500 to Mexico. Box’s proposal had strong support of the Department of Labor, labor unions, and nativist organizations.⁶

⁴ Neil Foley argues that in Texas, whiteness was defines as “not only black but also not Mexican.” Neil Foley, *The White Scourge: Mexicans, Blacks, and Poor Whites in Texas Cotton Culture*, (Berkeley: University of California Press, 1997), 5.

⁵ In 1930, the Senate passed a bill imposing a quota specifically on Mexico but not on other countries in the Western Hemisphere such as Canada. The House Committee on Immigration and Naturalization also passed the bill, but Hoover and the Department of State intervened out of diplomatic concern. Mark Reisler, *By the Sweat of Their Brow: Mexican Immigrant Labor in the United States, 1900-1940* (Westport, Conn: Greenwood, Press, 1976), 217-218; Lawrence A. Cardoso, *Mexican Emigration to the United States, 1897-1931: Socio-economic Patterns* (Tucson: University of Arizona Press, 1980), 141.

⁶ Reisler, *Sweat of their Brow*, 202, 207.

The attempt to impose quota on Mexico was persistent since before 1924.⁷ Unlike Japanese exclusion, nativist forces in the West were divided on the issue, since their states relied heavily on Mexican labor. For example, the California State Grange insisted that the organization was not contradicting itself in demanding exclusion of Japanese immigrants on the one hand and advocating for the need for Mexican labor, because the former wanted to “become an independent land owner or merchant in competition with the American White,” among Mexicans “such trait has not yet been developed.”⁸ In 1924, pro-quota nativists such as Albert Johnson prioritized exclusion of Japanese immigrants, and placed restriction of Mexican immigrants as the next target, once Southern and Eastern European immigrants were restricted and Japanese immigrants were excluded.⁹

Quota restrictions on Europe made immigration from Mexico more notable in the late 1920s. In 1921, immigration from Mexico comprised 3.7 percent of total immigration to the U.S. (29,603 / 805,228), but the percentage rose to 19.9 percent in 1927 (Mexico 66,766 / total 335,175).¹⁰ In 1926, the Bureau of Immigration, which advocated for placing Mexico on quotas base, created a new section titled “Mexican Immigration” in its annual report. And the 1928 report emphasized the growing importance of Western Hemisphere immigration: “If the expressions ‘Ellis Island’ and ‘Immigration’ were not synonymous, one could hardly think of the

⁷ Katherine Benton-Cohen, “Other Immigrants: Mexicans and the Dillingham Commission of 1907-1911,” *Journal of American Ethnic History* 30, no. 2 (2011): 33-57.

⁸ *Immigration from Countries of the Western Hemisphere: Hearing before the House Committee on Immigration and Naturalization* 255, 258 (1928) (A.C. Hardison, California State Grange)

⁹ Although Mexican immigrants were not subject to quota restrictions, other requirements such as visa was compulsory, and addition procedure and cost discouraged to immigrate, while others tried to enter without inspection. Divine, *Immigration Policy*, 51, 53.

¹⁰ Prior to 1924, Mexican immigrants accounted for 12.0% of the total immigration in 1923 (62,709 / 522,919), and 12.4% in 1924 (87,648 / 706,896). After a slight decline to 11.0% in 1925 (32,378 / total 294,314), the percentage rose to 14.0% in 1926 (42,638 / 304,488), 19.9% in 1927 (66,766 / 335,175), and 18.8% in 1928 (57,765 / 307,225). *Annual Report of the Commissioner General of Immigration 1928*, 10.

one without thinking of the other ... Ellis Island has lost its proud place in the general immigration scheme ... A great change has been taking place along our borders; steadily are they approaching a place of first importance.¹¹ Those emphasizing great increase in Mexican immigration often claimed that due to unauthorized immigration without a visa, the actual volume of immigration was larger than recorded by the immigration bureau.¹²

Arguments made both for and against quota restriction on Mexico displayed deep racism, both pointing to alleged “racial difference” of Mexicans as the reason why quota was either necessary or unnecessary. The Bureau of Immigration insisted that “permitting the unlimited flow of immigrants from this hemisphere” was not justified because the primary objective of 1924 Act was obviously “to bring to our shores in reasonable numbers the races and peoples from which we are descendants.” Entirely excluded from the collective “we” were not only immigrants from Mexico but people that had lived in the Southwest since before the region was seceded to the U.S. by the Mexican War.¹³ While all the independent countries of the Western Hemisphere were non-quota countries, the target was Mexico. Few proposed that immigration from Canada should be restricted.

In *Passing of the Great Race*, Madison Grant pointed to Mexico as the archetype of “the Melting Pot” that he disdained: “the absorption of the blood of the original Spanish conquerors by the native Indian population has produced the racial mixture which we call Mexican and which is now engaged in demonstrating its incapacity.”¹⁴ In 1927, Grant and forty-four prominent scholars including the Harvard President Lawrence Lowell and University of

¹¹ *Annual Report of the Commissioner General of Immigration 1928*, 1-2.

¹² Louis Bloch, “Facts About Mexican Immigration Before and Since the Quota Restriction Laws,” *Journal of the American Statistical Association*, 24, no. 165 (1929): 51.

¹³ *Annual Report of the Commissioner General of Immigration 1926*, 22.

¹⁴ Madison Grant, *Passing of the Great Race* (New York: Scribner’s Sons, 1936), 17.

Michigan President Leon Little issued a joint statement urging Congress to impose an immigration ceiling on Mexico and the West Indies, arguing that they were not “white.”¹⁵

For the first time, the 1930 Census classified “Mexican” as a “race” separate from “white.”¹⁶ Although persons of Mexican descent had been eligible for naturalization since the Treaty of Guadalupe-Hidalgo, extreme nativists such as the California Joint Immigration Committee, the leading force behind Japanese exclusion, engaged in a campaign to make Mexicans racially ineligible to naturalization and to exclude them from the U.S., although this attempt did not succeed.¹⁷

The anti-quota camp also exploited “race” in several ways, and argued that “racial difference” was precisely why quota restriction was unnecessary. Business such as farm organizations in the Southwest and the Midwest, railroad companies, as well as the Department of State were firmly against quota restriction.¹⁸ The strongest opposition arose from farming organizations, which feared that a formal quota would cut off supply of Mexican laborers. According to a survey in California, 67 percent of the farm owners responded that quota on Mexico would have a negative effect on farming, and half of 130 witnesses that testified at 1925-1930 hearings represented agricultural organizations.¹⁹ Instead of denying the alleged racial

¹⁵ *Immigration from Countries of the Western Hemisphere, Hearing before the House Committee on Immigration and Naturalization, 70th Cong. 684 (1928)*

¹⁶ Patrick D. Lukens Espinosa, “Mexico, Mexican Americans and the FDR Administration’s Racial Classification Policy: Public Policy in Place of Diplomacy,” (Ph.D. dissertation, Arizona State University, 1999).

¹⁷ In a 1935 naturalization case, Judge John Knight of the U.S. District Court in Buffalo, New York denied naturalization to three Mexicans, arguing that “Indian blood” made them ineligible for naturalization. Knight reversed his decision when the Department of State intervened after a protest from the Mexican government. Natalia Molina, “In a Race of Their Own: The Quest to Make Mexicans Ineligible for U.S. Citizenship,” *Pacific Historical Review* 79, no. 2 (2010): 193-197.

¹⁸ Emory S. Bogardus, “The Mexican Immigrant and the Quota,” *Sociology and Social Research* 12, no. 3 (1928): 371-74; Reisler, *Sweat of their Brow*, 133; Cardoso, *Mexican Emigration*, 124-25.

¹⁹ In California, 63.2 percent of all the farms employed Mexican workers, and 87.5 percent of the farms which did not employ white workers employed Mexican workers. California, Mexican Fact-Finding

difference between “Mexican” and “white,” the most common argument made on behalf of business interest was that white workers were not physically suited to perform the type of labor done by Mexican workers, which “naturally” divided the labor market.²⁰

Business interests coupled this argument with the claim that Mexicans were only temporarily in the U.S. and that their legal status as an “immigrant” was only a matter of classification under immigration law but not a social reality.²¹ Those opposed to quota restriction made a case that quota restriction was only necessary for those with the intention to settle in the U.S. Moreover, anti-quota advocates often disposed of “race” as irrelevant insisting that racial composition of the U.S. would not be altered because Mexicans were not permanent members of the U.S. For instance, John Nance Garner, a Texan Democrat and the Vice President of Franklin D. Roosevelt, insisted that “80%” of the Mexicans were temporary workers although their legal status was that of an immigrant / permanent resident.²² However, when the Depression struck, anti-quota advocates such as Senator Carl Hayden of Arizona, who had been arguing against quota restriction for the need of labor instead of recognizing Mexican immigrants as part of the American society, quickly reversed their position, now calling for deportation and repatriation of Mexican and Mexican American families.²³

Committee, *Mexicans in California: Report of Governor C. C. Young's Mexican Fact Finding Committee* (Sacramento: State Printing Office, 1930), 159-168.

²⁰ Reisler, *Sweat of their Brow*, 40; George J. Sánchez, *Becoming Mexican American: Ethnicity, Culture and Identity in Chicano Los Angeles, 1900-1945* (New York: Oxford University Press, 1993), 95-96; David G. Gutiérrez, *Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity* (Berkeley: University of California Press, 1995), 56.

²¹ Reisler, *Sweat of their Brow*, 40.

²² *Immigration from Countries of the Western Hemisphere, Hearing before the House Committee on Immigration and Naturalization, 70th Cong. 11, 99 (1928).*

²³ Eric V. Meeks, “Protecting the White Citizen Worker: Race, Labor, and Citizenship in South-Central Arizona, 1929-1945,” *Journal of the Southwest* 48, no. 1 (2006): 91–113.

Great Depression

In 1928, before the Great Depression struck, the State Department had started to curtail immigration from Mexico. In lieu of quota restrictions applied to Europe, the Department of State devised a method of administrative restriction by rejecting immigrant visa applications on the grounds that the applicants were “likely to become a public charge.” Out of diplomatic concerns, the Department of State was opposed to formal quota restriction, especially to the proposal to single out Mexico among countries of the Western Hemisphere, since immigration from other countries in the Western Hemisphere were not really an issue. The aim of administrative visa restriction was to show to Congress that immigration from Mexico could be regulated by means other than fixing a quota. This policy was reinforced under the Great Depression, and as discussed in chapter 1, was extended to immigration from Europe.²⁴

Immediately after taking office in December 1930, Secretary of Labor William Doak declared that he would deport 100,000 immigrants in order to provide jobs for “Americans.” Raids and massive deportation shook Mexican communities. Deportation of Mexicans were supported by many organizations including the American Federation of Labor and patriotic organization such as the American Legion, which argued that deportation created more jobs for “real Americans.”²⁵ The most infamous was the La Placita raid in Los Angeles on February 26, 1931, where the immigration officials apprehended four hundred Mexicans. Immigration agents gathered not only from Los Angeles but also from other districts, and the bureau publicized the raids beforehand in order to raise fear among Mexican immigrants as well as among Mexican-

²⁴ For the quota debate in the late 1920s, see Mark Reisler, *By the Sweat of Their Brow: Mexican Immigrant Labor in the United States* (Westport: Greenwood Press, 1976): 151-226; For studies that focus on border control, see Patrick Ettinger, *Imaginary Lines: Border Enforcement and the Origins of Undocumented Immigration, 1882-1930* (Austin: University of Texas Press, 2009), 145-166; Kelly Lytle Hernandez, *Migra!: A History of the U.S. Border Patrol* (Berkeley: University of California Press, 2010).

²⁵ Balderrama and Rodriguez, 67-68.

Americans. More than apprehension, the primary purpose was to scare away both lawful and unlawful residents from the U.S.

The Bureau of Immigration publicly acknowledged that formal status was of little concern, and that their primary interest was to pressure Mexican immigrants to leave the U.S. “voluntarily.” The basic position of the immigration bureau was that the more Mexicans left the U.S., the more jobs would be created for “Americans.” Commissioner of Immigration Hurry E. Hull testified before Congress: “You go into a city and arrest 8 or 10 that are illegally there, and they immediately begin to pack up and get into cars and go out. A good many of them probably could have stayed if they knew their situation, but the bulk of them are illegally here, and they are afraid of being arrested.”²⁶ Whether “they could have stayed” had they fully understood or been informed of their rights was of little concern to the immigration bureau.

As the next chapter discusses, this marked a contrast with deportation campaign against European immigrants. Surely William Doak declared that he was “going after every evader of our alien laws, regardless of nationality, creed or color, because I hold to the belief that persons who have no right to be here should give their places to Americans.”²⁷ The Department of Labor pointed to seamen jumping ship as the most common form of illegal entry by European nationals, claiming that some 180,000 had deserted the ships during the 1920s to evade quota restrictions.²⁸ But the Department of Labor or the Bureau of Immigration never associated any certain nationality from Europe with illegal entry. Nor did the agency acknowledge that the officers were engaging in scare tactics to induce emigration regardless of whether they were entitled to

²⁶ *Department of Labor Appropriation Bill, 1934*, 72nd Cong. 22 (1932) (Hurry E. Hull, Commissioner General, Bureau of Immigration).

²⁷ “Alien Drive Speeds Up,” *Los Angeles Times* April 11, 1931.

²⁸ “Prepare to Deport 100,000 Seamen,” *New York Times* March 25, 1931; Hurry E. Hull, “Guarding America’s Gates,” *New York Herald Tribune* April 12, 1931

remain in the U.S., but emphasized that they were following legal procedures, aside from the point whether that was true.²⁹

In February 1931, in addition to deporting and making immigrants “voluntarily depart” from the U.S. the Department of Labor began to repatriate immigrants without any immigration offense. The same month as the Placita Raid, Doak issued an order to repatriate Mexican immigrants under section 23 of the Immigration Act of 1917. The section provided that the Commissioner General of Immigration may “enter into contract for the support and relief of such aliens as may fall into distress or need public aid, and to remove to their native country.”³⁰

Doak found this clause seriously limiting for his purpose of “relieving the various communities throughout the county of their care” and “removing them from the competition in the labor market.” The 1917 Act limited repatriation to residents with less than three years in the U.S. The act recognized the tie immigrants built with the U.S., but it was immigrants with long residence in U.S. that Doak wanted to remove. Above all, short-term residents were not eligible for relief. For example, California did not provide relief to those with less than three-year residence in the state. Although it was legally possible for the federal government to repatriate such persons, neither were they on relief, so there were no “savings” to state or local governments.³¹ When one county in California approached the Immigration Bureau to inquire whether 3,500 would be repatriable under the 1917 Act, the bureau found that only “one out of the 3,500” had been in the U.S. for less than three years. In addition to urging Congress to think

²⁹ “Doak Denies Blame in Deportations,” *New York Times* August 9, 1931.

³⁰ From February 1931 to June 1932, the Bureau of Immigration repatriated some 3,100 immigrants under section 23.

³¹ In mid-1933, Doak estimated that budget of 145,000 dollars would allow the department to repatriate 1,600 immigrants. H. Rep. No. 73-125, at 1-2 (1933); *To Return to Philippine Islands Unemployed Filipinos, Before the House Committee on Immigration and Naturalization, 72nd Cong. 46* (1933) (statement of Rex Thomson, Department of Charities, Los Angeles City)

of repatriation as an “investment” that would save federal relief spending in the long run, far from seeing length of residency and formation of families in the U.S. as ties that Mexican immigrants have built in the U.S. Doak insisted that “it was essential and proper” to remove the statute of limitations.³²

Deportation or federal repatriation composed only a fraction of the campaign to remove Mexicans and Mexican-Americans. More numerous were repatriation programs by local governments and agencies. As the Great Depression hit its lowest point in 1932, the number of cities engaging in repatriation campaigns to send away Mexican families increased. Campaigns took a more forceful turn to pressuring Mexicans to accept repatriation than to receive relief.³³ The most infamous was Los Angeles. Los Angeles County repatriated 13,332 persons to Mexico between March 1931 and April 1934. The Los Angeles Department of Charities described the “problem” for the county as that “We not only have had to take care of a great number of Mexican indigents, and not only had them competing with our own citizens for whatever jobs did appear, but they are continually increasing the size of their colony by their very rapid birth rate.”³⁴ Such a statement exemplified the double bind applied to Mexican immigrants and Mexican Americans, accusing the unemployed of receiving public relief and accusing the employed of competing for a job with “our own citizens.” The distinction between “Mexican” and “our own citizens” did not refer to the actual citizenship status. Local officials often spoke of how much relief funds they could save in the long run by paying for repatriation. But as

³² Before the county officials approached the INS, approximately 6,500 of 10,000 Mexican immigrants in this locality had already left for Mexico.

³³ Hoffman, *Unwanted Mexican Americans*, 3.

³⁴ *To Return to Philippine Islands Unemployed Filipinos, Before the House Committee on Immigration and Naturalization*, 72nd Cong. 46 (1933) (Rex Thomson, Department of Charities, Los Angeles City)

historian Camille Guerin-Gonzales has shown, the amount of alleged savings cited by local officials included relief provided for U.S. citizens of Mexican descent.³⁵

Many cities followed suit, not only in the Southwest but in industrial cities in the Midwest such as Gary, Chicago, Detroit. And like Los Angeles, they often first requested the Bureau of Immigration to deport Mexican immigrants. For example, in East Chicago, Indiana, the American Legion took the lead in forming a repatriation committee in September 1931. Before doing so, the American Legion first contacted Secretary Doak to deport Mexican immigrants but the immigration bureau found few had any immigration offense.³⁶ The Legion promoted a similar program in Gary, Indiana, setting up a committee specifically for the purpose of sending away Mexican immigrant families.³⁷ In October 1931, the Detroit Department of Public Welfare set up a “Mexican Bureau,” with an instruction that “any Mexican applying for relief should be transferred to the Mexican Bureau for transport” to Mexico.³⁸

3.2 Family-Targeted Repatriation: Across Generations

Contemporaries were more than aware that what was called “repatriation” included a large number of U.S. citizens for whom the U.S. was the homeland. Localities did not only direct its efforts at temporary immigrant workers but looked to settled immigrants and Mexican Americans. The INS and local officials were interested in removing mixed-status families with

³⁵ Guerin-Gonzales, *Mexican Workers and American Dreams*, 83-84.

³⁶ Between June and October 1932, 382 single men, and 112 families (including 650 individuals) were repatriated on six trains organized by the American Legion. Francisco Arturo Rosales and Daniel T. Simon, “Mexican Immigrant Experience in the Urban Midwest: East Chicago, Indiana, 1919-1945,” *Indiana Magazine of History* 77, no. 4 (1981): 346-348.

³⁷ Neil Betten and Raymond A. Mohl, “From Discrimination to Repatriation: Mexican Life in Gary, Indiana, During the Great Depression,” *Pacific Historical Review* 42, no.3 (1973): 370-388.

³⁸ Norman D. Humphrey, “Mexican Repatriation from Michigan Public Assistance in Historical Perspective,” *Social Service Review* 15, no. 3 (1941): 502.

U.S. citizens. They believed that repatriation would not serve its purpose unless the entire family departed from the U.S., and the issue was how to ensure that immigrants would not leave their citizen families.

Repatriation was not without critics. For example, the National Catholic Welfare Conference's Bureau of Immigration wrote to the Texas Relief Commission condemning that it was a "serious mistake" to send off "American citizens by simply giving them a ticket to go back to their former home in Mexico (a home which never existed)" as well as "many alien fathers and mothers who had several United States born children." And regardless of their citizenship status, the organization argued, "the idea of repatriating people just to get rid of them in that it might be cheaper to advance two or three months budget money to pay transportation to the border" was wrong.³⁹

But the nativists who boasted Mexican repatriation as a success did not hesitate to acknowledge that the "repatriates" included U.S. citizens, but moreover emphasized that was the whole point. Speaking of "continually increasing the size of their colony by their very rapid birth rate," Los Angeles county officials argued that the purpose of Mexican repatriation campaign was the removal of families. For instance, at a 1933 Congressional hearing on Filipino repatriation program, the only other repatriation campaign targeting specific ethnic group, Rex Thomson of the Los Angeles Department of Charities emphasized that the purpose of Mexican repatriation was to remove families with U.S. born children. Thomson appealed the efficiency of the county's repatriation program that by paying "\$15 [per person] to send a Mexican and his family of five, we were ridding ourselves of a cost of some \$42.50 a month to keep them." Thomson characterized the key difference between repatriation to Mexico and to the Philippines

³⁹ Cleofas Calleros, to Miss Maria Dresden, Director of Texas Relief Commission, May 13, 1934, folder 2, box 14, Cleofas Calleros Papers, University of Texas at El Paso.

was that the former consisted of families with U.S.-born children, whereas Filipinos in California were allegedly predominantly single men. Neither was the reason against repatriation campaign, but his point was to emphasize the “cost-efficiency” of sending away Mexican and Mexican-American families to relieve the county of relief load, and to request federal funding for Filipino repatriation, which he considered as a costly program involving repatriation of single men at a higher cost.⁴⁰

Federal power to remove immigrants rapidly expanded in the 1930s. On May 14, 1937, Congress made a crucial change to the Immigration Act of 1917. The 1937 amendment allowed the INS to repatriate destitute immigrants “at any time after entry,” removing the three-year statute of limitations. This amendment passed both houses in June 1936 but failed to become law because the 72nd Congress adjourned two days later. By 1937 there were few recent immigrants because the State Department had refused them visas since 1929, and Congress maintained that statute of limitations was of “no practical benefit to the Government” and that removing it “relieves the overburdened taxpayers of this country of their continued support.”⁴¹ Along with the Deportation Act of 1929, which held an immigrant was deportable at any time after their arrival unless they could prove that they were not liable to become a public charge

⁴⁰ *To Return to Philippine Islands Unemployed Filipinos, Before the House Committee on Immigration and Naturalization*, 72nd Cong. 46 (1933) (statement of Rex Thomson, Department of Charities, Los Angeles City); Although the exclusionists insisted on removing 30,000 to 40,000 Filipinos. Filipinos have formed families in the U.S., and there was less reason to “return” to the Philippines. Secondly, even those who agreed to go to the Philippines could not afford to pay several hundred dollars for the passage of their families, since the Filipino Repatriation bill did not provide expenses for U.S. citizens. The question of who was going to pay for the U.S. citizen families and on what grounds became a pressing issue. The INS entered into an arrangement with the Los Angeles County Welfare Department to pay for the passage of children of interracial unions to avoid leaving them in the United States. Edward J. Shaughnessy, Deputy Commissioner, Immigration and Naturalization Service, to Samuel Dickstein, April 7, 1936, in response to an inquiry whether two U.S.-born sons can be repatriated with their father, HR 74A F16.3, box 350 (74th Congress), RG 233; Baldoz, *The Third Asiatic Invasion*, 192-193.

⁴¹ Section 23, Immigration Act of 1917 (39 Stat. 874); *To Provide for Removal at Government Expense of Certain Financially Distressed Aliens Who Apply for Permission to Their Native Country*, H. Rept. No. 74-120, at 1 (1935).

before entry, the federal government acquired broad power to deport and repatriate immigrants with limited financial means.

Throughout the 1930s, albeit at a smaller scale than in the early 1930s, the INS maintained their interest in sending away Mexican-American families. Encouraged by the passage of the Filipino Repatriation Act in 1935, nativists in California lobbied for federally-funded repatriation program of Mexican immigrants. Soon after the Filipino repatriation work began, the INS district offices received requests to launch a similar federal program for Mexican immigrants. INS district offices strongly supported this idea. The INS San Francisco District director wrote to Washington “what a fine thing it would be for the service if we could put over a successful Mexican repatriation movement and relieve the state penal and other institutions, as well as welfare and charitable organizations, of a perplexing problem.”⁴²

Removal of statute of limitations to federally funded repatriation renewed the INS’s interest in repatriation of Mexican and Mexican American families. An example of repatriation carried out under the new law is the repatriation of 1,283 Mexican and Mexican-Americans by the INS San Antonio District (May 1939 - March 1940), transporting them to Brownsville and Laredo on INS trucks. Majority had lived in the U.S. for more than three years, and would not have been repatriable before 1937.⁴³

Examination of citizenship status shows that almost all travelled in family groups: only 48 of the 1,283 repatriates travelled alone, while others were families ranging from 2 to 24

⁴² Edward W. Cahill, INS San Francisco District Commissioner, to James L. Houghteling, INS Commissioner, January 8, 1938, 55957/456, Accession Number 85-58A734, RG 85.

⁴³ Length of residence was calculated from the age of the child with U.S. citizenship. If the family included children older than three, it can be estimated that the parents were in the U.S. for more than three years.

including three generations.⁴⁴ Many included both Mexican citizens and U.S. citizens, and in fact majority were U.S. citizens for whom the U.S. was the homeland, and Mexico was not the place of repatriation. While 490 of the 1,283 repatriates were Mexican nationals, 793 or 62 percent were U.S. citizens.⁴⁵ Mexican citizens were mostly in their 30s and 40s. Those with U.S. citizenship tended to be of young age, who accompanied their parents to Mexico. All the children below 10, and 95 percent of the repatriates below 20 were U.S. citizens. To put it another way, approximately half of the U.S. citizen “repatriates” were below 10 years of age, and 84 percent were below 20. In 30 percent of the married couples, either one was a U.S. citizen. (Table 3-1: Age and Nationality of Repatriate Families, INS San Antonio District, 1939-1940, and Table 3-2: Relations and Nationality of Repatriate Families, INS San Antonio District, 1939-1940 on pages 164)

Despite the predominance of mixed-status families, what the INS officials discussed was “a plan that will make the Mexicans stick, once they cross the border.” They showed little concern about the fact that the family would not be able to return to the U.S. together. Theoretically, spouses and children with U.S. citizenship could return to the U.S. at any time, but the 1917 Act debarred spouse or parents who were Mexican nationals from returning to the U.S., which would have also made it difficult for the U.S. citizen family to return to the U.S. until they reached a certain age.⁴⁶

⁴⁴ Out of the 234 family groups including 1,192 individuals, only 30 consisted solely of Mexican nationals.

⁴⁵ In 190 households including married couples, both the husband and wife were Mexican nationals in 133 families, the husband was a Mexican national whereas the wife as a U.S. citizen in 52 families, and the husband was a U.S. citizen while the wife as a Mexican national in 5 families. 55957/456, Accession Number 85-58A734, RG 85.

⁴⁶ Edward W. Cahill, INS San Francisco District Commissioner, to James L. Houghteling, INS Commissioner. March 31, 1938, 55957/456, Accession Number 85-58A734, RG 85.

Repatriates and their Foreign-born Children: Nationality Act of 1940

Congress members from the West were not satisfied with pressuring Mexican and Mexican-Americans out of the U.S. Nativists believed that repatriation involved sending away immigrants from the U.S. and preventing return to the U.S. One method was to ensure visa refusal based on the liable to become a public charge clause. When inducing Mexican immigrants to sign up for the repatriation program, local officials told them that unlike deportation they were free to return to the United States. However, officials marked their passports, sending a signal to the consuls that they should be refused a visa on LPC grounds if they were to apply for a visa in the future.⁴⁷

But stamping a passport stopped short of a formal ban on reentry. A more formal ban on return was subsequently made into law, turning federally funded repatriation into formal banishment from the U.S. First of such law was the Filipino Repatriation Act, which banned Filipinos from returning to the U.S. Tydings-McDuffey Act imposed a quota of 100 on the Philippines, and immigration from the Philippines was all but closed. But Congress feared the possibility of repatriates entering the continental U.S. as “returning residents.” Nativists lobbying for Filipino repatriation opposed passing the repatriation bill without explicit prohibition on readmission to the U.S.⁴⁸ Based on the Filipino Repatriation Act, Congress amended the general Immigration Act of 1917 in 1937 to erect a formal bar against reentry of all federally-repatriated immigrants.

Nativists believed that such measures were still insufficient because they were not applicable to U.S. citizens. As many immigrants left the U.S., nativists saw families including U.S. citizens as a particular problem, voicing anxiety that their possible return to the U.S. would

⁴⁷ Hoffman, *Unwanted Mexicans in the Great Depression*, 32, 116.

⁴⁸ Ngai, *Impossible Subjects*, 125.

present an future “immigration problem.” Moreover, looking further ahead, nativists saw it as a multi-generational issue not only having to do with U.S.-born citizens but also with their children born in the future. As U.S. citizens, spouses that left the U.S. together, or children who grew up to be of age would also be able to pass on their citizenship to their Mexican-born children, who would be entitled to the rights citizenship endowed, including the right to come to the U.S.

Nationality act debates during the 1930s were filled with concern about how to safeguard against immigrant families returning to the U.S. and derivation of U.S. citizenship by foreign-born children of U.S. citizens who left the U.S. with their spouse or parents. During the 1934 Nationality Act debate, the Department of State argued that derivative citizenship was “an immigration problem, as well as a citizenship problem.” The Department emphasized that a large number of immigrants had left the U.S. since the Depression --over 100,000 in fiscal year 1931 --- calling attention to the fact that “many of them were accompanied by young children born in this country.” Despite being born and raised in the U.S., the State Department insisted that people “taken from this country by their parents in infancy” were “aliens.” They argued that enabling “alien citizens” to pass on citizenship allowed “large numbers of persons who are not only born abroad but are alien in all respects except in name to enter the United States free from the restrictions of the immigration law.”⁴⁹

Congress members from border states associated the issue with Mexican repatriation. Representative William Traeger from Los Angeles reminded Congress not to forget “the situation in California in the past year or two” when “we have sent as many as 12,000 back to Mexico in one month.” He emphasized that many were families with “children naturally, being

⁴⁹ William J. Carr, Assistant Secretary of State, to Samuel Dicksten, February 10, 1933, reprinted in *Relating to Naturalization and Citizenship Status of Children Whose Mothers Are Citizens of the United States: Hearing before the House Committee on Immigration and Naturalization, 73rd Cong. 10 (1933)*

born on the soil of the United States or under its jurisdiction, became citizens of the United States” and that they “will remain in Mexico until there is some way of getting back into the United States.” “Suppose the female of the family remains in Mexico long enough to raise her own family. Then she is entitled to bring all of those back to the United States when they return.”⁵⁰ Representative Martin Dies of Texas (D) argued that “the States that are on the border, California and Texas, are faced with that danger of having to let in every child that is born of aliens, because that child becomes an American citizen and is entitled to vote, and his children may go back and marry Mexicans.”⁵¹ Safeguarding citizenship did not mean protecting the citizenship rights of Mexican-Americans, but preventing their repatriation to the U.S. and their children from acquiring U.S. citizenship at birth.

Anxiety about citizens living abroad heightened as the war approached. Domestically, registration of foreigners (Alien Registration Act) marked foreigners in the U.S. as security concerns.⁵² “Citizens” abroad was another concern. In 1940 Congress made a crucial revision to the nationality act, which critically affected repatriates and their families.⁵³ The law had to do with the residency requirement of the parent in order to pass on one’s U.S. citizenship to the child. The previous chapter discussed this residency requirement in relation to Chinese Americans. Still, until 1940, the residency requirement was about third-generation citizenship derivation: the power of the foreign-born who acquired U.S. citizenship on *jus sanguinis*

⁵⁰ *Relating to Naturalization and Citizenship Status of Children Whose Mothers Are Citizens of the United States: Hearing before the House Committee on Immigration and Naturalization, 73rd Cong.* (1933) 41 (Representative William Traeger, R-CA)

⁵¹ *Relating to Naturalization and Citizenship Status of Children Whose Mothers Are Citizens of the United States: Hearing before the House Committee on Immigration and Naturalization, 73rd Cong.* (1933) 42 (Representative Martins Dies, D-TX)

⁵² Daniel Kanstroom, *Deportation Nation: Outsiders in American History* (Cambridge: Harvard University Press, 2007), 190-195.

⁵³ Sec. 201 (g), Nationality Act of 1940 (54 Stat. 1137)

principle to pass on one's citizenship. It did not concern U.S.-born citizens, since the fact of birth in the U.S. sufficed to fulfill the residency requirement, and unarguably so if they grew up in the U.S.⁵⁴ Marking a sharp change, the 1940 amendment imposed additional two-tiered condition on citizenship *jus sanguinis*. First, it mandated the citizen-parent to have a minimum of ten-year residence in the U.S. Moreover, five of the ten years had to be after one's sixteenth birthday. Taken together, although the minimum residence was ten years, in practice citizenship derivation was almost impossible unless one had lived in the U.S. until the age of twenty-one. Even if one had lived spent one's entire life in the U.S., the 1940 Act made citizenship derivation impossible if one left the U.S. before turning 21⁵⁵

To summarize, by 1940 three nationality laws governed citizenship of foreign-born children with a U.S. citizen parent. First, a child born before May 24, 1934 (the 1934 Nationality Act) could only derive U.S. citizenship from the U.S. citizen father. Second, those born between May 24, 1934 and January 13, 1941 could derive U.S. citizenship from either parent. But unlike previously, failure to take residence in the U.S. before a certain age resulted in automatic loss of

⁵⁴ For those born before the Nationality Act of 1940, a few days in the U.S. sufficed to fulfill the residency requirement of the parent. An example is a 1953 exclusion case regarding two children of a woman born in Mexico to a U.S. citizen father and a Mexican national mother. Her husband was a Mexican citizen, and prior to giving birth in 1935 and 1937, she had visited the U.S. twice (two days for the first time and a few hours for the second time). When the family sought for permanent admission to the U.S, the INS excluded the two children for lack of immigration visas. The INS maintained that the mother had not resided in the U.S. prior to giving birth and that the children did not acquire U.S. citizenship at birth. But the Board of Immigration Appeals ruled that the mother's two visits to the U.S. satisfied the pre-birth residency requirement and that her children were U.S. citizens. *Matter of V-*, 6 I & N Dec. 9 (BIA 1954).

⁵⁵ Sec. 201 (g), Nationality Act of 1940 (54 Stat. 1137); In addition to citizens who left the U.S. before reaching twenty-one, the act also made it impossible for citizen under twenty-one to transfer their U.S. citizenship to their foreign-born child, for whom it was impossible to have five-year residence the U.S. after reaching sixteen. Unlike the retention requirement abolished in 1978, this is part of U.S. nationality law today.; Since 1986, the citizen parent is required to have five-year physical presence prior to the child's birth, at least two years of which must be after reaching 14. 8 U.S.C. 1401 (g) amended by Act of November 14, 1986 (100 stat. 3655)

U.S. citizenship (originally 5-year residence between 13 and 18, raised in 1940 to 5 years between 16 and 21).⁵⁶ Thirdly, for those born after January 13, 1941, in addition to the aforementioned conditions, the citizen-parent was required to have more than ten-year residence in the U.S., including five years after reaching 16. (Table 3-3: Citizenship Derivation Chart on page 165.)

The impact of the 1940 Nationality Act has rarely been considered in relation to Mexican-American repatriation, because the peak of repatriation was over when the act was enforced. But the 1940 revision was critical for Mexican-Americans who left the U.S. before reaching majority often with their parents. For example, some 1,200 families repatriated by the INS San Antonio District in 1939 and 1940 included 798 U.S. citizens. Pre-1940 nationality law would have allowed them all to pass their citizenship to children born in Mexico later. However, under the 1940 nationality act 666 of the 798 U.S. citizens, who were younger than 21, did not meet the five-year residence after sixteen. The 1940 act made it practically impossible for U.S.-born citizens who left the U.S. before reaching majority to pass their citizenship to their children. And what should be noted is that although the 1940 nationality act was enforced in January 1941, what mattered was not when the repatriates left the U.S. but when the child was born, thereby affecting all U.S. citizens living outside the U.S. thereafter and any child born abroad after January 1941 to citizens not fulfilling the parental residency requirements.

3.3 Citizenship in Suspicion

After World War II, many former repatriates sought to return to the U.S., and they had to navigate their way through complex web of immigration and nationality laws. In 1947, the

⁵⁶ Sec. 1, Nationality Act of 1934 (48 stat. 797); The deadline to come to the U.S. was raised several times until the act of October 10, 1978 (92 stat. 1046) repealed this retention requirement.

National Catholic Welfare Conference's El Paso/Juarez office reported that it was "literally swamped with the problems of our citizens of Mexican ancestry, who had returned to Mexico either forcibly or by their own choice" during the Great Depression.⁵⁷ From the 1940s to the mid-1960s, assisting the former repatriates was one of the principal concerns of the agency. Former repatriates sought certificates for themselves as well as for their children, attesting to their citizenship. For families struggling to establish their member's citizenship status, in addition to legal counsel, the NCWC through its extensive connections to Catholic parishes provided assistance in obtaining necessary documents such as birth certificates and baptismal certificates.

Along with meeting various requirements of nationality law, the most fundamental challenge was how to prove U.S. citizenship either by birth or by derivation before U.S. officials such as consulates and the Immigration and Naturalization Service. Cleofas Calleros reported in 1946, "securing the necessary identifications, with proof of citizenship and repatriation of the parents back to Mexico was a difficult and time consuming operation."⁵⁸ An examination of 48 families, sampled from the organization's case record, show that these households included 350 individuals, which included 161 U.S. citizens and 189 Mexican citizens. In each case, it was necessary to establish who was born in the U.S., or whether one had acquired U.S. citizenship by derivation. (Table 3.4: Sampling of Case Files from National Catholic Welfare Conference El Paso /Juarez Office on page 183)

⁵⁷ Along with the New York office, the National Catholic Welfare Conference had maintained an immigration office in El Paso/Juarez since 1923. National Catholic Welfare Conference, Bureau of Immigration, *Annual Report 1946-1947*, 40, folder 4626, box 148; Records of the National Catholic Welfare Conference, Center for Migration Studies, Staten Island, New York (hereafter NCWC Records, CMS).

⁵⁸ National Catholic Welfare Conference, Bureau of Immigration, *Annual Report 1946-1947*, 40, folder 4626, box 148, NCWC Records, CMS.

To prove birth in the U.S. was a difficult task, especially for those born in the Southwest. As Adena Miller Rich of the Immigrant's Protective League of Chicago observed in 1940, even more than naturalized citizens it was "the American-born man or woman ... who may have the greatest difficulty in proving his or her United States citizenship." For naturalized U.S. citizens, there was a crucial document to prove U.S. citizenship acquired through naturalization: certificate of naturalization. But U.S.-born citizens lacked such uniform document. "In fact, the American-born adult usually does not have such a certificate," because birth registration and birth certificates were a relatively recent system. It was not unusual for those born in the U.S. to be unable to secure any documentary evidence even if they had not left the country for one's entire life, and much more so if they lived abroad.⁵⁹

As the National Catholic Welfare Conference's El Paso / Juarez Office assisted their clients in establishing their citizenship or their family's immigration status, it was not uncommon to encounter cases where a birth record could not be located. Above all, birth registration was not completely carried out in the 1920s in the 1930s, and this was especially true in the Southwest. While states and localities had laws of some kind to record births and deaths, standardization of the practice did not begin until the early twentieth-century. It was in 1915 that the federal government began collecting birth data from states. A state that met the federal standard of registering at least 90 percent of each year's birth was called a "birth registration area." As of 1918, only 19 states and District of Columbia were included in the birth registration area, but none of the western states such as California, Arizona, New Mexico, Arizona, and Texas had met the standard. They were among the last of the states to fulfill the 90 percent

⁵⁹ Adena M. Rich, "Naturalization and Family Welfare: When Is a Client a Citizen?" *Social Service Review* 14, no. 1 (March 1, 1940): 10–35.

standard, with Texas being the last state in the country to meet it in 1933.⁶⁰ In 1940, it was estimated that 92.5 percent of the births in the U.S. were registered, but the rate in states of Arizona, New Mexico, and Texas was lower.⁶¹

Especially in such cases, baptismal record became one of the most critical documents that established a person's citizenship and immigration status. In addition to families, the organization also received request from government agencies to secure a record. Based on baptismal records, the National Catholic Welfare Conference assisted their clients to apply for a delayed birth certificate, a birth certificate obtained sometime after birth. The process of filing a delayed birth certificate could take months if not more than a year. The office sometimes urged parishes to locate baptismal records as soon as possible, emphasizing the importance of the documents for their clients.

Citizenship in Suspicion

Although claims to citizenship were not the most common method of unauthorized immigration at the U.S.-Mexico border, a rising concern since the late 1940s about unauthorized immigration added to the suspicion of the INS and consulates cast on citizenship claims. Precisely because citizenship claims involved citizenship and immigration status of not only one individual but their families and descendants, government officials doubted citizenship claims.

⁶⁰ "The Progress of Birth and Death Registration in the United States," *Science* 47, no. 1224 (1918): 581–582; Halbert L. Dunn, "Vital Statistics Collected by the Government," *Annals of the American Academy of Political and Social Science* 188 (November 1936): 340–350.

⁶¹ Sam Shapiro and Joseph Schachter. "Birth Registration Completeness United States, 1950." *Public Health Reports* 67, no. 6 (June 1, 1952): 513–524;

The INS estimated that when one person established birth in the U.S. an average of four dependents would derive U.S. citizenship. ⁶²

The INS deeply suspected citizenship claims involving delayed birth certificates. But application for a delayed birth certificate was by no means uncommon. In Texas, between 1940 and 1960, some 190,000 delayed birth certificates were issued to citizens of Mexican descent. But the immigration officials maintained that delayed birth certificates were “doubtfully reliable” proof of one’s birth in the U.S. ⁶³ For instance, between April 1953 and May 1954, in a Texas county, the INS decided to investigate one hundred and seventy persons of Mexican descent who obtained a delayed birth certificate in order to determine whether they were born in the U.S., although only seven persons were found to have falsely acquired the document. Moreover, the court ruled that delayed birth certificates are not sufficient to establish birth in the U.S. ⁶⁴

The Operation Wetback launched in July 1954 by the INS Commissioner Joseph M. Swing, a former army general, further added to the agency’s suspicion on citizenship claims. Between 1943 and 1964, the U.S. recruited a total of 4.6 million workers from Mexico under the Bracero program, which began in 1942 in response to wartime labor needs. The wartime program, which was based on bilateral agreement with Mexico, ended on December 31, 1947, but demand for temporary crop workers survived the program, and was renewed in 1951. ⁶⁵ The Bracero program also stimulated unauthorized immigration. For one, it induced people who could not qualify for the program to enter the U.S. without inspection. Secondly, those admitted

⁶² Edgar Niebuhr, “False Claims to United States Citizenship by Mexican Aliens,” *I & N Reporter* 9 no. 1 (1960): 1.

⁶³ Ralph Farb, “S.I.O. Hearings in the Southwest,” *I & N Reporter* 12 no. 2 (1963): 2.

⁶⁴ Niebuhr, “False Claims to United States Citizenship by Mexican Aliens,” 1.

⁶⁵ The wartime Bracero Program consisted of agricultural program and construction of railroads. Unlike the agricultural program, the railroad program was terminated in 1945. For the latter, Barbara Driscoll de Alvarado, *The Tracks North: The Railroad Bracero Program of World War II* (Austin, Tex: CMAS Books, Center for Mexican American Studies, University of Texas at Austin, 1999).

as legal Bracero remained in the U.S. longer than original period of contract, which immediately made their stay illegal. Deportations and voluntary departures grew rapidly from 29,000 in 1944 to 565,000 in 1950. The INS highly publicized the quasi-military operation to apprehend unauthorized immigrants in order to scare off workers. In fiscal years 1954 and 1955, the INS formally deported 34,500 Mexicans. Over one million were recorded to have departed voluntarily after apprehension, and an unknown number of persons left the U.S. for fear of apprehension.⁶⁶ The INS boasted the operation as an enormous success. At the same time, however, the INS believed that precisely because “undocumented” entry or stay became difficult, more immigrants were induced to obtain fraudulent documents in order to enter and reside in the U.S. more safely.⁶⁷

The simple act of applying for a birth certificate could trigger an investigation by the INS. For example, in Cameron County, Texas, the INS and the county judge made an arrangement that the INS would interview all applicants for a delayed birth certificate. As the INS believed that one of the most effective ways to investigate citizenship question was to call in the claimant’s family, citizenship investigation often involved interviewing the whole family. Citizenship claims and the approach of the immigration bureau displayed a long lasting legacy of racial exclusion and expulsion. What the INS found particularly useful was the technique that the agency implemented through the “Chinese-Confession Program” launched in 1956. Following the Chinese Revolution in 1949, a large number of persons in Hong Kong applied for U.S. passports to flee from the communist takeover, claiming U.S. citizenship as foreign-born

⁶⁶ *INS Annual Report 1954*, 32; *INS Annual Report 1955*, 14- 15; For Operation Wetback, see Juan Ramon García, *Operation Wetback: The Mass Deportation of Mexican Undocumented Workers in 1954* (Westport, CT: Greenwood Publishing Group, 1980).

⁶⁷ Kelly Lytle Hernandez, *Migra!: A History of the U.S. Border Patrol* (Berkeley: University of California Press, 2010), 203-204.

children of Chinese-Americans. As discussed in chapter 2, citizenship claims had been the central problem for immigration officials since the turn of the century. In order to discover whose claims were fraudulent and to stem off immigration of paper families once and for all, the INS turned to the Chinese-Americans living in the U.S. Urging them to disclose their “true” and “paper” family history, the Department of Justice offered legal permanent residence to those who “confessed.” Unlike the Chinese-Confession Program, for Mexican-Americans the INS did not launch a large scale program directed at the entire community in a certain locality, but employed the method of questioning families that they found to be useful.⁶⁸

A Board of Immigration Appeals case from 1956 is illustrative of the difficulties that the repatriates experienced in establishing their citizenship status. The case also shows how the hurdle was much higher for those claiming U.S. citizenship by derivation than for those claiming citizenship by birth in the U.S., or for the generation born in Mexico and those born in the U.S. In September 1956, the BIA ruled that twenty-year old Alberto Martínez [pseudonym] should be deported to Mexico for having entered the U.S. without inspection and an immigration visa. Born in Huanuzco, Zacatecas in 1935, Alberto Martínez first came to the U.S. with his parents in 1946 at the age of 11. Six years later, in 1952, he was deported to Mexico. He reentered the U.S. the following day near and lived in the U.S. for another four years until he was apprehended again. The question raised in 1956 was whether he was a Mexican national or whether he was in fact a U.S. citizen. There was no question as to his birth in Mexico, but the issue was the birthplace of his parent. Although his father was a Mexican national, there was a possibility that

⁶⁸ Niebuhr, “False Claims to United States Citizenship by Mexican Aliens,” 1-3; For Chinese Confession Program, see Ngai, *Impossible Subjects*, chapter 6.

his mother was a U.S.-born citizen. If this was the case, Alberto Martínez was also a U.S. citizen at birth not subject to deportation.⁶⁹

The citizenship status of Laura Martínez [pseudonym], the mother of Alberto Martínez, had come into question two years earlier in her own deportation proceeding. She was one of the Great Depression repatriates that went to Mexico with her parents in 1931. Her parents came to the U.S. around 1919 or 1920 and lived in Midwestern states such as Colorado, Montana, Kansas, and Minnesota. By the 1950s, her parents were already deceased, and Laura Martínez was the eldest of the six surviving siblings. The issue in the 1950s was whether Laura Martínez was brought to the U.S. as a baby from Mexico or was born in the U.S. Her younger siblings were all proved to be U.S.-born: one in Montana, and the other four in Minnesota. With the parents deceased, her siblings could offer little information on Laura Martínez's birthplace, since they were all born after Laura, and her relatives offered contradictory testimonies. As for documentary evidence, the only available documents in the U.S. were her school records and Census records which indicated that she was a U.S.-born citizen. The only document in Mexico was her marriage certificate, which did not indicate her place of birth. Neither the family nor the U.S. government could locate her birth record or baptismal record either in the U.S. or in Mexico.⁷⁰

Although both Laura Martínez and Alberto Martínez's citizenship and immigration status depended on whether Laura Martínez was born in the U.S., conflicting evidences and testimonies divided the fate of the two. The INS could not prove that Laura Martínez was *not* a citizen. At the same time, however, nor could the family positively prove that Laura Martínez was born in the U.S. With both sides unable to provide affirmative evidence to prove their case, the

⁶⁹ *Matter of A-M-*, 7 I&N Dec. 332 (BIA 1956).

⁷⁰ *Matter of A-M-*, 7 I&N Dec. 332 (BIA 1956).

Department of Justice concluded that Laura was “not an alien.”⁷¹ But the decision that she was “not an alien” had different consequences for Laura Martínez and Alberto Martínez. The Board of Immigration Appeals ruled that the evidence that the family provided was sufficient in order for Laura Martínez to continue to reside in the U.S. but not for Alberto Martínez.

The Board of Immigration Appeals decided that in the two cases the burden of proof lay with different parties. As for Laura Martínez, who claimed to birth on U.S. soil, the BIA maintained that the burden of proof was on the U.S. government to prove that she was an alien and that she did not hold U.S. citizenship. And the evidence that the U.S. government provided was not strong enough to overturn the evidence provided by the family. However, the case was different with regard to Alberto Martínez. The BIA maintained that in order to establish derivative U.S. citizenship of foreign-born citizens, the burden of the proof was on the claimant to establish one’s parent’s birth in the U.S. The BIA held that the U.S. government did not have to prove that Laura Martínez was an alien in order to deport Alberto Martínez. Unable to establish her mother’s birth in the U.S., Alberto Martínez’s claim that he was a Mexican-born U.S. citizen was denied and he was deported as a Mexican national.⁷²

3.4 Reclaiming Citizenship

Securing proof of birth in the U.S. could be a difficult task in itself. It was even more complicated when the family included children born in Mexico after the 1940 Nationality Act was enforced, because in order to determine the citizen of the child it did not suffice to prove that the parent was a U.S. citizen but also to establish how long they had lived in the U.S. and at what age the parents left the U.S. For U.S. citizens who bore children in Mexico, the Nationality Act

⁷¹ *Matter of A-M-*, 7 I&N Dec. 332 (BIA 1956).

⁷² *Matter of A-M-*, 7 I&N Dec. 332 (BIA 1956).

of 1940 was a hard boundary of U.S. citizenship. Unlike the pre-1940 Act generation, the post-1940 Act generation could acquire U.S. citizenship only if the parent had lived in the U.S. for a certain number of years at a specific age. For Mexican-Americans who were taken to Mexico as minors, even if they fulfilled the ten-year minimum residency, the other requirement of having five-year residence after sixteen was a critical line that often divided the citizenship status of their families. Depending on when the child were born and at which age the parent had left the U.S., citizenship were divided among siblings within the same family, or among children of repatriates who went to Mexico in the same year, or among children born in Mexico in the same year.

For example, repatriates who left the U.S. as teens found that their children may not necessarily have the same citizenship status. Among such cases were the García family and the Hernandez family [pseudonym], which sought for the assistance of the NCWS in the late 1940s. In the García family, the Colorado-born mother left the U.S. with her parents at the age of 15. In the Hernandez family, the Texan-born father left the U.S. at the age of 12. They both left the U.S. in 1931, at the peak of repatriation. And after marrying Mexican nationals, both sought to return to the U.S. with their spouse and Mexican-born children.⁷³

Although the parents left the U.S. in 1931 as teens, the citizenship status of their Mexican-born children was critically different, because the children were born under different nationality laws. The three Mexican-born children of the García family were all U.S. citizens. They were all born in the 1930s, when the citizen parent was still not required U.S. residence at a specific age in order to pass on one's U.S. citizenship. By contrast, none of the Hernandez

⁷³ Case file, NCWC El Paso/Juarez Office, 1950, box 13, Calleros Papers; Case file, NCWC El Paso/Juarez Office, 1949, box 26, NCWC Case Records, UTEP; Individual names and folder level are withheld for privacy, and all the names are pseudonym

children were U.S. citizens, because they were all born after the 1940 Nationality Act was enforced. Having been taken out of the U.S. at 12, the father did not fulfill the requirement to pass on his U.S. citizenship, five-year residence after his sixteenth birthday.²²

Whereas the dividing line between the García family and the Hernandez family lay in the year the children were born in Mexico, children born in the same year also held different citizenship status depending on how long their parents had lived in the U.S. Among such cases were the González family and López family, who sought for the NCWC's assistance in 1948. In both families, the mother was a U.S.-citizen, while the father was a Mexican national. Also in both households, the elder siblings were born in Mexico the 1930s and the youngest child was born in 1943.

Yet, whereas all the González children held U.S. citizenship, the López children did not. In the López family, the elder siblings born in the 1930s held U.S. citizenship, but the youngest child did not acquire U.S. citizenship at birth. The difference between the two families had to do with the age that the U.S. citizen mother had left the U.S. In the González family, the mother born in Arizona in 1908 had already reached 21 when she went to Mexico during the Depression. In the López family, however, the mother had left the U.S. as a teenager, and the 1940 Nationality Act did not allow her to transfer her U.S. citizenship to her child born in 1943.²³ Thus, a few years' difference of age either of the parent and the child divided citizenship status of families. And as in the López family, citizenship status was often divided within the same family.

As former repatriates and their families sought to reestablish their residence and their citizenship or immigration status, the years after 1950 were of particular importance for Mexican-born children of U.S. citizens. This was because of the citizenship retention deadline.

The first-post 1934 Nationality Act generation reached their sixteenth birthday in 1950, compelling those born after May 24, 1934 to apply to retain their U.S. citizenship before the deadline. As a result of the looming deadline, in 1949, for instance, the NCWC's El Paso / Juarez office secured more than three thousand birth certificates and baptismal certificates of former repatriates so that they and their families could obtain U.S. passports to come to the U.S.⁷⁴

The year 1950 was important for foreign-born U.S. citizens who had to meet the deadline to retain their U.S. citizenship. The most visible citizenship rush occurred in Hong Kong, where exile from the Chinese Revolution in 1949 coincided with the arrival of the first retention deadline in 1950, and 111,700 U.S. citizens of Chinese descent applied for U.S. passports to come to the U.S., creating a long backlog.⁷⁵ Questions such as whether persons who had applied for a U.S. passport before reaching sixteen but passed the birthday by the time he landed on U.S. soil was raised in several board of immigration appeals ruling.⁷⁶

Not all those interested in repatriation could come to the U.S. before their sixteenth birthday, and after May 1950 those who could not meet the deadline began to lose their U.S. citizenship. The mid-1950s also witnessed efforts to recover their U.S. citizenship. A revision of both immigration and nationality laws, the Immigration and Nationality Act of 1952, enacted two years after the first generation of post-1934 foreign-born children began to lose their U.S. citizenship, raised the retention deadline from sixteenth to twenty-third birthday¹⁷ The issue after

⁷⁴ National Catholic Welfare Conference, Bureau of Immigration, *Annual Report 1948-1949*, 42, folder 4628, box 148; *Annual Report 1949-1950*, 37, folder 4629, box 148, NCWC Records, CMS; For those born after January 13, 1941, the retention deadline did not become a pressing issue until the mid-1960s. Since the maximum age to come to the U.S. was raised to 23 by the Immigration and Nationality Act of 1952, the first retention deadline for the post-1940 Act generation did not arrive until 1964.

⁷⁵ For Cold War Chinese immigration, see Ngai, *Impossible Subjects*, chapter 6.

⁷⁶ *Matter of L-B-D-*, 4 I & N Dec. 639 (BIA 1952)

1952 was whether the new deadline applied retroactively to those who had already passed the old deadline. This question did not arise when the 1940 Nationality Act raised the deadline of the 1934 Act, because nobody had passed their thirteenth birthday. Although foreign-born children of U.S. citizens appealed that they should be recognized as U.S. citizens as long as they came to the U.S. before their twenty-third birthday, the U.S. government including consulates, the INS, and the Board of Immigration Appeals maintained that the new deadline did not apply retroactively to those who did not meet the previous deadline and that it only applied to those who were below 16 years of age when the 1952 Act took effect.⁷⁷

In 1957 that the Department of Justice changed its interpretation of the new nationality law as a result of *Lee You Fee v. Dulles*, mentioned in the previous chapter. Lee You Fee was born in China in July 1935, and had been raised in Hong Kong since 1936. His father Lee Q. Pon was a Chinese-born U.S. citizen, who derived his citizenship from his U.S.-born father. Lee Q. Pon moved to the U.S. in 1926, and during his visit to China a decade later married Lee You Fee's mother. In 1936, Lee Q. Pon returned to the U.S. and took residence in Wisconsin, while Lee You Fee and the mother remained in China. Thus, Lee You Fee was born as a U.S. citizen. But when he reached sixteen in 1951, he was still in Hong Kong and lost his U.S. citizenship under the Nationality Act of 1940. The family brought the case to the federal court, arguing that Lee You Fee should be able to recover one's citizenship as long as he arrived in the U.S. before the new deadline, but lost the case in both in the district court and the court of appeals. However, after the Court of Appeals ruling, the Department of Justice granted *err* and the Supreme Court

⁷⁷ In an early 1953 case regarding a man born in Cayman Islands in 1935, the Board of Immigration Appeals ruled that foreign-born citizens who lost their U.S. citizenship by failing to come to the U.S. before reaching 16 could not recover one's citizenship under the Immigration and Nationality Act of 1952. *Matter of B-*, 5 I & N Dec. 291 (BIA 1953).

decided that Lee You Fee could retain his U.S. citizenship as long as he came to the U.S. before his twenty-third birthday.⁷⁸

The 1957 ruling provided an opportunity for those in a similar situation to recover their citizenship. Such was the case for Jose Martínez [pseudonym], who was born in Mexico in April 1935 to a father born in the U.S. in 1915 and a Mexican mother. When he first moved to the U.S. in early 1952, he was admitted to the U.S. as a citizen and not as a Mexican national. In 1956, however, the INS discovered that Jose Martínez was already seventeen when he first came to the U.S. The INS ordered departure from the U.S. on the grounds that he failed to retain his U.S. citizenship and thus required an immigrant visa. Jose Martínez once again returned to the U.S. but this time not as a U.S. citizen but as an immigrant. It was a year after he started living in the U.S. as a Mexican national that *Lee You Fee v. Dulles* was decided. Having learned of the decision, he appealed to the Department of Justice that he should not have lost his U.S. citizenship. The BIA acknowledged his claim, and since Jose Martínez had already lived in the U.S. for more than five years, he was finally able to obtain a certificate of U.S. citizenship. Thus within the matter of six years, Jose Martínez lived in the U.S. first as a U.S. citizen, then as a Mexican national, before he was finally able to claim his U.S. citizenship in 1958.⁷⁹

After reinterpretation of the Immigration and Nationality Act of 1952, the NCWC's El Paso / Juarez Office also saw renewed attempts by those who were not able to meet the old deadline to retain one's U.S. citizenship before the new deadline. For some, the *Lee You Fee v. Dulles* came too late. By the time of the ruling, some of the post-1934 Act generation had

⁷⁸ *Lee You Fee v. Dulles*, 236 F. (2d) 885, 355 U.S. 61 (1957); The Department of Justice acknowledged that although the first 1934 Act generation had passed the deadline when the Immigration and Nationality Act went into effect, they had not when Congressional Committees first proposed to raise the maximum age, and that the original intent of the Congress was to raise the deadline before the 1934 Act reached their sixteenth birthday.

⁷⁹ *Matter of M* – 7 I&N Dec. 646 (BIA 1958)

already passed their twenty-third birthday. And those who were living outside the U.S., unlike in the case of Jose Martinez, even under the new extended deadline, they could no longer recover their citizenship.

In 1958, the National Catholic Welfare Conference was “still faced with problems of citizenship that involve hundreds of our clients and which dates back to the wholesale repatriation to Mexico during the 1930 depression period, when American citizen families of Mexican descent were removed mainly from the Southwest.”⁸⁰ As the NCWC reported in 1961 that the issue of citizenship of repatriate families seemed to “get more complicated as the 1929 - 1939 generation gets older,” passage of time since the Great Depression, enforcement of the U.S.-Mexico border control thereafter, added to the difficulties of the repatriate families encountered in establishing their citizenship. In the nativism of the 1930s and the racialized view of Mexican-Americans, Congress situated both Mexican-American repatriation and post-1934 U.S. nationality laws regarding foreign-born children as solutions to an “immigration problem” of “aliens.” For Mexican and Mexican-American repatriates and their families, legacies of racial policy haunted families for decades. The issue of U.S. citizenship not only involved the generation that experienced repatriation first-hand but their children as well, deciding how or whether the repatriates and families could return to the U.S.

⁸⁰ National Catholic Welfare Conference, Department of Immigration, *Annual Report 1957-1958*, 15, folder 4767, box 151, NCWC Records, CMS.

Tables and Figures for Chapter 3

3-1: Age and Nationality of Repatriate Families, INS San Antonio District, 1939-1940

Age	Mexican	Percentage	U.S. Citizen	Percentage
0-9	0	0.0	389	49.4
10-19	33	6.7	268	34.0
20-29	65	13.3	61	7.7
30-39	135	27.6	16	2.0
40-49	104	21.2	1	0.1
50-59	77	15.7	1	0.1
60+	52	10.6	0	0
Unknown	24	4.9	52	6.6
Total	490	100	788	100

Source: Author's compilation from file 55957-456; RG85, NARA.

3-2: Relations and Nationality of Repatriate Families, INS San Antonio District, 1939-1940

	Mexican			U.S. Citizen		
	Male	Female	TOTAL	Male	Female	TOTAL
Unaccompanied	33	3	36	0	0	0
Head of Household	199	8	207	7	0	7
Spouse	0	146	146	0	54	54
Sons and Daughters	31	23	54	370	307	677
Parents	0	11	11	0	0	0
Grandparents	2	1	3	0	0	0
Grandchildren	1	0	1	23	19	42
Siblings	1	3	4	4	1	0
Nephews and Nieces	0	1	1	4	3	7
Unknown	2	0	2	1	0	1
TOTAL	269	196	465	409	384	788

The INS recorded man as head of household unless the woman was widowed. Source: Author's compilation from file 55957-456; RG85, NARA.

3-3: Citizenship Derivation Chart

Date of birth	Residency requirement for the parent (acquisition requirement)	Residency requirement for the child (retention requirement)		
Before May 23, 1934	U.S. citizen father Residence in the U.S. of any length before the birth of the child	None		
May 23, 1934 to January 12, 1941	U.S. citizen father or mother Residence in the U.S. of any length before the birth of the child	5-year continuous residence in the U.S. from age 13 to 18 Move to the U.S. before 13	5-year between 13 and 21 Move to the U.S. before 16 (1940 Act)	Move to the U.S. before 23 (1952 Act)
January 13, 1941-	U.S. citizen father or mother 10-year residence before the birth of the child 5 years must be after reaching 16 years of age		5-year residence between 13 and 21 Move to the U.S. before 16	Move to the U.S. before 23 (1952 Act)

3-4: Sampling of Case File from National Catholic Welfare Conference, El Paso / Juarez Office

	Both parents Mexican citizen	One parent U.S. citizen	TOTAL
Number of Households	36	12	48
Number of Individuals in the household	278	72	350
Number of U.S. Citizens	124	37	161
Number of Mexican citizens	154	35	189

Source: Author's compilation from casework files of the National Catholic Welfare Conference El Paso / Juarez Case. The author went through every 5 boxes of 86 boxes.

Chapter 4. “Hardship” Cases and Mixed Status Families, 1929 - 1952

In 1934, a group of immigrant aid agencies and immigrant advocacy groups submitted a report to the Secretary of Labor Frances Perkins on immigration reform. Including prominent lawyers such as Max Kohler and immigrant aid organizations such as the American Jewish Congress, Hebrew Immigrant Aid Society, National Catholic Welfare Conference, the YWCA, and the Foreign Language Information Service, among others, the so-called Ellis Island Committee made recommendations on immigration legislation and administration of immigration policy. A significant part of the report to called attention to noncitizens in the U.S. without formal permanent resident status: permanent residents who became deportable, nonimmigrants, and unauthorized immigrants.¹

This chapter first discusses the reform movement by immigrant advocacy groups and Frances Perkins, which sought to correct the problems of immigration law that Doak’s deportation campaign underscored. Yet, the interests of immigrant advocacy groups and the INS were not identical, and the reform movement that was initially about recognizing various social ties that immigrants of different legal status built in the U.S. with the society developed into an effort for a stronger deportation policy that gave certain consideration to family-ties.

Despite its limitations, for a decade, family-based suspension of deportation provided mixed status families an important path to permanent residency. But after World War II, suspension of deportation became almost unattainable as staunch restrictionists took control of the immigration committees. Moreover, concurrent with active recruitment of workers since World War II, Congress would specifically make the procedure inapplicable to Mexican families, recognizing no claims of families.

¹ Ellis Island Committee, *Report of the Ellis Island Committee* (New York: 1934), 101-102.

4.1 Non-immigrants and Illegal Immigrants.

Deportation campaign in cities with large immigrant population from Europe met strong criticism. The raid of the Finnish Worker's Education Association in New York on Feb 15, 1931, one of the earliest raids by Secretary of Labor William Doak, was quickly condemned by Senator Robert E. Wagner (D-New York) as employing "Russian Czarist tactics."² In mid-1931, National Commission on Law Observance and Enforcement (Wickersham Commission) published a report that emphasized the "grave abuses and unnecessary hardships" that resulted from the deportation law itself, organizational structure of law enforcement agencies, and administration of the law.³ Although Doak denied that the agency engaged in any unconstitutional activities, he was often compelled to defend the action of the agency.⁴

The Hoover administration's immigration and deportation policy was a nightmare for immigrant advocacy groups such as the Joint Conference of Immigration Legislation. As discussed in chapter 1, the executive order in September 1930 reduced visa issuance by 90 percent. The visa policy not only concerned new immigrants but U.S. residents without formal permanent residency. The sharp divide between "immigrant" and all other status was characterized by how the 1924 Act allowed no other form of acquiring permanent residency than entry with an immigrant visa. No lawful "non-immigrant" could obtain permanent residency after starting to live in the U.S. Congress believed that granting permanent residency to people who initially entered the U.S. without an immigrant visa would undermine restriction system

² "Wagner Decries 'Czarist Tactics' in Alien Drive," *New York Herald Tribune*, February 22, 1931.

³ "Expert Declares Deportation of Aliens is Illegal," *New York Herald Tribune*, April 17, 1931; National Commission on Law Observance and Enforcement, *Report on the Enforcement of the Deportation Laws of the United States* (Washington D.C.: G.P.O, 1931), 177.

⁴ "Doak Denies Blame in Deportations," *New York Times*, August 9, 1931.

based on limiting the number of immigrant visas. This was actually not a matter of whether the number of visas was limited or not, or whether somebody would be pushed back on the waiting list. People who formed families in the U.S. were no exception. For example, a nonimmigrant married to a U.S. citizen qualified for non-quota immigrant status, and theoretically there was no wait for a visa. Granting permanent residency to such a person was not going to push back anybody on the quota waiting list. Still, physical departure from the U.S. was mandatory in order to obtain a visa at a consulate. For those without non-quota status, a nonimmigrant married to a permanent resident for example, there was no telling when the family could return to the U.S. For nonimmigrants wishing to become a permanent resident, the Great Depression added to the difficulty of financing a trip to a consulate, leaving the workplace and family until receiving a visa. Moreover, there was no guarantee of return once stepping out of the U.S., and consuls were likely to refuse a visa on “liable to become a public charge” grounds. Securing a visa did not guarantee readmission to the U.S., since factors such as illness during the voyage would be grounds for exclusion by the immigration bureau.

Deportation involving mixed status families caused family separation, with some family members sent abroad, while others remaining in the U.S. As historian Mae Ngai has shown, along with the creation of the Border Patrol in 1924, regime of deportation emerged to support immigration restriction. The Deportation Act of 1929 made deportation equal to permanent banishment from the U.S. by forbidding readmission of deportees. Congress relaxed this bar somewhat in 1932, but formal deportation still barred reentry for at least one year. The law made reentry to the U.S. a felony punishable by imprisonment for not more than two years or by

a fine of not more than \$1,000, or by both such fine and imprisonment.⁵ Voluntary departure instead of formal deportation did not make a large difference, since departure from the U.S. or loss of permanent resident status made former residents subject to visa refusal by the Department of State. For example, a father/husband who voluntarily left the U.S., while his wife and children remained in the U.S., to show enough savings to support the family without working for a year in order to secure a visa to return to the U.S.⁶

Taken together with the State Department's visa refusal policy, the Labor Department's deportation campaign highlighted the sharp line drawn between lawful permanent residents and all other noncitizens: those who had lost their permanent resident status for deportable offenses, lawful nonimmigrants, and those who entered the U.S. unlawfully. Along with their struggle against the Department of State, immigrant aid agencies and advocacy groups working with European immigrants insisted on the need to create a mechanism that would allow noncitizens without formal permanent resident status, either lawful or unlawful, to obtain permanent residency without having to leave the U.S.⁷

Frances Perkins and Ellis Island Committee

⁵ Jane Perry Clark, *Deportation of Aliens from the United States to Europe* (New York: Columbia University Press, 1931), 469; Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 60, 82; Deportation Act of March 4, 1929 (45 Stat. 1551).

⁶ Ellis Island Committee, *Report*, 101-102.

⁷ There was a difference of opinion on who should be vested with such power. The Wickersham Commission proposed an independent body appointed by the President. National Commission on Law Observance and Enforcement, *Report on the Enforcement of the Deportation Laws* (Washington D.C.: G.P.O, 1931), 178-179; Jane Perry Clark recommended that the Secretary of Labor should be vested with discretionary power. Jane Perry Clark, *Deportation of Aliens from the United States to Europe* (New York: Columbia University Press, 1931) 485.

The appointment of Frances Perkins as the Secretary of Labor in March 1933 brought the immigration bureau closer to immigrant advocacy groups. As Read Lewis of the Foreign Language Information Service described Perkins as a person who spoke “our language,” Perkins was more receptive to criticisms against the immigrant bureau than her predecessor. Shortly after assuming office, Perkins held meetings with immigrant aid organizations in New York to seek their opinion. Perkins requested immigrant aid agencies to prepare a formal report on the conditions at Ellis Island, to make recommendations on administration of the newly organized Immigration and Naturalization Service, and on general immigration policy. The selection of the committee members showed that the new labor secretary’s interest primarily lay in immigrants from Europe and the conditions on Ellis Island, not the land borders. Named the Ellis Island Committee, core members and cooperating organizations largely overlapped with the Joint Conference on Alien Legislation, which included organizations such as the American Jewish Congress, National Catholic Welfare Conference, YWCA, Hebrew Immigrants Aid Society, and the International Migration Service, which had been protesting against restriction of admission of immigrants and was planning to submit their own list of recommendations.⁸ Among the seven subcommittees was the Subcommittee on Treatment of Deportees, chaired by Columbia law professor Joseph Chamberlain and including Jane Perry Clark, known for her study *Deportation of Aliens from the United States to Europe* (1931), the most extensive study on deportation at the time.⁹ While the Ellis Island Committee prepared its report, Perkins devised several

⁸ The Bureau of Immigration and the Bureau of Naturalization merged into the Immigration and Naturalization Service in June 1933; Joint Conference on Alien Legislation, Minutes, March 31, 1933, folder 10, box 1, reel 136; Immigration and Refugee Services of America Records. ; “Bulletin to the Members of the Committee on Ellis Island,” 1933, folder 1, box 11, Max Kohler Papers, American Jewish Historical Society.

⁹ Jane Perry Clark, *Deportation of Aliens from the United States to Europe* (New York: Columbia University Press, 1931)

administrative measures for immigrant families. Her ultimate goal was to create a mechanism that would enable those without permanent residency, whether lawfully or unlawfully residing in the U.S., to become a permanent resident without having to leave the U.S. But this was only possible by Congressional amendment to the 1924 Act.

Perkins first looked at lawful nonimmigrants who had to leave the U.S. for an immigrant visa, and sought to enable their prompt return. First, Perkins changed the system of family visa petitioning. Previously, the Department of Labor had required nonimmigrants wishing to become permanent residents to first leave the U.S., and next for sponsoring family member to file a family visa petition with the department. Instead, Perkins allowed the sponsor to first file a petition, and permitted the beneficiary to remain in the U.S. until approval of the petition, thereby obviating the need to stay abroad both for petition approval and visa issuance. Second, in September 1933, Perkins made an arrangement with Canada to enable U.S. residents to visit U.S. consulates in Canada instead of those in Europe to apply for a visa. In order to convince Canadian authorities that the U.S. would not leave them stranded in Canada, the INS gave assurances of readmission even if the consuls denied a new visa. In 1935, this agreement was made into a more formal process called pre-examination, where the INS examined the applicant prior to their departure to Canada to guarantee readmission to the U.S.¹⁰

Next, Perkins looked at deportable immigrants, and proposed a system to cancel their deportation and to accord them formal permanent residency. Deportation debarred reentry for at least one year, and voluntary departure did not preclude the possibility of visa refusal, which in fact was very high during the Great Depression. Once residents stepped out of the U.S. soil, the Department of Labor did not have any control over the State Department's visa policy. And

¹⁰ U.S. Department of Labor, *Annual Report of the Secretary of Labor* (Washington D.C.: GPO, 1934), 50, 70; Ngai, *Impossible Subjects*, 84-85.

Perkins began to withhold executing deportation orders for certain immigrants until Congress passed a law to create some mechanism to grant permanent residency to deportable immigrants. By 1938, Perkins stayed 4,455 deportations. Popularly called “hardship cases,” they became the focus of deportation reform debate.¹¹

While Perkins devised several administrative measures, the Ellis Island Committee completed its report in 1934. The report placed strong emphasis on “the right of husband and wife, parents and children to be united.” With regard to admission, the committee recommended wider family-based exemption from quota restrictions, a less stringent application of “likely to become a public charge” clause for visa applications by families of citizens and permanent residents. But in light of the Great Depression, they saw more possibility of reform for persons already living in the U.S. than for new immigrants.¹² Pointing to nonimmigrants without permanent residency, the committee called for deportation reform. In mid-1935, the recommendations of the Ellis Island Committee were incorporated into an INS-endorsed bill co-sponsored by Representative John Kerr (D-North Carolina) and Senator Marcus Coolidge (D-Massachusetts).

4.2 Illegal Entry, Self-sustaining Family, and Criminality

¹¹ Adena Miller Rich, “Case Work in the Repatriation of Immigrants,” *Social Service Review* 10, no. 4 (1936): 589-590.; Stay of deportation was grounded in Section 19 of the Immigration Act of 1917; *Annual Report of the Secretary of Labor 1934*, 53; “Memorandum for Guidance of Immigration and Naturalization Service in Disposition of Dies Bill Stayed Cases,” August 23, 1938; Gerald D. Reilley, Solicitor of Labor, memorandum to Frances Perkins, September 1, 1938; folder “Dies Bill,” box 2, Subject Files Relating to Immigration and Naturalization, 1933-1943; General Records of the Office of the Solicitor; RG 174.

¹² Ellis Island Committee, *Report*, 5, 132-133; Joint Conference on Immigration Legislation, Minutes, April 11, 1934; folder 2; box 223; reel 136; Immigration and Refugee Services of America Records.

Advocates for the hardship cases attempted to separate suspension of deportation from “new immigration” or “immigration policy.” For William Doak, further reduction of quotas, higher bar to naturalization, deportation, and repatriation were all part of immigration policy to create jobs for “real American citizens.” In challenging the visa refusal by the Department of State or the attempt to formally reduce quotas, the reformers reasoned that “family immigration” did not constitute new immigration but was about the rights and wellbeing of current residents in the U.S. Likewise, reformers sought to separate suspension of deportation from immigration policy, reasoning immigration policy was about admission of people from outside the U.S. Suspension of deportation did not involve any physical admission to the U.S. but was a matter of recognizing people already in the U.S. as formal members by changing their legal status.

In advocating for the hardship cases, the Ellis Island Committee and the INS both pointed to European immigrants with citizen or permanent resident families whose grounds for deportation was unlawful entry (often resulting from a technicality) as the most qualifying for relief. What should be noted is that Asian immigrants were entirely out of scope of the reform campaign. Reformers did not intend to question the racial boundary to permanent residency by wholesale exclusion of “aliens ineligible to citizenship” by the 1924 Act, and all deportation reform bills in the 1930s made a reservation that the proposal to grant permanent residency to a nonimmigrant or deportable immigrants did not apply to those racially ineligible to citizenship.

Reformers stressed the need to think beyond legal status of individual immigrants. The committee especially called attention to “individual’s family responsibilities and the social and community hardship” resulting from deportation, and advocated for cases involving “extraordinary hardship, such as where deportation would involve disruption of a family, the

other members of which are entitled to remain in this country.”¹³ Likewise, the INS Commissioner Daniel W. MacCormick (1933-1937) appealed for family hardship on various occasions. On a 1935 CBS radio program, MacCormick described how “upon the success of their efforts depends the fate 2,600 aliens of good character whose deportation has been stayed in the past two years and—ininitely more important, the fate of their families in this country.”¹⁴ At hearings, he testified, “One thousand and eighty cases a year means 3 cases a day, and it means the separation of three families in every 24 hours, the mother, the father, and the children sometimes going to different countries.”¹⁵

Citing various researches, reformers sought to draw attention to familial connections between non-citizens and citizens. In 1936, the National Council on Naturalization and Citizenship conducted a survey on 4,866 non-citizens in fifty cities. Including their families, the study involved 21,245 individuals. The study showed that on average, for each non-citizen (including those without families), there were 1.41 U.S. citizen. Some 75 percent of the non-citizens were either married to a U.S. citizen or had a U.S.-born child with U.S. When limited to noncitizens with families, the 4,169 households included a total of 20,548 individuals, out of which 61 percent were U.S. citizens, and each household included an average of 2.9 U.S. citizens.¹⁶ The National Council on Naturalization and Citizenship wrote, “The non-citizens in the United States are by no means hermetically isolated from our citizenship population ... At

¹³ Ellis Island Committee, *Report*, 77.

¹⁴ Daniel W. MacCormack, “What is Our Alien Program Today,” Columbia Broadcasting System, Washington D.C.: WJSV, August 2, 1935, folder 112, box 8, United States Catholic Conference Records, Center for Migration Studies.

¹⁵ *Deportation of Criminals, Preservation of Family Units, Permit Noncriminal Aliens to Legalize their Status: Hearing before the Senate Immigration Committee 74th Cong. 21 (1936)* (Daniel W. MacCormack, INS Commissioner).

¹⁶ The study covered 5,000 families. National Council on Naturalization and Citizenship, *The Families of Aliens: A Study of Their Citizenship Status*, 12-13.

the most vital social nexus, that is, in the family unit itself our alien population is related to our citizen population.” Inseparable from deportation was the issue of “how many citizen spouses and children would they leave behind.” Or, if noncitizens were “deprived of their jobs, how many citizen dependents would be thrown upon relief?”¹⁷

Federal and local governments conducted similar studies on citizenship status of immigrant families. Between 1935 and 1936, the INS studied the citizenship status of families of 10,000 immigrants who filed a declaration of intention to naturalize (first paper). The survey showed that 63.5 percent of the declarants were married, and that 13.7 percent were married to a U.S. citizen. It also indicated that 45.2 percent of all declarants had minor children in their household and that each declarant with a child had an average of 2.3 U.S.-born children.¹⁸ In New York, the Emergency Relief Bureau studied the citizenship status of 194,976 households on relief. The study showed that 36,159 were households headed by non-U.S. citizens, and that such households included 51,501 U.S.-born children, or an average of 1.4 U.S.-born person per household.¹⁹ Pointing to various studies, the advocates for the hardship cases urged to consider the result that deportation of one immigrant might have on the citizen or permanent resident family members who were entitled to live in the U.S.

Family-oriented deportation reform shared several characteristics with arguments made for expansion of family-based admission. One was its emphasis on the interest of citizens and

¹⁷ National Council on Naturalization and Citizenship, *The Families of Aliens: A Study of Their Citizenship Status* (New York, 1937), 12-13, folder 141, box 11, United States Catholic Conference Records, Center for Migration Studies.

¹⁸ The INS randomly selected 10,000 from the total of 92,123 applicants that filed a first paper between July 1935 and March 1936. On average, each household had an average of 1.45 U.S.-born minor children. Cited in National Council on Naturalization and Citizenship, *The Families of Aliens: A Study of Their Citizenship Status*, 12-13.

¹⁹ Cited in National Council on Naturalization and Citizenship, *The Families of Aliens: A Study of Their Citizenship Status*, 13-15.

permanent residents rather than on the prospective immigrant or the deportee. Advocates for admission of families emphasized the rights of U.S. citizens and permanent residents to bring their family members to the U.S. than the right of foreigners to immigrate to the U.S. Similar argument was made for suspension of deportation, with primary emphasis on the potential hardship to citizen and permanent resident families who would be left in the U.S. than on the hardship of deportees. An example was the 1935 report that the INS prepared to explain to Congress about deportation cases that Perkins had stayed. The report repeated that the purpose was “not to be lenient toward the alien subject to deportation but to protect the family unit.” The concern of the INS was “not the hardship it works on him [alien] but the hardship it works on American citizens.” The report explained how deportation of 2,862 immigrants would leave 6,389 families in the U.S., including 4,665 citizens and 3,994 dependents. Separation of families especially the plight of those in the U.S. was the main concern.²⁰

In staying deportation, the INS prioritized not simply immigrants with a citizen or permanent resident family but those who did not rely on public relief and who provided financial support for the family.²¹ The INS also invoked an economic argument emphasizing how suspension of deportation was not only “for the relief of the American citizen and legally resident members of the families of aliens of good character who are now subject to deportation”

²⁰ *Report to Accompany List of Stayed Deportation Cases Called for in House Resolution 350*. H.doc. No. 74-392, at 2, 6 (1935); The report was prepared according to a House resolution that requested Perkins to continue to stay deportation until Congress discussed the Kerr-Coolidge bill.

²¹ *Report to Accompany List of Stayed Deportation Cases Called for in House Resolution 350* H.doc. No. 74-392, at 2, 6 (1935); *Annual Report of the Secretary of Labor 1936*, 99; The INS maintained that the most qualifying were persons with no police record and no record of public relief (66 percent), those with a record of brief public relief but were no longer on relief (17 percent), and those who were on public relief but likely to be removed from relief once if they recovered from illness (13 percent). L. P. Winings, Acting Assistant, memorandum for Daniel W. MacCormack, November 27, 1935, file 55884/474, Accession 85-58A734, RG 85.

but also for the relief of the “American taxpayer.”²² In addition to the cost of deportation that the federal government had to cover, the INS argued that deportation of breadwinners actually imposed “on our States and communities of the burden of caring for a new group of dependents.” As opposed to William Doak’s reasoning that deportation would create jobs for “Americans” and also reduce the relief cost, Perkins reversed this argument and criticized the previous administration’s deportation campaign for separating families and adding to government relief.²³

Notably, the INS emphasized that in “overwhelming majority” of the hardship cases, the INS had decided to stay deportation precisely because the grounds for deportation were some form of irregular entry or visa overstay. MacCormack argued against summary deportation because “illegal entry in itself is not a criterion of character,” and attributed the most common motive for unauthorized immigration to “a desire to join family or relatives, to find a refuge from oppression, to better oneself economically.” “The mother who braves the hardship and danger frequently involved in an illegal entry for the purpose of rejoining her children cannot be held by that sole act to be a person of bad character.”²⁴ This argument actually involved a profound question, since unauthorized immigration, which the INS described as the most qualifying for relief, was the most common grounds for deportation since 1924. As historian Mae Ngai has shown, along with the creation of the Border Patrol in 1924, the 1924 Act situated entry without any inspection as the foremost challenge to the regime of immigration restriction, an offense deportable any time after entry without any statute of limitations.²⁵ If unauthorized entry was both the most common grounds for deportation and the reason for not deporting the immigrant

²² *Deportation of Criminals Pt. 4, Hearing Before the Senate Committee on Immigration*, 74th Cong., 201-203 (1936) (Daniel W. MacCormack, INS Commissioner).

²³ *Annual Report of the Secretary of Labor 1935*, 53.

²⁴ *Report to Accompany List of Stayed Deportation Cases Called for in House Resolution 350*. H.doc. No. 74-392, at 7 (1935); Also quoted in Ngai, *Impossible Subjects*, 84.

²⁵ Ngai, *Impossible Subjects*, 60, 82.

family, how could the two be reconciled? The Ellis Island Committee and the INS had very different answers to this question, which also pointed to overlapping but ultimately distinct interests of the two.

As much as Perkins was eager for reform, the interest of the INS as a law enforcement agency was not ultimately identical with that of immigrant advocacy groups. The Ellis Island Committee portrayed immigrants facing deportation as established members of the society. The fact of unauthorized entry mattered less than long residence in the U.S., they argued, and that it made more sense to “accept a person already in the United States, already on the road to assimilation and of proved character, in place of a new and untried immigrant.” In fact, along with their advocacy for creating a mechanism for lawful nonimmigrants to obtain permanent residency, the immigrant advocacy groups emphasized a greater importance in the ties that immigrants built through their lives in the U.S. than their formal immigration status. Also, along with family connections, the Ellis Island Committee saw length of residence itself as an important tie developed between immigrant and the U.S.²⁶

Most fundamentally, the Ellis Island Committee the committee saw deportation “years after entry” as unjust, and criticized the 1924 Act for removing statutes of limitations for deportation on various grounds. The committee insisted on restoring general statutory limitation that the 1924 Act removed for various grounds for deportation. Read Lewis of the Foreign Language Information Service argued that a statute of limitations was “an established principle of legal procedure in dealing with offenses” and that immigration law offense should be no exception.²⁷ The committee especially pointed to deportation for unauthorized entry: “Illegal

²⁶ Ellis Island Committee, *Report*, 88, 98, 135

²⁷ *Deportation of Aliens Pt. 2, Hearing before the Senate Committee on Immigration*, 74th Cong., 133-162 (1936) (Read Lewis, Foreign Language Information)

entry is not an offense which can be classified as *malum in se*.” Pointing out that absence of statute of limitation was “too harsh a penalty of an act which is not wrong in itself,” the reformers proposed to restore statutory limitation for irregular immigration as before 1924. Pre-1924 immigration laws embodied the idea that initial status or the method of entry mattered less than the life spent in the U.S., and included statutory limitation to deportation for entry without inspection: three-year residence before 1917, and five-year residence before 1924. And as a way to reconcile statutory limitation with numerical immigration restriction, the committee suggested permanent residency granted through suspension of deportation against the quotas, since 90 percent of the quotas were being wasted due to visa refusal.²⁸ While the Ellis Island Committee emphasized family connections as the most important factor in weighing against deportable offenses, it was not the only factor.

On the other hand, the INS only supported discretionary suspension and not general statutory limitation. The former did not limit the power of the agency, since the decision was discretionary after all. More broadly, along with its opposition to statutory limitation, the INS was reluctant to attach importance to the length of residence. In fact, the majority of the

²⁸ Ellis Island Committee, *Report*, 88, 98, 135; Due to statute of limitations, in 1924, there were at least 250,000 undocumented immigrants, who were no longer deportable. The reason for their lack of certificate of arrival varied from having avoided inspection to the immigration authorities unable to locate the record for some reason such as misspelled name, forgetting the name of the ship and date of arrival. Still, a statute of limitations for deportation for undocumented entry endowed them with the right to reside in the U.S. indefinitely. And at the same time, non-recognition as formal “immigrants” barred them from naturalization, or from stepping out of the U.S., which immediately made them subject to quota restriction as a new immigrant without any record of previous admission to the U.S. This kind of permanent residency ceased to exist for post-1924 migrants, when Congress made unauthorized entry an offense without any statute of limitations. The minimum figure of 250,000 was estimated from the number of people who obtained permanent residency between 1929 and 1952 through Registry Act of March 2, 1929 (45 Stat. 1512) and the Registry Act of August 7, 1939 (45 Stat. 536); The former accorded permanent residency to pre-1921 undocumented immigrants, and the latter to pre-1924 undocumented immigrants. *INS Annual Report 1946*, 24; *INS Annual Report 1947*, 20; *INS Annual Report 1948*, 30; *INS Annual Report 1949*, 45; *INS Annual Report 1950*, 40; *INS Annual Report 1951*, 37; *INS Annual Report 1952*, 35.

deportation cases that the INS had stayed concerned long-term residents; 93 percent had more than five-year residence, and 59 percent had more than ten-year residence. However, the INS stressed that the criteria was not the length of residence in itself but ties built over the period with a citizen or permanent resident family, and moreover about the rights of family members entitled to reside in the U.S.²⁹ Whereas the Ellis Island Committee pointed to family ties as the most important factor to consider but not the only factor, the INS pointed to family ties almost exclusively. Furthermore, whereas the Ellis Island Committee sought to place the hardship cases in the context of questioning the sharp line drawn between formal permanent resident status and other noncitizens, the INS positioned the issue as a minor aspect within its general deportation policy. And with regard to how to weigh unauthorized entry against family ties, instead of fully elaborating on this point, MacCormack and the INS pursued a different line of argument that emphasized the existence of other immigrants who should be deported, compared with whom unauthorized entry was a light offense.

Families and “Criminal Aliens”

For the INS, the primary interest was in developing a stricter deportation policy and in removing “undesirable aliens” from the U.S., and the hardship cases was only a small part of that scheme.³⁰ The INS’s call for a stronger deportation power was part of Roosevelt administration’s “war against crime,” which significantly expanded the power of federal law enforcement agencies such as the Federal Bureau of Investigation. With the volume of immigration small,

²⁹ *Report to Accompany List of Stayed Deportation Cases Called for in House Resolution 350*. H.doc. No. 74-392, at 7-8 (1935); Frances Perkins to Joseph Goldberg, Esq. July 28, 1938 folder “Deportation 1938”; box 70, Frances Perkins General Subject Files, Office of the Secretary, RG 174.

³⁰ *Report to Accompany List of Stayed Deportation Cases Called for in House Resolution 350* H. doc. No. 74-392, at 1, 8-9 (1935)

inspection at ports of entry had become less important. Instead, as Acting INS Commissioner Edward J. Shaughnessy wrote in 1937, the primary work of the INS shifted from “immigration control” to “alien policing.”³¹ And the agency’s sympathy for the hardship cases partly derived from the belief that the INS could end unauthorized entry, if they had stronger authority to apprehend and deport immigrants. As MacCormack wrote to Perkins in late 1936, the INS intended to “clear up the situation of illegal entrant in this country at one stroke and make a fresh start from now on.” Thus, the agency saw the issue of unauthorized immigration as more of a transitory problem rather than as a problem inherent in immigration restriction.³²

The INS compared the hardship cases to those whom the agency called “criminal aliens.” The INS argued that stronger legal power would allow the agency to deport more “criminal aliens” and “persons who have entered or remained in the country illegally.” “As opposed to the inevitable large increase in the number of deportations made possible,” the INS argued, “the number of persons of good character permitted to remain in the country with a view to averting the separation of families is comparatively small.” Furthermore, “this number should rapidly decrease as the old cases are cleared up and the proposed new authorities ... become effective.”³³ The INS particularly pointed to crimes involving “moral turpitude,” specifically to crimes involving narcotic laws and concealed weapons law. Under the Immigration Act of 1917, deportation for a crime involving moral turpitude required a sentence to imprisonment for one year or more. The INS insisted that this allowed people with multiple convictions to remain in the U.S. as long as each sentence was less than a year, and demanded Congress to lower the

³¹ “Immigration Task Now One of Policing,” *New York Times*, May 3, 1937.

³² Daniel W. MacCormack, memorandum for Frances Perkins, December 18, 1936; folder “Deportation 1936-1937, box 71, Frances Perkins General Subject Files, Office of the Secretary, RG 174.

³³ *Deportation of Criminals, Preservation of Family Units, Permit Noncriminal Aliens to Legalize Their Status*. H.R. Rep. No. 74-1110, at 8 (1936).

hurdle for deportation.³⁴ The INS also pointed out that in criminal offenses the judge could make a recommendation to the Secretary of Labor to prevent deportation.³⁵ By comparison, the INS argued, deportation for immigration offenses was too harsh: "There is no statute of the United States which offers so many loopholes for the escape of the criminal, while at the same time imposing such barbarous treatment upon the persons of good character."³⁶

Immigrant advocacy groups primarily concerned about establishing a system to cancel deportation did not agree with the INS drawing comparison between immigrants of "good moral character" and "criminals." As the Immigrant's Protective League of Chicago pointed out, emphasis on the non-deportability of "criminal aliens" could only add to the prejudice that immigrants had higher crime rate, and in the worst scenario Congress could pass only a harsher deportation law without giving consideration to the hardship portion.³⁷

Framed within the overall goal of strengthening the agency's power, the INS did not support proposals that worked against that goal. One of the most significant criticisms of deportation proceedings was that the same officer served the function of a prosecutor, judge, and

³⁴ Under the Immigration Act of 1917, there were three classes of aliens that were deportable for crimes involving "moral turpitude." Deportable at any time after entry were (1) a person convicted of "a crime involving moral turpitude" before coming to the U.S. (2) a person convicted in the U.S. of a crime involving moral turpitude for more than once, and on each occasion sentenced to imprisonment for a year or more. Also deportable was a person convicted within five years after entry, for which he is sentenced to imprisonment for a year or more. Puttkammer, "Legislation Affecting the Deportation of Aliens," 235; For the development of the FBI and crime control, Kenneth O'Reilly, "A New Deal for the FBI: The Roosevelt Administration, Crime Control, and National Security," *Journal of American History* 69, no. 3 (1982): 638-658.

³⁵ Ellery C. Stowell, "The Deportation of Aliens," *American Journal of International Law* 29 no. 4 (1935): 673-674.

³⁶ *Deportation of Aliens: Hearing before the House Committee on Immigration and Naturalization*, 74th Cong., 4 (1935) (Daniel W. MacCormack, INS Commissioner)

³⁷ Ellis Island Committee, *Report*, 5-6; Adena Miller Rich, Immigrant's Protective League of Chicago, letter to Joint Conference on Immigration Legislation, reprinted in Minutes, November 8, 1934, folder 2, box 223, reel 136, Immigration and Refugee Services of America Records; Representative John J. O'Connor, letter to Frances Perkins, June 8, 1938; folder "Immigration Legislation, Dies Bill"; box 2; Subject Files Relating to Immigration and Naturalization, 1933-1943; General Records of the Office of the Solicitor; RG 174.

jury. Often, the immigrant was brought in without any preliminary legal proceedings or warrant of arrest for an examination by an immigration inspector. The same inspector applied for the warrant of arrest, examined the immigrant to apply for a deportation warrant, which was rarely overturned by higher authorities.³⁸ The Ellis Island Committee, for example, suggested that administrative officials “exercising quasi-judicial power” should not be influenced by the enforcement policies of their superiors and “that all hearings on exclusion and deportation cases be held before quasi-judicial officers ... who shall perform no other duties.”³⁹ But the INS called for a simpler process that would not only allow local officers instead of the central office in Washington DC to issue warrants of arrest, but to allow any INS employee to detain without a warrant any person suspected of being deportable. Such power would enable deportation of 20,000 criminals, the INS argued.⁴⁰

Overlapping but ultimately different interests of the immigrant advocacy groups and the INS became apparent when the INS endorsed a deportation bill introduced by Representative Martin Dies (D-Texas, 1931-1945), which included a clause on suspension. Dies offered suspension of deportation only as a temporary relief for the maximum of 8,000 immigrants over the next four years. While the INS endorsed the bill, since it at least covered the immediate cases stayed by Perkins, immigrant advocacy groups pointed out that expiration of temporary measure would only leave a much harsher deportation law, and that suspension of deportation should be permanently incorporated into law, not merely a temporary relief for the immediate cases stayed by Perkins. “We hope that discretionary legislation will become permanent

³⁸ E.W. Puttkamer, "Legislation Affecting the Deportation of Aliens," *University of Chicago Law Review* 3, no. 2 (1936): 231-232.

³⁹ Ellis Island Committee, *Report*, 84-85.

⁴⁰ *Report to Accompany List of Stayed Deportation Cases Called for in House Resolution 350* H.doc. No. 74-392, at 3-5 (1935); Hutchinson, *Legislative History*, 239.; Reuben Oppenheimer, “Recent Developments in Deportation Process,” *Michigan Law Review* 36 no. 3 (1938):355-384.

legislation on our statute books,” Cecilia Razovsky of the National Council of Jewish Women stated at a Senate hearing.⁴¹

It was much to the surprise of reformers that Dies included such clause in his deportation bill at all. Dies was known as an ardent restrictionist among the Southern Democrats. A vocal critic of Frances Perkins, Dies had earlier announced his plans to deport “6,000,000 aliens as a partial solution to the unemployment problem.” He criticized proposals to expand family-based non-quota admission as an attempt to break down immigration restriction, opposed suspension of deportation, proposed to create a Bureau of Deportation, and demanded deportation of communists.⁴² His intention was to gather support from more moderate congress members to realize his own agenda to create a more stringent deportation law.⁴³ Still, the proposal to invest the Secretary of Labor with the authority to suspend deportation -- even for a few years -- met strong oppositions from restrictionists including various patriotic societies as well as the American Federation of Labor. Thomas Jenkins (R-Ohio) insisted that Congress should not “surrender to the woman down in the Department of Labor or the man who may succeed her, or anybody else, our right to determine who should stay here.”⁴⁴ Much of the opposition in Congress came from Southern Democrats and Republicans including Senator James J. Davis (R-Pennsylvania), former Labor Secretary. Although the House passed the Dies bill, it was blocked

⁴¹ *Deportation of Criminals Pt.2, Before the Senate Committee on Immigration, 74th Cong.*, 133-162 (1936).

⁴² “Drive for Law to Deport 6,000,000 Aliens,” *New York Times* June 23, 1935.

⁴³ Daniel Kanstroom, *Deportation Nation: Outsiders in American History* (Cambridge: Harvard University Press, 2007), 186-200; Hutchinson, *Legislative History*, 235, 237, 243-244.

⁴⁴ 81 Cong. Rec. 5560 (1937). (Thomas Jenkins, R-Ohio)

by Senator Robert Reynolds (D-North Carolina) of the Senate Immigration Committee, who accused the measure as “an importation, not a deportation bill.”⁴⁵

Failure to pass the Dies bill ended the period of brief cooperation between Dies and the Department of Labor, and Dies once again began to accuse Perkins of abusing her power as Secretary of Labor. Deep antagonism of the restrictionists toward Perkins not only had to do with the hardship cases. Added to the accusation that Perkins was harboring illegal immigrants was that she was soft on communists. In June 1938, shortly before the 75th Congress closed, Dies was appointed to the chair of special investigative committee House Committee on Un-American Activities, which would come into full force during the Cold War. The foremost target was Harry Bridges, the leader of the International Longshoremen and Warehousemen Union affiliated with the Congress of Industrial Organizations, who led the longshoremen strike of 1934. The case of Bridges was different from the hardship cases, because there was no deportation order standing against him in the first place, and Perkins saw no reason to press charges against him. But Dies demanded immediate deportation of Bridges, threatening to impeach Perkins.⁴⁶

With the attack against INS stepping up, the INS Commissioner James L. Houghteling (1937-1940) suggested an alternative strategy for hardship cases. The commissioner advised Perkins that further stays of deportation orders would neither serve the interest of the INS nor that of the families. Five years had elapsed since Perkins first started staying deportation orders,

⁴⁵ 80 Cong. Rec. 4913 (1936); 81 Cong. Rec. 5560, 5574 (1937); 83 Cong. Rec. 8229, 8992-8996 (1938); James L. Houghteling, INS Commissioner, memorandum to Frances Perkins, June 21, 1938; Frances Perkins to James L. Houghteling, July 2, 1938; folder “Immigration Legislation, Dies Bill,” box 2, Subject Files Relating to Immigration and Naturalization, 1933-1943, General Records of the Office of the Solicitor, RG 174.

⁴⁶ Kanstroom, *Deportation Nation*, 194; “Move for Perkins Impeachment on Bridges Case Made in House,” *New York Times*, January 25, 1939.

but the absence of Congressional action perpetuated their ambiguous status. Moreover, although the INS insisted that the Secretary of Labor had the power to decide when to execute deportation order, the hardship cases had become a weak point of the INS, accused of leniency.⁴⁷

The INS was primarily concerned about immigrant families from Europe. Since Perkins took office the INS had stayed 14 percent of all deportation and voluntary departure cases involving European immigrants. Houghteling's suggestion was to make Canadian pre-examination, of which primary function was for lawful nonimmigrants to obtain a visa in Canada, applicable to deportable immigrants.⁴⁸ This method of legalization became closely connected with family-based admission under the quotas system, since eligibility depended on having a non-quota or preference family status. And the INS decided to enable deportable immigrants who would qualify for a family visa to voluntarily leave the U.S. for Canada and to readmit them. Also since the Canadian authorities only granted brief stay on the premise of prompt visa issuance, the system worked in favor of those without long wait for a visa such as immigrants from countries with large quotas.⁴⁹

However, termination of stays of deportation for the "hardship cases" increased the number of private bills, or bills written for individuals, as sympathetic Congress members sought

⁴⁷ Daniel MacCormack died in early 1937; James I. Houghteling, INS Commissioner, memorandum to Frances Perkins, July 27, 1938; folder "Immigration Legislation, Dies Bill"; box 2; Subject Files Relating to Immigration and Naturalization, 1933-1943; General Records of the Office of the Solicitor; RG 174.

⁴⁸ The INS divided the 4,455 cases into "natives or citizens of contiguous territory or adjacent islands," "visa petition cases," "the seventh proviso," and "aliens who have had residence of ten years or more but without immediate families in this country." "Memorandum for Guidance of Immigration and Naturalization Service in Disposition of Dies Bill Stayed Cases," August 23, 1938; folder "Dies Bill," box 2; Memorandum, August 30, 1939; folder "Stayed Cases—7th Proviso"; box 4; Subject Files Relating to Immigration and Naturalization, 1933-1943; General Records of the Office of the Solicitor; RG 174.

⁴⁹ Ngai, *Impossible Subjects*, 86-87; James I. Houghteling, INS Commissioner, memo to Gerald Reiley, Solicitor of Labor, November 7, 1938; folder "Preexamination" box 4, Subject Files Relating to Immigration and Naturalization, 1933-1943; General Records of the Office of the Solicitor; RG 174; Frances Perkins, letter to Richard B. Russell Jr., Senate immigration committee chair, February 2, 1940, folder "Legislation—1940," box 67, Frances Perkins General Subject Files; Office of the Secretary; RG 174.

relief for families ordered to depart from the U.S. Some five hundred private immigration bills were introduced in the first session of the 76th Congress. Private immigration bill was an arena where various Congress members and the INS contested for power. For example, House Immigration and Naturalization Committee Chair Samuel Dickstein sought to pass a law that would require the INS to stop deportation whenever a private relief bill was introduced, to which he objected for fear that it would interfere with the independency of the agency. On one occasion, the House spent more than five hours to discuss four individual cases. Although Congress realized that its burden had increased, Congress was still unwilling to leave the matter with the agency, the reason not least being that Perkins oversaw the agency.⁵⁰

In the meantime, Congressional pressure on Perkins continued to increase. In early 1940, J. Parnell Thomas (R-New Jersey) introduced an impeachment resolution, emphasizing how the number of deportations had dropped after Perkins took office.⁵¹ Congressional pressure compelled Perkins to hold several months of hearing on Harry Bridges, although she eventually decided to cancel proceedings. In February 1940, shortly after her decision not to press charges against Bridges, Perkins gave a speech in titled “Deportation of Aliens” at the Commonwealth Club of San Francisco. Her appearance gathered much attention from the audience expecting to hear about the case of Bridges. Instead, Perkins discussed the hardships of family separation, and called for legislative reform.⁵²

In May 1940, the hardship cases took a new turn. Under the Reorganization Act of 1940, the INS was transferred from the Department of Labor to the Department of Justice. With the

⁵⁰ James L. Houghteling, INS Commissioner, memorandum to Frances Perkins, June 21, 1938; folder “Immigration Legislation, Dies Bill”; box 2; Subject Files Relating to Immigration and Naturalization, 1933-1943; General Records of the Office of the Solicitor; RG 174.

⁵¹ Kanstroom, *Deportation Nation*, 194; “Move for Perkins Impeachment on Bridges Case Made in House,” *New York Times*, January 25, 1939.

⁵² “Miss Perkins Asks Alien Law Change,” *New York Times*, February 20, 1940.

war in Europe worsening, the reorganization was based on President Roosevelt's request to coordinate security measures for potential "enemy aliens" residing in the U.S. More broadly, it also showed how the function of the INS had gradually shifted to policing within its borders. Also important was antagonism toward Perkins. According to Representative John Taber (R-New York), Republicans supported reorganization less because they found the INS to be best placed in the Department of Justice than because they wished the INS to be removed from Perkins. Taber insisted that the President did not have "the patriotism or the courage to remove the Secretary of Labor ... who for the last seven years has steadily and steadfastly failed and refused to enforce the immigration law," and emphasized that the Attorney General should make the INS "about-face on the position that he has followed under Madame Perkins."⁵³

Ironically, Congress agreed to take care of the hardship cases only after transfer of the INS from the Department of Labor and away from Perkins, who had advocated for the hardship cases. Immediately after the INS was placed in the Department of Justice, the immigration committees reported out a broad deportation bill. The bill significantly expanded the ideological grounds for deportation to include teaching, advocating, or joining an organization that taught or advocated the "over-throw by force and violence of the Government of the United States," as well as criminal grounds for deportation, but also included a clause on discretionary suspension of deportation in hardship cases.⁵⁴

4.3 From Economic Detriment to Exceptional and Extremely Unusual Hardship

⁵³ "Roosevelt Plans to Put Immigration under FBI," *Baltimore Sun*, May 22, 1940; "House Approves Immigration Move," *Baltimore Sun*, May 28, 1940; Kanstroom, *Deportation Nation*, 194; Zolberg, *Nation by Design*, 287.

⁵⁴ Ngai, *Impossible Subjects*, 88; Sec. 20, Alien Registration Act of 1940 (54 Stat. 670, Smith Act).

Incorporated into the Alien Registration Act of 1940, Congress placed suspension of deportation as an exception to the regime of immigration restriction. It did not countervene racial immigration restriction. The 1940 Act confirmed that racial exclusion would apply to any form of permanent residency by stating that one is eligible for suspension of deportation only if one “is not racially inadmissible or ineligible to naturalization.”⁵⁵

In two ways, Congress made sure to reconfirm the principle of numerical immigration restriction. For one, when the grounds for deportation was unauthorized immigration, the 1940 Act charged permanent residency granted through suspension of deportation against the quotas.⁵⁶ Regardless of whether it was permanent residency acquired through an immigrant visa or through suspension of deportation, Congress remained firm on numerically limiting the number of new immigrants / permanent residents. In fact, since quotas remained unused due to visa refusal during the 1930s, this appeared to be a reasonable solution to the reformers to reconcile unauthorized immigration with numerical immigration restriction. However, deduction of quotas would create a problem once the quotas were filled again, giving rise to the charge that unauthorized immigration was equal to skipping the line while others waited for a visa, and to grant permanent residency to unauthorized immigrants would be unfair to others.

And notably, for lawful nonimmigrants, Congress refused to create a mechanism for nonimmigrants without any deportable offenses to obtain permanent residency. What the reformers initially called into question was the sharp distinction drawn between foreigners of various immigration status, but the hardship cases became tied to building the deportation regime. Ironically, it was only when one became deportable – by overstaying one’s stay permit for instance but not while the permit was still valid - that there was a possibility to obtain permanent

⁵⁵ Section 20 c, Alien Registration Act of 1940 (54 Stat. 670)

⁵⁶ Section 20 c, Alien Registration Act of 1940 (54 Stat. 670)

residency without having to leave the U.S. Congress maintained that to open the front door for nonimmigrants to obtain permanent residency would undermine numerical immigration restriction based on limiting the number of visas. It was not until 1952 that Congress would create such mechanism (“adjustment of status” from a nonimmigrant to a permanent resident). What cracked this rule was the Displaced Persons Act of 1948, which allowed 15,000 displaced persons residing in the U.S. as nonimmigrants to obtain permanent residency, although they were mortgaged against the future quotas of their countries of birth.⁵⁷

The phrasing of the conditions on suspension of deportation reflected the arguments made for the hardship cases during the Great Depression: “serious economic detriment to a citizen or legally resident alien who is the spouse, parent, or minor child.”⁵⁸ First, the primary justification for staying deportation was the possible hardship of the U.S. citizen or permanent resident family members that would remain in the U.S. or would have to make the decision of whether to accompany the deportee. Thus, the 1940 Act only referred to the hardship of “citizen or legally resident alien” family member entitled to live in the U.S. and not to the deportable immigrant. Second, the term “economic detriment” reflected how the INS emphasized that it was not in the economic interest of the U.S. government to deport breadwinners and to add to public relief by compelling families to rely on relief. By contrast, factors such as length of residence, statute of limitations, hardship of the deportee himself lost saliency.

Beyond Economic Detriment

⁵⁷ 245 (a) Immigration and Nationality Act of 1952; Charles Gordon, “Ameliorating Hardships Under the Immigration Laws,” *Annals of the American Academy of Political and Social Science* 367 (September 1966): 85–92.

⁵⁸ Section 20 c, Alien Registration Act of 1940 (54 Stat. 670)

Despite its limited nature, suspension of deportation procedure was a valuable path for mixed status families. Between 1940 and 1952, the Department of Justice suspended some 38,000 deportation cases. Through suspensions granted and through the struggles of much larger number of immigrants who were denied relief, mixed status families questioned what exactly “serious economic detriment” of the family meant. Especially important in their struggle was the five-member Board of Immigration Appeals (BIA) established in 1940 within the Department of Justice. During the 1940s, the BIA annually considered some 3,000 cases regarding various aspects of immigration, deportation, and nationality laws. Although immigrants could also bring the case to the federal court through *habeas corpus* proceedings, they were very rare and much more difficult, and hearings by the BIA were often the last hope for immigrant families denied relief by the INS.⁵⁹

At one level, the Board of Immigration Appeals sought to articulate “economic detriment” in strictly financial terms of lost wage income as a result of deportation, and resulting economic difficulty of the family remaining in the U.S. The BIA pointed to factors such as overall income of the household, income of the deportee, how many family members relied on the income, or whether the family members in the U.S. supported the deportee, and the cost of maintaining two households.⁶⁰

At another level, the Board of Immigration Appeals sought to apply “economic detriment” to wider circumstances of family hardship that were not necessarily limited to loss on income. The BIA placed particular emphasis on motherhood. For instance, in a case of a mother relying on public relief with five minor U.S.-born children, the BIA ruled that “economic

⁵⁹ Watson B. Miller, “Administering Our Immigration Laws,” *Annals of the American Academy of Political and Social Science* 262 (March 1949): 178–184.

⁶⁰ *The Immigration and Naturalization Systems of the United States*, S. Rep. No. 81-1515, at 597 (1950).

detriment” of the U.S. citizen children did not require the mother to have wage income.

Although the family relied on public relief, the BIA decided that a mother’s care of her children in itself was “services of economic value to her minor children” and that loss of mother’s care by deportation can be considered as “serious economic detriment” to the children.⁶¹ On the other hand, in a 1949 case, the BIA also decided that even if the family had sufficient financial means to support the child by paying for “nurses, governesses or pediatricians,” it did not follow that deportation of the mother would cause no detriment to the child. The BIA agreed with the plea that “love and care” of a mother cannot be replaced by any paid service.⁶² Thus, while interpreting family hardship in strictly financial terms at one level, the BIA went beyond literal reading of the law, shifting the procedure away from its Great Depression origins.

From Economic Detriment to Exceptional and Extremely Unusual Hardship

However, staunch restrictionists and anti-communists that took control of the post-World War II immigration committees believed the rulings of the Board of Immigration Appeals had become too liberal. The Cold War and the anti-Communist crusade brought forth the security-centered aspect and much harsher part of deportation law. Senator Patrick McCarran (D-Nevada), Senator James Eastland (D-Mississippi), and Representative Francis Walter (R-

⁶¹ *The Immigration and Naturalization Systems of the United States*, S. Rep. No. 81-1515, at 597 (1950).

⁶² T came from Greece in 1946 as a temporary visitor admitted for 6 months but overstayed. During her stay in the U.S., she married a non-U.S. citizen and gave birth to a child. A former diplomat, her husband was a general partner in a stock firm, and T had her own asset of 100,000 dollars. The INS decided that because the family had enough assets to pay for the care of the child, voluntary departure would not cause economic detriment to the citizen child. But the Board of Immigration Appeals agreed with her counsel’s plea that “no one could possibly take the position that the loss of 2-year-old child’s mother for an indefinite period would not be a serious detriment to the child” and that “no amount of nurses, governesses or pediatricians can take the place of this or any child’s life of love and care of his mother.” BIA also agreed that the child should not to be taken to Europe with the mother, because then he “would be forced to suffer the detriment of being brought up in the foreign land without the love, care, and guidance of his father.” *In the Matter of T-*, 3 I&N Dec. 707 (BIA 1949)

Pennsylvania) among others pushed for a more stringent law with regard to exclusion and deportation of immigrants. As chair of not only the Senate Judiciary Committee but also of the appropriations subcommittee that oversaw the budget of the INS, McCarran exercised strong influence on legislation and administration of immigration laws. In addition to expanding the ideological grounds for deportation by the McCarran Internal Security Act of 1950, Congress passed a series of laws that left immigrants without sufficient protection and laws that made it extremely difficult for deportation to be cancelled, incorporated into the Immigration and Nationality Act of 1952 (McCarran-Walter Act).⁶³

During the debate over the hardship cases in the 1930s, Congress was resistant to accord the INS with discretionary power to suspend deportation. In 1948, Congress reduced the discretionary power of the INS in suspension of deportation procedures. The 1940 Act had required the INS to regularly report to Congress all the cases recommended for suspension of deportation. But the law did not require Congressional approval. Permanent residency was granted unless Congress explicitly disapproved of the cases. To exercise stronger Congressional control over the INS and administration of immigration and deportation law, Congress made affirmative approval by both houses a requisite to suspension of deportation. Instead of tacit approval of permanent residency, lack of Congressional vote on the INS's recommendation now meant execution of deportation order. Prior to 1948, Congress rarely disapproved of the INS's

⁶³ Ellen Schrecker, "Immigration and Internal Security: Political Deportations during the McCarthy Era," *Science & Society* 60, no. 4 (1996/1997): 393–426; Michael J. Ybarra, *Washington Gone Crazy: Senator Pat McCarran and the Great American Communist Hunt* (Hanover, N.H.: Steerforth Press, 2004), 434–435.

use of discretion, but Congress rejected 14 percent of the 23,329 cases presented to it between 1948 and 1952.⁶⁴

Moreover, the Senate Judiciary Committee led by McCarran sought to rewrite the law entirely to nullify the BIA rulings on suspension of deportation, which they believed had become too inclusive. McCarran insisted that the possibility of obtaining permanent residency through suspension of deportation provided an “incentive” for unauthorized immigration and was “threatening our entire immigration system.”⁶⁵ Immigrant advocacy groups strongly criticized the motion to raise the bar for deportable immigrants to acquire permanent residency. Some argued that what was necessary was not more stringent law but to detach suspension of deportation from its Great Depression origins. The Common Council for American Unity, for example, urged Congress to remove the word “economic,” because the phrasing calls for “proof that the serious detriment be ‘economic’ in character” despite the fact that deportation could cause “serious detriment ... although it is not economic in character.”⁶⁶ The Association of Immigration and Nationality Lawyers protested that rewriting of the clause would “create more hardship cases than they will solve” and that “we should favor reuniting families – keeping them together rather and disrupting them.”⁶⁷ Immigrant advocacy groups pointed out that Congress already had strong control over deportation cases under the 1948 Act, since the INS could not

⁶⁴ Act of June 1, 1948 (62 Stat.1206); Will Maslow, “Recasting Our Deportation Law: Proposals for Reform,” *Columbia Law Review* 56, no. 3 (1956): 342-343.

⁶⁵ *Revision of Immigration and Nationality Laws*, S. Rept. 82-1137, at 25 (1952).

⁶⁶ *Revision of Immigration, Naturalization, and Nationality Laws: Joint Hearings before the Subcommittees of the Committees on the Judiciary*, Hearing, 82nd Cong. 651(1951) (statement of Frank L. Auerbach, Common Council for American Unity).

⁶⁷ *Revision of Immigration, Naturalization, and Nationality Law: Joint Hearings before the Subcommittees of the Committees on the Judiciary*, Hearing., 82nd Cong. 674 (1951) (statement of Gustav Lazarus, President of Association of Immigration and Nationality Lawyers)

suspend deportation without positive approval by both houses, and called for a more individual approach.

But Congress ignored all such appeals. The immigration committees did not deny “in almost all cases of deportation, hardship and frequently unusual hardship is experienced by the alien or the members of his family who may be separated from the alien.” However, such hardship was secondary to immigration control; “hardship or even unusual hardship to the alien or to his spouse, parent, or child is not sufficient” to warrant cancelling an order of deportation.⁶⁸ Hardship was inherent in deportation, and to take into consideration hardships of immigrant families would undermine the regime, they maintained. While Congress stopped short of eliminating the procedure altogether, Congress imposed an “exceptional and extremely unusual hardship” test as the new requirement for suspension of deportation. In addition, the law also limited eligibility to immigrants with continuous residence of five to ten years in the U.S., depending on the deportable offense. Only immigrants that fulfilled both the family hardship and residency requirement could be considered for suspension of deportation.⁶⁹

The Immigration and Nationality Act of 1952 nullified the decade of debate over what constituted family hardship (“economic detriment”) that warranted suspension of deportation. Between 1941 and 1952, the INS submitted an annual average of 3,500 cases for Congressional approval, the majority of which were approved. But after 1952, both the number of cases recommended by the INS and the rate of Congressional approval dropped sharply. In 1954, the

⁶⁸ *Revision of Immigration and Nationality Laws*, S. Rept. 82-1137, at 25 (1952).

⁶⁹ For irregular immigration, Congress required five-year continuous residence for nonimmigrants who overstayed, and set a much higher bar of ten-year continuous residence for undocumented immigrants who entered without any inspection. Sec. 244 (a)(2)(3) and Sec. 244 (a)(4); Kanstroom, *Deportation Nation*, 234.

INS submitted only 293 cases, and Congress approved none.⁷⁰ Compared with the “serious economic detriment” standard, few immigrants could meet the new “exceptional and extremely unusual hardship” test.

4.4 Country Contiguous to the United States

In 1950, after reviewing the legislative process during the 1930s surrounding the hardship cases, the Senate immigration subcommittee concluded that “it does not appear that the law [regarding suspension of deportation] was prompted by any necessity to give relief to aliens who were nationals of territory adjacent to the United States. The law was enacted principally for the benefit of Europeans.” As difficult as the “exceptional and extremely unusual hardship” test was hard to meet, even more stringent of the INA of 1952 was categorical exclusion of immigrants from Mexico and the British West Indies from the procedure, from whence where the U.S. was actively recruiting temporary workers.

The 1940 act was a law passed during the period of low immigration and low unauthorized immigration. In 1940 deportations and voluntary departures combined totaled 15,500. Deportations and voluntary departures grew rapidly from 29,000 in 1944 to 565,000 in 1950, a majority of which concerned Mexican immigrants. Increase of unauthorized immigration was a direct companion to the active recruitment of temporary workers under the Bracero Program since 1943, initially in response to wartime labor needs, under which 4.6 million workers were recruited until 1964.⁷¹ Overstay or simply leaving the contracted

⁷⁰ Will Maslow, “Recasting Our Deportation Law: Proposals for Reform,” *Columbia Law Review* 56, no. 3 (1956): 342-343.

⁷¹ The wartime program based on bilateral agreement with Mexico ended on December 31, 1947, but demand for temporary workers soon resume recruitment, and in 1951 Congress passed Public Law 78 that governed the program until 1964. The wartime Bracero Program consisted of agricultural program, and

workplace immediately made their presence in the U.S. illegal and subjected them to deportation. Moreover, the prospect of employment but far fewer formal contracts than the number of applicants induced those who could not find a contract to cross the border without inspection.

Employers ran less risk from hiring unauthorized workers, since immigration law imposed no penalty on the employers for hiring of unauthorized immigrants. While immigrants were constantly exposed to threat of apprehension, employers exploited this imbalance to keep workers on the farm only in so long as their labor was needed. Selective law enforcement by the INS encouraged unauthorized immigration. At budget hearings, Congress members speaking for the interest of business often pressured the INS not to deprive the employers of worker during the farm season. The number of apprehensions tended to rise after harvest was over and when labor was no longer needed for the year.⁷²

The INS enforced immigration law selectively to supply agribusiness with workers. One method carried out alongside the Bracero Program was the so-called “drying out” process. This process, strongly protested by the Mexican government, involved taking unauthorized workers to the border, making them cross over to Mexico temporarily, and returning them as formal braceros to the U.S. farms where they were formally employed and apprehended. While frequency and scale of this operation varied, in certain years this was the most popular route for hiring Bracero workers. For instance, in 1947, 20,000 Bracero workers arrived in the U.S. after formally signing a contract in Mexico. Another 55,000 workers were contracted after first having worked in the U.S. without authorization, and then went through the “drying out” process.

the railroad program that was terminated in 1945. For the latter, Barbara Driscoll de Alvarado, *The Tracks North: The Railroad Bracero Program of World War II* (Austin, Tex: CMAS Books, Center for Mexican American Studies, University of Texas at Austin, 1999).

⁷² Kitty Calavita, *Inside the State: The Bracero Program, Immigration, and the I.N.S* (New York: Routledge, 1992), 35.

In 1949, the latter outnumbered the former by 87,000 to 20,000. The prospect of employment without having to go through recruitment centers encouraged more to take the risk of crossing the border. Importantly, this form of legalization appealed to employers because it only made an undocumented worker into a lawful yet temporary worker, firmly tied to a specific place of employment and to a specific employer. These workers did not have any rights of collective bargaining, and leaving the workplace immediately made their presence in the U.S. unlawful.⁷³

By contrast, the INS was reluctant to grant suspension of deportation for Mexican workers. There was a critical difference between legalizations through “drying out” and “suspension of deportation.” Legalization through “drying out” did not endow workers with rights attached to permanent residency or immigrant status. Suspension of deportation provided formal permanent residency and rights accorded to a formal immigrant. Notably, the INS argued that three factors obviated the need to suspend deportation for Mexican nationals: 1) geographical proximity 2) nonquota status of the natives of the Western Hemisphere and *theoretically* unlimited number of visas 3) option of voluntary departure. First, the INS insisted that making a trip to Mexico involved less hardship than a trip to Europe, since Mexico was closer to the U.S. Second, the INS argued that Mexican immigrants experienced shorter waits for a visa than European immigrants, because quota restriction did not apply to natives of the Western Hemisphere. Therefore, the INS argued, voluntary departure, which did not preclude the possibility of return with an immigrant visa, did not cause hardship for Mexican families.⁷⁴

Because suspension of deportation was “discretionary” after all, Mexican immigrants had to take a risk in appealing for suspension of deportation. Since only those formally charged with

⁷³ President’s Commission on Migratory Labor, *Migratory Labor in American Agriculture* (Washington, D.C.: G.P.O., 1951), 52, 78; Cindy Hahamovitch, *No Man’s Land: Jamaican Guestworkers in America and the Global History of Deportable Labor* (Princeton: Princeton University Press, 2011), 111-112.

⁷⁴ *Matter of G*, 2 I. &N. Dec. 692 (BIA 1946); *Matter of M*, 2 I. & N. Dec. 751 (BIA 1946)

deportation could apply for a suspension, appealing for suspension instead of accepting voluntary departure could result in formal deportation if their appeals were rejected.

Nevertheless, mixed status families did not leave silently, but appealed for their families. In the mid-1940s, the Board of Immigration Appeals disagreed with the INS on denying relief to Mexican immigrants for the reasons stated above. For example, in 1946, the BIA heard the case of a 50-year old former Bracero worker with a U.S.-born wife and five U.S.-born children.

Whereas the INS insisted on voluntary departure for his overstay, the BIA acknowledged that “if the alien were required to depart to Mexico and wait there for his visa application to be processed,” the family waiting for the father / husband’s return would suffer “serious hardship” and “real hardship.” Even if absence from the U.S. was “for a temporary period of time,” the BIA ruled that it should not be the reason for having the father depart from the U.S. instead of having him stay in the U.S. to establish permanent residency.⁷⁵ In another 1946 ruling concerning a former Bracero worker with a U.S. citizen wife and two children, the BIA pointed to the need to consider factors such as “delay involved in the securing of a visa,” “loss of working time” and accordingly loss of income, how they would be “matter of grave consequences” to the family.⁷⁶

However, the House and Senate immigration committees would soon insist on eliminating the procedure entirely for Mexican immigrants. After reviewing the deportation reform campaign during the 1930s, the Senate immigration subcommittee insisted that “the law was prompted by any necessity to give relief to aliens who were nationals of territory adjacent to the United States. The law was enacted principally for the benefit of Europeans.” Indeed, deportation reform advanced by Frances Perkins was primarily concerned about immigrants

⁷⁵ *Matter of G*, 2 I. & N. Dec. 692 (BIA 1946)

⁷⁶ *Matter of M*, 2 I. & N. Dec. 751 (BIA 1946)

from Europe, but the law was formally applicable to all except “aliens ineligible to citizenship.” While raising the bar from “economic detriment” to “exceptional and extremely unusual hardship” for European immigrants, the immigration committees refused to recognize any family hardship at all when it came to Mexican immigrants.

The motion to penalize the workers heavily met significant opposition from President Harry Truman’s Commission on Migratory Labor, which was formed in June 1950 in response to the controversy over the Bracero Program. In a report published in March 1951 after twelve hearings, the Commission recommended that the guest worker program should be based on intergovernmental agreement, and also that the federal government should exercise stronger oversight over working conditions instead of giving free range to the employers.⁷⁷ Along with working conditions of guest workers and its effect on American workers, the issue of unauthorized immigration figured prominently in the report. With regard to unauthorized immigration, the Commission suggested penalizing employers for hiring undocumented workers (employer sanctions). The commission believed that employer sanctions would not only reduce unauthorized immigration but also alleviate substandard wages and working conditions resulting from the hiring of unauthorized workers with virtually no right to make any kind of protest. The commission also objected to the practice of contracting unauthorized workers as Bracero workers for the purpose of returning them to their employers.⁷⁸

Importantly, while the commission proposed stricter law enforcement, they noted that proposed changes should not “interfere with hardship cases as authorized by present immigration

⁷⁷ Hahamovitch, *No Man’s Land*, 114.

⁷⁸ President’s Commission on Migratory Labor, *Migratory Labor in American Agriculture*, 78; Employer sanction was also strongly supported by the Mexican government. Richard B. Craig, *The Bracero Program: Interest Groups and Foreign Policy* (Austin: University of Texas Press, 1971), 93-100; Calavita, *Inside the State*, 30, 46-47.

laws,” in other words with suspension of deportation procedure under the 1940 Act. Their opposition was directed only at “legalization for employment purposes,” that is the so-called drying out process of legalizing undocumented workers into Bracero workers who were tied to the employer with little bargaining rights. Unlike the immigration committees, the Commission did not direct its criticism at immigrants who formed families in the U.S.⁷⁹ However, after the renewal of the Bracero Program in 1951, the immigration committees pushed for a law that ran entirely contrary to the President’s Commission’s recommendation, providing employers with more protection while penalizing the immigrants more heavily than before.

On the one hand, catering to the interests of agribusiness, in the Immigration and Nationality Act of 1952 Congress specifically provided that there shall be no penalty for “employment (including the usual and normal practices incident to employment)” of unauthorized immigrants. This infamous clause was named Texas proviso after the agribusiness in Texas that powerfully lobbied for the clause, and would remain in place until 1986, protecting employers from persecution.⁸⁰ Second, Congress made “a native of any country contiguous to the United States” (Mexico and Canada) and those of “any adjacent islands” (the West Indies) categorically ineligible for suspension of deportation, refusing to recognize any hardship for mixed status families from Mexico.⁸¹

⁷⁹ President’s Commission on Migratory Labor, *Migratory Labor in American Agriculture*, 78.

⁸⁰ The INA made “harboring” of unauthorized immigrants a felony punishable by a \$2,000 fine and a prison term of five years. At the same time, the INA provided that “employment (including the usual and normal practices incident to employment)” did not constitute “harboring.” Sec. 247 a 4; Calavita, *Inside the State*, 71-75.

⁸¹ Sec. 244 (b); Adjacent islands included Saint Pierre, Miquelon, Cuba, the Dominical Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea. Sec. 101.b.5, Immigration and Nationality Act; Under the 1924 Act, immigrants born in the colonies and those born in the mother country were all counted against the quotas of the mother country such as Britain and France. For instance, quotas for Britain were available to those born in British colonies such as

Statutory exclusion from suspension of deportation did not necessarily mean that migrants from Mexico were more likely to be formally deported. As before, deportation required the INS to conduct formal investigation and to pay for transportation, which both the INS and Congress wanted to avoid. Rather, elimination of suspension of deportation facilitated the INS to conduct investigation in a more casual manner and to induce voluntary departure, since the only consequence of refusing to depart from the U.S. was formal deportation. A major criticism of the INS raised in the 1930s concerned abuses resulting from multiple roles played by the INS officer in deportation proceedings. The Administrative Procedures Act of 1946 required administrative hearings to be conducted by officers that were not primarily investigators and enforcement agents, but whether deportation hearing was governed by the law still remained to be contested in the late 1940s. The question seemed to have been settled in 1950, when the Supreme Court ruled in *Wong Yang Sung v. McGrath* that the law indeed applied to deportation proceedings. The INS appealed to Congress that the Supreme Court ruling would require significant increase in the budget and taskforce of the INS, especially pointing to unauthorized immigration from Mexico. In response, Congress exempted deportation procedure from the Administrative Procedures Act.⁸² Thus, coupled with the exemption of deportation hearing from the Administrative Procedures Act, which left immigrants without adequate protection in

Jamaica. However, in 1952, Congress prohibited colonies to have unlimited access to the quotas of the mother country, particularly with colonies of Britain in mind. While preventing their entry as “immigrants,” Congress expanded the “non-immigrant” category to recruit workers from the West Indies. From 1953 to 1965, some 100,000 visas were issued to agricultural workers from the British West Indies under the so-called H-2 provision of the 1952 Act. 101 (a) (15) (H) had three subcategories: (i) persons of distinguished merit and ability (ii) other temporary workers (iii) trainees; Cindy Hahamovitch, “Creating Perfect Immigrants: Guestworkers of the World in Historical Perspective,” *Labor History* 44 no. 1 (2004): 86-87.

⁸² *Supplemental Appropriation Bill for 1951: Hearing before Subcommittees of the House Committee on Appropriations* 81st Cong. 367-377 (Argyle Mackey, Acting Commissioner, INS); “The Impact of the Federal Administrative Procedure Act on Deportation Proceedings.” *Columbia Law Review* 49, no. 1 (1949): 73–87; Robert L. Jeffrys, “The Wong Yang Sung Decision,” *INS Monthly Review* 7, no. 10 (1950): 131–137; Kanstroom, *Deportation Nation*, 171-174; Ngai, *Impossible Subjects*, 88.

deportation hearings, the INA of 1952 furthered the vulnerability of workers by assuring the employers of non-prosecution while leaving the apprehended immigrants with no other option than departure from the U.S., whether through voluntary departure or deportation.⁸³

The Board of Immigration Appeal rulings after the passage of the INA reflected Congressional sentiment. Earlier, the BIA had disagreed with how the INS invoked various factors to deny family hardship experienced by families of Mexican immigrants. But this was no longer the case after 1952. In a series of rulings between the passage of the INA in June 1952 and its effective date in December 1952, the BIA followed the logic of the INA and pointed to theoretically unlimited availability of immigrant visas for Mexican nationals as a reason for not recognizing economic detriment to mixed status families including U.S. citizens.⁸⁴ After the enforcement of the INA in December 1952, which formally made suspension of deportation unavailable to Mexican nationals, the BIA would repeatedly dismiss the claims of Mexican and Mexican American families, pointing to statutory exclusion from the procedure under the INA.⁸⁵

Concurrent with the active recruitment of workers, the 1952 exclusion from suspension of deportation was a precursor to a series of measures aimed at preventing Mexican agricultural workers, whether legally or illegally in the U.S, from settling in the U.S. In 1955, the INS and the Department of State would adopt an unofficial policy of refusing immigrant visas to agricultural workers in order to admit them only as braceros and not as formal immigrants.⁸⁶ In 1958, Congress extended categorical exclusion of “a native of any country contiguous to the United States or of any adjacent islands” to the “adjustment of status” procedure as well, banning

⁸³ Sec. 244 a, Immigration and Nationality Act

⁸⁴ In August 1952, the BIA denied suspension of deportation to four families of Mexican immigrants, all of which included U.S. citizens. *Matter of T- F-*, 4 I & N Dec. 711(BIA 1952)

⁸⁵ *Matter of Padilla-Munoz*, 11 I. & N. Dec. 836 (BIA 1966)

⁸⁶ Kalavita, *Inside the State*, 87-88.

not only unauthorized immigrants but lawful braceros still under contract and other nonimmigrants from becoming a permanent resident.⁸⁷ A relaxation of the condition for suspension of deportation in 1962, requiring “extreme hardship” for some offenses instead of the “exceptional and extremely unusual” test, would remain inapplicable to immigrants from Mexico and the West Indies.⁸⁸ When Congress made adjustment of status or suspension of deportation applicable to immigrants from any part of the world in the 1970s, it was contingent upon formal numerical restriction on immigration from the Western Hemisphere.

The formal justification for categorical exclusions of Mexican immigrants from acquisition of permanent residency based on family claims was that their “non-quota” immigrant status / theoretically unlimited access to visas would obviate the need for admission based on other grounds such as family. As chapter 6 will discuss, coupled with the active recruitment of “workers,” absence of any form of family-based admission with regard to Mexico during the quotas era reinforced the view that immigration from Mexico was not grounded in family ties or based on claims of U.S. citizens and permanent residents, whereas immigration from the Eastern Hemisphere was.

⁸⁷ In effect, this was practically unavailable to Mexicans, because as a matter of administrative policy the INS maintained that “aliens who entered the United States as nonimmigrants are not eligible for adjustment under Sec. 245 if at the time of such entry they were entitled to non-quota visas by reason of birth in non-quota countries” *INS Annual Report 1954*, 29.

⁸⁸ Act of October 24, 1962 (76 stat. 1247)

Table for Chapter 4

4-1: Suspension of Deportation, 1941-1952

Year	Deportation	Voluntary Departure	Suspension of Deportation
1941	4,407	6,531	120
1942	3,709	6,904	751
1943	4,207	11,947	4,677
1944	7,179	32,270	3,429
1945	11,270	69,490	4,914
1946	14,375	101,945	2,414
1947	18,663	195,880	5,806
1948	20,371	197,184	3,160
1949	20,040	276,297	5,806
1950	6,628	572,477	3,288
1951	13,544	673,169	4,267
1952	20,181	703,778	2,899

Source: U.S. Department of Justice, *Annual Report of the Attorney General* (Washington D.C.; G.P.O, 1941), 14-16; U.S. Department of Justice, *INS Annual Report 1943* (Washington D.C.; G.P.O, 1943), 14-16; *INS Annual Report 1944*, 18-20; *INS Annual Report 1945*, 18-19; *INS Annual Report 1946*, 21-23; *INS Annual Report 1947*, 18, 19; *INS Annual Report 1948*, 22, 29; *INS Annual Report 1949*, 17-18, 28; *INS Annual Report 1950*, 50-51; *INS Annual Report 1951*, 33, 57-58; *INS Annual Report 1952*, 29, 34-35.

Part III. Dual-sided Reform

In September 1965, speaking against the bill that would become the Immigration Act of 1965, Senator James Eastland (D – Mississippi), chair of the Judiciary Committee argued that “much of the criticism of the McCarran-Walter Act stems from the heavy oversubscription of this fourth preference class,” especially in Italy. Opposed to the abolition of the national origins quotas until the very last minute, Eastland insisted that “unfortunately” family-based admission had expanded in a way that he had not imagined when the Immigration and Nationality Act of 1952 was passed.¹ Senator Sam Ervin (D - North Carolina) of the immigration subcommittee and also a long-time supporter of the national origins quotas expressed a different view. Having agreed to abolish the national origins quotas, Ervin wrote to Eastland that despite abolition of the quotas, family-based admission would ensure that the national origins system would in practice live on.²

The 1952 Act included several reforms to the law. The most significant was abolition of the racial bar to naturalization, which enabled people of Asian descent to become U.S. citizens and ended wholesale exclusion of Asian immigrants. The law created a quota of 2,000 for an “Asia-Pacific Triangle,” which included twenty countries and colonies, and assigned a token quota of 100 to most countries with the exception of Japan (185). However, unlike quotas for Europe where immigrants were charged against the place of birth regardless of nationality, the Asian country quotas and the Asia Pacific Triangle quota were racial quotas that applied not only to persons born in those countries but to all persons descended from the region. The 1952 Act counted any individual with one or more Asian parent, regardless of their place of birth or

¹ 111 Cong. Rec. 24553 (1965)

² Senator Sam Ervin, to Senator James O. Eastland, August 24, 1965; untitled folder; box 36, Michael Feighan Papers.

nationality, against both country quota and against the "Asian Pacific Triangle" quota. This was done to prevent unfettered Asian immigration from non-quota countries in the Western Hemisphere (eg Cuba) and from European colonies with large Asian populations such as Hong Kong. Even if the country quotas were not filled, no quota visas were to be issued if the Asia Pacific Triangle quota had been exhausted.³

With regard to Europe, McCarran-Walter Act maintained the national origins quotas with no change in the size of each country's quota.⁴ Yet, the Senate committee which prepared the new omnibus law no longer spoke of "mixing the races." Its justification was that it was a "method of favoring 'immigrants considered to be more readily assimilable because of the similarity of their cultural background to those of the principal proponents of our population,'" reflecting that explicit hierarchization of European nationalities was no longer sustainable.⁵

The most visible change was in the preference system. The act accorded highest preference to highly skilled immigrants, and their spouse and children. Second preference were for parents and adult unmarried sons and daughters of U.S. citizens (20 percent and any visas

³ The Asia Pacific Triangle was defined as "triangle bound by the meridians 60 east and 165 west longitude and by the parallel 25 south latitude." The areas included were 1) Afghanistan 2) Bhutan 3) Burma 4) Cambodia 5) Ceylon, 6) China 7) Chinese 8) India 9) Indonesia 10) Japan 11) Korea 12) Laos 13) Nauru (trust territory of Australia) 14) New Guinea (trust territory of Australia) 15) Pacific Islands (trust territory of the U.S.) 16) Pakistan 17) Philippines 18) Western Samoa (trust territory of New Zealand) 19) Thailand 20) Vietnam. Japan was assigned a quota of 185, and Chinese (born anywhere in the world) were assigned a quota of 105. Quotas for all others were 100.

⁴ However, justification for the quotas showed a change. In changing the definition, the 1952 law added that the quota shall be "the same number which was previously determined in establishing the national origins quotas," and there was no recalculation of the quotas.

⁵ Donald Reed Taft, *International Migrations: The Immigrant in the Modern World* (New York: Ronald Press Company, 1955), 416; Importantly, although the size of the quotas remained the same as before, the 1952 Act also provided different justification for the calculation of the quotas. The 1952 Act stated that each quota was "one sixth of 1 percent of the number of inhabitants in the continental United States in 1920 attributable by national origin to that quota area." The pre-1952 quotas was calculated by applying the national origins ratio to the figure of 150,000, which was a sum of the 2 percent of the European-born population in 1890. "One sixth of 1 percent of the number of inhabitants in the continental United States in 1920 attributable by national origin to that quota area" was a figure that only happened to be the closest to the original quotas. Ngai, *Impossible Subjects*, 249-250.

unused by first preference), and fourth preference for adult married sons and daughters, and brothers and sisters regardless of age or marital status, if there were any visas that remained unused by the first three preferences.

Although the 1950s is often described as a period of little change in the national origins quotas, as Eastland spoke of the expansion of family-based admission, by 1959, the basic framework of what would be considered a “family” and how family relations would be classified in 1965 was determined. With particular attention to the campaign by Italian American organizations, chapter 5 discusses their challenge to the nuclear family based model of family-based admission and the lasting change in immigration law achieved by the movement.^{6 7}

Chapter 6 looks into the final phase of the abolition of the national origins quotas. It will examine the dual aspects of family-based admission, seen by the defenders of the national origins quotas both as a threat to immigration restriction and at the same time as a means to preserve the national origins quotas. While liberals saw family-based admission more as a matter of rights of citizens and residents, defenders of the national origins quotas associated family-based admission with ethnoracial similarity, which in fact displayed how the meaning of national origins and family had changed since the 1920s. Next, it will examine how after 1965 the notion that families should be treated “equally,” and family-unification as pillar of the

⁶ The Immigration and Nationality Act exempted spouse and minor children of U.S. citizens from the quota restriction. Within the quotas for each nationality, first preference (50 percent) was given to skilled immigrants, their accompanying spouse and minor children. Second preference (30 percent) was given to parents of U.S. citizens. Third preference (20 percent) was given to spouse and minor children of permanent residents. Unused quotas were divided between fourth-preference relatives and non-preference immigrants, 25 percent to the former and 75 percent to the latter.

⁷ Fourth-preference class was divided into 20 percent for unmarried adult sons and daughters of U.S. citizens (first preference), 10 percent for married sons and daughters (fourth-preference), and 24 percent for brothers and sisters regardless of marital status (fifth-preference). See Appendix A

Immigration Act of 1965 and post-quotas regulation was translated into a formal ceiling on the Western Hemisphere.

Chapter 5: Expanding the Boundary of Family, 1953-1959

In October 1958, a woman in San Diego who sent for her son and his family in Italy wrote to the American Committee on Italian Migration (ACIM), an Italian-American lobbying and immigrant aid organization: “When I filed petition for my son about six years ago I was led to believe that it was a matter of few months until he could come here. ... He is partly employed in Italy and lives with his wife and children in one room. I send him as much help as I can. ... I pray with all my heart that you may be able to help me, for he is my son and I suffer the pain and the worry of a mother.”¹

The letter entailed one of the most divisive issues in the late 1950s to the early 1960s about the boundaries of family-based immigration: the issue of so-called “fourth-preference relatives” of U.S. citizens, which included sons and daughters over twenty-one, married sons and daughters, and siblings regardless of age and marital status. According to Representative Francis Walter (D-Pennsylvania), the author of the Immigration and Nationality Act of 1952, such cases “most definitely does not belong in the notion of ‘family reunion.’” They were “not belonging to families already established in the United State but, obviously constituting new family units.”² Edward Swanstrom, the Executive Director of the Catholic Relief Service responded, “You mentioned we would be bringing in new families and not simply uniting members of families who were separated. This is true in a sense, but then they are all closely related to families that

¹ “Appeals for Help on 4th Preference Cases Increase Daily,” *ACIM Dispatch* 7 no. 7 (November 1958): 3.

² Francis Walter, letter to Edward E. Swanstrom, Executive Director of the Catholic Relief Service, September 18, 1961, folder “1962 Legislation—Correspondence with Walter,” box E85, American Committee on Italian Migration Records 001, Center for Migration Studies, Staten Island. (Hereafter, ACIM Records 001)

are already here.”³ The primary issue had to do with how marital status determined the boundary of family.

Scholarship often treats the various laws passed from 1952 to 1965 as piecemeal laws that fell short of eliminating the national origins quotas. While this is true to a certain extent, this framing has obscured our understanding of family unification debates in the 1950s. This chapter first examines the Refugee Relief Act of 1953 in the history of family unification. The bulk of the literature on the Refugee Relief Program has been produced by scholars of refugee policy, and the act has rarely been examined in the context of family unification, save for studies on adaption.⁴ However, the family question was prominent in post-war refugee law and practice: 32 percent of 180,000 Refugee Relief Act immigrants were relatives of U.S. citizens and permanent residents. Specifically, four out of sixteen admission categories were reserved for family-based admission.⁵ In all, some 46,000 Italians and 7,500 Greeks immigrated as relatives, and one quarter of all Refugee Relief Program immigrants were Italian relatives. Second, it was the first post-1952 law that claimed family unification as one of its purposes, which set the precedent for four additional laws passed in 1957, 1959, 1961, and 1962. Third, it allowed family immigration in a manner that was not possible under general immigration law.

The latter half of the chapter looks into the Immigration Act of 1959, with particular attention to the campaign that the American Committee on Italian Migration (ACIM) launched to challenge the nuclear family model of family unification in order to enable immigration of adult

³ Swanstrom to Walter, April 1, 1972, folder “1962 Legislation—Correspondence with Walter,” box E85, ACIM Records 001.

⁴ For example, Gil Loescher and John A. Scanlan, *Calculated Kindness: Refugees and America’s Half-Open Door, 1945-Present* (New York: Free Press, 1983); Michael Gill Davis, “The Cold War, Refugees, and U.S. Immigration Policy, 1952-1965,” Ph.D. Dissertation, Vanderbilt University, 1996; Carl Bon Tempo, *Americans at the Gate: The United States and Refugees during the Cold War* (Princeton: Princeton University Press, 2008)

⁵ 1) orphans 2) Italian 3) Greek and 4) Dutch relatives of U.S. citizens and permanent residents.

or married sons and daughters of U.S. citizens, and siblings (regardless of age or marital status) of U.S. citizens.⁶ Such relations were called “fourth-preference” relatives under the INA of 1952, and would receive 54 percent of all visas under the Immigration Act of 1965, which laid the grounds for further immigration of families after the 1970s. Before 1965, admission of fourth-preference relatives was most associated with immigration from Italy and Greece, where the backlog was the longest, but their struggles and debates have only started to gather scholar inquiry. The 1965 Act was nicknamed the “brothers and sisters act” by some critics, since it reserved 24 percent of the visas for siblings, and a few studies discuss the matter in relation to brothers and sisters.⁷ However, the issue before 1965 had less to do with siblings than with how marital status determined the boundary of family. Lastly, this chapter will discuss where the interests of expediting family immigration and the broader challenge to abolition of the quotas diverged.

5.1. The Emergency Migration Program and the Refugee Relief Act

⁶ Some 60,000 Italians immigrated to the U.S. under the Refugee Act of 1953. Additional 48,000 Italians were admitted under the Act of September 11, 1957, Act of September 22, 1959, Act of September, 1961, and the Act of October 24, 1962; *INS Annual Report 1963*, table 6F; *INS Annual Report 1965*, table 6D; *INS Annual Report 1966*, table 6E and 6F.

⁷ For early study on immigration reform movement by Italian-Americans, Frank J. Cavaioli, "Chicago's Italian Americans Rally for Immigration Reform." *Italian Americana* 6, no. 2 (September 1980): 142-156, and Cavaioli, "Italian Americans Slay the Immigration Dragon: The National Origins Quota System." *Italian Americana* 5 no. 1 (March 1979): 71-100. The most recent and comprehensive study on and the American Committee on Italian Migration is Danielle Battisti, "Relatives, Refugees, and Reform: Italian Americans and Italian Immigration during the Cold War, 1945-1965," Ph.D. Dissertation, State University of New York at Buffalo, 2010, and Battisti, "The American Committee on Italian Migration, Anti-Communism, and Immigration Reform," *Journal of American Ethnic History* 31 no. 2 (2012): 11-40. Battisti does not discuss the issue of fourth-preference relatives; For a policy-elite focused study that discusses the issue of fourth-preference Italian backlog, see Philip Eric Wolgin, chapter 3 "“A Great Part of Our Moral and Spiritual Fiber”: The Development of Family Reunification in U.S. Immigration Policy, 1948-1968,” In “Beyond National Origins: The Development of Modern Immigration Policy Making,” Ph.D. Dissertation, University of California at Berkeley, 2011, 56-93. Wolgin discusses the fourth-preference issue solely in terms of brothers and sisters.

On December 4, 1953, four months after the Refugee Relief Act of 1953 was enacted, the U.S. Ambassador to Italy Clare Boothe Luce issued the first Refugee Relief Act visa in Naples to Michele Sannio, a 30-year old lithographer. His parents Maria and Luciano Sannio lived in Newark, New Jersey, and Michele had not seen his father in twenty-one years. On arriving at the Port of New York in late December, he was “greeted with unbounded joy” by his parents.⁸ On January 2, 1954, a 12-year-old Stamatoula Roumania arrived at the New York International Airport as the first Refugee Relief Act immigrant from Greece. *The New York Times* reported how the law realized the “Reuniting of a Family after 5 years.” At a ceremony held at the airport, Stamatoula was met by her parents living in Denver, Colorado, representatives of Greek-American associations, and various government officials including the INS Commissioner Argyle M. Mackey, who had flown to Athens a few days earlier to hand a visa himself to Stamatoula. Her father had immigrated to the U.S. in 1948, and her mother joined him in mid-1953 with a visa issued for a spouse of a permanent resident. Stamatoula was supposed to come with her mother, but when they were about to leave for the U.S. she contracted an illness and was placed in the custody of her grandmother in Athens. She had to forfeit her long-awaited visa, and was once again put at the end of the waiting list, but was saved by the Refugee Relief Act that provided visas to Greeks outside the national origins quotas restriction.⁹

The majority of the immigrants that arrived in the initial years of the Refugee Relief Program were cases like Michele Sannio and Stamatoula Roumania, who received a visa based on their family relations to U.S. citizens and permanent residents and not on their refugee status.

⁸ William F. Kelly, “The Need for a More Liberal Attitude on Migration,” *ACIM Dispatch* 3 no. 1 (February 1954): 2; First Refugee Act Immigrant Thanks ACIM,” *ACIM Dispatch* 3, no. 2 (March 1954): 1.

⁹ “First Greek Lands under ’53 Law, Reuniting a Family after 5 Years.” *New York Times*, January 3, 1954.

The Refugee Relief Act provided sixteen classes of admission, four of which were based on family connections: 1) adopted orphans or orphans to be adopted, 2) Italian relatives of U.S. citizens and permanent residents, 3) Greek relatives of U.S. citizens and permanent residents, and 4) Dutch relatives of U.S. citizens and permanent residents. They were called “preference cases” or “relative preference cases” according to how the INA of 1952 defined family relations (second, third, and fourth preference were for family-based admission). Sannio was an adult son of U.S. citizen (fourth-preference), and Roumania was a minor daughter of a permanent resident (third-preference).¹⁰

“Overpopulation” and Emergency Migration Program

Signed seven months after the enforcement of the INA of 1952, the Refugee Relief Act originated in the “Emergency Migration Program” proposed by President Harry Truman in March 1952 and revived by President Dwight Eisenhower in April 1953. Truman and Eisenhower sought to address the two intertwined issues: residual refugees from the end of World War II and overpopulation in geopolitically important areas. “Overpopulation” was not a term that simply referred to population density as such. It was more of a political vocabulary in which the main concerns lay in whether the country’s economy was strong enough to support the population, and if not, in the possibility of political unrest, and most importantly in whether economic and political instability might lay the grounds for the expansion of Communist influence.¹¹

¹⁰ This later became seventeen to include Hungarian refugees; Only relatives were admitted in the first year, and as of June 1955, 84 percent of the 21,000 visas had been issued to relatives. *INS Annual Report 1953*, 14; Bon Tempo, *Americans at the Gate*, 56.

¹¹ *INS Annual Report 1953*, 14; Davis, “The Cold War, Refugees, and U.S. Immigration Policy,” 74-76; Bon Tempo, *Americans at the Gate*, 35.

On March 24, 1952, three months before the expiration of the Displaced Persons Act of 1948 (hereafter DP Act) and the INA of 1952 became law, Truman asked Congress to authorize a program to “aid in alleviating the problems created by communist tyranny and overpopulation in Western Europe.” As Truman spoke of the need to “continue our participation in the international effort now being made to assist in the migration and resettlement ... from the overpopulated areas of Western Europe,” the administration had committed to the founding of the Intergovernmental Committee for European Migration (ICEM), which began operating a month before.¹² Truman’s message placed foremost emphasis on how the weak economy and “overcrowded conditions” in certain countries posed a threat to the “free nations.” Communism was both the reason and the possible result of the situation.

Throughout the Soviet dominated area of central and eastern Europe, the communist regimes are increasing their repressive measures. ... The people in all these groups come into areas where, for the most part, the local economy is unable to support the population already there. Western Germany, for example, is overcrowded with almost nine million people of German ethnic origin who were driven there from Eastern Europe after the war. Trieste, which is receiving many of those escaping from the satellites, is badly overcrowded. Italy is struggling with very serious problems of overpopulation and is urgently trying to resettle large numbers of its people overseas. Greece faces great difficulty in absorbing the refugees of Greek origin who are being driven out of the Balkan satellites by the communists. Thus, the brutal policies of Soviet tyranny are aggravating overcrowded conditions which are already a danger to the stability of these free nations.¹³

¹² The purpose of ICEM was to facilitate emigration from countries such as Italy, Greece, the Netherlands, Austria, and Germany, where “surplus” population was estimated to be three and a half million, to countries such as Australia, Canada, the U.S., and Latin American countries. Until October 1952, ICEM was called the Provisional Intergovernmental Committee for the Movement of Migrants. Edward Marks, “Internationally Assisted Migration: ICEM Rounds out Five Years of Resettlement,” *International Organization* 11 no. 3 (1957): 481-494; *Emergency Immigration Program* 6; Loescher and Scanlan, *Calculated Kindness*, 47.

¹³ Harry S. Truman: "Special Message to the Congress on Aid for Refugees and Displaced Persons.," March 24, 1952. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=14435>;

Truman's emphasis on "Western Europe" had two meanings. At one level, Western Europe in Cold War context was different from how Congress in the 1920s that created the national origins quotas contrasted Western Europe with Southern and Eastern Europe. As historian Carl Bon Tempo argues in his study on refugee policy, "ethnonational conception of national identity had lost ground to a political identity."¹⁴ Truman's reference to countries such as Italy and Greece, which had long been classified as Southern Europe and still was treated as such in the context of immigration policy, as part of Western Europe highlighted the division between the "free" West and the communist East in Cold War. Immigration policy had to be formulated in such a way as to ensure that they would remain as part of the West.

At another level was the differentiation between Europe and Asia. The proposal that emigration and moreover admission to the U.S. could be a solution to weak economy and political instability only applied to Europe. The Truman administration and the liberals were very clear that they did not consider emigration or admission to the U.S. as a possible option for the overpopulation or refugee situation in Asia. In June 1952, the same month that Congress passed the INA of 1952, betraying liberals' hope for the abolition of the national origins quotas, Truman appointed the President's Commission on Immigration and Naturalization to present alternative views of more liberal immigration policy. Chair of the commission was the recently retired Solicitor General Philip Perlman, and the subchairman was Earl G. Harrison, the INS Commissioner under FDR administration (1941-1944) whose 1945 report on Jewish Displaced Persons formed the basis of the DP Act. As chair of the National Committee on Immigration Policy formed in 1945, Harrison had also been part of private efforts to modify the national origins quotas system. The commission called in witnesses that had been intentionally excluded

¹⁴ Bon Tempo, *Americans at the Gate*, 43.

from the Congressional hearings for the INA of 1952 led by McCarran, such as voluntary agencies engaging in immigration and refugee aid.¹⁵

With regard to Asia, the President's Commission and its 1953 report *Whom We Shall Welcome* were highly critical of the outright racial discrimination against Asian immigrants under the INA of 1952, where a person with one "Asian" parent was charged against the quotas of both the country of parent's ancestry (100 for most countries) and of regional quotas for the "Asia Pacific Triangle" (2,000) regardless of where the immigrant himself /herself was born.¹⁶ Still, when it came to refugee and overpopulation, the Commission stressed that admission to the U.S. was not a possibility for Asia. According to the Commission, the problems of refugee and overpopulation in Europe were not entirely divisible, and were "transitory problems" that could both be relieved somewhat by migration to the U.S. although not entirely. By contrast, the report strongly emphasized that Commission did not see migration as any solution to problems in Asia.

The best scientific and professional advice available to the Commission is to the effect that migration offers no solution to overpopulation on the Asiatic mainland. No conceivable migratory movement could provide substantial relief for present Asian surplus population ...On the other hand, for Western Germany, Greece, Italy, the Netherlands, and perhaps Japan, the need is different. Emigration can serve as a safety valve for transitory problems of critical population pressures.

The Commission offered similar views on refugees, arguing that admission to the U.S. was a partial solution to the situation in Europe but not to Asia.

In Europe, the problems of refugees, expellees, escapees, and displaced persons are now finite. In Europe, the problem of refugees, expellees, escapees, and displaced

¹⁵ Loescher and Scanlan, *Calculated Kindness*, 4-6, 47; Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants since 1882* (New York: Hill and Wang, 2004), 117; For the list of witnesses, President's Commission on Immigration and Naturalization, *Whom We Shall Welcome*, 285-301.

¹⁶ President's Commission on Immigration and Naturalization, *Whom We Shall Welcome*, 52-54.

persons are not finite. With a coordinated international effort, in which the United States would play its part, the end of these European refugee and related problems is in sight. Unfortunately the same cannot be said for the refugee situation in Asia ...

The problems of overpopulation and refugees in Asia are of vital importance to world peace. Their solution, however, cannot – as it can be in Europe, find major relief through migration.¹⁷

Thus, proposal to admit certain number of immigrants from countries such as Italy and Greece stood on two grounds: redrawing the lines within Europe along the Cold War West/East line and by emphasizing the difference from Asia.

In offering admission outside the quotas system to immigrants from Europe, both Truman and Eisenhower placed similar emphasis on admitting nationals of strategically important areas in Europe as on admission of expellees and escapees. Specifically, Truman requested non-quota admission of 300,000 persons over a three-year period: 21,000 religious and political refugees from communism in eastern Europe, 22,500 Greek nationals, 22,500 Dutch nationals, 108,000 Italian nationals, and 117,000 Germans and persons of German ethnic origin. Eisenhower proposed to admit 240,000 persons over a two-year period: 110,000 for German expellees, 15,000 for escapees in NATO countries, Turkey, or in Trieste, 75,000 Italian national or those of Italian ethnic origin, 20,000 Greek national or those of Greek ethnic origin, and 20,000 Dutch national or those of Dutch ethnic origin.¹⁸ What should be noted here is that the original proposals did not place importance on refugee status. Whereas the initial idea was to simply admit a certain number of Italian, Greek, and Dutch immigrants outside the quotas, Congress made refugee status and family connection as the two pre-requisites. Some scholars have

¹⁷ President's Commission on Immigration and Naturalization, *Whom We Shall Welcome*, 64; Wolgin, "Beyond National Origins," 147-148.

¹⁸ Truman administration bill was introduced by Emanuel Celler (D-NY); Eisenhower administration bill was introduced by Senator Arthur Watkins (R-UT); Loescher and Scanlan, *Calculated Kindness*, 45; For discussion of "escapee" as a distinct Cold War construction differentiated from refugees or immigrants, see Susan L. Carruthers, "Between Camps: Eastern Bloc 'Escapees' and Cold War Borderlands," *American Quarterly* 57, no. 3 (2005): 911-942.

described the relatives clause as an anomaly of the Refugee Relief Act, but the original plan was titled the “Emergency Migration Act” and did not require refugee status of Italians, Greek, and Dutch.¹⁹

Among the three countries of Italy, Greece, and Netherlands, the political situation in Italy posed particular concern to both administrations. A high unemployment rate, with 2.5 million unemployed, low wages, and the return of 500,000 colonists from the former Italian colonies in Africa were all perceived to be sources of political unrest. The June 1953 election, in which the Communist Party carried 36 percent of the vote, only deepened the fear of Communist takeover. In the case of Netherlands, the two main problems were high birth rates, and unemployment in agriculture. As with Italy, another issue in the Netherlands was migration from the former colonies, where independence of the former Dutch colony Indonesia resulted in migration to Netherlands of the so-called Indo-Dutch population.²⁰ Nevertheless, the perseverance of the national origins quotas by the INA of 1952 not only made immigration to the U.S. a small possibility but only sent the message that the U.S. had no intention to open its own door.

Unlike Truman and the Democrats such as Senator Herbert Lehman (D-NY) and Representative Emanuel Celler (D-NY), Eisenhower administration and the Republicans did not insist on amending the national origins quotas. In fact, prior to the passage of the INA of 1952, leading immigration reformers in Congress such as Lehman and Celler still stopped short of advocating for abolition of the quotas system altogether. For example, the major counter-bill to McCarran-Walter bill proposed to raise the overall quotas, recalculate the quotas based on the most recent census of 1950, and to redistribute unused quotas from undersubscribed countries to

¹⁹ Loescher and Scanlan, *Calculated Kindness*, 47.

²⁰ Davis, “The Cold War, Refugees, and U.S. Immigration Policy,” 74-76.

oversubscribed countries.²¹ Many reform bills until the early 1960s proposed increase in overall quotas, recalculation of quotas, and redistribution of quotas. But after 1952 there also emerged a more frontal attack on the quotas system itself. Since 1953, Lehman and Celler would introduce a series of bills to replace the national origins quotas with what President Truman's Commission named "unified quota system" under which no country had a pre-fixed quota larger than others.²² On the other hand, Republicans remained silent about the national origins quotas during the debates about the refugee relief program. In a manner somewhat similar to how the DP Act was passed by disassociating admission of displaced persons from the reevaluation of the quotas system, Eisenhower disassociated emergency migration program from the national origins quotas system for fear of being attacked as attempting to destroy the INA of 1952. Republican Senators agreed to table any discussion of the quota system until the expiration of the Refugee Relief Act.²³

The proposal to admit non-refugees outside the quotas faced opposition from two entirely different standpoints. One objection was that the scale of the program was far from adequate to address both the issue of refugees and overpopulation, especially with regard to the latter, and that if the Congress was willing to admit 240,000 persons outside the quotas the visas would be

²¹ Daniel Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002), 189-190; Aristide Zolberg, *A Nation by Design: Immigrant Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2006), 314-315.

²² During the discussion of the emergency migration program and the refugee relief act, Lehman was the only Senator who insisted on the floor that it "does not do the slightest thing to correct the deficiencies, the evils, and the defects of the McCarran-Walter Act." 97 Cong. Rec. 10107 (1953); Instead of fixing the number of visas, they sought to maintain some flexibility in the allocation. 250,000 (maximum for one country 37,500), Family max 50 percent (125,000) to families within the third degree of consanguinity, occupational max 20 percent (50,000), refugee asylum (maximum 20 percent), national interest (maximum 20 percent), and new seed migration (maximum 20 percent). Outside numerical restrictions were parents of U.S. citizens, as well as spouse and minor children. Where the Lehman-Celler proposals crucially differed from the Truman Presidential Commission was that they proposed to cap immigration from the Western Hemisphere as well.

²³ Davis, "The Cold War, Refugees, and U.S. Immigration Policy," 87; Tichenor, *Dividing Lines*, 183.

best put to use by reserving them all for refugees. This was the position of Protestant organizations involved in refugee aid such as the National Council of the Churches, Church World Service, and the National Lutheran Council. At hearings, they insisted on focusing on “people who have been uprooted from their homes by war and the aftermath of war.” Instead of directly approaching the issue of overpopulation as such, they maintained that admission of refugees, expellees, and escapees would indirectly alleviate overpopulation. For instance, with regard to Italy, they proposed that special visas be reserved for returnees from former Italian colonies in Ethiopia and northern Africa. This diverged from the positions of Catholic and Jewish organizations. Catholic organizations such as the National Catholic Welfare Conference viewed emergency migration program both as a means to aid refugees and as a means to enable immigration of co-religionists from countries where quotas were oversubscribed. After the founding of Israel in 1948, Jewish organizations had less direct interest in bringing their co-religionists to the U.S. than before, but neither did they insist on limiting the emergency migration to refugees.²⁴

An entirely different kind of opposition came from restrictionist concerns about the “destruction of the national origins quotas system.” Whereas the disagreement among refugee aid agencies concerned whom the program should prioritize, McCarran and Walter were against the President’s proposal as a whole and wished to kill the entire bill if possible. The foremost opposition of the restrictionists was that the program would open the door to communists. The portion to admit a certain number of Italian, Greek, and Dutch nationals invited additional

²⁴ Neuringer, *American Jewry and United States Immigration Policy*, 370-371; *Emergency Immigration Program: Hearing before the House Committee on Judiciary, Subcommittee no. 1, 83rd Cong.* 110-124 (1953) (Paul Empie, National Council of Churches and National Lutheran Council); *Hearing on Emergency Migration of Escapees, Expellees, and Refugees: Hearing before the Senate Committee on Judiciary, Subcommittee on Immigration and Naturalization, 83rd Cong.*, 102- 103 (Walter W. Van Kirk, National Council of the Churches of Christ in the United States of America)

objections, since it practically meant raising the ceiling for countries where high demand of visas far exceeded the quotas. Restrictionists feared it would “set a precedent for complete destruction of the national origins quota system” and the INA of 1952 that went into effect only a few months earlier. If there were to be any temporary law, McCarran insisted on an all-refugee law and the Senate renamed “Emergency Migration Act” into “Refugee Relief Act.” Nevertheless, Senate did not entirely close the opportunity for Italians, Greeks, and Dutch. In addition to reducing the number of visas, the Senate included refugee status as a requirement.²⁵ As Senator Arthur Watkins (R-Utah), sponsor of the administration bill, commented that “it was because we could not get the bill through ... that we had to take the refugee program,” supporters of the initial emergency migration program saw the refugee status requirement as a compromise for getting a bill passed.²⁶

As a compromise, Congress established two admission classes for Italy, Greece, and Netherlands: refugees and relatives. For Italians, 45,000 visas were allocated to refugees, and 15,000 to relatives. For Greeks and Dutch, 15,000 visas were allocated to refugees and 2,000 to relatives. Originally, the relatives clause was based on the “preference system” that the emergency migration borrowed from the DP Act, which was the post-WWII act with the most extensive definition of relatives. In addition to the primary criteria of defining “displaced persons,” the law included a secondary preference system, one of which covered “blood relatives of citizens or lawfully admitted alien residents of the United States, such relationship in either case being within the third degree of consanguinity computed according to the rules of the

²⁵ *Emergency Migration Act of 1953*. S. Rep. No. 83–629 (1953); 99 Cong. Rec. 10110-10111 (1953) (Senator Patrick McCarran); Bon Tempo, *Americans at the Gate*, 41.

²⁶ *To Amend the Refugee Relief Act of 1953: Hearing on H.R. 8193 and S. 3005: Hearing before the Subcommittee of the Committee on the Judiciary Committee*, 84th Cong. 17, 25-26 (1954).

common law.” (section 6c)²⁷ In other words, it extended to relations such as nieces and nephews, uncles and aunts, and theoretically great-grandchildren and great-grandparents of both citizens and permanent residents. This was a much wider conceptualization of relatives than the then-in-effect 1924 Act, which only considered spouse (wife more than husband), minor children (non-quota) parents of U.S. citizens (first preference), and spouse and minor children of permanent residents (second preference) as relatives for purposes of admission.²⁸ Initially, Eisenhower’s emergency migration program drew on the DP Act, and gave preference to blood relatives within the third degree of consanguinity. However, a temporary legislation prompting revision of general immigration law was what the restrictionists most wanted to avoid, and they sought to make the emergency migration program conform as much as possible to the INA of 1952. Congress narrowed the definition of relatives to match the three family-based preference classes under the INA of 1952: parents of U.S. citizens (second preference), spouses and unmarried minor children of permanent residents (third preference), siblings of U.S. citizens, and married or adult sons and daughters of U.S. citizens (fourth preference).²⁹

However, despite the nativists’ intention, the Refugee Relief Act would fuel criticism against the INA of 1952. Precisely because family-based admission under the two laws closely resembled each other, both in terms of the range of relatives and in the system of family petitioning, the Refugee Relief Act was characterized as a law to provide relief for relatives

²⁷ This does not suggest that the DP Act as a whole was liberal. All persons admitted under the DP Act were charged against the future quotas. The most controversial preference was that for agricultural workers (section 6a), inserted in order to keep out Jewish immigrants.

²⁸ Although the definition of relatives under the Displaced Persons Act was never wholly incorporated into general immigration law, various bills in the 1950s referred to this definition. For instance, Herbert Lehman (D-NY), Emanuel Celler (D-NY), and John F. Kennedy (D-MA) adopted this definition in their proposals to abolish the national origins quotas system.

²⁹ “For the Information of Our Reader,” *ACIM Dispatch* 3, no. 6 (October 1954): 3; “How American Citizens Can Help Others to New Lives in the United States,” *ACIM Dispatch* 3, no. 9 (December 1954): 5; Box D1, ACIM 001

prevented from immigrating to the U.S. by the long backlog caused by the national origins quotas system. And the amendment made to the original Refugee Relief Act in 1954 would further highlight the problem of family separation.

(Table 5-1: Immigrants Admitted under the Refugee Relief Act of 1953 on page 259)

National Origins Quotas and National Security: The 1954 Amendment to the Refugee Relief Act

Despite its initial emphasis as an all-refugee law, on August 31, 1954, Congress amended the Refugee Relief Act and dropped the emphasis on refugee status. Along with the identical definition of relatives, this blurred the line between admission of relatives under emergency legislation and general immigration law. Whereas the original formula divided visas between relatives and refugees with emphasis on the former, the 1954 amendment made 60,000 Italian visas, 17,000 Greek visas, and 17,000 Dutch visas available for both refugees and relatives without any prefixed number for either. This amendment was proposed at a very early stage of the Refugee Relief Program, and only six persons had arrived in the U.S. when House passed the amendment in March 1954.³⁰

The Department of State's Bureau of Security and Consular Affairs, which was responsible for the administration of the Refugee Relief Program, divided the program into "two separate and distinctly different phases of the operations." The first phase was to issue 19,000 visas to Italian, Greek, and Dutch relatives of U.S. citizens and permanent residents. Although all persons applying for a Refugee Relief Act visa were subject to rigid screening, admission of relatives was considered to proceed the fastest, since the procedure had much in common with

³⁰ "Refugee Program to be Stepped Up," *New York Times* January 31, 1954.

the general system of family petitioning by U.S. citizens and permanent residents, a long-established practice for family visas since 1924.³¹

Admission of 190,000 refugees, escapees, expellees, and orphans adopted by U.S. citizens was placed as the second phase of the Refugee Relief Program. The law required refugees, escapees, and expellees to secure a job and housing assurances, and the Department of State decided to let the assurances accumulate before they sent staffs to various countries to administer the program. Assurance was the first of the numerous hurdles. The Refugee Relief Act required a concrete proof of job and housing as well as a proof that they would not displace a U.S. citizen from the job or housing. Furthermore, the law accepted only assurances by individual U.S. citizens and not by organizations. The DP Act had permitted both blanket assurances and assurances by organizations. Voluntary agencies first had to find a U.S. citizen willing to sponsor a visa. Although certain number of refugees, escapees, and expellees had relatives and acquaintances in the U.S., this was a difficult condition to meet for those without.³²

³¹ Another phase, which was in the jurisdiction of the Immigration and Naturalization Service, was to adjust the status of persons already in the U.S. who were in refugee status. *First Semiannual Report of the Administrator of the Refugee Relief Act of 1953* (Washington D.C.: GPO, 1954), 8-9; *Third Semiannual Report of the Administrator of the Refugee Relief Act of 1953* (Washington D.C.: GPO, 1955), 8; Since majority of Italian relatives was expected from Southern Italy, the first post of the entire Refugee Relief Program was established at Naples in December 1953. Operation in Greece followed, with the first post established at Athens and then at Salokia. As of April 1954, Italy and Greece were the only two countries where the Refugee Relief Program was launched. Naples and Palermo posts administered three quarters of the Italian cases, and Naples became the largest post in the entire Refugee Relief Program. Three other posts were established in Genoa, Palermo, and Trieste. Senate Committee on Judiciary, *Final Report of the Administrator of the Refugee Relief Act*, 39-43; Bon Tempo, *Americans at the Gate*, 48.

³² Despite liberals' repeated protest, the individual U.S. citizen sponsor requirement was maintained throughout the Refugee Relief Program. Since mid-1955, however, voluntary agencies were allowed to endorse and co-sign the assurance with the U.S. citizen individual, which made it easier to find a sponsor. Bon Tempo, *Americans at the Gate*, 45-48, 57; For assistance to Italian Americans, see Battisti, "Refugees, Relatives, and Reform," 138-140, 150; *To Amend the Refugee Relief Act of 1953: Hearing on H.R. 8193 and S. 3005: Hearing before the Immigration Subcommittee of the Senate Judiciary Committee*, 83rd Cong. 14 (1954) (Scott McLeod, Administrator, Bureau of Inspection, Security and Consular Affairs, Department of State).

The immediate reason for the proposal to amend the Refugee Relief Act to expand family-based admission was that there were many more petitions filed for relatives than assurances filed for refugees. It was evident from the beginning that relatives visas provided under the program would not even meet the existing demand under general immigration law. When the bill was enacted, family visa petitions by Italian Americans under the INA of 1952, many of which had been carried over from the preceding 1924 Act, had already exceeded 15,000 provided by the Refugee Relief Act. Passage of the Refugee Relief Act induced even more people to file a petition, given a hope that there might be an opening for their families under temporary law. Particularly fast to accumulate were petitions for fourth-preference relatives who had little chance of immigration under the regular channel of the 1952 Act. Italian fourth-preference petitions (adult or married sons and daughters, and siblings) alone counted 32,000, and the demand was actually much higher, since this figure did not include the beneficiaries' spouses and children. By contrast, as of April 1954, 240 assurances for refugees had been filed in Italy, 1,800 in Greece, and 4 in Netherlands. As the State Department acknowledged, this was not because few qualified but due to the high hurdles of the Refugee Relief Act.³³

For the supporters of the original emergency migration program such as Senator Watkins, the priority was to quickly admit as many people as possible. Watkins maintained that refugee status was less important, since the original idea was simply to admit certain number of immigrants outside the quotas. In January 1954, when Congress began to consider amending the Refugee Relief Act, only four persons had immigrated to the U.S.: three Italians and one Greek.³⁴ Slow progress due to the various hurdles that restrictionists included and from

³³ *INS Annual Report 1953*, 19; *INS Annual Report 1954*, 16; "Facts Regarding in the RRP in Italy," folder "Immigration and Citizenship Act of 1953," box 493, Emanuel Celler Papers, Library of Congress.

³⁴ "Refugee Program to be Stepped Up," *New York Times* January 31, 1954.

administration of the program was a source of much frustration and criticism, and reallocation of visas was a welcomed change to expedite the program. According to Watkins, of foremost importance was “propaganda purposes” against Communism, which was most undermined by the fact that the U.S. was actually admitting few persons despite having passed a special law. As long as the U.S. could “show the Italian people that you are willing to take them over here,” it was a secondary issue whether their status was refugees or relatives.³⁵

McCarran and Walter’s withdrawal of opposition spoke to an exclusionary motive behind family-based admission. As discussed earlier, one of the main reasons for the initial emphasis on refugee status was because McCarran and Walter saw admission of non-refugees as a threat to the national origins quotas, since non-quota admission of nationals from certain countries with small quotas in effect raised the ceiling under the INA of 1952. However, equally if not more important than their concerns about the “destruction” of the national origins quotas was the fear of communist infiltration. They suspected all refugees as possible communists. After including various screening processes in the Refugee Relief Act, they sought to maintain control over the administration of the program. Their ally in the Department of State was Scott McLeod, a former FBI agent and the administrator of the Refugee Relief Program. Liberals like Emanuel Celler fiercely condemned that rigorous screening prevented the program from achieving its purpose. And until Eisenhower demoted McLeod in mid-1955, the program progressed at a very slow pace.³⁶

³⁵ *To Amend the Refugee Relief Act of 1953, Hearing on H.R. 8193 and S. 3005: Hearing before the Subcommittee of the Committee on the Judiciary Committee, 84th Cong. 17, 25-26 (1954) (Senator Arthur Watkins)*

³⁶ *Special Migration Act of 1953. H.R. Rep. No. 83-974, at 19-20; Bon Tempo, Americans at the Gate, 41-47.*

From a security-centered perspective, the Bureau of Security and Consular Affairs believed that admission based on family connections would lower the chance of communist infiltration. The merit of emphasizing family connections was that “it is much easier to ascertain his background by inquiry than ... the refugee.” The deputy administrator Robert C. Alexander argued likewise that emphasis on family ties could bring “a better type of immigrant, security wise.” Whereas at the core of family-based admission was the desires of American citizens and permanent residents to bring their families to the U.S., it was ultimately the idea that families were less likely to pose security threats that overrode the restrictionists’ concerns about the destruction of the national origins quotas.³⁷

Anticommunism worked on several levels in favor of family-oriented admission from Italy, Greece, and Netherlands. First was a foreign-policy concern of the administration that sought to prevent communist influence in strategically important NATO countries. Secondly, once admission of refugees were approved, it was the restrictionist fear of communist infiltration and suspicion of refugees that formed a more family-oriented admission policy.

As a result, on two levels, the 1954 Amendment tied the Refugee Relief Act more closely with family unification of Italian-Americans and Greek-Americans. First was the composition of immigrants admitted under the program. Majority were relatives; 46,308 Italians and 7,518 Greeks immigrated as relatives, and 13,153 Italians and 9,198 Greeks immigrated as refugees.³⁸ In the case of Italy, it reversed the original formula for 45,000 visas for refugees and 15,000 for

³⁷ *To Amend the Refugee Relief Act of 1953: Hearing on H.R. 8193 and S. 3005: Hearing before the Immigration Subcommittee of the Committee on the Judiciary*, 84th Cong. 12, 29 (1954) (Robert C. Alexander, Bureau of Security and Consular Affairs, Department of State and Edward Maney, Director of the Visa Office, Department of Justice) 3-4, 14

³⁸ Demand for bringing relatives from Netherlands was small, and 13,989 Dutch came as refugees and 930 as relatives, which was close to the original allocation of 15,000 visas for the former and 2,000 for the latter. Bon Tempo, *Americans at the Gate*, 45-56.

relatives. Italian relatives admitted under the program comprised one-quarter of all Refugee Relief Act immigrants, and one-sixth of Italian immigrants between 1952 and 1965.

Second had to do with the rhetoric surrounding the law and characterization of the program. Although Congress dropped the emphasis on refugee status, the 1954 amendment was not a return to the original emergency migration plan, which simply proposed to admit a certain number of Italian, Greek, and Dutch nationals outside the quotas. Notably, Walter explained to the House the purpose of the amendment was “to reunite the families of people who are living in this country but have relatives abroad.”³⁹ As the Senate Judiciary Committee reported that “in the preference cases ... which have already been approved under the Italian, Greek, and Dutch quotas a large percentage of the cases are in the fourth-preference category,” the amendment was most expected to benefit fourth-preference relatives especially in Italy and Greece. Walter considered that fourth-preference relatives would be preferable to admitting “strangers.” This view that admission of persons related to U.S. citizens or residents were preferable to admitting those without necessary connections was a view lacking humanitarian concerns, since it lay emphasis on the interests of and connections with insiders.⁴⁰

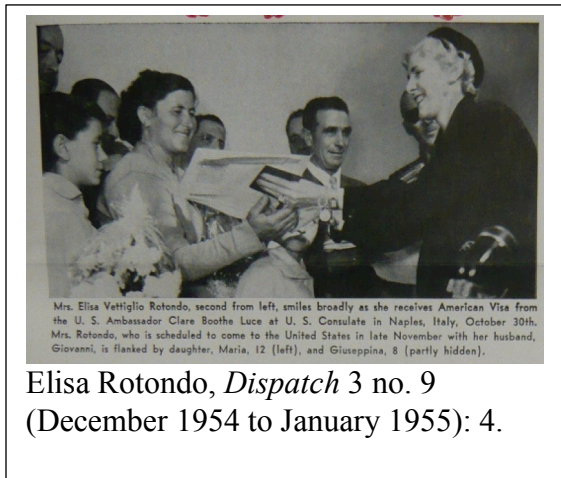
What deserves attention here is the rhetorical shift in arguments advanced for the original emergency migration program and for the 1954 amendment. The primary emphasis of the original proposal, which simply proposed to admit a certain number of immigrants, was on “overpopulation” or how the weak economy unable to support the population might lead to political unrest and communist expansion. In the March 24, 1952 message, Truman did not mention uniting of families as the reason for special legislation at all. Yet, the restrictionists,

³⁹ 100 Cong. Rec. 3244 (1954)

⁴⁰ Ibid. Exclusionary aspect of the 1954 amendment can also be found in the fact that as a condition of making visas mutually available for refugees and relatives, McCarran insisted that a job and housing assurance should be required of both refugees and relatives.

who saw immigration policy as a matter of domestic policy, never supported the idea that problems of other countries should be a factor for the U.S. in determining its immigration policy. Second, when Congress established refugee class and relatives, family connection was more of a requirement for qualifying for a visa than the reason for a special legislation. But as the Refugee Relief Act as amended was characterized as a law to promote reunion of families, “family reunification” attained a higher grounds as a reason for special legislation. It also suggested that while the national origins quotas could not be overridden by proposals to admit nationals of certain countries with weak economies it could be challenged by demands for family-unification.

5.2. Migration under the Refugee Relief Act and the Immigration and Nationality Act



On October 31, 1954, two months after Congress amended the Refugee Relief Act, Ambassador Clare Boothe Luce issued the 10,000th Refugee Relief Act visa in Italy. The recipients were Elisa Vittiglio Rotondo (41), her husband Giovanni Rotondo (44) and their two daughters Maria (12) and Giuseppina (8), from Cassino. In December 1954, they arrived at New York on S.S. Independent. Elisa's brother Anthony Vittiglio and her father Joseph Vittiglio lived in Detroit. It had been more than thirty years since Elisa had last seen her father. Anthony welcomed the Rotondos at the port and the Rotondos soon took residence in Detroit right next door to the Vittiglios. According to an Italian-American newsletter, "the reunion was a joyous occasion in the lives of both families."⁴¹ As the 10,000th Italian recipient of the Refugee Relief Act visa, the Rotondos was a focus of much attention. Images of Ambassador Luce handing the visa to the Rotondo s and the family arriving in New York together to be welcomed by Anthony Vittiglio were widely circulated through the Italian-American media. These images represented

⁴¹ "Ten Thousandth Visa Recipient Arrives with Family," *ACIM Dispatch 4*, no. 1 (February 1955): 1-2.

a crucial difference between the Refugee Relief Act and the INA of 1952 with regard to the boundary of family-based admission.

The significance of the Refugee Relief Act lay not only in that it was the first post-1952 temporary law that enabled those waiting for a family visa to immigrate to the U.S. outside the quotas but also in that it allowed the mode of family immigration that was not possible under general immigration law. This section discusses how the Displaced Persons Act, the Refugee Relief Act, and the INA of 1952 defined “relatives” and the different modes of immigration under each law. Although the Refugee Relief Act conformed to the INA of 1952 in many ways, its nature as an emergency legislation made a difference that underscored the constraints imposed on family-sponsored migration under the INA of 1952. Once the law expired, removal of such constraints would become one of the most heated issues in family unification debate in the late 1950s to the early 1960s. Most importantly, the issue not only had to do with the mode of immigration but with the boundaries of what constituted family under immigration law.

The Refugee Relief Act allowed all immigrants admitted under the program (refugees, escapees, expellees, and the relatives class) to immigrate together with “their spouses and their unmarried sons or daughters under twenty-one years of age, including stepsons or stepdaughters and sons or daughters adopted prior to July 1, 1953.” The one condition was that they all applied for a visa and immigrated to the U.S. at the same time and not at a later date. (section 3) This was a feature inherited from the DP Act.⁴² As stated in the previous section, Congress made the range of relatives eligible for family sponsorship under the Refugee Relief Act conform to general immigration law instead of the DP Act. But this family provision that the Refugee Relief Act inherited from the DP Act created a rarely-noted but crucial difference from the INA

⁴² The DP Act provided that “the spouse and unmarried dependent child or children under twenty-one years of age” of a displaced person shall also be eligible for a visa. (section 2.c.3)

of 1952. The Refugee Relief Act was the first post-1952 act to enable a U.S. citizen to sponsor a visa not only for a married immigrant but for their spouse and children as well. Specifically, when a U.S. citizen sponsored a Refugee Relief Act visa for their parents (second preference under the INA of 1952), married sons and daughters, or married siblings (fourth preference), the visa covered beneficiaries' spouse and unmarried minor children as well. An example was the first Dutch to receive a Refugee Relief Act visa in May 1954: Jan Koetsier, a cattle-breeder, his wife and their six minor children. The sponsor of the visa was Jan's elder son Henry Koetsier living in Buena Park, California.⁴³ An example of the latter was the Rotondos. The principal beneficiary of the visa was Elisa, a fourth-preference relative of her brother Anthony and her father Joseph. Her husband and the children derived their immigration status from Elisa.⁴⁴

Such family immigration was not possible under the INA of 1952. Under general immigration law, simultaneous immigration of the nuclear family was a privilege reserved for certain classes of immigrants. The INA of 1952 reserved simultaneous immigration of the nuclear family as a privilege for non-family-based immigrants: skill-based first-preference immigrants or non-preference immigrants. Immigrants like Elisa Rotondo who had their visas sponsored by their parents or siblings (fourth-preference) had to leave the spouse and children abroad. It was only after becoming a permanent resident of the U.S. that they could take steps to file a petition for their family. Since families of permanent residents were subject to quota restriction, this meant a considerable period of time until they could join in the U.S. This "perverse arrangement," as *Columbia Law Review* article criticized, was by no means due to oversight of Congress nor was it a matter of technicality. "The draftsmen of the McCarran-

⁴³ "First Visas to Dutch by '53 Act," *New York Times* May 15, 1954.

⁴⁴ "Mrs Luce Gives Visa to Refugee," *New York Times* October 31, 1954; "Mrs. Luce Issues 10,000th Visa under Refugee Act," *ACIM Dispatch* 3, no. 9 (December 1954-January 1955): 4.

Walter Act knew how to keep family together when they wanted to.”⁴⁵ It was precisely their status as family-sponsored immigrants that prohibited them from bringing their immediate family to the U.S.

For example, an Italian-American in Davenport, California sponsored a visa for his parents in Genoa. However, the INA of 1952 did not allow the two minor children of the parents to be included in the same visa, because they were siblings of the sponsoring U.S. citizen (fourth-preference) whereas parents of U.S. citizens belonged to a higher preference (second preference). The advice of the American consulate was for the parents to leave their children in Italy and to send for them later after becoming permanent residents of the U.S.⁴⁶ Another citizen in San Francisco petitioned for visas for her parents and her minor brother, a second preference petition for the former and fourth-preference petition for the latter. With much longer backlog for the latter, there was no chance that a second-preference relative and a fourth-preference relative could receive a visa at the same time. Therefore, the only advice that an immigrant aid agency could give was that “parents place their son ... with relatives or in an institution” and that “immediately after their arrival” they should file a third preference petition for their son.⁴⁷ The age of the children was of particular importance in such cases. A child of a permanent resident only qualified for preferential status while they were minors. If the children reached twenty-one while waiting for a visa, they lost any preferential status. Upon naturalization of the parents, they would once again qualify for a preferential status, but adult sons and daughters only qualified for a fourth-preference visa with a long backlog.

⁴⁵ Charles P. Schwartz Jr., “American Immigration Policy,” *Columbia Law Review* 55, no. 3 (March 1955): 326-327.

⁴⁶ Eugenio Renzo Di Tano, Davenport, California, letter to ACIM, October 20, 1958, folder “Fourth Preference Appeal—Replies,” box E55, ACIM Records.

⁴⁷ Piera Cicco, San Francisco, California, letter to ACIM, October 16, 1958; Caesar Donanzan, letter to Piera Cicco, October 24, 1958, folder “Fourth Preference Appeal—Replies,” Box E55, ACIM Records.

This constraint was based on the idea that family-based admission should be confined within the family “unit” in order to prevent chain migration. The fundamental unit was the nuclear family with a male breadwinner. Thus, the 1924 Act had only allowed family-based admission to spouse (wife more privileged than husband) and unmarried minor children (non-quota), along with parents (first preference).⁴⁸ And while the INA of 1952 allowed U.S. citizens to send for married sons and daughters, or married brothers and sisters, the beneficiaries’ spouses and children were not seen as part of the family of the sponsoring U.S. citizen, but as sons and daughters-in law, grandchildren, siblings-in-law, nephews, and nieces, relations too distant to deserve consideration as family.

This model of family-based admission did not recognize the multiplicity of family relationships. The immigrant was compelled to choose which family mattered more than others. A price to pay for having one’s visa sponsored by relatives in the U.S. was to leave one’s own spouse or children in Europe. On the other hand, in order to immigrate together with one’s spouse and children, one could not claim a visa based on relationship to families in the U.S. The INA of 1952 recognized only one relationship at a time but not both, and demanded immigrants to make a choice of which relations mattered more than others.

For immigrants from countries with undersubscribed quotas like Great Britain, such rules mattered little. Regardless of whether they had relatives in the U.S. or not, majority came as non-preference immigrants without sponsorship. It was the least time and cost-consuming way as long as there were abundant quotas, since there was no need to prove one’s skill (first-preference) nor did their families in the U.S. have to take the trouble to file a petition on their behalf. In fact, when immigrants from countries with abundant visas such as Great Britain

⁴⁸ In the case of permanent residents, preference was accorded to spouse and children.

applied for family-based non-quota or preference visas, officials wondered why they took such “entirely unnecessary” trouble and speculated that it was probably due to lack of understanding of immigration law.⁴⁹

Thus, the Refugee Relief Act was the first legislation without such constraints and enabled U.S. citizens to formally sponsor married immigrants and their families. While this was also possible under the DP Act, the primary criteria of admission under the DP Act was that they were displaced persons. But the Refugee Relief Act was different in that it was partly claimed to be a law for promoting family reunion. This was a privilege momentarily available under the Refugee Relief Act, and once the law expired, admission of married relatives would become one of the most heated issues in family unification debate in the late 1950s to the early 1960s. (Table 5-3: Immigration Pattern of Fourth-Preference Relatives under the Refugee Relief Act and the Immigration and Nationality Act on page 261)

5.3. Fourth Preference Relatives and the Immigration Act of 1959

In early 1958, the American Committee on Italian Migration declared that the fourth-preference under the INA of 1952 was “a farce” since “it permits them [U.S. citizens] to file applications and petitions, which, in most cases, are approved and then put at the bottom of a long list, for which there will never be any visas.”⁵⁰ Situating abolition of the national origins quotas as its long term goal, the organization resolved that its immediate goal was to tackle the plight of fourth-preference relatives. After the Refugee Relief Act visas were exhausted, the

⁴⁹ *Proposing an Amendment to the Refugee Relief Act of 1953: Hearing on H.R. 7475, Before the Subcommittee No. 1 of the House Committee on the Judiciary*, 83rd Cong. 16 (1954) (Edwin S Maney, Director, Visa Office, Bureau of Immigration, Department of Justice).

⁵⁰ “ACIM Launches Drive for Reunion of ‘Fourth Preference Cases,’” *ACIM Dispatch* 7, no. 2 (Feb 1958):

chance of fourth-preference relatives to immigrate to the U.S. became extremely small. First of all, even with the 1954 Amendment, the Refugee Relief Act visas were far from sufficient to meet the existing demand at the time, and new applications continued to grow. By June 1959, waiting list for a fourth-preference visa reached 65,000 in Italy, not including their spouse and children, 4,500 in Greece, 3,200 in Poland, 2,500 in Portugal, and 1,700 in Yugoslavia. However, in the previous two years, fewer than 300 were able to obtain a visa in Italy. The annual quota for Italy was 5,666, and fourth-preference relatives could obtain a visa only if the first three preferences did not use all the quotas.⁵¹

Between 1957 and 1962, Congress passed four bills that allowed immigrants waiting for a preference visa over a certain period to immigrate to the U.S. outside the quotas. As temporary legislation for non-quota admission, the scale was much smaller than the Refugee Relief Act; a total of some 82,000 preference families immigrated between 1957 and 1966 outside the quotas. These laws did not name immigrants from specific countries, but granted non-quota status by preference category and by registration date, in other words according to how long they had been waiting for a visa. The largest beneficiaries were immigrants from Italy, which received 48,000 visas, followed by those from Portugal (7,100) and Greece (6,800). (Table 5-4: Legislation Regarding Family-based Admission, 1957-1962 on page 262; Table 5-5: Non-quota Admission of Preference Families on page 263)

The peak of Italian immigration to the U.S. between 1952 and 1965 was during the Refugee Relief Act.⁵² On one hand, in the late 1950s, as historian Danielle Battisti argues,

⁵¹ *INA Annual Report 1957-1959*, table 7A: Quota Immigrants Admitted, By Quota Area and Quota Preferences.

⁵² For Italian emigration to Europe, and around the world, see Giuseppe Lucrezio Monticelli, "Italian Emigration: Basic Characteristics and Trends with Special Reference to the Last Twenty Years," *International Migration Review* 1, no.3 (1967): 10-24.

political conditions had become less favorable than in 1953 for Italians to gain admission to the U.S. The economies of Germany and Austria were recovering, which decreased the urgency of programs such as “emergency migration program.” Although the economy of southern Italy was weak, the possibility of the Communist Party taking control had diminished. Since the issue of “overpopulation” that had been emphasized in the early 1950s was not solely a matter of weak economy and unemployment but whether economic and political unrest would create an opening for communist influence, the White House felt less need for a special legislation. It was even more difficult to gain admission as refugees, since refugees became more tightly associated with those fleeing from “Communist, Communist-dominated, or Communist-occupied area” such as Hungarians, and even they could not gain permanent residency for several years after being paroled into the U.S.⁵³

On the other hand, a more favorable condition was the heightened pressure to amend or abolish the national origins quotas altogether. For example, the American Immigration Conference, an umbrella association established in 1953 by some 60 ethnic and religious organizations in order to reform the 1952 Act, completed a 40-point reform proposal in 1955 that outlined their goals, the first of which was that “the national origins quotas system be abolished and that it be replaced by a humane and rational immigration plan free from racial, ethnic and religious discrimination.”⁵⁴ With the merger of AFL-CIO in 1955, organized labor also joined force for abolition of the national origins quotas.⁵⁵

⁵³ Battisti, “The American Committee on Italian Migration, Anti-Communism, and Immigration Reform,” 29-31; Bon Tempo, *Americans at the Gate*, 60-85, 97-105.

⁵⁴ American Immigration Conference, “Recommendations for Amending Certain Provisions of the Immigration and Nationality Act,” September 1955, box 8, American Immigration and Citizenship Conference Records, Social Welfare History Archives, University of Minnesota at Minneapolis.

⁵⁵ Tichenor, *Dividing Lines*, 203-207.

In Congress, at the forefront of attack against the national origins quota system were Senator Herbert Lehman (D-NY) and Representative Emanuel Celler (D-NY). Since 1953, the two had introduced a series of bills to abolish the quotas system. Republicans also became more openly critical of the national origins quotas. During the debates about the refugee relief program, Republicans remained silent about the national origins quotas. Eisenhower separated emergency migration program from the issue of the quotas system in order not to invite the criticism that the program was an attempt to undermine the INA of 1952, and Republicans had agreed not to discuss the quotas system while the Refugee Relief Act was in effect. But in early 1956, for the first time Eisenhower publicly proposed to modify the national origins quotas system, although his proposal was not abolition of the national origins quotas but 1) an increase of the overall quotas and 2) redistribution of unused quotas by Great Britain and Ireland.⁵⁶

Background of ACIM and the Immigration Act of 1957

Since its founding in early 1952, the American Committee on Italian Migration upheld abolition of the national origins quotas system as its long-term goal. With an acute demand for Italian immigration to the U.S., they engaged in a dual strategy to call for the abolition of the national origins quotas and to lobby for temporary legislation as well. Established a few months before the Immigration and Nationality Act became law, when the retention of the national origins quotas was almost certain, the organization supported President Truman's emergency migration program. Through providing aid to Italians and Italian-Americans during the Refugee Relief Act, ACIM expanded its network from some 15 chapters around New York to over 120 chapters by 1958.

⁵⁶ Hutchinson, *Legislative History*, 325-326; Zolberg, *Nation by Design*, 323.

After the expiration of the Refugee Relief Act, the organization first focused on the reunification of families of Refugee Relief Act immigrants. As discussed earlier, all Refugee Relief Act immigrants were entitled to immigrate together with spouse and children. But whether it was legally possible for families to immigrate together and whether various circumstances allowed them to do so was a different matter. A considerable number of Refugee Relief Act immigrants did not or could not immigrate to the U.S. with their spouse and children, but applied individually for a visa with the intention to first find employment in the U.S. and then to send for their families. The Refugee Relief Act visa was available to the entire family only when they immigrated to the U.S. together and not at a later date. Once the law expired, separation of Refugee Relief Act immigrants and their families became an acute issue. Since they were yet to fulfill the five-year residency requirement for naturalization, these immigrants had to petition for their families under the third-preference for families of permanent residents, and that waiting list grew rapidly. In Italy, by 1957 approximately 18,000 immediate family members were waiting for a third-preference visa.⁵⁷

The argument that families of Refugee Relief Act immigrants deserved special consideration particularly appealed to Congress. For example, Representative David Dennison (R-OH) argued: “In many cases the head of the family had come to this country before the others to prepare the way for his loved ones, not realizing that the law would expire before the

⁵⁷ Another issue was the so-called “pipeline cases,” who were at various stages of visa and investigative processing were closed, when the number of available Refugee Relief Act visas were exhausted. Department of State accepted significantly more assurances than the available number of visas because they were uncertain whether Congress would extend the program. While visas remained unused in Germany and Austria, the expiration of the Refugee Relief Act left 59,000 prospective immigrants in pipeline status, including 22,000 Italian relatives and refugees, 10,500 Greek relatives and refugees, 9,900 Asian refugees, 9,000 escapees, and 5,700 Chinese nationals. Battisti, “The American Committee on Italian Migration, Anti-Communism, and Immigration Reform,” 27-29; Senate Committee on Judiciary, *Final Report of the Refugee Relief Act of 1953*, 41, 54, 141.

families were joined. ... In my district there are a particularly large number of people from Greece and Italy who were caught by the expiration of this act. ... But in the midst of all the blessings they enjoy as Americans, there is always the heartache in being separated from their loved ones.”⁵⁸ In the Act of September 11, 1957, Congress agreed to clear the backlog in the first three preference classes by allowing all first-preference (skill-based immigrants), second-preference (parents of U.S. citizens), and third-preference immigrants (spouse and minor children of permanent residents) for whom petition had been approved before July 1, 1957 to immigrate outside the quotas.⁵⁹

Fourth-Preference Campaign

However, the 1957 Act entirely neglected the last category of family-preference immigrants, those with the longest waiting list: the fourth preference, including adult sons and daughters of U.S. citizens, married sons and daughters of U.S. citizens, and siblings of U.S. citizens. The ACIM highlighted the issue of fourth-preference relatives as the second phase of their campaign. In light of the economic recession, instead of pushing for immediate legislation, ACIM devoted the year 1958 to bringing to the attention of Congress and the public the hardship of fourth-preference families through their newsletter *ACIM Dispatch*, press interviews, radio talks and speaking tours throughout the country organized by ACIM chapters in cities such as

⁵⁸ 103 Cong. Rec. 16307 (1957)

⁵⁹ Expected number of immigrants was as follows, Italy, 21,308; Greece 3,588; Poland 1,118; Chinese 634; Japan, 592; Turkey, 599; Hungary, 554; and Spain, 363. 103 Cong. Rec. 15487 (1957); Section 12, Act of September 11, 1957.

Cleveland, Camden, St. Louis, Kansas, Omaha, Chicago, Los Angeles, San Francisco, Seattle, and Portland.⁶⁰

The organization made use of every opportunity to make both political and emotional appeal.⁶¹ In the mid-term election, ACIM made sure to emphasize the political influence of Italian American voters. On Columbus Day 1958, Representative Kenneth Keating of New York, ranking Republican on the House Judiciary Committee running for the Senate, arranged a meeting in New York City between President Eisenhower and ACIM leaders. At the meeting, they stressed that “Italian voting population in New York State is the largest of all the nationality groups” and that “championing this cause [fourth-preference legislation] publicly will have a very beneficial effect on the chances of any candidate running for reelection.”⁶²

Of particular importance was a campaign that the organization launched in October 1958 to gather detailed information about the situation of fourth preference relatives and their families. Through local chapters, newspapers such as *Gazzetta del Massachusetts*, *Il Corriere de Popolo*, *Il Crociato*, *La Voce del Popolo*, radio programs, ACIM requested Italian-Americans who had filed fourth-preference petitions to write to the ACIM headquarters in New York including information such as when their petitions were approved, availability of housing and employment for the prospective immigrant, current employment status or specialty of the prospective

⁶⁰ ACIM Board of Directors, Minutes, April 29, 1959, folder “Board of Directors,” box E61, ACIM Records.

⁶¹ For instance, at an awards dinner that the organization held in early 1958 in Illinois for senators Everett M. Dirksen (R) and Paul H. Douglas (D), the Italian ambassador appealed that “the case for the reunion of families does not reflect only an Italian interest, but also, and mainly one that affects the American national interest.” “Address by H.E. Manlio Brosio,” *ACIM Dispatch* 7, no. 2 (Feb 1958): 2-3.

⁶² Memorandum, circa October 1958, folder “Congressional Correspondence,” box E35, ACIM Records. “Eisenhower Favours Solution of ‘Fourth Preference’ Problem,” *ACIM Dispatch* 7, no. 7 (November 1958): 1 and 4.

immigrant, whether they were sending remittances to Italy, and the last time families had met one another.

“The interest in the announcement,” as the Italian language radio station WOV’s director wrote, proved to be “very strong.” Letters kept coming in, and it did not take long for the organization to decide that they had gathered enough evidence to prove their point to Congress. ACIM reported that they were “flooded” with letters and that “letters pouring in reflect pathetic plight of broken families.”⁶³ Within a month ACIM received replies from over twenty states, from overseas including Canada and Italy, with 90 percent arriving from seven states with large Italian-American population: New York, California, Illinois, Pennsylvania, New Jersey, Connecticut, and Massachusetts.⁶⁴ Since some had filed petitions for more than one relative, by the time some 1,000 Italian-Americans wrote to ACIM about their families, the organization had gathered information about 1,200 fourth-preference cases. Since the Italian backlog for fourth-preference was some 60,000, the letters comprise 2 percent of all Italians waiting for a fourth-preference visa at the same time.⁶⁵

In order to emphasize the separation of Italian-Americans from their families, the organization quickly published the letters in their newsletter for distribution to Congress

⁶³ “ACIM Flooded with Requests to Help Resolve 4th Preference Problem,” *Dispatch* 7, no. 6 (October 1958): 1 and 4; Arnold Hartley, Director of Programs, WOV, letter to Caesar Donanzan, October 6, 1958, folder ‘Fourth Preference Replies, English-1,’ box E54, ACIM Records; Caesar Donanzan, letter to Nicola Francone, President of Italian Broadcasting and Advertising Co., Chicago, December 8, 1958, folder “Fourth Preference Appeal Replies 3,” box E55, ACIM Records.

⁶⁴ The following statistics is based on the author’s analysis of letters filed at the Center of Migration Studies, Staten Island. Fourth-preference files can be found in boxes E54, E55, and E60, ACIM Records. New York (22 percent), California (22 percent), Illinois (17 percent), Pennsylvania (12 percent), New Jersey (8 percent), Connecticut (4 percent), and Massachusetts (4 percent). Other states include Colorado, Delaware, Florida, Indiana, Maryland, Michigan, Missouri, Nevada, Ohio, Rhode Island, Tennessee, Texas, Vermont, Washington, Washington D.C., West Virginia, and Wisconsin.

⁶⁵ The largest number of petitions filed by an individual concerned two sons and three daughters. Folder “Fourth-preference replies, Italian,” box E54, ACIM Records. Individual names are withheld in this article for privacy reasons.

members, and other immigrant advocacy groups. A woman in East Chicago wrote about her sister, “I filed a petition for my sister in August, 1953. She is alone in Italy and I am alone here. Our parents are dead and we have no relatives. I hope that you will do everything you can to help her join me here. I cry every night from loneliness.” A mother in Detroit who sent for her daughter wrote, “Why are we permitted to file applications for our loved ones only to discover that it is useless? ... I am a widow. She is my only child, I send her the means to carry on and keep telling her to hope and pray that someday we will be together again. I suffer loneliness and a longing to see her. Is there any hope?”⁶⁶

Challenging the Boundary of Family

Fourth-preference appeals sent to ACIM included significantly more requests to send for one’s brothers and sisters than for sons and daughters. Out of the 1,236 fourth-preference cases, 75 percent concerned admission of brothers and sisters, while 25 percent pertained to sons and daughters. Further breakdown by sex shows that 41 percent were for brothers, 34 percent for sisters, 12 percent for sons, and 13 percent for daughters. Thus, 53 percent of the fourth-preference cases sent to ACIM concerned male relatives, while 47 percent concerned female relatives. The letters also suggest that at least a quarter of fourth-preference relatives had spouses and children, who were not recognized by the INA.⁶⁷

(Table 5-6: ACIM Fourth Preference Files on page 264)

Realizing non-quota admission for fourth-preference relatives was in itself a difficult task. Many of the sponsors assumed that once visas were granted to their sons and daughters or

⁶⁶ “Appeals for Help on 4th Preference Cases Increase Daily,” *ACIM Dispatch* 7, no. 7 (November 1958): 3.

⁶⁷ Author’s analysis of fourth preference files, boxes E54, E55, and E63, ACIM Records.

their brothers and sisters, they would be able to come to the U.S. together with their spouse and children. But this was not possible under the 1952 Act. Fourth-preference families were bound by the rule that family-sponsored immigrants may not bring their immediate families.

For example, a naturalized citizen in Detroit wrote to ACIM that he sought to send for his daughter, her husband and child from Sicily. They had registered on the consular waiting list on the same day, but there was little chance of immigrating together to the U.S. The U.S. citizen father could petition for his daughter, but not for his son-in-law or grandchild. The only option for the daughter was to come to the U.S. first, and later sponsor a visa for husband and son (third preference before naturalization and non-quota after naturalization).⁶⁸ Under the Refugee Relief Act, ACIM recommended entire family to apply for a refugee visa instead of applying individually, otherwise there was no knowing when the following families would be able to come to the U.S.⁶⁹ Under general immigration law, however, they were mandated to immigrate separately.

Surely, after immigrating to the U.S. fourth-preference immigrants could send for their family as permanent residents or as naturalized citizens. But the purpose of the 1957 Act that ACIM had campaigned for was to realize prompt immigration of family of permanent residents. In October 1958, just when ACIM launched its fourth-preference letter campaign, the 20,000th visa for Italians had been issued under the 1957 Act. As an example of a “family now happily resettled in America,” *ACIM Dispatch* reported the reunion of the Mallimo family. In June 1956, Pasquale Mallimo immigrated to the U.S. with a Refugee Relief Act visa sponsored by one of his brothers in the U.S. His wife and their seven children could not come together to the U.S. at the

⁶⁸ Joseph B. Kyle, American Consul in Palermo, Italy, letter to Representative Louis C. Rabaut, July 24, 1958, folder “4th Preference, English,” box E54, ACIM Records. G.A. letter to ACIM, October 23, 1958, folder “Fourth Preference,” box E54, ACIM Records.

⁶⁹ Battisti, “Refugees, Relatives, and Reform,” 144-145, 166, 341-342.

time, and Pasquale worked as a construction laborer on Long Island for two years to save the \$1,200 needed to send for the family. Although the quota for Italy was full, the 1957 Act that accorded non-quota admission to spouse and children of permanent residents enabled his wife and children to come to the U.S. two years later.⁷⁰ In the case of the Mallimos, financial conditions not legal barriers led the family to immigrate step by step. But under the Immigration and Nationality Act, the only option for families like the Mallimo's was to immigrate to the U.S. separately.

The 1957 amendment to the INA of 1952 regarding skill-based first-preference immigrants further underscored the constraints imposed on family-sponsored immigrants. Previously, spouse and minor children of skill-based immigrant were accorded first-preference status but only when they immigrated together. This alone already pointed to the disadvantageous position of family-sponsored immigrants who did not have this option and were mandated to leave their spouse and minor children and to send for them later. Still, if the spouse and minor children of a skill-based immigrant was to follow later to the U.S., the INA of 1952 provided that they shall be treated on the same basis as families of any other permanent resident. The 1957 amendment accorded first-preference status to spouse and children of skill-based immigrants regardless of when they applied for a visa, and provided that they no longer had to wait for a visa in the same line as other immediate families of permanent residents. With permanent residents that were admitted on the basis of their skills and profession placed on a more privileged position than other permanent residents, the 1957 Act widened the gap between treatment of skill-based immigrants and those of family-sponsored immigrants.⁷¹

⁷⁰ "Reunited Italian Families Grateful to ACIM," *ACIM Dispatch* 7, no. 6 (October 1958): 3.

⁷¹ Between 1952 and 1957, the INA provided first preference visas to spouse and children of first preference immigrants only when they were "accompanying. In 1954, the Board of Immigration Appeals

A mere backlog clearance without challenging the model of family-based admission would replicate the problems. In their meetings with Senator John F. Kennedy, the INS Commissioner Joseph Swing, Senator James Eastland, chair of the Senate Sub-Committee on Immigration and Naturalization, and Francis Walter among others, Juvenal Marchisio and Caesar Donazan, president and the executive secretary of ACIM emphasized that Congress was by no means making a major amendment to the Immigration and Nationality act, but needed “to simply amend this provision [1957 Act] to include Fourth Preference Cases.” At the same time, they emphasized that Congress should not only clear the backlog for fourth-preference relatives but also recognize a fundamental flaw in immigration law that separated families. The organization proposed that Congress should reconsider the model of family-based admission and not only admit married sons, daughters, brothers and sisters of citizens (as principal beneficiaries) but extend the scope to their spouses and children (derivative beneficiaries).⁷²

The organization pointed to the two precedents: the Refugee Relief Act of 1953 and the Immigration Act of 1957. First, the Refugee Relief Act, which was the first opportunity for a significant number of fourth-preference immigrants to arrive in the U.S., allowed simultaneous

considered a case where the wife arrived six weeks after the husband. The husband was a German immigrant who was admitted to the U.S. as a skill-based first preference immigrant, and the wife was also issued a first-preference visa on the same day as an “accompanying” spouse. When the wife arrived in the U.S. six weeks after her husband, the INS maintained that her visa was not valid, since she was not physically “accompanying” her husband. The Board of Immigration Appeals ruled in favor of the couple that the term should not be taken literally. *In the matter of M-*, 0300/462538 5 *I&N* 722; In 1957, the privilege was extended from “accompanying” to “following to join” family. Congress still distinguished “existing families” or “pre-existing families,” who were already married before moving to the U.S. from families formed after immigration to the U.S. If they were already married before one spouse immigrated to the U.S., the other spouse was considered to be a “spouse following to join” the first preference immigrant. But if the marriage took place after moving to the U.S., the spouse was not considered to be “a spouse following to join” but as a spouse of a permanent resident alien. In the Matter of G-, Int. Dec. 936, File A-11523922, Exclusion Proceedings Decided by the Board June 24, 1958 quoted in *La Gazzetta Legale Italo-Americana* 38, no. 4 (April 1959): 81-84.

⁷² “Congressional Sentiment Favors ACIM Fourth Preference Goal,” *ACIM Dispatch* 7, no. 3 (March-April 1959): 1-3.

immigration of the nuclear family. Second, one of the proclaimed purposes of the 1957 Act, which cleared backlogs for first to third preferences, was reunification of permanent residents with their spouse and children (third-preference). ACIM explained that once admitted to the U.S. and obtaining permanent resident status fourth preference relatives would now be able to send for their spouse and children, which would make the third preference waiting list even longer. Admission of fourth preference relatives without considering their spouses and children would only repeat the problem that Congress previously agreed to ameliorate.

ACIM's proposal had strong support of Kenneth B. Keating, now a Senator, and Italian-American Congress members such as John O. Pastore from Rhode Island, the first Italian-American Senator, and Representative Peter Rodino from New Jersey, who would become the chair of the House Judiciary Committee in 1973. As expected, the foremost obstacle was Francis Walter, who insisted that "amendment proposed by the Committee on Italian Migration" was "excessive and not serve the best economic and social interests of the United States at this time."⁷³

Walter expressed particular concern about the multiplier effect of admitting married immigrants. The official fourth-preference waiting list contained little information about the spouses and children of married applicants, precisely because the latter did not qualify for a visa. Walter instead relied on the State Department's "multiplication index" to estimate the family implications of fourth preference immigration. The index was an estimate of how many

⁷³ Speech of Kenneth Keating before the American Immigration Conference and National Council on Naturalization and Citizenship, folder "AIC Committee on Legislation, February- April 1959," box 7, AICC Records; "Fourth Preference 'Clean-Up' Bill Introduced by Keating," *Dispatch* 8, no. 2 (February 1959): 1-2; "Daniels Introduces 4th Preference Bill in Congress," *ACIM Dispatch* 8, no. 4 (April 1959): 2, box D1, ACIM Records; "Disegno de legge di quarta preferenza presentato da Keating," *La Gazzetta Legale Italo-Americana* 38 no. 4 (April 1959):74-76; folder "Background Clipping," box E61, ACIM Records; Francis Walter, letter to Representative Charles A. Buckley, June 30, 1959, folder "Legislation—H.R. 5896 Correspondence A-G," box E66, ACIM Records.

immigrants were likely to follow one immigrant from particular countries. Walter insisted that Italian immigration would increase at a higher rate than other nationalities. The index for Italian immigration was 2.7., and Walter maintained that non-quota admission of 60,000 Italians on the fourth-preference waiting list would lead to future immigration of 150,000, including their spouses and children, which was roughly equal to the annual quota for the entire Eastern Hemisphere.⁷⁴

Some Congress members advised ACIM that appealing for “only unmarried Italians in this category” might raise the chance of achieving fourth-preference legislation, but the organization did not choose to pursue this course.⁷⁵ First, they maintained that the nuclear family was not the only family relationship that mattered, and insisted that marital status should not be the grounds for denying relief. Second, they demanded that Congress should recognize how the conventional model of family-based admission dividing family relations into units actually separated families. Caesar Donanzan emphasized to various Congress members such as Emanuel Celler, “There is no doubt that some of these 84,952 applicants [fourth-preference backlog for all nationalities] ... are married and have children. We have advocated ... that in order not to create a future problem of separated families, they be permitted to bring spouses and children with them. ... We believe that it is in the American national interest that these people be

⁷⁴ The average “multiplication index” was 2.1. Francis Walter, letter to Caesar Donanzan, July 17, 1959, folder “Legislation – H.R. 5896, Walter, F.R.,” box E66, ACIM Records; For the index, also see Fred Mesmer, Judiciary Committee staff member, memo to Senator John Pastore, circa July 1959, folder “Legislation—H.R. 5896 Correspondence P-Z,” box E66, ACIM Records.

⁷⁵ Juvenal Marchisio, interview with IDAS, April 28, 1959, folder “Background Pamphlets,” box E70, ACIM Records.

admitted and, furthermore, we believe that our government has a moral responsibility to act favorably upon the petitions since it has accepted and approved them.”⁷⁶

Family Reclassified: Immigration Act of 1959

The fourth-preference campaign by ACIM bore fruit as the Act of September 22, 1959. In face of heightened pressure for elimination of the national origins quotas, it was difficult for Walter to entirely dismiss the demand. In fact, Walter accepted the proposal to change the preference classes rather than clear backlogs. Walter agreed to reclassify and to expand the range of relatives in several ways. First Walter agreed that the INA of 1952 should be amended since “unmarried adult children, although not minors, still belong to the family unit.” Walter also agreed that Congress should “permit the immigrant who is classified in the fourth preference category to bring with him his spouse and his minor children” for the purpose of “avoiding the immigration of family unit in two steps.”⁷⁷ On the other hand, he decided to offer little in terms of reducing existing backlogs, insisting on limiting eligibility to those who had already been waiting for a visa before the 1952 Act went into effect.⁷⁸

The Act of 1959 was a mixed success. As a temporary legislation for backlog clearance, the law was limited. For example, the 1957 Act had eliminated all the backlogs for the first three-preference classes by allowing non-quota admission for skilled-based immigrants and their families, parents of U.S. citizens, and spouse and minor children of permanent residents who had

⁷⁶ Caesar Donanzan, letter to Emanuel Celler, June 30, 1959, folder “Legislation H.R. 5896, Correspondence, A-G,” box E66, ACIM Records.

⁷⁷ 105 Cong. Rec.12716 (1959)

⁷⁸ To counter Keating, Walter introduced his own bill (H.R. 5896). *American Immigration Conference News* 5, no. 2 (March 31, 1959), 4-5; Walter bill passed by the House (July 6, 1959) reserved non-quota admission only for applicants since before the McCarran-Walter Act. Walter bill would have provided visas to only 6,317 Italians. Wagner, “The Lingering Death of the National Origins Quotas System,” 356.

applied for a visa before July 1, 1957. By contrast, the 1959 Act only provided non-quota visas for those registered before December 31, 1953. Although the cut-off date was a year later than the original date insisted by Walter and was expected to benefit some 57,000 immigrants including 30,000 Italians, it left a six-year backlog untouched.⁷⁹

The most importance change was reclassification of “family” in U.S. immigration law in a lasting way. First, with regard to parent-child relation, the 1959 Act came to place less emphasis on age, although adult children still did not enjoy the same status as minors. The 1959 Act expanded the preference categories for unmarried sons and daughters of citizens and permanent residents. The second preference previously reserved for parents now included unmarried adult sons and daughters of citizens. They would receive 20 percent of the visas in 1965. The third preference for families of permanent residents, previously limited to spouse and unmarried minor children was now expanded to include adult sons and daughters, who previously did not receive any consideration. Families of permanent residents would receive 20 percent of the visas in 1965.

ACIM’s challenge to the idea that nuclear family is the sole basis of family-based admission successfully extended the scope of family-based admission. Fourth preference now included married sons and daughters of U.S. citizens, along with their spouses and children. It also included siblings of U.S. citizens, along with their spouses and children if the siblings were married. In all, married children and siblings would receive 34 percent of all visas under the 1965 Act. In 1965, when the national origins quotas were abolished, Congress would reserve 10

⁷⁹ The Walter Bill passed by the House reserved relief for applicants before the McCarran-Walter Act went into effect, but Senate extended the cutoff date by one year. “Eisenhower Signs Bill to Reunite Families,” *ACIM Dispatch* 8, no. 6 (1959): 1-3.

percent of the visas for married sons and daughters and their spouse and children, and 24 percent for siblings and their spouse and children.⁸⁰

(Table 5-7: Reclassification of Preference Families, 1952-1959 on page 265)

5.4. Limits of Family-focused Reform

For the next few years, ACIM lobbied to reduce the growing backlog for fourth-preference relatives. As a temporary legislation, the 1959 Act left a 6-year backlog in fourth-preference category, and it took another three years until Congress reduced fourth-preference backlog by a mere three months, while the Italian fourth-preference waiting list continued to grow. One reason for rapid growth of the waiting list was new applications. Another was because the 1959 Act made wider range of families eligible for a family visa. Pre-1959 fourth-preference waiting list did not include the spouse and children of fourth-preference relatives, since they did not qualify for any preferential status. Now they could be officially registered as fourth-preference relatives. For instance, according to a 1962 statistics, in 1954, 15,279 married sons, daughters, and brothers and sisters (both single and married) newly registered on consular waiting list. And the number of their spouses and children was estimated to be 36,000. In 1955, 17,600 Italians registered as the principal beneficiary. The number of spouse and children were estimated to be 30,000. By 1962, the Italian fourth-preference waiting list reached 140,000. But in several ways, 1959 had marked a turning point in the movements to reform the national origins quotas and for the movement to expand family-based admission.⁸¹ (Table 5-8: Estimate of Italian Fourth Preference families in 1962 on page 266)

⁸⁰ Section 3, Immigration Act of September 22, 1959 (73 Stat. 644)

⁸¹ Immigration Act of 1961 Senator Pastore (D-RI) introduced a bill provided non-quota status for fourth preference relatives registered on a consular waiting list prior to December 31, 1954 (S.3361). Originally,

Restrictionist Opposition to Family-focused Reform

The significant growth of waiting list made the restrictionists more reluctant to pass further emergency legislations. The 1959 amendment to the INA of 1952 was precisely the reason for not enacting further legislation for fourth-preference relatives. In 1961, Congress passed another temporary legislation to provide non-quota visas for second and third preference relatives (now parents and unmarried sons and daughters of U.S. citizens, and spouse and unmarried sons and daughters of U.S. citizens), but refused to include fourth-preference relatives.⁸² In a letter to Edward Stanstrom, Executive Director for the Catholic Relief Service and board member of ACIM, Francis Walter wrote:

Whenever we speak about “reuniting of families” we must remember that since the 1959 amendment we can bring only second and third preference categories within the true meaning of that formula; fourth preference category, however, most definitely does not belong in the notion of “family reunion.”⁸³ [emphasis in original letter]

According to Walter, there were two reasons why immigration of post-1959 fourth-preference relatives did not constitute “family reunion.” First, the fourth preference category no

the bill was expected to benefit 65,000 fourth preference relatives, including 52,000 Italians, 3,000 Greeks, and 2,500 Portuguese among others. The Senate moved back the cutoff date to March 1954 in order to reduce the number of prospective immigrants to 16,000; It also accorded non-quota status to first preference immigrant, their spouse and children. Hutchinson, 355-356; *Facilitating the Entry of Alien Skilled Specialists and Certain Relatives of U.S. Citizens, and for Other Purposes*, S. Rept. 87-2276 (1961) at 2, 5.

⁸² The 1959 Act had an unintended effect of increasing the waiting period for others. Inclusion of unmarried adult sons and daughters of citizens and permanent residents to second and third preference waiting list, pushed back parents of citizens and some spouses and minor children of permanent residents on the waiting list, since some of the newly-included adult sons and daughters had an earlier priority date. In September 1961, while Congress was about to pass the 1961 Act for second and third preference families, ACIM requested Congress to include fourth preference relatives as well. “Third Preference Quota Dilemma,” *ACIM Dispatch* 9, no. 6 (September 1960): 1.

⁸³ Francis Walter, letter to Edward E. Swantrom, Executive Director of the Catholic Relief Service, September 18, 1961; Same letter sent to Luigi Antonini, President of United Italian American Labor Council, January 22, 1962, folder “1962 Legislation—Correspondence with Walter,” box E85, ACIM Records.

longer included unmarried adult sons and daughters of U.S. citizens, who were reclassified to the higher second-preference category. Walter's second reason was that the fourth-preference included certain new relations, namely the spouse and children of married sons and daughters or married siblings, which to his mind constituted "new" family units.

Referring to the granting of second preference status to unmarried sons and daughters of U.S. citizens and third preference status to unmarried sons and daughters of permanent residents, Walter wrote:

Our motivation was, of course, the recognition that unmarried child, although not a minor, is a part and parcel of the family unit created by his father and mother. He or she obviously remains an integral part of that family, regardless of age, until he or she marries, thus creating a new family unit.⁸⁴ [emphasis in original]

As long as the sons and daughters were unmarried, Walter maintained, they could be considered as part of the nuclear family, although they were given less consideration than unmarried and minor children.

However, Walter maintained that post-1959 fourth preference relatives involved "an entirely different situation." Walter stated the key amendment that the ACIM pushed for was precisely why fourth-preference relatives no longer deserved special consideration. He insisted that the concept of "family union" only applied to the immediate nuclear family, not to members of that family who had their own spouse and children. In fact, it was even more so than before 1959 because post-1959 fourth preference category included spouse and minor children of married sons and daughters and the siblings of citizens as well:

We have amended at the same time the fourth preference provisions allocating immigrants visas under that portion of the quotas to brothers and sisters (together with

⁸⁴ Francis Walter, letter to Edward E. Swantrom, Executive Director of the Catholic Relief Service, September 18, 1961; Same letter sent to Luigi Antonini, President of United Italian American Labor Council, January 22, 1962, folder "1962 Legislation—Correspondence with Walter," box E85, ACIM Records.

their spouses and children) of United States citizens and to married sons and daughters (again including their spouses and children) of such citizens. ... we recognized ... that the new family units created by the primary beneficiaries of fourth preference status deserve some preferential statement although less favorable than those who belong to separated family units.

We would be bringing ... persons not belong to families already established in the United States but, obviously, constituting new family units⁸⁵ [emphasis and parenthesis in original]

Walter emphasized that this was his “basic position” that would be “important for future actions.”

Walter’s position made prospect of further temporary legislation small.

Liberal Withdrawal from Family-focused Reform

Whereas Walter’s opposition was based on his belief that family-based admission had become too expansive, reformers aiming to abolish the national origins quotas gradually withdrew their support from family-focused legislation, though for different reasons. They did not oppose admitting fourth-preference relatives. Rather, within the broad context of immigration reform, not all had a direct interest in the admission of relatives. For example, after the passage of the 1957 Act, the American Jewish Congress commented that it had cleared visa backlog for “all preference categories for all national quotas,” although the law did not touch the longest fourth-preference backlog.⁸⁶

But more importantly, liberals came to doubt whether a series of temporary legislations would add up to the abolition of the quotas system. On the contrary, they increasingly believed that backlog clearance would forestall comprehensive reform. The divide became apparent by 1962 when Senator Philip Hart (D-MI) introduced a bill in March 1962 that proposed to replace

⁸⁵ Ibid.

⁸⁶ American Jewish Congress, Commission on Law and Social Action, “Kennedy Immigration Act: A Summary and Analysis,” 4; box 479, Emanuel Celler Papers.

the national origins quota with quotas calculated on different basis such as population of the country and proportion of recent immigration to the U.S. Although President Kennedy was silent on immigration reform, Hart bill was based on a 1959 bill that Kennedy had introduced as a Senator.⁸⁷ While ACIM expressed support for the Hart bill, the organization maintained that since Hart bill is “an omnibus bill and necessarily requires long and extensive study, it is unlikely that its passage can be effected during this session.” Instead, the organization requested Congress members to first pass a temporary law to admit Italian families outside the quotas.⁸⁸

The observation that a bill that directly attacked the quotas system was unlikely to pass was probably true as long as Francis Walter was in control. Indeed, President Kennedy remained silent on immigration reform until Walter’s death in 1963, partly because he sought to avoid confrontation with Walter.⁸⁹ Nevertheless, the responses to the ACIM’s request for further family-focused legislation were half-hearted at best. Senator Kenneth Keating replied, “While I do not feel that piece-meal immigration legislation is an answer to the long term changes needed in our immigration policy, I assure you that I will support legislation designed to provide some relief to the many thousands of families separated.”⁹⁰ Senator Hart expressed clear objections, stating that “continuation of the piecemeal approach to immigration problems will indefinitely delay genuine immigration reform.” Abolition of the national origins quotas required “the

⁸⁷ Wagner, “The Lingering Death of the National Origins Quotas System,” 368-369.

⁸⁸ For those waiting for more than eight years. Juvenal Marchisio, letter to Philip A. Hart, April 17, 1962, folder “Legislation 1962, Correspondence with Walter,” box E85, ACIM Records.

⁸⁹ Wagner, “The Lingering Death of the National Origins Quotas System,” 310-311.

⁹⁰ Kenneth Keating to Caesar Donozan, June 26, 1962, “Legislation: Replies from Senator of June 19, 1962 letter,” box E86, ACIM Records.

unified support of those who believe in and equitable and humane immigration policy” and that the “pursuit of additional temporary measures most certainly will delay its enactment.”⁹¹

After the death of Francis Walter in 1963, the challenge to the national origins quota system entered its final stage. The question of who should be considered as families drew on the developments up to 1959. Along with their expectation that abolition of the national origins quotas would not significantly alter the volume of immigration, liberals maintained that abolition of the quotas would eliminate the backlog in various European countries. But the question of how central family relation should be in the overall plan to replace the national origins quota system remained.

⁹¹ Philip A. Hart, letter to Edward E. Swanstrom and Juvenal Marchisio, April 18, 1962, folder “Legislation 1962, Correspondence with Walter,” box E85, ACIM Records.

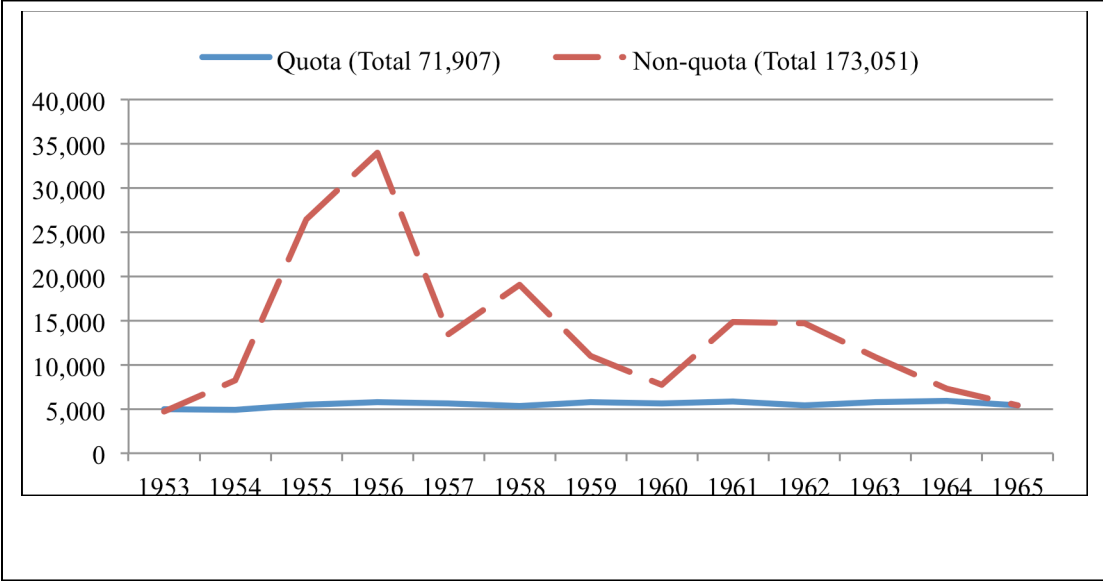
Tables and Figures for Chapter 5

5-1: Immigrants Admitted under the Refugee Relief Act of 1953

Class of Admission	Total Admitted	Percentage
German expellees in Western Germany, Berlin, or Austria	37,192	20.4%
Escapees in Western Germany, Berlin, or Austria	27,631	15.1%
Escapees in NATO countries or in Turkey, Sweden, Iran or Trieste	9,867	5.4%
Polish veteran refugees in U.K.	1,996	1.1%
Italian refugees	13,153	7.2%
Italian relatives of U.S. citizens and LPRs	46,308	25.4%
Greek refugees	9,198	5.0%
Greek relatives of U.S. citizens and LPRs	7,518	4.1%
Dutch refugees	13,839	7.6%
Dutch relatives of U.S. citizens and LPRs	930	0.5%
Non-Asian Far East Refugees	888	0.5%
Asian Far East refugees	2,996	1.6%
Chinese refugees	1,997	1.1%
Palestine refugee in the Near East	1,939	1.1%
Orphans under 10	3,727	2.0%
Adjustment of Status	3,443	1.9%
TOTAL	182,622	100.0%

Source: *INS Annual Report 1958*, table 6B

5-2: Quota and Non-quota admission from Italy, 1953 to 1965



5-3: Immigration Pattern of Fourth-Preference under Refugee Relief Act and the Immigration and Nationality Act

Admission of Married Sibling under the Refugee Relief Act, and the Immigration and Nationality Act amended in 1959

Step	Visa Sponsor	Relatives in Foreign Country, Preference Category				
		Non-quota	Second	Third	Fourth (Primary Beneficiary)	Fourth (Derivative Beneficiary)
Step 1	X= U.S. Citizen				A – Sibling of X	B and C – Spouse and Child of A
Step 2	A, B, and C all receive a fourth-preference visa and immigrate to the U.S.					

Admission of Married Sibling under the Immigration and Nationality Act, 1952-1959

Step	Visa Sponsor	Relatives in Foreign Country, Preference Category				
		Non-quota	Second	Third	Fourth	No Preference
Step 1	X= U.S. Citizen				A – Sibling of X	B and C – Spouse and Child of A BUT Sibling-in-law and nephew/niece of X
Step 2	A receives a fourth-preference visa and immigrates to the U.S. Since B and C do not have any preferential status, they cannot receive a visa at the same time.					
Step 3	A = Permanent Resident			B and C- Spouse and Child of A		
Step 4	A becomes a naturalized U.S. citizen (at least 5 years after step 2)					
Step 5	A = U.S. Citizen	B and C- Spouse and Child of A				

Admission of Married Son or Daughter under the Refugee Relief Act, and the Immigration and Nationality Act amended in 1959

Step	Visa Sponsor	Relatives in Foreign Country, Preference Category				
		Non-quota	Second	Third	Fourth (Primary Beneficiary)	Fourth (Derivative Beneficiary)
Step 1	X= U.S. Citizen				A – Son or Daughter of X	B and C – Spouse and Child of A
Step 2	A, B, and C all receive a fourth-preference visa and immigrate to the U.S.					

Admission of Married Son or Daughter under the Immigration and Nationality Act

Step	Visa Sponsor	Relatives in Foreign Country, Preference Category				
		Non-quota	Second	Third	Fourth	No Preference
Step 1	X= U.S. Citizen				A – Son or Daughter of X	B and C – Spouse and Child of A BUT Son or daughter-in-law and grandchild of X
Step 2	A receives a fourth-preference visa and immigrates to the U.S. Since B and C do not have any preferential status, they cannot receive a visa at the same time.					
Step 3	A = Permanent Resident			B and C- Spouse and Child of A		
Step 4	A becomes a naturalized U.S. citizen (at least 5 years after step2)					
Step 5	A = U.S. Citizen	B and C- Spouse and Child of A				

5-4: Legislations Regarding Family-based Admission, 1957-1962

Legislation	Permanent or temporary	Sponsor	Beneficiary	Cutoff Date	
Sept. 11, 1957	Amendment to INA	Citizens	Adopted children under 14	Not applicable.	
P.L.85-	Sec.	Temporary	Admitted	Citizens	Parents (2 nd) Petition approved

316	6	legislation	outside the quotas		preference)	prior to 1957
				Permanent residents	Spouses and children (3 rd preference)	
Sept. 22, 1959 P.L. 86-363	Sec. 1	Amendment to INA	Added to 2 nd preference	Citizens	Unmarried sons and daughters	Not applicable.
	Sec. 2		Added to 3 rd preference	Permanent residents	Unmarried sons and daughters	
	Sec. 3		Added to 4 th preference	Citizens	Spouses and children (derivative beneficiary)	
	Sec. 4	Temporary legislation	Admitted outside the quotas	Citizens	Parents, unmarried sons and daughters (2 nd)	Priority date earlier than Dec. 31, 1953 and petition approved prior to
				Permanent residents	Spouses and unmarried sons and daughters (3 rd)	
			Citizens	Brothers, sisters, married sons and daughters, their spouses and children		
			Immigrants admitted under the Refugee Relief Act of 1953	Spouse, minor children, unmarried sons and daughters, and parents		
Sept. 26, 1961 P.L. 87-301	Sec. 25	Temporary legislation	Admitted outside the quotas	Citizens	Parents, unmarried sons and daughters (2 nd)	Petition filed prior to July 1, 1961
				Permanent residents	Spouses and children	
Oct. 24, 1962 P.L. 87-885		Backlog clearance		Citizen	Brothers and sisters, married sons and daughters, their spouses and children	Priority date earlier than March 31, 1954 and petition filed prior to Jan. 1, 1962.

5-5: Non-quota Admission of Preference Families, 1957-1966

	Annual Quotas	P.L. 85-316 Sept. 11, 1957	P.L. 86-363 Sept. 22, 1959	P.L. 87-301 Sept. 26, 1961	P.L. 87-885 Oct. 24, 1962	Total
All Countries		25,022	29,337	16,130	11,483	81,972
Top ten						
Italy	5,666	17,883	16,934	7,407	5,793	48,017

Portugal	438	181	2,164	633	1,906	7,109
Greece	308	1,889	4,389	1,208	1,513	6,758
China	100	306	2,148	1,386	73	2,102
Yugoslavia	942	421	337	377	134	1,771
Philippines	100	116	839	890	203	1,490
Poland	6,488	713	281	525	21	1,404
Japan	185	343	145	298	48	1,115
Spain	250	181	426	135	222	1,074
Jordan	200	177	536	174	314	938

Source: *INS Annual Report 1963*, table 6F; *Annual Report 1965*, table 6D; *INS Annual Report 1966*, Tables 6E and 6F.

5-6: ACIM Fourth Preference Files

(Sample Size 1,236)

	Brother	Sister	Son	Daughter	Total
Spouse and children, unnoted	32 percent	25 percent	10 percent	10 percent	77 percent
With spouse and children	9 percent	9 percent	2 percent	4 percent	23 percent
Total	41 percent	34 percent	12 percent	14 percent	100 percent

Source: Author's analysis of fourth-preference letters, box E54, E55, D63, ACIM Records, Center for Migration Studies, Staten Island

5-7: Reclassification of Preference Families, 1952-1959

Preference	1952	1957	1959
Non-quota	Spouse and minor children	Spouse and minor children	Spouse and minor children
First 50 percent	Skilled immigrant Spouse and children, Accompanying	Skilled immigrant Spouse and children, accompanying and following to join	Skilled immigrant Spouse and children, accompanying and following to join
Second (Citizen's family) 25 percent	Parents	Parents	Parents Unmarried sons and daughters over 21
Third (LPR's family) 25 percent	Spouse and minor children	Spouse and minor children	Spouse and unmarried children
Fourth – (Citizen's family) No guaranteed quota	Sons and daughters over 21 Married sons and daughters Brothers and sisters	Sons and daughters over 21 Married sons and daughters Brothers and sisters	Married sons and daughters, their spouse and children, accompanying Brothers and sisters, their spouse and children, accompanying
Nonpreference	All others	All others	All others

5-8: Estimate of Italian Fourth-Preference Families in 1962, under INA as Amended in 1959

Year Registered	Principal beneficiary	Derivative beneficiary		TOTAL
		Spouse, children -Registered	Spouse, children -Unregistered	
	Siblings Married sons and daughters			
1954	15,279	17,032	19,075	51,386
1955	17,599	3,158	23,300	59,761

Source: "Memorandum on Italian Registrations," August 7, 1962, folder "Legislation, Correspondence with Walter," box E85, ACIM Records.

Chapter 6: Family Preference, Equality and Uniformity, 1960-1978

In the 1960s immigration debate, the key difference between the reformers and the defenders of the national origins quotas was the former's emphasis on "quota system" whereas the latter highlighted the "non-quota system." As the reformers stepped up their attack on the national origins quotas, the opposition sought to redirect the debate by arguing that quotas and nonquota admission should be abolished as a set, both as an invention of the 1920s. The first form of nonquota admission was immigration from the Western Hemisphere, especially from Mexico. Second was non-quota family admission from the Eastern Hemisphere. Third was temporary legislation and Presidential parole, primarily for refugees.

Family-based admission was a double-edged sword for the defenders of the national origins quotas. At the very core, they saw demands for family unification, especially non-quota family admission through regular or temporary law as the principal reason why immigration no longer conformed strictly to the national origins quotas ratio. At the same time, however, supporters of the national origins quota found merits in family-based admission. Once the restrictionists accepted the abolition of the quota system, they saw family-based admission as a way to protect "national origins." This exclusive aspect of family-based admission was coupled with a more liberal understanding of family-based admission as rights of citizens and residents, and practical demands for family immigration from Southern and Eastern Europe in the Immigration Act of 1965.

In the last part of the chapter, I will examine how family-unification as the principle of U.S. immigration policy and the notion that family should be the basis of admission was exploited to impose not only numerical restriction but also a uniform ceiling on the Western Hemisphere, and examine how "equality" translated into a "uniform" form of restriction.

6.1 “Naturally-Operating National Origins”

Despite a pre-election campaign for immigration reform, and despite being known for his *Nation of Immigrants* (1958), President John F. Kennedy remained silent on immigration reform for two years, much to the disappointment of the reformers. Higher on Kennedy’s agenda were issues such as civil rights legislation, and the President sought to avoid confrontation with the powerful Francis Walter and James Eastland, chair of the Senate Judiciary Committee. It was two months after Walter’s death in May 1963 that Kennedy sent a special message to Congress calling for immigration reform, which was coupled with a bill sponsored by Philip Hart and Emanuel Celler, proposing gradual abolition of the national origins quotas over a five-year period (S.1932 / H.R. 7700).¹ Assassinated in November that year, Kennedy did not live to see any progress in the bill, but it provided a momentum as well as a basis framework for reform by Lyndon Johnson.

As Kennedy’s *A Nation of Immigrants* emphasized, it was not that “one side wanted to go back to the policy of our founding fathers, of unrestricted immigration, and the other side wanted to stop all further immigration.” Some “limitation upon immigration” was the basic starting point. Whether to return to “open immigration” was entirely beside the point by the 1960s, and the difference in opinions was not “even over the number of immigrants to be admitted, but over the test for admission.”²

Hart-Celler bill included several major proposals. As for the Eastern Hemisphere, of utmost importance was abolition of the national origins quotas. Second was abolition of racial

¹ Edward P. Hutchinson, *Legislative History of American Immigration Policy, 1798-1965* (Philadelphia: University of Pennsylvania Press, 1981), 359-361; Stephen Thomas Wagner, “The Lingering Death of the National Origins Quotas System: A Political History of United States Immigration Policy, 1952-1965,” PhD diss., (Harvard University, 1986), 310-311; Daniel J. Tichenor, *Dividing Lines : The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002), 208-209.

² John F. Kennedy, *A Nation of Immigrants* (Revised and Enlarged Edition, 1964), 48.

quota of Asia-Pacific Triangle, and to count all immigrants by the country of their own birth and not by the region of ancestry. Having abolished country quotas and combining them to a hemispherical ceiling, the bill proposed to use the existing four-point preference system to distribute visas within the hemispherical ceiling instead of solely within the country quotas. The two suggested changes to the preference system were to add parents of permanent residents in the fourth-preference category and to exempt parents of U.S. citizens (second preference) from numerical restriction.³

Another concerned countries in the Western Hemisphere that had achieved independence since 1952: Jamaica (1962) and Trinidad and Tobago (1962). In order to restrict non-white immigrants, the INA of 1952 had imposed a quota of 100 on all colonies denying access to the quotas of the mother countries, particularly with an intention of blocking British colonies from using the quota of 65,000 for Great Britain. As stated in chapter four, recruitment of agricultural workers from the West Indies by expanding “non-immigrant” categories on the one hand and restricting “immigrants / permanent residents” was the most explicit view of non-white immigrants as a source of labor but not as permanent members. And even after independence, Congress continued to subject Jamaica, and Trinidad and Tobago to the quota of 100 instead of placing them outside the quotas system like any other independent countries of the Western Hemisphere.⁴

At the same time, as Kennedy’s *A Nation of Immigrants* emphasized, the difference of opinion was not “over the number of immigrants to be admitted, but over the test for

³ S.1932 / H.R. 7700

⁴ Martin Ira Glassner, “The Foreign Relations of Jamaica and Trinidad and Tobago, 1960-1965.” *Caribbean Studies* 10, No. 3 (1970): 116-153.

admission.”⁵ And the bill was modest with regard to total expected immigration. In the Eastern Hemisphere, there would no longer be any quotas that would be wasted, and all the visas were expected to be fully used (165,000). The number of exempted families was expected to increase by some 12,000: parents newly exempted (5,000), and families from countries where there was currently no need to seek for a family-based non-quota status because of large quotas (7,000). Increase of immigration from the Western Hemisphere was estimated at 13,000: immigrants from Jamaica and Trinidad and Tobago (7,000), and immigrants of Asian descent formerly charged against the Asia-Pacific Triangle despite being natives of the Western Hemisphere (6,000). (Table 6-1: Hart-Celler Bill on page 316)

However, defenders of the national origins quotas such as James Eastland (D - Mississippi), chair of the Senate Judiciary Committee, as well as Michael Feighan (D - Ohio), new chair of the House Immigration Subcommittee, were yet to lower their guard. No less adamant than Walter, Feighan insisted that redistribution of unused quotas was the best he could accept.⁶ Feighan refused to acknowledge any problem with the criteria used for deciding the quotas. Instead, he insisted that quota was only a “theoretical ceiling” and that admission outside the quotas demonstrated benevolence of the U.S. For instance, with regard to immigration from Asia, he emphasized that non-quota family immigration pierced the ceiling of 100, and highlighted non-quota immigration as “the ample evidence that the charges of prejudice against all Orientals are invalid.”⁷ But although the size of immigration was not the point, Feighan spoke

⁵ Kennedy, *A Nation of Immigrants* (Revised and Enlarged Edition, 1964), 48.

⁶ “Reopening the Door,” *New York Times*, January 18, 1965; Betty K. Koed, “The Politics of Reform: Policymakers and the Immigration Act of 1965.” PhD diss. (University of California, Santa Barbara, 1999), 160.

⁷ Michael Feighan, “Some Insights on Immigration,” Speech before American Coalition of Patriotic Societies, February 4, 1965, folder 841, box 89, ACIM Records.

nothing of how the Asia Pacific Triangle constituted a racial quota where one was charged not against the country of one's own birth but against the region of ancestry.

At the same time, it was difficult for politicians in the urban north to continue to entirely ignore the demands of Southern and Eastern European immigrants and their descendants, who had acquired more political power by the 1960s. In the case of Feighan, his constituents in Cleveland included immigrants from Italy, Poland, and Hungary and their descendants. In the 1964 election, his rival in the primary race as well as local media criticized Feighan's unwillingness to tackle immigration reform, which was speculated to be the main reason Feighan finally held a hearing until only a few months before the end of the 88th Congress.⁸ After the hearing, Feighan simply replaced the Hart-Celler bill with his own bill to redistribute unused quotas.⁹

It was not until early 1965 that the restrictionists loosened their grip on the national origins quotas. After Johnson succeeded to Kennedy in November 1964, among the immigration reformers, expectation on the new President was much lower than on Kennedy. As a Senator, Johnson had voted for the INA of 1952 to maintain the national origins quotas, and it was uncertain whether he would actively show support for immigration reform. Yet, after solid Democratic victory in the 1964 election, which lessened the weight of the Southern Democrats in

⁸ "President Nudges Feighan to Immigration Bill," *Cleveland Press*, June 24, 1964; "Feighan Upsets Administration," *Plain Dealer*, August 12, 1964; Koed, "Politics of Reform," 160-174.

⁹ *Immigration: Hearing before the House Committee on Judiciary*, 88th Cong. (1964) H.R. 12305 (Feighan); American Immigration and Citizenship Conference, *News* 10 no. 5 (October 3, 1964); Wagner, *Lingering Death*, 397-402.

"Immigration: Quotas vs. Quality," *Reporter*, January 14, 1965: 30-31.

the party, Johnson began to step up both symbolic and legislative attacks on the national origins quotas.¹⁰

First, on January 7, Johnson announced his plan to incorporate Ellis Island, which lay decaying since the INS facilities closed in 1954, into the Statue of Liberty National Monument. Six days later, Johnson sent a special message to Congress calling for abolition of the national origins quotas.¹¹ In May 1965, in his proclamation to designate the Ellis Island as national monument, Johnson praised “16 million immigrants” who arrived between “1892 and 1930” for making the U.S. “not merely a nation, but nation of nations,” and urged Congress to “draw on the lessons of Ellis Island” and to do away with the “outdated national origins quota system.”¹²

The celebration of Ellis Island indicated the transformation of ethno-racial boundaries among European immigrants since the 1920s as well as the meanings attached to the Statue of Liberty and Ellis Island. First of all, as historian John Higham argued, the Statue of Liberty originally was not intended as a symbol of welcome for immigrants. Designated as national monument by Calvin Coolidge in 1924, the very year the Immigration Act of 1924 was passed, it was understood as the symbol of republicanism. It was only after the closing of mass migration from Europe that the statue changed its meaning as a “symbol of the migrations.”¹³ Likewise, Johnson’s portrayal of the Ellis Island was highly romanticized in light of the fact that the island

¹⁰ David M. Reimers, *Still the Golden Door: The Third World Comes to America*, 2nd ed. (New York: Columbia University Press, 1992), 65-66; Tichenor, *Dividing Lines*, 211-212; Wagner, *Lingering Death*, 417-419.

¹¹ Reimers, *Still the Golden Door*, 65-66; Tichenor, *Dividing Lines*, 211-212; Accompanying bill Philip Hart (S. 500) and Emanuel Celler (H.R.2580).

¹² Charles Mohr, “Ellis Isle Made National Shrine,” *New York Times*; May 12, 1965; Lyndon B. Johnson: “Remarks Upon Signing Proclamation Adding Ellis Island to the Liberty Island National Monument.,” May 11, 1965. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=26955>.

¹³ John Higham, “The Transformation of the Statue of Liberty,” in *Send These to Me: Immigrants in Urban America* (Baltimore: Johns Hopkins Press, 1984), 71-80.

had primarily served as an inspection and detention center not a welcome center. But as historian Oscar Handlin compared Ellis Island to Plymouth Rock and called for the need to preserve the island as part of national heritage, the gesture was symbolic. Ellis Island inspection center was established in 1892 in response to immigration from Southern and Eastern Europe. In 1924, the reason why Albert Johnson insisted on using the 1890 census as the basis of the quotas was to disregard the Ellis Island immigrants altogether. Celebration of the Ellis Island marked a direct contrast with the 1924 Act and was an appeal to the descendants of Ellis Island immigrants.¹⁴ At the same time, “nation of immigrants” of the 1960s was a selective narrative encompassing immigrants from Europe but not others such as Asian immigrants, who were not merely restricted but excluded by the 1924 Act. It was not until three decades later in 1996 that Angel Island in San Francisco, where inspection center was completed in 1910, achieved national historic landmark status.¹⁵

Impenetrable Ceiling

In the face of heightened pressure from the reform camp, defenders of the national origins quotas took two positions. One was refusal to make any compromise. In the Senate, Judiciary Committee Chair James Eastland would continue to oppose abolition of the national origins quotas until the last minute, voting against the Immigration Act of 1965. Another path chosen by Feighan was to take the offensive rather than being on the losing end and to push for a

¹⁴ Edward Corsi, Sylvan Gotshal, Oscar Handlin, Allan Nevins, “Letters to the Time: Future of Ellis Island,” *New York Times*, December 20, 1960; “Ellis Island Cast in a Historic Role: To Be Part of Liberty Island Project, Udall Says,” *New York Times*, January 7, 1965; On symbolization of the Ellis Island, John Bodner, “Symbols and Servants: Immigrant America and the Limits of Public History,” *Journal of American History* 73, no. 1 (1986): 140; Judith Smith, “Celebrating Immigration History at Ellis Island,” *American Quarterly* 44, no. 1 (1992): 84-85.

¹⁵ Erika Lee and Judy Yung, *Angel Island: Immigrant Gateway to America* (New York: Oxford University Press, 2010), chapter 9 “Saving Angel Island.”

counterproposal with minimal concessions. This was similar to the response of the restrictionists in the early 1950s, which raised alarm by the passage of the Displaced Persons Act of 1948 as a sign of liberalization. In order to prevent the Truman administration from opening the gate further, McCarran and Walter decided to push for an omnibus bill of their own design (INA of 1952) that would preserve the national origins quotas system.¹⁶ Shortly after Johnson's special message in January, Feighan's aides advised him that immigration reform seemed inevitable and that resisting any change would cost him politically because it would "look as though he favored discrimination against Non-Anglo-Saxon Americans [emphasis in original]." Furthermore, refusal to take part in the debate would allow liberals such as Emanuel Celler to design the new system. As Feighan put it, "The only sensible means of avoiding being run over by a steamroller" was to push one's own "positive program for revision of the present immigration laws."¹⁷

In February 1965, at the annual meeting of the American Coalition of Allied Patriotic Societies, one of the most vocal supporters of the quotas system, Feighan announced his intention to replace the national origins quotas with an alternative system of immigrant selection. Feighan explained that the reason was not because there was anything wrong with the principle of the national origins quotas but because the current system was not restrictive enough, and emphasized the need to build a stronger system of "selective admission."¹⁸ Although Feighan spoke of "failure" of the quota system, what he meant was that actual immigration no longer conformed neatly to the national origins ratio.

Scholarship often describes that the main difference between the administration proposal (Hart- Celler, S. 500- H.R.2580) and Feighan (H.R. 8662 introduced on June 1) concerning

¹⁶ Tichenor, *Dividing Lines*, 189.

¹⁷ Memorandum , January 28, 1965, Folder "Outline for Revisions," box 40, Michael Feighan Papers.

¹⁸ Michael Feighan, Press release, February 4, 1965; folder "Immigration," box 27, Michael Feighan Papers; Wagner, *Lingering Death*, 425-426.

immigration from the Eastern Hemisphere lay in the preference system. Whereas the original bill retained the four-point preference system of the INA of 1952 with some modifications, the latter forwarded a seven-point preference system with more visas reserved for family-based admission. While this is true, this description misses the duality of the restrictionist views of family-based admission both as a reason for the erosion of the quotas system and at the same time as a means to keep the spirit of the national origins quotas alive. As this chapter will discuss, the idea that family-based admission was related to the national origins quotas pointed to different understanding of the national origins from the 1920s, as ethno-racial categorization of European immigrants had changed.

Before loosening their firm grip on the quota system, its defenders pointed to non-quota admission – family or otherwise - to depict the quota as only a theoretical ceiling. They denied the need to eliminate the entire quota system, arguing that U.S. immigration policy as a whole was not restrictive, if taken together with non-quota admission. However, when upholding non-quota admission no longer served the purpose of defending the quotas system, Feighan reversed his argument to claim that the weakness of the quota system lay in lack of “fixed ceiling on the number of immigrants we will admit from each such country,” in other words non-quota admission.¹⁹ Central to the call for a firmer ceiling was to subject all families to a firm impenetrable worldwide ceiling.²⁰ Not since 1921 when Senator William Dillingham proposed the quotas as an absolute ceiling had a major politician suggested an impenetrable ceiling, and it was only within the ceiling that Feighan proposed to reserve majority of the visas for family-based admission.

¹⁹ Michael Feighan, “Immigration: Fact and Fiction,” Speech at the City Club, Cleveland, Ohio, May 14, 1965; folder “Cleveland Hearing”; box 38; Michael Feighan Papers.

²⁰ “Estimates of Alien Admissions under H.R.8662 during First Year of Operations,” 1965; folder “1965 Immigration Bill”; box 27; Michael Feighan Papers; Koed, “The Politics of Reform,” 247.

Most fundamentally, restrictionists concluded that the Congress in the 1920s had erred by creating a non-quota class for European immigrants, which provided grounds for further demands to apply the provision to an ever wider range of immigrants, family or otherwise. In a 1963 book written to defend the national origins quotas, a former Missouri Congressman Marion T. Bennett wrote how political pressures for admission of family members were especially strong, and “it can be safely concluded that immigration restrictions as to relatives will continue to be modified or disappear.” The ultimate result, Bennett lamented, was “greatly increased immigration and further dilution of the national origins quota system.”²¹ Two years later, Bennett wrote to Feighan that the national origins quotas had been “rendered unworkable by the numerous exceptions made to it by Congress and by non-quota immigration generally.”²² Feighan found fault not only with the system but with the word “non-quota,” which came to be seen as antithesis to the national origins quotas. “Public attacks against the quota system,” Feighan argued, “have been used to generate pressure for ... creating non-quota status for various new classes of aliens.” The new system had to make it “impossible to create a new whipping boy to increase immigration in the future” by eliminating non-quota admission altogether.²³

Feighan aimed to eliminate all non-quota admission from the Eastern Hemisphere and the Western Hemisphere. For the Eastern Hemisphere, Feighan argued that since the quotas and the family-based exemption from quota restriction were a set, “when we repeal the national origins quota system ... we must repeal those exceptions” as well. However, this argument conveniently

²¹ Marion T. Bennett, *American Immigration Policies, a History* (Washington: Public Affairs Press, 1963), 278.

²² Marion T. Bennett, to Michael Feighan, June 11, 1965, folder “Final Draft of H.R. 2580,” box 27, Michael Feighan Papers.

²³ “Differences between H.R.8662 and H.R.2580,” folder “Immigration, box 27, Michael Feighan Papers; “Major Accomplishments of the Subcommittee Substitute Bill,” July 26, 1965, folder “1965 Immigration Bill,” box 27, Michael Feighan Papers.

ignored that no one was proposing to abolish numerical restriction and that the contested issue was only the quotas as a method of restriction. As Kennedy's *The Nation of Immigrants* emphasized, it was not "as if one side wanted to go back to the policy of our founding fathers, or unrestricted immigration." Surely, return to pre-1921 policy of numerically unlimited admission would have obviated the need for non-quota exemption, but nobody made such proposals. Exemption of families had not only to do with quotas but more fundamentally with numerical immigration restriction.²⁴ Characteristic of the call for simultaneous elimination of quotas and non-quota admission from both hemispheres was the argument that the two were invented as a set, and that abolition of the quotas should necessarily accompany elimination of the other. But this argument pointed to only one aspect of the quota system while ignoring others.

Avoiding the impression of being anti-family, which would be read as a move against Southern and Eastern European immigrants, was also important. Feighan proposed to first issue visas to immediate families (children, spouse, and parents), deduct the number from the annual ceiling, and to distribute the remainder to various countries according to the preference system. By counting close relatives against the overall ceiling but not against the country ceiling, Feighan ranked family lower than the principle of numerical restriction but higher than the country ceiling. Central to this scheme was a direct trade-off between the number of visas issued for close relatives and those for others, which would leave the total ceiling unaffected by any future increase of family immigration. the focal point of rallying cry for reform. "Especially

²⁴ "Rodino Issues against Repeal of Non-quota Provisions External to the Western Hemisphere," 1965, folder "Immigration, box 27, Michael Feighan Papers; Kennedy, *A Nation of Immigrants*, 48.

pleased” with this idea, Marion T Bennett wrote that “the time has certainly arrived when the best interests of the United States require a firm, numerical immigration ceiling.”²⁵

In Feighan’s proposal, one can find the seed of more recent form of immigration restriction. In 1990, Congress agreed to deduct the number of visas issued to immediate families from the annual ceiling, although the complex formula still holds the ceiling penetrable to a degree.²⁶ However, this scheme met strong oppositions from the liberals in the 1960s. First was the objection that as a matter of principle certain family relations held higher grounds than numerical restriction, and therefore should not be counted against the ceiling. Second was the administrative concern that the scheme was too complicated to enforce, because the number of visas would fluctuate every year depending on how many immediate relatives applied for a visa. The Department of State preferred to issue a fixed number of visas for each class of immigrants.²⁷ There were also objections that immediate relatives might exhaust the ceiling, leaving only a few visas for others, but a large increase of family immigration was not expected at the time, at least not to the level of what would actually happen in the 1970s.²⁸ (Table 6-2: Feighan Bill on page 317)

Naturally Operating National Origins

²⁵ Marion T. Bennett, to Michael Feighan, June 11, 1965, folder “Final Draft of H.R. 2580,” box 27, Feighan Papers.

²⁶ Immigration Act of 1990 (104 Stat. 4978) Edward J. W. Park, and John S. W. Park. *Probationary Americans: Contemporary Immigration Policies and the Shaping of Asian American Communities* (New York: Routledge, 2005), 18-21.

²⁷ Memorandum on the Opinion of the Department of State and the Department of Justice, June 4, 1965, folder “Immigration,” box 27, Michael Feighan Papers; Department of State, “Section by Section Comment on H.R. 8662,” 1965; folder “Immigration 89th Congress, H.R. 8662”; box 482; Emanuel Celler Papers; “Estimates of Alien Admissions under H.R.8662 during First Year of Operations,” 1965; folder “1965 Immigration Bill,” box 27, Michael Feighan Papers.

²⁸ Immigration Act of 1990 (104 Stat. 4978) Edward J. W. Park, and John S. W. Park. *Probationary Americans: Contemporary Immigration Policies and the Shaping of Asian American Communities* (New York: Routledge, 2005), 18-21.

While family-based admission in the form of non-quota admission posed a threat not only in that potential increases of family migration were unforeseeable but also in that it could lead to expansion of non-quota admission to wider range of relatives or others. At the same time, however, Feighan believed that family-based admission would serve another purpose: to keep the main source of immigration to Europe.

As historian David Reimers and others have pointed out, with regard to future sources of immigration, the Immigration Act of 1965 was not intended to invite immigration from Asia or Africa. Congress believed that immigration after abolition of the quotas system would come from Europe.²⁹ Ethno-racial concerns about the source of immigration still ran deeply, but such concerns were less about immigration from Southern and Eastern Europe, for whom quotas restriction was invented. For example, when Emanuel Celler's staff examined the letters of objections to the Hart-Celler bill, concerns about "ethnic or racial impairment" resulting from abolition of the national origins quotas were "chiefly expressions of prejudice against African and Asian immigrants" and not against immigrants from Europe.³⁰ But, despite the differences in its design, few believed that their own bill would open the door to large-scale immigration from areas other than Europe. For instance, under the Hart-Celler bill retaining the 1952 preference system with higher priority on occupation-based admission, the INS estimated that beneficiaries were most likely to be Great Britain, Germany, Italy, Greece, and Poland. China was the only country in Asia that ranked among the top ten countries of anticipated immigration.³¹ Celler believed future immigration was "likely to be more than 80% European."³²

²⁹ Reimers, *Still the Golden Door*, 67, 74-76.

³⁰"Analysis of Letters Opposing the Immigration Bills H.R. 2580 and S. 500," 1965, folder "Immigration, 88th Congress, HR7700, pt 5," box 480, Emanuel Celler Papers.

³¹ *Immigration: Hearing before the Senate Committee on Judiciary*. Hearing. 89th Cong. 323-325 (1965); United States Department of Justice, Immigration and Naturalization Service, "Estimated Admission

The difference over the weight given to family preferences was not so much in the estimation that future immigration would be from Europe, but in what was supposed to be the primary purpose of future immigration policy and family-based admission. It was not the primary purpose of Hart / Celler to limit future immigration to Europe, or on the other side of the coin, to keep out immigration from Asia or Africa. The immediate objective was abolition of the national origins quotas, and what they thought would naturally follow was more of a redistribution of visas from Northern and Western Europe, where the quotas had remained unused for many years, to Southern and Eastern Europe. In fact, Celler did not think that criteria of visa distribution would make any material change in immigration from Asia or Africa. He stated bluntly on the House floor that “there is no danger whatsoever of an influx from the countries of Asia and Africa” because “few of the people from these areas can even pay the cost of the ticket to come here.” With visible backlog in countries in Southern and Eastern Europe, it was expected that at least in the short run, family-based admission was expected to allow more immigrants to come from Southern and Eastern Europe. But that was not the primary purpose of family-based admission. Liberals saw family-based admission more in terms of individual rights of citizens and permanent residents.³³

By contrast, nativists in the 1960s placed keeping the source of future immigration Europe as the main purpose of immigration policy, not simply the natural outcome after the abolition of the quotas system. More fundamentally, the main criteria of immigrant selection was “similar background,” which they defined as being European. Senator Sam Ervin (D-North

under S. 500 and H.R. 2580,” February 1965; folder “Secretary Rusk before Senate Judiciary Committee on Immigration”; box 2; E5309; RG 59, NARA.

³² “Common Misapprehension about the Administration’s 1965 Immigration Bill, H.R. 2580,” 1965, folder “Immigration, 88th Congress, HR7700, pt 5,” box 480, Emanuel Celler Papers.

³³ 111 Cong. Rec. 21758 (1965)

Carolina), chair of the Senate immigration subcommittee, insisted that the INA of 1952 was based upon the theory that it was desirable to maintain the ethnic origin of American citizens as they were in 1924, which he wholeheartedly supported.³⁴ And in so far as the restrictionists upheld ethno-racial similarity as central to immigration policy, they had much in common with the nativists in the 1920s. However, there was an importance difference in the idea of similarity. What characterized the restrictionist thinking of the 1960s was the view that “national origins” were related to “families,” which was very different from the understandings of national origins in the 1920s.

A day after House passed the Hart-Celler bill as amended by Feighan, with 74 percent of the visas reserved for family-based admission, Ervin wrote to Senator James O. Eastland, chair of the Senate Judiciary Committee, how he believed the new law would keep the essence of the national origins quotas:

The theory of the much maligned national origins quota system seemed to me sound. That system assumes that all men are created equal and that the various nationalities have made contributions to the development of the United States according to their number residing here. The system also, logically, I think, assumes that those people can be best assimilated into our society who have relatives, friends or others of similar background already here. Therefore, under the system quotas are granted to countries in proportion to the number of persons of the various national origins who make up the population of this country. I see nothing unjust in such a system ...³⁵

It goes without saying that the national origins quotas had little to do with the idea that “all men are created equal.” What is notable here is the idea that saw a “logical” connection between national origins and admission of relatives, and that preference for relatives reflected the national origins quotas scheme. In a similar vein, six months after the passage of the 1965 Act, the

³⁴ *Immigration: Hearing before the Subcommittee on Immigration and Naturalization of the Senate Judiciary Committee*. Hearing. 89th Cong. 106 (1965) (Senator Sam Ervin)

³⁵ Senator Sam Ervin, to Senator James O. Eastland, August 24, 1965; untitled folder, box 36, Michael Feighan Papers.

America Legion declared that the new law “preserved the national-origins base of immigration to the United States.” The Legion proclaimed that “the quota system was ‘struck down,’ the national origins system wasn’t” and highly praised Feighan for devising “a naturally-operating national origins system” without relying on formal quotas. The Legion explained that “nobody is quite so apt to be of the same national origin of our present citizens as are member of their immediate families, and the great bulk of immigration henceforth will not merely be from the same parent countries as our present citizens, but will be their close relatives.”³⁶

This was a fundamentally different understanding of the national origins quotas and family immigration from Southern and Eastern Europe from the 1920s. While both insisted on “similar background” as the principal criteria of selection, the 1920s concept of similarity embedded in the quotas had little to do with having immediate relatives in the U.S. or the idea “those people can be best assimilated into our society who have relatives, friends.” It is true that within a given European country, Congress favored an immigrant with a family over those without, but the quota system itself did not link similarity with having close relatives and friends in the U.S. In fact, as discussed in the first chapter, the quotas system was designed specifically for the purpose of minimizing the importance of ties to relatives and families. Representative Albert Johnson’s proposal after World War I was to limit immigration to relatives of U.S. citizens and those who had declared their intention to become a U.S. citizen. The objection of Senator William Dillingham was that family-based admission would favor Southern and Eastern European immigrants, and quota scheme was advanced as a direct counter-proposal to family-centered admission. The quota system was a counter proposal to family-based admission, which privileged the ethnoracial origin of individuals above all else.

³⁶ Heller, Deane, and David Heller. “Our New Immigration Law.” *American Legion Magazine*, February 1966.

Among the three quota systems enforced in 1921, 1924, and 1929, it was the Emergency Quota Act of 1921 that came closest to favoring ties with relatives and friends in the U.S. The 1921 quota was based on the “foreign-born population” or the number of first-generation immigrants from each European country in the most recent census. And it was precisely because this favored immigrants from Southern and Eastern Europe whose “relatives and friends” had recently immigrated to the U.S. that nativists pushed for a different quota formula. First, instead of using the most recent census, the 1924 Act used the 1890 census to disregard immigration for the past thirty years. The purpose of the 1924 Act was to minimize the importance of family ties, and to enable immigrants from countries who had fewer families and relatives. The national origins quotas as finalized in 1929 had even less to do with familial connections. The national origins quotas went back to the 1790 census and calculated how many descended from the “native” population in 1790, assuming that English in 1790 and a British national in the 1920s shared a quality that made them better Americans.³⁷ Reformers in the 1920s who pushed for expanding family-based admission surely did not intend to promote the national origins quotas. It was an appeal for families separated by the quota system not the idea of maintaining the ethno-racial status quo of the American society.

But conflation of the national origins and family-centered admission in 1965 was less of an intentional misrepresentation than a different categorization of European ethnic groups developed over the decades. The southern and eastern European immigrants who had been considered as the “degraded races of Europe” and were the objects of restriction in the 1920s had become accepted as white-ethnic Americans by the 1960s.³⁸ The views of future President

³⁷ Ngai, *Impossible Subjects*, 33.

³⁸ For a discussion of how immigration restriction reconfigured racial lines and formed “Caucasian,” with less emphasis on differences among European immigrants, Matthew Frye Jacobson, *Whiteness of a*

Gerald R. Ford (R- Michigan), the House minority leader at the time, expressed the inclusive and exclusive aspect of family-based admission associated with ethno-racial grouping. Ford called family-focused admission from the Eastern Hemisphere a “blood relationship argument.” According to Ford, it was in countries such as “Poland, in France, in Italy, in England, in Germany, in Scandinavia, in all of the western European countries” that “Americans” have “extremely close and broad ties on the basis of blood.” Immigrants from countries such as Poland and Italy, once the target of restriction, were now categorized as European related by “blood” to Americans.³⁹

Notably, Ford turned this family preference as “blood relationship” argument, which was at one level inclusive for Euro-Americans, against immigrants from the Western Hemisphere. According to Ford, what would follow from placing “blood relationship = family” at the core of immigration policy was restriction of immigrants from the Western Hemisphere, whom he argued were not related to Americans.⁴⁰ This was a crude display of more exclusive aspect of family-based admission. Still, in the 1960s reference to “blood” was not the dominant discourse. Rather, attack on non-quota admission used the language of “discrimination.” Whereas conflation of the national origins and family-centered admission was less of an intentional misrepresentation than a different categorization of European ethnic groups, attack on non-quota admission from the Western Hemisphere by restrictionists was based on intentional distortion of the quota systems.

6.2 “Accident of the Place of Birth”

Different Color: European Immigrants and the Alchemy of Race (Cambridge: Harvard University Press, 1998)

³⁹ 111 Cong. Rec. 21810 (1965)

⁴⁰ 111 Cong. Rec. 21810 (1965)

Attack on non-quota admission from the Western Hemisphere by restrictionists such as Feighan and Eastland distorted the historical context of the quota system on several levels. First was the characterization of absence of formal ceiling on the Western Hemisphere as “historical companions” to the quota system, and the argument that Congress should do away entirely with the invention of the 1920s. In fact, it was the quota restriction and “non-quota” as a term that were invented in the 1920s, but the term “non-quota” was only applied to the continuing policy of numerically unlimited admission from the Western Hemisphere.⁴¹

Secondly, nativists spoke as if the ceiling of 150,000 for the Eastern Hemisphere was the absolute annual maximum that Congress in the 1920s intended to admit from around the world, and spoke of how total immigration including the Western Hemisphere has doubled quota immigration from the Eastern Hemisphere. However, neither the figure of 150,000 nor the national origins ratio of distribution had to do with the Western Hemisphere, or for that matter any other parts of the world other than Europe. First of all, the figure of 150,000 was based on a calculation of 2 percent of the European-born immigrants in 1890. Secondly, the national origins ratio applied to that figure was about how many people in 1920 descended from Europe. Neither considered how many people had immigrated from or originated from the Western Hemisphere, for instance from former territories of Mexico such as California, Arizona, New Mexico, and Texas, nor subsequent immigration.⁴²

Most fundamentally misplaced was the argument that quotas imposed on the Eastern Hemisphere and the non-quota status of the Western Hemisphere constituted “discrimination based upon accident of country of birth.” Feighan argued that eliminating national origins

⁴¹ Michael Feighan, “‘Immigration: Fact and Fiction’ Speech at the City Club, Cleveland, Ohio”, May 14, 1965. folder “Cleveland Hearing,” box 38, Michael Feighan Papers.

⁴² Ngai, *Impossible Subjects*, 26

quotas did away with only half of discrimination based on “country of birth,” because half of all immigration to the U.S. was non-quota immigration from the Western Hemisphere. He argued that non-quota status for natives of the Western Hemisphere expressed the idea that they were “considered superior to and therefore preferable to people born in Europe or elsewhere in the world” and made a case that Congress “should remove all discrimination based upon accident of country of birth.”⁴³

This neglected the historical context of non-quota admission from the Western Hemisphere. Non-quota status of the Western Hemisphere was not based on the same logic that resulted in Britain receiving the largest quota.

As the Department of State and the Department of Justice, both against the Western Hemisphere ceiling, pointed out that absence of formal ceiling on the natives of the Western hemisphere was distinct from quotas ranging widely in size accorded to countries in the Eastern Hemisphere, and to coin both policies as “discrimination” distorted history. Attorney General Nicholas Katzenbach argued that to apply the label of “discrimination” to both the national origins quotas and non-quota status for the Western Hemisphere was “to twist the word,” as the latter “did not involve discrimination in the same sense at all as the national origins system.” “The initial national origins system quota law was heavily Anglo-Saxon and Northern European oriented. It discriminated against Italians, Greeks, other countries of Southern Europe and the Asiatic counties.” On the other hand, non-quota status for the Western Hemisphere was “never intended to be discriminatory against anyone.”⁴⁴ The Secretary of State Dean Rusk argued that the word “discrimination” had several meanings, and explained that the reason why the national

⁴³ Michael Feighan, “Discrimination,” March 3, 1965; Michael Feighan, memorandum, April 27, 1965; folder “Outline for Revisions”; box 40; Michael Feighan Papers.

⁴⁴ *Immigration: Hearing before the Immigration Subcommittee of the House Judiciary Committee*, 89th Cong. 22, 43 (1965) (statement of Nicholas Katzenbach, Attorney General)

origins quotas were perceived to be discriminatory was not because of the size of the quotas or because possibility of immigration to the U.S. was different according to the country of birth. It was because they were created from the idea that some were inherently superior to others “based on race, religion, ancestry, or ethnic origin.” Rusk explained that although it was true that the U.S. made a “distinction” between the Western hemisphere and other parts of the world, it was not an “unfair, unjustified, or offensive distinctions drawn among people,” as it was “simply a recognition of Western Hemisphere solidarity which had been and is the firm policy of the United States.”⁴⁵ To be sure, this reasoning was only partly true. While foreign relations had played an important role, equally crucial were factors such as business interests which looked at Mexico as an easy access to labor. Nevertheless, absence of a formal quota on the Western Hemisphere was not based on the same logic that resulted in Britain receiving the largest quota.⁴⁶

However, as Mae Ngai argues, the attack on the Western Hemisphere exemption on grounds of fairness and equal treatment between countries and regardless of place of birth also had saliency because of the civil rights era focus on formal equality.⁴⁷ Moreover, as the next section examines, the claim that families of U.S. citizens and residents should be treated equally would reinforce the claim that the Western Hemisphere immigrants should be restricted in the same way as in the Eastern Hemisphere.

Western Hemisphere Immigration as Labor Immigration

⁴⁵ *Immigration: Hearing before the Immigration Subcommittee of the House Judiciary Committee*, 89th Cong. 94 (1965) (statement of Dean Rusk, Attorney General); Dean Rusk, Secretary of State, to Michael Feighan, July 8, 1965; folder “State and Justice Department Correspondence”; box 40; Michael Feighan Papers.

⁴⁶ Dean Rusk, Secretary of State, to Michael Feighan, July 8, 1965; folder “State and Justice Department Correspondence”; box 40; Michael Feighan Papers.

⁴⁷ Ngai, *Impossible Subjects*, 254-256.

Intervention of the White House as well as management by Chair of the House Judiciary Committee Emanuel Celler prevented the House from imposing a Western Hemisphere ceiling. Celler succeeded in voting down the proposal both in the Judiciary committee and on the House floor.⁴⁸ However, as an alternative to restriction by a numerical ceiling, Feighan insisted on restriction by a stricter labor certification procedure for Western Hemisphere immigrants than for immigrants from the Eastern Hemisphere, which he hoped to have the effect of reducing immigration from the Western Hemisphere even without formal ceiling.⁴⁹

The labor certification was a new feature of the 1965 law that reflected the demand of organized labor above all. The demands of organized labor, which were both inclusive and exclusive, left several marks on the 1965 Act. Since the merger of the AFL-CIO in 1955, organized labor had been instrumental in lobbying for abolition of the national origins quotas.⁵⁰ Along with calling for the abolition of the national origins quotas, the AFL-CIO in fact suggested that the ceiling could be much higher than 165,000 proposed by Kennedy/Johnson/Hart-Celler. At the same time, organized labor was insistent on establishing a stronger control over labor immigration. Their strongest opposition was directed at the Bracero Program, which was terminated in 1964, and hiring of farm workers on temporary basis. At the same time, organized labor insisted on raising the bar for an occupation-based immigrant visa as well. Under the INA of 1952, all applicants for an occupation visa had been required to first secure a job offer from the prospective employer. The AFL-CIO demanded that in addition applicants should be

⁴⁸ The House immigration subcommittee first approved of the ceiling, but the White House intervened. Edward M. Kennedy, "The Immigration Act of 1965," *Annals of the American Academy of Political and Social Science* 367 (September 1966): 137–149; William G. Hartley, "United States Immigration Policy: The Case of the Western Hemisphere," *World Affairs* 135, no. 1 (1972): 54–70.

⁴⁹ Charles Keely, "Measuring the Effect of Labor Certification," *International Migration Review* 4, no. 2 (1970): 75–82.

⁵⁰ Tichenor, *Dividing Lines*,

required to prove through affirmative approval of the Labor Secretary that American labor was unavailable in the 1) occupation in the 2) locality where the immigrant was planning to work.⁵¹

Feighan found in labor certification a tool to reduce immigration from the Western Hemisphere without relying on a formal ceiling. Importantly, at the core was the view of immigration from Mexico primarily as recruitment or restriction of labor force. Feighan maintained that “this new system of preferences together with the new labor controls on non-preference immigrants is expected to maintain to a large extent the traditional patterns of immigration to the United States. (European.) [parenthesis in original]”⁵²

In all, for the Eastern Hemisphere, the House agreed to reserve 74 percent of all visas for family-sponsored immigrants, and exempted all family-sponsored immigrants from securing a labor certification. The House also exempted refugees (6 percent) from labor certification. By contrast, for the Western Hemisphere, the House required labor certification of all immigrants except for spouse, minor children, and parents of citizens and permanent residents, arguing that no family-based “preference system” existed for the Western Hemisphere. Here it is important to distinguish two meanings of the term “preference,” confounded both intentionally and unintentionally at the time. One meaning is priority in distributing numerically limited visas, which may be called “family-based numerical preference.” Another is exemption from labor certification based on family ties, which may be called “family-based labor clearance.” The term was used interchangeably with regard to the Eastern Hemisphere immigrants, because those

⁵¹ The AFL-CIO had less to say about how many visas should be issued on the basis of occupations, and agreed to keeping the 1952 preference system reserving half of the visas for occupation-based immigrants. What the AFL-CIO demanded was to require this for applicants for an occupation-based immigrant visa. But as it turned out, since Congress reserved 74 percent of the ceiling for family-sponsored visas and another 6 percent for refugees, along with exemption of immediate relatives, labor certification applied to less than 20 percent of the Eastern Hemisphere immigrants.

⁵² Reimers, *Still the Golden Door*, 72; “Major Accomplishments of the Subcommittee Substitute Bill,” July 26, 1965; folder “1965 Immigration Bill”; box 27; Michael Feighan Papers.

who qualified for a family visa were exempted from labor clearance as well. Labor certification introduced in 1965 and family-based clearance conformed to the pre-existing family-based numerical preference, which had evolved through four decades of numerical restriction since 1921. But restriction was enforced in the opposite order for the Eastern and the Western Hemisphere. For the Western Hemisphere, the first requirement for admission was the labor certification imposed upon all prospective immigrants. No numerical preference existed, since there was never a firm ceiling. The argument that the Western Hemisphere immigrants, who did not have any numerical preference, did not need family-based labor clearance was an intentional confusion of the two meanings. Surely, without a ceiling, family-based numerical preference was unnecessary. But, labor certification was qualitative restriction, a different matter from numerical ceiling.

Several Congress members pointed out that absence of a numerical ceiling did not justify narrower family-based labor clearance for the Western Hemisphere, because the two were different forms of restriction, and that it was an exploitation of non-quota status of Western Hemisphere immigrants. Representative George Edward Brown Jr. (D-California) pointed out that narrower family-based labor clearance would mean that “citizens and permanent resident aliens who have relatives in the Western Hemisphere are denied the opportunity” to send for one’s family members. Another member argued that absence of a ceiling “does not satisfy the citizen who tries unsuccessfully to bring his brother or his unmarried daughter to this country, [who failed to meet the labor clearance] only to be told that he cannot do so because he is a native of the Western Hemisphere.” Nevertheless, House ignored such voices.⁵³

⁵³ 111 Cong. Rec. 21797 (1965) (Representative George Edward Brown Jr., D-California); 111 Cong. Rec. 21800 (1965) (Representative Florence Price, R-Pennsylvania).

Moreover, the Senate Immigration and Naturalization Subcommittee chair Sam Ervin (North Carolina) insisted that labor certification, which was more or less a form of administrative restriction, was not sufficient as a safeguard.⁵⁴ When the committee refused to abolish the national origins quotas without a ceiling on the Western Hemisphere, the White House and the liberals including Edward Kennedy and Philip Hart agreed to a ceiling of 120,000 on two conditions. The first was to organize a Congressional Select Commission to discuss the issue further until July 1, 1968, when the quotas for the Eastern Hemisphere were to be abolished entirely after a three-year transition period. The second was to subject immigration from the Western Hemisphere to a hemispherical ceiling but not to a country ceiling, which was mostly in deference to Canada, as Canadian immigrants had averaged annually 37,000. This compromise was somewhat similar to how Congress passed the 1924 Act by postponing the national origins quotas until a few years later. In the late 1920s, serious disagreement over the national origins quotas postponed its enforcement twice. But this time, although the Congressional Select Commission and the House voted for postponement, lack of Senate action put the first formal ceiling on the Western Hemisphere into effect in 1968.⁵⁵ The House originally advanced stricter labor certification for the Western Hemisphere as an alternative to a numerical ceiling. However, imposition of rigid labor certification in combination with a numerical ceiling multiplied the impact of the first formal numerical restriction on immigration from the Western Hemisphere.

⁵⁴ Senator Sam Ervin, to Senator James O. Eastland, August 24, 1965; untitled folder; box 36; Michael Feighan Papers.

⁵⁵ United States. Select Commission Western Hemisphere Immigration, *Report* (Washington, D.C.: G.P.O., 1968), 9; Edward M. Kennedy, "The Immigration Act of 1965," *Annals of the American Academy of Political and Social Science* 367 (September 1966): 137-149; William G. Hartley, "United States Immigration Policy: The Case of the Western Hemisphere," *World Affairs* 135, no. 1 (1972): 54-70; Koed, "Politics of Reform," 264-266.

6.3 Post-1965 Immigration Pattern

In all, the Immigration and Nationality Act as amended in 1965 set up two systems for the Eastern Hemisphere and the Western Hemisphere, but these did not actually correspond to the respective levels of immigration. The Immigration Act of 1965 was passed in the period of low immigration from Europe and Asia. But for the Western Hemisphere, above all for Mexico, it was enforced during a time of high immigration, especially considering migration under the Bracero Program until 1964.

First, the 1965 Act provided three paths to permanent residency for natives of the Eastern Hemisphere. The first method was an immigrant visa. Another was adjustment of status from a non-immigrant to a permanent resident. Third was suspension of deportation, although this was extremely difficult. For natives of the Western Hemisphere, the immigrant visa was the only path to permanent residency.⁵⁶

Second, with regard to numerical limitations, for both the Eastern and the Western Hemisphere, Congress exempted spouse, children, and parents of U.S. citizens over 21. The hemispherical ceiling for the Eastern Hemisphere was 170,000, distributed according to the seven-point preference system, with a per-country ceiling of 20,000. The range of families that qualified for a visa drew on the amendments made to the INA of 1952 by 1959. The ceiling for the Western Hemisphere was 120,000, distributed on first-come, first-served basis without any country ceiling.

⁵⁶ As discussed in chapter 4, in 1958 Congress barred nonimmigrants from Mexico and the West Indies from adjustment of status. (sec. 245, INA). The 1965 Act extended this bar to “a native of any country of the Western Hemisphere or of any adjacent island” from adjustment of status. Sec. 13 b, Immigration Act of 1965; Hutchinson, *Legislative History*, 373; Zolberg, *A Nation by Design*, 332.

Third difference concerned labor certification. For both hemispheres, family-based labor clearance applied to spouse and minor children of citizens and permanent residents, as well as parents of citizens over 21. In addition, however, for the Western Hemisphere, family-based labor clearance was provided for parents of U.S. citizens under 21 and parents of permanent residents. For the Eastern Hemisphere, family-based labor clearance was provided for adult or married sons and daughters (first and fourth numerical preference), as well as siblings regardless of marital status or age (fifth numerical preference) of U.S. citizens. In other words, the law imposed labor certifications on most adults of working age from the Western Hemisphere (save for spouses), while exempting from labor certification virtually all adults coming under family preference categories from Europe, which comprised 74 percent of all visas.

(Table 6-3: 1965 System: Eastern Hemisphere and the Western Hemisphere, page 318)

For prospective immigrants, family sponsorship thus became more critical than ever, as intense competition for a visa began. Soon after the enforcement of the 1965 Act, visa applications for “immediate relatives” (spouse, minor children, and parents of a U.S. citizen) rose sharply for three reasons. First, more immigrants qualified for the status, as parents of U.S. citizens newly acquired exempt status. Second, the 1965 Act mandated “immediate relatives” to apply for a visa as such instead of applying for other types of visa such as occupation-based visa or non-preference visas that were limited in numbers. Before 1965, whether to apply for a family visa was a matter of convenience not a requirement. For example, a British spouse of a U.S. citizen rarely applied for a non-quota visa based on family petitioning, because a quota visa was easier to obtain. The change of rules was to leave numerically limited visas for those who

had no other option.⁵⁷ Third, the increase indicated the intensified competition for a visa, with no visas reserved for any particular nationality as the quotas system had done, and with all competing for a visa not within one's country of birth but under a hemispherical and later worldwide ceiling. Even if the 1965 Act had not mandated qualifying immigrants to apply for immediate relatives status, there was no longer a reason why a person who could be exempted from both numerical restriction and labor clearance by virtue of one's familial relationship would want to compete with all other visa applicants from all other countries.⁵⁸

Thus, the most visible change in application for immediate relatives status occurred in countries where there was previously minimal limitation, either because of large quotas or because visas were unlimited. Before 1965, less than 1 percent of British immigrants applied for non-quota family status, but immediate relatives comprised 23 percent in 1976. The same was true of natives from the Western Hemisphere, who were previously categorically exempted from numerical restriction and not by virtue of familial relations. Between 1969 and 1976, some 143,000 Mexicans and 31,000 Canadians immigrated outside the hemispherical ceiling, as immediate families of U.S. citizens.⁵⁹ (Table 6-4: Immediate Relatives by Country of Birth, 1966-1976 on page 320)

Under intense competition for a visa, post-1965 immigration followed the expected pattern to a certain extent. The practical purpose of the abolition of the quotas was to facilitate immigration from Southern and Eastern Europe. As discussed in chapter 5, Italy, Greece, and

⁵⁷ Raymond Farrell, "The Role of the Immigration and Naturalization Service in the Administration of Current Immigration Law," *International Migration Review* 4, no. 3 (1970): 16–30.

⁵⁸ Raymond Farrell, "The Role of the Immigration and Naturalization Service in the Administration of Current Immigration Law," *International Migration Review* 4, no. 3 (1970): 16–30.

⁵⁹ From 1969 to 1976 transitional quarter, 37,217 wives, 52,316 husbands, 48,179 children, and 4,982 parents were admitted as immediate relatives from Mexico. *INS Annual Report, 1966-1976*, table 9.; *Western Hemisphere Immigration, Hearing before Subcommittee on Immigration, Citizenship, and International Law* 94th Cong. 370 (1975)

Portugal in particular had a long backlog in the family preference categories under the INA of 1952, especially in the former fourth-preference category including married sons and daughters or siblings of U.S. citizens. Since they had long been registered on the waiting list, they were the first to receive a visa after the removal of quota restriction. Between 1965 and 1971, immigration from Southern and Eastern Europe rose by 75.6 percent from 40,106 to 70,444, and majority of the visas were family-sponsored.⁶⁰

Congress expected that immigration from Northern and Western Europe would remain more or less at the same level as before, and that the visas that had been wasted each year by countries such as Britain and Ireland would be distributed to Southern and Eastern Europe. However, between 1965 and 1971, immigration from Northern and Western Europe sharply dropped by 64.5 percent from 73,318 to 26,062. By contrast, immigration from Asia rose dramatically by 400.2 percent from 20,683 to 103,461, outnumbering immigration from entire Europe (96,502) by 1971.⁶¹

What deserves attention here is the dual meanings behind the country ceiling of 20,000 for the Eastern Hemisphere. For one, the purpose of a country ceiling was to prevent just a few countries from exhausting the hemispherical ceiling. Also, as Mae Ngai argues, the ceiling of exactly the same size for every country reflected how liberals understood equality in terms of formalistic equality without regard to factors such as demand for migration to the U.S.⁶² For another, there was also a more specific reason that the size of the ceiling was 20,000, and not any other number. It was because Congress took into account immigration from Great Britain and Germany, which had averaged some 20,000 since the 1950s. In other words, 20,000 was sort of

⁶⁰ *INS Annual Report 1971*, 4.

⁶¹ *INS Annual Report 1971*, 4.

⁶² Ngai, *Impossible Subjects*, 245, 254.

a new “quota” for Britain and Germany, which Congress believed to be sufficient -- combined with immediate relatives exemption -- to ensure the same level of immigration even after the abolition of the national origins quotas. But this turned out to be a serious underestimation of the intense competition for a visa throughout much of the world after the abolition of the quotas system. The ceiling did not operate in the same way as guaranteed national quotas, which could not be used by immigrants from other countries, and immigration from neither Britain nor Germany ever reached 20,000 after 1965.⁶³

Prior to 1965, the quota of 100 on countries in Asia had virtually limited immigration from the region to spouse and minor children of U.S. citizens, who could immigrate outside quota restriction as non-quota family. Thus, family members that qualified for non-quota status accounted for over 80 percent of all immigration from Asia.⁶⁴ However, by 1971, immediate relatives composed only 30 percent of immigrants from Asia. More numerous were immigrants who qualified for a preference within the ceiling. Preference immigrants from Asia outnumbered those from Europe by 74,700 to 72,600.⁶⁵

Initial characteristics of post-1965 immigration from Asia was the high percentage of occupation-based immigrants. In 1969, some 44 percent of occupation-based admission was from Asia, and 24.5 percent from Europe. The largest number was from the Philippines, while

⁶³ Michael Feighan, “Major Accomplishments of the Subcommittee Substitute Bill (H.R. 2580, as amended)” July 26, 1965, folder “1965 Immigration Bill,” box 27, Michael Feighan Papers.

⁶⁴ From 1953 to 1965, non-quota families comprised 83 percent of all Japanese immigrants (quota 185), and 85 percent of all Filipino immigrants (quota 100). Women comprised 85 percent (50,727) of Japanese immigrants and 68 percent (20,600) of Filipino immigrants.

⁶⁵ *INS Annual Report 1971*, 4; For an overview of post-1965 immigration from Asia, Bill Ong Hing, *Making and Remaking Asian America through Immigration Policy, 1850-1990* (Stanford: Stanford University Press, 1993), chapter 3.

country with the highest percentage of professional immigrants was India.⁶⁶ A related feature was that many of the new permanent residents from Asia had been living in the U.S. since before 1965 as nonimmigrants such as students or exchange scholars, and had their status adjusted to permanent residents.⁶⁷ From 1966 to 1971, approximately 132,000 nonimmigrants from Asia adjusted their status either by forming a family or by finding a job in the U.S., a significantly higher number than those from Europe (99,000). Before 1965, the Asia-Pacific Triangle and the quota of 100 did not apply to entry of nonimmigrants, but it had prevented Asian nonimmigrants from becoming permanent residents, since any form of permanent residency (immigrant visa, adjustment of status, suspension of deportation) counted against the quota. But elimination of the Asia Pacific Triangle and the quotas opened this path. Occupation-based permanent residency required employer sponsorship as well a labor clearance, which was difficult without prior contact with the employer. Therefore, it worked more in favor of U.S. residents than for those newly applying for a visa from outside the U.S.⁶⁸

In the following years, to first arrive in the U.S. as a non-immigrant and then to acquire permanent residency would become a more popular route to permanent residency than applying

⁶⁶ *INS Annual Report 1969*, 5; Charles Keely, "Measuring the Effect of Labor Certification," *International Migration Review* 4, no. 2 (1970): 87–92; Immigration from the Philippines was characterized by medical profession. For post-WWII recruitment of Filipino nurses as exchange visitors, Catherine Ceniza Choy, *Empire of Care: Nursing and Migration in Filipino American History* (Durham: Duke University Press, 2003), chapter 3 and chapter 4.

⁶⁷ Paul Ritterband, "Law, Policy, and Behavior: Educational Exchange Policy and Student Migration," *American Journal of Sociology* 76, no. 1 (1970): 71–82; George B. Baldwin, "Brain Drain or Overflow?" *Foreign Affairs* 48, no. 2 (1970): 358–372.

⁶⁸ Between 1962 and 1964, 30 percent of the immigrants admitted as natural scientists and engineers were from United Kingdom and Germany. Thomas Mills, "Scientific Personell and the Professions," *Annals of the American Academy of Political and Social Science* 367 (September 1966): 37.

for an immigrant visa, marking a striking contrast between 1924 and 1952 when entry with an immigrant visa was the only path to permanent residency.⁶⁹

By 1971, the top country of origin in the Eastern Hemisphere had become the Philippines, followed by Italy, China, Greece, India, Korea, Portugal, Great Britain, Yugoslavia, and Germany.⁷⁰ And once the first post-1965 permanent residents became U.S. citizens with broader rights to send for families, the number of family-sponsored immigrants from Asia would gradually rise. A large portion of the ceiling reserved for family-based visas, which were originally meant for Southern and Eastern European immigrants and to reserve the future source of immigration to Europe, would begin to function for family immigration from Asia.⁷¹

Importantly, along with the decline of immigration from Northern and Western Europe, the country ceiling of 20,000 applied to the Eastern Hemisphere bore different meanings. As stated earlier, the figure originally had two purposes. One was to prevent a few countries from exhausting the annual ceiling of 170,000, and another was to allow the same level of immigration as before from Britain and Germany. But in the absence of a formal quota system, the ceiling failed to achieve the latter purpose. Dissociated from pre-1965 immigration from Britain and Germany, what then remained was 20,000 as a flat ceiling not to be exceeded by any country. As the next section examines, those not satisfied with a hemispherical ceiling on the Western Hemisphere would point this figure particularly at Mexico, where annual immigration averaged some 35,000, and insisted on extending the country ceiling to the Western Hemisphere.

⁶⁹ Present government statistics no longer refers to “immigrants,” which connotes new arrival, but refers to new “permanent residents.” Until 2004, the annual immigration report used the term “immigrants admitted,” although adjustment of status had already outnumbered immigrant visas. Since 2005, the report has referred to “legal permanent residents,” which more accurately describes permanent residency both through adjustment of status and immigrant visa. The Department of Homeland Security, *Yearbook of Immigration Statistics 2005* (Washington, D.C.: G.P.O. 2005)

⁷⁰ *INS Annual Report 1971*, 4;

⁷¹ Reimers, *Still the Golden Door*, 94.

6.4 Family Preference, Equality and Uniformity

On January 1, 1977, Congress capped immigration from any one country in the world at 20,000 by extending the country ceiling system to countries in the Western Hemisphere. The House report accompanying the bill argued that the 1965 Act “endorsed the principles of equity and family reunification as the basis of our immigration policy” and that the purpose of the new law was to complete “the unfinished business” of extending “these principles to the natives of the Western Hemisphere.”⁷² However, as sociologist Charles Keely questioned at a 1975 hearing, “equality of treatment was used as a legitimating concept to justify getting rid of national origins as a major selection criterion,” but whether “the ethical imperative of equal treatment” should be “translated into a 20,000 per country limit despite the size of the country and all other considerations” was another matter. With regard to Mexico, the new country ceiling of 20,000 was lower than the current level of immigration.⁷³ This section examines how the call for “family reunification” was central in the translation of “equal treatment” to a uniform ceiling, how Congress successively extended restriction in the name of equity and family unification. And the call for family-based labor clearance became intertwined with family-based numerical preference, which also assumed imposition of a numerical ceiling.

Restriction on the Western Hemisphere was enforced in four steps, marking the onset on an “Era of Both Qualitative and Quantitative Restrictions on Both Hemispheres.”⁷⁴ The first was the labor certification enforced on December 1, 1965. Thereafter, except for spouse, minor children, and parents of citizens and permanent residents, all immigrants from the Western

⁷² *Amending the Immigration and Nationality Act*. H.R. Rep. No. 94-1553, at 1 (1975); U

⁷³ *Western Hemisphere Immigration: Hearing before the Subcommittee on Immigration, Citizenship, and International Law of the House Committee on the Judiciary*, Hearing. 94th Cong. 196-197 (1975) (Charles B. Keely Associate Professor, Department of Sociology, Fordham University)

⁷⁴ Guillermina Jasso and Mark R. Rosenzweig, “Characteristics of Immigrants to the United States: 1820-2003,” in *A Companion to American Immigration* (Wiley-Blackwell,);

Hemisphere were required to secure a labor certification before applying for a visa. Within a year, immigration dropped from 174,000 to 122,000. Second was the hemispherical ceiling of 120,000 enforced on July 1, 1968.⁷⁵ Visa applications exhausted the ceiling within a few months, and the backlog grew from nine months in 1969 to twenty-eight months in 1975, with 290,000 registered on the waiting list.⁷⁶ Thirdly, on January 1 1977, within the hemispherical ceiling of 120,000, a uniform country ceiling of 20,000 went into effect. Lastly, on January 1, 1979, the two hemispherical ceilings were combined into a worldwide ceiling of 290,000.⁷⁷

Enforcement of the 1965 Act soon gave rise to call for a “preference system” for the Western Hemisphere, which referred to both “labor certification” (family-based labor clearance) and to family-based numerical preference (priority within the ceiling). After 1965, there was a broader agreement on uniform application of labor certification (and family-based labor clearance) across both hemispheres. More controversial was the issue of backlog and numerical preference, because at the core of the problem was the ceiling on the Western Hemisphere that brought about the need for such preference in the first place. For example, the Congressional Select Commission on Western Hemisphere recommended uniform labor certification system for both hemispheres but advised against hasty enforcement of a ceiling on the Western Hemisphere.⁷⁸ The distinction between the two preference systems and examination of how the

⁷⁵ United States. Select Commission Western Hemisphere Immigration, *Report* (Washington, D.C.: G.P.O., 1968), 9.

⁷⁶ United States. Select Commission Western Hemisphere Immigration, *Report* (Washington, D.C.: G.P.O., 1968), 9. *INS Annual Report 1969*, 3; *Western Hemisphere Immigration, Hearing before Subcommittee on Immigration, Citizenship, and International Law* 94th Cong. 370 (1975)

⁷⁷ Act of October 26, 1976 (90 Stat. 2703) and Act of October 5, 1978 (92 Stats. 907)

⁷⁸ United States. Select Commission Western Hemisphere Immigration, *Report* (Washington, D.C.: G.P.O., 1968), 9. *Western Hemisphere Immigration: Hearing before the Subcommittee on Immigration, Citizenship, and International Law of the House Committee on the Judiciary*, Hearing. 93rd Cong. 299 (1973) (testimony of Gaynor I. Jacobson, Chairman, Committee on Migration and Refugee Affairs, American Council of Voluntary Agencies for Foreign Service)

two merged is crucial in understanding how the call for equality, especially that for families, eventually translated into uniformity after 1976: the same labor certification, the same numerical preference, but also the same size of ceiling for every country.

Family-based Labor Clearance and Family-based Numerical Preference

With increasing competition for a visa, immediate family status (spouse, children, and parents of U.S. citizens) that provided both 1) numerical exemption and 2) labor clearance became of utmost value. Majority of Western Hemisphere immigrants were immediate families of U.S. citizens, followed by spouse, children, and parents of permanent residents. Family members of permanent residents were not given any numerical preference unlike in the Eastern Hemisphere, but were exempted from labor certification. On the other side of the coin, predominance of preferred families indicated the difficulty in applying for a visa for those without any preferential status, either in the form of exemption from either numerical restriction or from labor certification. Only 8,900 immigrants with labor certification immigrated in 1973.⁷⁹

In passing the 1965 Act, Congress assigned the Department of Labor to implement the details of the labor certification procedure. The Department of Labor sought to meet two demands. On the one hand, organized labor was insistent on a rigid labor certification, and was especially opposed to providing visas for temporary work such as farm labor. On the other hand, Johnson/Hart/Celler had found occupation-based admission of immigrants under the INA of

⁷⁹ From 1969 to 1976 transitional quarter, 37,217 wives, 52,316 husbands, 48,179 children, and 4,982 parents were admitted as immediate relatives from Mexico. *INS Annual Report, 1966-1976*, table 9.; *Western Hemisphere Immigration, Hearing before Subcommittee no. 1, House Committee on the Judiciary*, 93rd Cong. 52-53 (1973); *Western Hemisphere Immigration, Hearing before Subcommittee on Immigration, Citizenship, and International Law* 94th Cong. 370 (1975)

1952 too limiting, especially in that highly skilled immigrant visa (first preference under the 1952 Act) required a pre-arranged job offer and visa sponsorship by the prospective employer in the U.S., which was obviously difficult to find for people without previous residence in the U.S.⁸⁰

To cater to both demands, the Department of Labor devised an elaborate system of labor certification. On the one hand, the new law lowered the hurdle for certain professions to apply for an immigrant visa. First, professionals such as physicians, engineers, chemists, mathematicians were no longer required to secure a job offer or sponsorship by the employer, previously mandated by the INA of 1952. They were also exempted from individual labor certification introduced by the 1965. Next in line to the most preferred occupations, the Department of Labor created another list of occupations that needed to clear an individual labor certification but did not need to secure a job offer.⁸¹

More restrictive was the other half of the certification, which had a serious adverse effect on immigrants who could have applied for a visa before 1965. Of particular impact was the list of occupations categorically ineligible for an occupation-based immigrant visa. If one's occupation was listed among the so-called "non-certified occupations," there was no chance of immigration unless one qualified for a family-based visa. Importantly, farmworkers were made categorically ineligible for an immigrant visa, which along with the termination of the Bracero Program significantly narrowed the possibility of agricultural migration on either temporary or permanent basis. Secondly, those with an occupation not on either the preferred or the noncertified list was first required a job offer, next to go through a long labor certification

⁸⁰ Zolberg, *A Nation by Design*, 335

⁸¹ The list of most preferred occupations was called Schedule A, and the list of next preferred occupations was named Schedule C. Non-certified list was called Schedule B

process beginning with the local employment service office to the regional Manpower Administration to prove that there was a shortage of such job in the county on intended residence, and lastly to have one's prospective employer petition for a visa with the INS. But it was undoubtedly hard for those without prior contact in the U.S. to find an employer willing to offer a job and to sponsor a visa.⁸²

However, while the rigid procedure discouraged or even made it impossible for those without necessary occupational qualifications or family connections to obtain a visa, the system turned out to have little control over whether, where, and in what occupations people who were actually able to obtain an immigrant visa or permanent residency would work.⁸³ First of all, a majority of the new permanent residents did not go through labor certification procedure. This was because Congress reserved 74 percent of the Eastern Hemisphere ceiling for family-sponsored visas and another 6 percent for refugees, to whom certification did not apply. Immediate relatives admitted outside the ceiling were also exempted. Labor certification applied to less than 20 percent of the Eastern Hemisphere immigrants. Moreover, visa category was only a criteria for initial admission, and regardless of their visa type, most immigrants intended to work when they came to the U.S. In fact, in 1970, 63 percent of the new permanent residents reported an occupation, but 16 percent had gone through labor certification procedure. And after two years in the U.S., another 15 percent reported to have found a job.⁸⁴

⁸² First, the employer and the intending immigrant had to file forms at local employment service office, which conducted fact finding. Next was fact finding by the state employment service. Third was approval by the regional office of the Manpower Administration. Only then was the employer allowed to petition the INS for a visa. Frank H. Cassell, "Immigration and the Department of Labor," *Annals of the American Academy of Political and Social Science* 367 (September 1966): 105–114.

⁸³ *Immigration: Hearing before Subcommittee no. 1 of the House Committee on Judiciary*. Hearing. 88th Cong. 2nd Sess.

⁸⁴ U.S. Department of Labor, *Immigrants and the Labor Market* (Washington, D.C.: G.P.O., 1974), 70.

Prior to the passage of the 1965 Act, a figure often cited by advocates for elimination of the national origins quotas including the AFL-CIO was that “only one-fourth to one-third of the immigrants ... were jobseekers.” This calculation was premised on the idea that in family-based immigration, the male head of household was the wage earner and the other members were dependents who would not seek for a job. However, although it was true that immigrants that applied for a visa based on their occupational qualifications were more likely to join the labor force, it certainly did not follow that others such as those with family visas would not. Precisely because the 1965 Act reserved large proportion of visas for family-based admission to which the labor certification did not apply, it turned out that majority of immigrants with occupations did not have to obtain a certification to begin with.⁸⁵

Secondly, many immigrants changed and found jobs after arriving in the U.S. A 1973 study by the Department of Labor showed that 56.7 percent of occupation-based immigrants changed occupations (not jobs within the same occupation) within two years in the U.S. In order to obtain a labor certification, the 1965 Act required applicants to show unavailability of “American labor” in the specific locality of intended residence. But not surprisingly many immigrants changed residences after arriving in the U.S. After two years, less than one-third of occupation-based immigrants remained both in the occupation and in the county of residence stated at the time of visa application. Despite the high requirements for obtaining a labor certification, it was obviously not serving its proclaimed purpose of regulating occupations and

⁸⁵ *Immigration: Hearing before Subcommittee no. 1 of the House Committee on Judiciary*. Hearing, 88th Cong. 2nd Sess. 322 (1964) (Andrew Biemiller, AFL-CIO Legislative Director)

the locality new immigrants would work in. As the AFL-CIO acknowledged, to deny the right to change occupations or residence to permanent residents was equal to “indentured servitude.”⁸⁶

Thus, the most basic question raised against the labor certification was whether such procedure was necessary at all either hemispheres. The system surely had an effect of discouraging immigration of people who neither held preferred occupations nor the necessary family ties, but it had less to do with regulating the jobs of immigrants who were actually able to obtain a visa. Religious organizations and refugee aid organizations suggested abolition of labor certification altogether. Nevertheless, the AFL-CIO strongly opposed elimination of the certificate system, and upheld the certification as indispensable to the 1965 Act.⁸⁷

Another criticism was directed at disparate treatment of immigrants from the two hemispheres, in other words narrower family-based clearance for immigrants from the Western Hemisphere. In the Eastern Hemisphere, 80 percent of the immigrants with a preference visa (74 percent for family, and 6 percent for refugees) did not have to secure a labor certification. In the Western Hemisphere, all immigrants except for spouse, minor children, and parents of U.S. citizens and permanent residents had to do so. As it was pointed out during the Congressional debate in 1965, different systems of numerical restriction did not justify discrepancies in family-based labor clearance. Representative Bernice Frederic Sisk (D-California), for instance, argued that narrower family-based labor clearance for the Western Hemisphere was tantamount to “saying that we do not consider family relationships as important to persons who happen to be born in Canada or Mexico” than to those from the Eastern Hemisphere. Sisk argued that it

⁸⁶ *Western Hemisphere Immigration: Hearing before the Subcommittee on Immigration, Citizenship, and International Law of the House Committee on the Judiciary*, Hearing. 93rd Cong. 289-299 (1973) (Kenneth A. Meiklejohn, Legislative Representative, AFL-CIO)

⁸⁷ *Western Hemisphere Immigration: Hearing before the Subcommittee on Immigration, Citizenship, and International Law of the House Committee on the Judiciary*, Hearing. 93rd Cong. 289-299 (1973) (Kenneth A. Meiklejohn, Legislative Representative, AFL-CIO)

would be unfair to characterize admission from the Eastern Hemisphere as family unification and then to say that the United States did not want people from the Western Hemisphere “unless they do possess needed skills.”⁸⁸ However, such liberal call for a uniform application of family-based labor clearance became susceptible to the restrictionist agenda, which held the proposal hostage to numerical ceiling across both hemispheres.

In 1968, three years after the introduction of labor certification, Congress imposed a ceiling of 120,000 on the Western Hemisphere, and visa backlog began to grow rapidly. Along with the backlog emerged calls for two kinds of preference systems for the Western Hemisphere. One was to exempt the same range of family members from labor certification in both hemispheres. Another was to set certain priorities within the hemispherical ceiling, family or otherwise. However, the fundamental issue with regard to the growing backlog was not lack of preference system but the overall ceiling. It was the imposition of a previously non-existing ceiling that created a backlog. Without reconsideration of the ceiling itself, introducing preferences to an oversubscribed ceiling would just make the wait shorter for some but longer for others. After 1965, few no longer objected to any ceiling on the entire Western Hemisphere. Still, there were calls for reconsideration for the size of the ceiling, especially its applicability to Mexico and Canada.

In Congress, the most vocal critic of increasing restriction on immigration from the Western Hemisphere was Representative Henry B. González (D), the only Mexican-American member of the House in the late 1960s. González’s parents came to the U.S. during the Mexican Revolution, and he was the first Mexican-American Congressman elected from Texas (1961 -

⁸⁸ *Western Hemisphere Immigration: Hearing before the Subcommittee on Immigration, Citizenship, and International Law of the House Committee on the Judiciary*, Hearing. 93rd Cong. 239 (1973) (Representative Bernice Frederic Sisk, D-California)

1999). González had been a vehement critic of the Bracero Program, insisting on admission of Mexicans as formal immigrants and permanent residents instead of as temporary workers with fewer rights and without paths to citizenship.⁸⁹ He voted against the 1965 Act for the reason that it was a restrictive law imposing an unprecedented ceiling on the Western Hemisphere, sharply questioning Emanuel Celler why Congress was “erecting a wall, rather than reducing wall, which we originally intended to do.”⁹⁰ While the 1965 Act was hailed as a “liberal” bill, González did not see it that way. After the imposition of a hemispherical ceiling in 1968, González objected to the motion to introduce a country ceiling on the Western Hemisphere, especially to a ceiling on Mexico in the form of the same size of ceiling for every country. He questioned whether a flat ceiling for countries varying widely in size, population, and demand for visas, from “Iceland with a population of 210,000” to “Brazil ... for its population of 100 million” was truly “equal.” González saw flat ceiling as not only “wholly unrealistic” but as “a rank discrimination against a country such as Mexico,” which ignored the “basic relationship that were inextricably linked in the historic development of our country, particularly the Southwest.”⁹¹

The fact that González was the first Mexican-American Congress member from Texas, and the only Mexican-American member of the House in the late-1960s indicated that the political power of Mexican Americans was still weak. Still, González was not alone in his objections to uniform country ceiling. So was Peter Rodino (D-New Jersey), who became the Chair of the House Judiciary Committee in 1973, when Emanuel Celler lost his seat in Congress that he had held since 1923. On one hand, Rodino called for a worldwide ceiling instead of maintaining the two separate hemispherical ceilings, thus reinforcing numerical restriction.

⁸⁹ Tichenor, *Dividing Lines*, 211; Light T. Cummins, “The Hispanic Heritage of the Southern United States of America,” *Revista De Historia De América* no. 105 (January 1, 1988): 89–110.

⁹⁰ 111 Cong. Rec. 15657 (1965)

⁹¹ 119 Cong. Rec. 31460 (1973)

However, importantly, Rodino was against treating Mexico and Canada on the same basis with other countries, emphasizing the need to recognize not simply the “extensive common borders” shared with the two countries, but also the “cultural, social, and economic ties” that had historically been developed. He was especially against the proposal to impose a ceiling of 20,000, which was below the current level of immigration. For Mexico and Canada, Rodino proposed return to pre-1968 numerically unlimited admission, and if not, at least a larger ceiling than other countries.⁹²

This proposal to reconsider the ceiling on Mexico also displayed different thinking on unauthorized immigration, which once again began to gather attention since 1965. Rodino’s proposal to exempt Mexico from the hemispherical ceiling was coupled with another bill of his on unauthorized immigration. Controversy about unauthorized immigration was a critical difference between the debate on Western Hemisphere ceiling in 1965 and afterwards. Since the Operation Wetback in 1954, the INS had assured Congress that the border was under control, and in 1965 there was hardly any discussion on unauthorized immigration or what effect the Western Hemisphere ceiling might have on unauthorized immigration. Relative inattention to unauthorized immigration since the late 1950s to the early 1960s was not simply due to strict law enforcement, but also because it was combined with expansion of the Bracero Program and admission of more Mexicans as legal workers. In the late 1950s, an average of some 400,000 braceros were admitted each year. But successive narrowing of the front door by termination of the Bracero Program (1964), introduction of the labor certification (1965) that made farmworkers among others ineligible for an immigrant visa, and hemispherical ceiling (1968) led to a surge in unauthorized immigration. Apprehension by the INS skyrocketed from 110,000 in

⁹² 119 Cong. Rec. 31456 (1973)

1965 to 766,600 in 1975. Partly because the INS concentrated its force on the Southern border, apprehension of Mexican immigrants sharply rose from 55,000 to 680,000. Regardless of whether voluntary departure or formal deportation followed, apprehension by the INS had entirely different meaning before and after 1968, as the growing visa backlog now prevented return to the U.S. with a visa, even if one was granted voluntary departure.⁹³

Specifically, Rodino believed in penalties for employers that hired undocumented workers (employer sanctions) as the key deterrent, and aimed to abolish the so-called “Texas Proviso” under the INA of 1952, which specifically exempted employers from being persecuted for hiring of undocumented workers.⁹⁴ Employer sanctions were supported by Nixon, Ford, and Reagan administrations, and eventually became law in 1986 as part of the Immigration Reform and Control Act, but it was in fact a highly controversial measure that met opposition not only from business but also from Mexican-American civil rights organizations that it would lead to employment discrimination.⁹⁵ Yet, the main point here is that taken together with the proposal to lift the ceiling from Mexico, Rodino’s bills embodied a different thinking than a more single-sided approach that separated legal admission from unauthorized immigration, approaching the former by a ceiling that had little relation to the demand and approaching the latter focusing solely with more stringent legislation and law enforcement. However, the debate on Western Hemisphere ceiling was ultimately won by the position that equality meant “uniform preference

⁹³ *INS Annual Report 1975*, 13; Zolberg, *A Nation by Design*, 321.

⁹⁴ For Rodino bill on unauthorized immigration (H.R. 982), *Amending the Immigration and Nationality Act*. H.R. Rep. No. 92-1366 (1972); Tichenor, *Dividing Lines*, 227-228.

⁹⁵ This bill was killed in the Senate Judiciary Committee by James Eastland, who had strong interest in securing source of exploitable labor. Immigration Reform and Control Act of 1986 (100 stat. 3359); As an example of opposition to employer sanctions on the grounds that it will increase discrimination, Antonio Hernandez (Mexican American Legal Defense and Education Fund), “Immigration Reform: Employer Sanctions and Legalization,” *In Defense of the Alien* 6 (1983): 99–107; Tichenor, *Dividing Lines*, 230-235.

system and per country limitation.” What also prevailed was the view that unauthorized immigration should be treated strictly as a matter of law enforcement, although it was evident by the 1970s that a country ceiling on Mexico would increase unauthorized immigration.

Equality, Family, and Uniformity

Those insistent on further restriction of Mexican immigration advanced the position that equal preference system between the two hemispheres would require not only 1) the same family-based labor clearance, 2) the same seven-point numerical preference system, but also 3) a uniform country ceiling for all countries 4) as well as a worldwide ceiling instead of two separate hemispherical ceilings. Representative of this view was Joshua Eilberg (D-Pennsylvania), the chair of the Subcommittee on Immigration, Citizenship, and International Law of the House Judiciary Committee. As originally introduced, Rodino’s bill had proposed to 1) introduce a numerical preference system to the Western Hemisphere but 2) to exempt Mexico and Canada from any numerical restriction. But the subcommittee rewrote it into an entirely different bill that introduced 1) a numerical preference system to the Western Hemisphere but also imposed 2) a uniform ceiling on all countries, including Mexico and Canada.⁹⁶

At one level, arguments made for a flat ceiling revealed the view of Mexican immigrants as exploitable labor rather than as permanent members of the society. Eilberg insisted that reduction of immigrant visas was reasonable because formal immigrant status and the right of permanent residency or to naturalization were of less importance to Mexicans, who Eilberg claimed did not intend to settle in the U.S. The House report on bill emphasized the “lowest naturalization rates” among Mexican immigrants, and insisted that whether as legal immigrants

⁹⁶ Donald G. Hohl and Michael G. Wenk, “The Illegal Alien and the Western Hemisphere Immigration Dilemma,” *International Migration Review* 7, no. 3 (1973): 323–332.

or unauthorized workers “a large number have no intention of moving here permanently.” The report argued that reduction of immigrant visas could be counterbalanced by an increase of temporary worker visa for Mexican nationals, specifically the H-2 visa that had been used to recruit agricultural workers from the West Indies since 1952. Just as H-2 visas for temporary workers were invented in 1952 as a set with colonial quota of 100 for “immigrants” from the West Indies, the proposal was equal to saying that Mexican nationals were more wanted for their labor than as immigrants.⁹⁷ Moreover, as Representative González shot back at Eilberg, such view was indeed reminiscent of “committee hearings back in the 1920’s” that “Mexican was unassimilable and therefore his entry should be restricted and prohibited.”⁹⁸

Yet, unlike in the 1920s, when “race” was the primary language used both by the proponents for and opponents to quotas restriction on Mexico, few explicitly linked naturalization rates to “racial unassimilability.” What figured more prominently was the language of “equality” and “family.” In striking similarity with Michael Feighan, who described non-quota status of Western Hemisphere immigrants as discrimination against the Eastern Hemisphere, Eilberg characterized absence of a country ceiling in the Western Hemisphere as “the last vestige of national origins discrimination,” although neither pre-1968 non-quota status for the Western Hemisphere nor the separate hemispherical ceiling had to do with national origins quotas. Nevertheless, Eilberg insisted that “special treatment for our contiguous neighbors – no matter what justification is presented” was discriminatory. This idea that the Western Hemisphere immigrants were given “special treatment,” special in the sense of unfair, was reinforced by the 1965 renaming of Western Hemisphere immigrants from “non-quota immigrants” to “special immigrants.” This was a required change since “quota” no longer

⁹⁷ *Immigration and Nationality Act Amendments of 1973*. H.R. Rep. No. 93-461, at 10 (1973)

⁹⁸ 119 Cong. Rec. 31476 (1973)

existed, thereby making the term “non-quota” meaningless. However, choice of the word “special” was what Feighan had insisted on, with the intention to connote the impression that the Western Hemisphere immigrants were given treatment unfair to immigrants from other parts of the world.⁹⁹

Utterly ignored was the fact that a uniform country ceiling was lower than the current level of immigration. As discussed in the previous section, 20,000 was a figure that corresponded with the pre-1965 level of immigration from Britain and Germany, expected to minimize the impact of abolition of quota system. Although proponents for uniform ceiling on all countries around the world upheld the 20,000 ceiling as a matter of formality, it masked how Congress decided the number not out of some abstract formulation but in consideration of immigration from the most preferred countries. However, the figure was applied to the Western Hemisphere entirely out of context of ongoing immigration.

The language of “family unification” was also exploited to serve a more restrictive aim. Combined with the argument that absence of a country ceiling constituted discrimination against the Eastern Hemisphere was the argument that uniform “family preference” system applied to the two hemispheres and to all countries in the world would promote unification of families from the Western Hemisphere. Instead of entirely rejecting a more liberal call for “family preference,” for instance the criticism that family-based labor certification was much narrower for the Western Hemisphere than for the Eastern Hemisphere, those insistent on a ceiling took the position that the proper way to realize “equality” and to extend “family preference” to the Western Hemisphere was to apply to every country 1) the same family-based labor clearance, 2) the same numerical preference system, 3) a flat country ceiling 4) under a worldwide ceiling.

⁹⁹ 119 Cong. Rec. 31458 (1973).

However, as Representative William Edwards (D – California) pointed out in his opposition to a uniform ceiling, although the proclaimed purpose of the preference system was family unification, “numerical preference” was a matter of whom to prioritize within a fixed ceiling. To impose a ceiling much smaller than current demand “actually works against the goal of reunion of Mexican Families.”¹⁰⁰

The Act of October 26, 1976 (90 Stat. 2703) created a uniform system for both hemispheres. It finally enabled nonimmigrants from the Western Hemisphere to adjust their status to permanent resident, lifting the ban that had been put in place in 1958. It also applied the same family-based labor clearance and the seven-point numerical preference system to both hemispheres. Here, as in the Eastern Hemisphere, family-based labor clearance was accorded to those who qualified for a family-based visa (numerical preference), and the two meanings of “family preference” merged. However, coupled with the preference system was a flat ceiling of 20,000 for every country.¹⁰¹ In 1978, the two hemispherical ceilings would be combined into a global ceiling of 290,000.

Notable was the justification given by Congress for the 1976 Act. The House Committee report on the bill characterized the 1965 Act as a law that “endorsed the principles of equity and family reunification as the basis of our immigration policy for the Eastern Hemisphere” and that the purpose of the 1976 Act was “to extend these principles to the natives of the Western Hemisphere.” However, while claiming to promote family reunification by giving preferences to families, the bill was actually going to adversely affect immigration from Mexico in particular.¹⁰²

¹⁰⁰ 119 Cong. Rec. 31477 (1973)

¹⁰¹ It removed parents of minor U.S. citizens from family-based labor clearance as well.

¹⁰² *Amending the Immigration and Nationality Act*. H.R. Rep. No. 94-1553, at 1 (1975).

In explaining how the new law would benefit immigrants from the Western Hemisphere, the report conveniently avoided mentioning Mexico. As an example, the report compared “the 22-year old British citizen daughter of a U.S. citizen or the Spanish wife of a permanent resident alien” to “the 22-year old Brazilian daughter of a U.S. citizen or the Canadian wife of a permanent resident alien,” who did not have family-based labor clearance and numerical preference enjoyed by the former. Surely, for an adult daughter of a U.S. citizen in Brazil, where less than 20,000 had applied for a visa, family-preference (labor clearance and numerical preference) meant higher chance of immigration to the U.S.¹⁰³ However, utterly missing was reference to Mexico, where the backlog of over 150,000 was significantly in excess of the new country ceiling. Ironically, extension of family-based labor clearance, which in itself originated from a more liberal criticism of disparate treatment between families in the two hemispheres (treating immigration from Europe as that of families and immigration from the Western Hemisphere as that of labor), also added to the backlog. Enabling wider range of families to apply for a visa meant that even if the ceiling on the Western Hemisphere was maintained at the same level the waiting list would become longer. But to impose a country ceiling that was only a fraction of the size of the existing backlog multiplied the waiting period in Mexico by several times.

Passed during the period of low immigration from Europe and Asia, and during a time of high immigration from Mexico, the Immigration Act of 1965 and its “family-preference,” in practice and as a “principle,” worked in different ways. As unexpected as the consequences were, family-preference increased immigration from Asia in unprecedented volume. However, the call for equal treatment of families or the claim that family should be the primary criteria of

¹⁰³ U.S. Congressional Research Service, *Illegal Aliens: Analysis and Background* (1977), 76-89.

admission worked for a more restrictive purpose with regard to immigration from the Western Hemisphere. The first formal system of “family preference” for immigrants from Mexico indicated increased restriction.

Tables and Figures for Chapter 6

6-1: Hart-Celler Bill (88th Congress)

	INA as amended in 1959	Hart - Celler bill
	Total 155,000 (penetrable)	Total 165,000 (penetrable)
	Guaranteed Quota system	Guaranteed minimum = 200 Theoretical ceiling = 16,500
No Limit	Spouse and minor children of U.S. citizens	Spouse, minor children, Parents of U.S. citizens

	Preference System within the Quota	Preference System within the Hemispherical Ceiling
1	Skilled immigrant	Skilled immigrant
50 percent	Spouse and children, accompanying and following to join	Spouse and children, accompanying and following to join
2	Parents	Unmarried sons and daughters over 21
25 percent	Unmarried sons and daughters over 21 25 percent	25 percent
3	Spouse and unmarried children of LPR	Spouse and unmarried children of LPR, accompanying and following to join
	25 percent	25 percent
4	Brothers and sisters, married sons and daughters + their spouse and children, accompanying	Brothers and sisters, married sons and daughters + their spouse and children, accompanying
	No reserved quota, 50 percent of any remainder	Parents of LPR No reserved quota, 50 percent of any remainder ----- Job No reserved quota, 50 percent of any

		remainder
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6-2: Feighan Bill (89th Congress - H.R. 8662)

Order of Preference	Class	Number of Visas
		X = 325,000 (worldwide ceiling) or 225,000 (Eastern Hemisphere)
1	Spouse, unmarried Sons and Daughters, Parents of Citizens	No limitation (theoretical maximum X)
2	Special Ability	10 percent of (X - 1 st preference)
3	Spouse, unmarried Sons and Daughters, Parents of Permanent Residents	20 percent of (X - 1 st preference)
4	Married Sons and Daughters	20 percent of (X - 1 st preference)
5	Brothers and Sisters	20 percent of (X - 1 st preference)
6	Skilled and Unskilled	20 percent of (X - 1 st preference)
7	Refugees	10 percent of (X - 1 st preference)
None	Others	Any remainder

Source: Memo, 1965, folder "Presidential Conference," box 36, Michael Feighan Papers; American Immigration and Citizenship Conference, *AICC News* 11 no. 3 (June 30, 1965).

6-3: 1965 System: Eastern Hemisphere and the Western Hemisphere

I: Paths to Permanent Residency

	Eastern Hemisphere	Western Hemisphere
Paths to permanent residency	1: Immigrant visa 2: Adjustment of status 3: Suspension of deportation	Immigrant visa

II: Numerical Limitation

	Eastern Hemisphere	Western Hemisphere
Numerical Exemption	Spouse, minor child, parents of U.S. Citizens	Spouse, minor child, parents of U.S. Citizens
Hemispherical Ceiling	170,000	120,000
Per-Country Ceiling	20,000	None
Visa Distribution	Preference System	
	1: Adult but unmarried sons and daughters of U.S. citizen	58,000
	2: Spouses, minor children of permanent residents	58,000
	3: Professional + their spouse and minor children	29,000
	4: Married sons and daughters of citizens + their spouse and minor children	29,000
	5: Siblings (regardless of age or marital status) of citizens + their spouse and minor children	69,600
	6: Skilled and unskilled workers +	29,000
	7: Refugees	17,400
	First come, first served	

III: Family-based Exemption from Labor Certification

Hemispherical Applicability	U.S. Citizen or Permanent Resident	Relationship
Eastern and Western Hemisphere	Citizen	Spouse and minor children
	Citizen over 21	Parents
	Permanent resident	Spouse and minor children
Eastern Hemisphere only	Citizen	<p>adult but unmarried son and daughters</p> <p>married sons and daughters + their spouse and minor children</p> <p>siblings (regardless of age or marital status) + their spouse and minor children</p>
Western Hemisphere only	Citizen below 21	Parents
	Permanent resident	Parents

6-4: Immediate Relatives by Country of Birth, 1966-1976 Transitional Quarter

	Wives	Husbands	Children	Parents	% of Total	Total
All Countries	364,700	191,104	192,617	117,011	20.1%	865,432
Mexico (1969-)	37,217	52,316	48,179	4,982	29.7%	142,694
Philippines	39,521	6,639	21,991	22,844	31.8%	90,995
Germany	35,526	2,671	14,504	2,707	50.8%	55,408
Korea	25,926	1,105	20,692	4,745	29.8%	52,468
Italy	12,594	10,597	6,423	14,023	19.2%	43,637
U.K.	22,674	7,287	5,988	4,251	23.4%	40,210
China, Taiwan	13,325	3,173	2,984	14,537	18.7%	34,019
Canada (1969-)	14,970	7,484	7,550	951	34.3%	30,955
Japan	20,600	1,893	3,357	1,402	55.0%	26,712
Greece	7,388	8,902	1,991	6,973	17.7%	25,254

Source: *INS Annual Report, 1966-1976*, table 9.

Epilogue

In 1978, Congress ended the three-tiered immigration restriction since 1921 by combining the two hemispherical ceilings into a worldwide ceiling of 290,000. Along with a uniform country ceiling of 20,000 enforced two years earlier, it marked the beginning of formally neutral but global restriction. The Immigration Act of 1924, which permanently established immigration restriction and closed the era of open immigration, had displayed three features with regard to families. The very definition of “family” for immigration purposes, and how family claims have been weighed in setting conditions of admission, acquisition or denial of permanent residency marked the boundaries of membership and belonging in American polity.

For Europe, the key feature of the 1924 system was exemption of the nuclear family of U.S. citizen. At surface, the 1924 Act was generous to nuclear family member in exempting them from quotas, but quotas restriction narrowed the diverse pattern of family migration that was possible before 1921 in the age of open migration. National origins quotas system originated as a direct antithesis to family-based admission, to minimize the importance of family ties as criteria of admission. Throughout the quotas era, family-based admission from Europe was associated with immigration from Southern and Eastern Europe, as large quotas ensured immigration of families from Northern and Western Europe even without special consideration for families. The demand to expand non-quota admission continued to meet intense oppositions, and it was only won by struggles of Southern and Eastern European families.

With regard to Asia and the Western Hemisphere, the Immigration Act of 1924 included no family-based admission system, but for different reasons. Deprivation of family rights from U.S. citizens of Asian descent was central to exclusion of Asian immigrants as “aliens ineligible to citizenship.” Racial exclusion of “aliens” superseded any claims of citizens. In the 1920s

immigration debate, the concept of family was invoked in two ways: to refer to individual family relations and to the national, or “Caucasian,” family. Naturalization laws and anti-miscegenation laws defined the latter “family.” It was only for those within the latter “family” that Congress recognized the question of which family relations mattered. The issue of citizenship had very different meanings for European immigrants and Asian-Americans. The former brought forth questions such as why formal citizenship and naturalization should be tied to bringing of the family. For the latter, the struggle was over whether citizenship mattered at all and over guarding their own citizenship acquired at birth.

For immigrants from the Western Hemisphere, the initial reason for the absence of a family-based admission system was due to the absence of a formal ceiling. Numerical preference, family or otherwise, is a product of numerical ceiling on immigration. However, the non-quota status of Mexican immigrants, which was tied to *theoretically* unlimited admission, was also tied to non-recognition of family in peculiar ways. First of all, among the main reasons raised in the 1920s *against* formal ceiling was non-recognition of Mexican immigrants as settlers, or as those joining or immigrating with their family. This view of Mexican immigrants as temporary members in American society came into full force during the Great Depression against Mexican and Mexican-American families.

Decline of hierarchization among European immigrants, redrawing of Western Europe / Eastern Europe in the Cold War context eroded the strict national origins ratio of immigration as well as the nuclear family model of family-based admission, enabling relations such as siblings and adult or married children of U.S. citizens to qualify for a family visa by the 1950s. By the 1960s, regrouping of “European” also created a very different understanding of national origins quotas and its relation to family-based admission, which initially were in opposition to one

another. Along with a more liberal view of family-based admission as rights of citizens and residents, a more exclusive view of family-based admission as a different form of “national origins” that sought to keep the source of immigration Europe emerged.

The elaborate system of “family preferences” for the Eastern Hemisphere in a way characterized immigration from the Eastern Hemisphere (Europe) as that of family reuniting in the U.S. and as admission based on claims of citizens and permanent residents. By contrast, the absence and denial of family-based admission system for Mexico reinforced the view of Mexican immigration as that not grounded in rights of U.S. citizens and residents. Conversely, immigration authorities and lawmakers posited theoretically unlimited availability of visas as the reason for not recognizing family claims as the grounds of admission from Mexico (suspension of deportation, adjustment of status, or labor certification). Concurrent recruitment of Mexican workers as temporary workers without any family rights, which far outnumbered those admitted as immigrants, both reflected and reinforced the view of Mexican immigration as that of temporary labor. As the strict labor certification suggested, Congress abolished non-quota admission from the Western Hemisphere with little consideration for families. The eventual introduction of the “family preference” system to the Western Hemisphere was contingent with the first formal ceiling, which in fact amounted to restriction rather than facilitation of family immigration from Mexico.

In the post-national-origins-quota era of formally race-neutral and sex-neutral immigration policy, exemption of close relatives of U.S. citizens from numerical restriction has been the basic line. Few contemporaries deny family reunification *in principle*, so far as legal entrants are concerned. In the 1970s, as the shift from recruitment of “guest workers” to family reunification in Europe or the signing of the Helsinki Accords of 1975 exemplify, immigration

policies of liberal democracies showed certain convergence in recognizing the obligations to admit the immediate family of citizens and long-term residents.¹ But the end of the three-tiered restriction regime in the U.S. was not a return to open immigration. Global competition for visas created long backlogs, and family-based admission continued to be a contested field.

By the mid-1970s, several consequences of the 1965 Act had become evident. First was the dramatic change in the sources of immigration to the U.S. Although family-based admission was expected to most benefit European immigrants, in 1971 immigration from Asia (103,461) surpassed that from Europe (96,502), and by 1977 the former rose to 157,759, while the latter dropped further to 70,010. Family-based admission played a crucial role in this trend. In the immediate years after 1965, aside from spouses of U.S. citizens, many of whom were married to American soldiers stationed abroad, majority of immigrants from Asia acquired permanent residency based on their professions. Many received higher education in the U.S. and changed their status from a nonimmigrant to a permanent resident. Fulfillment of the five-year residency requirement for naturalization now allowed more post-1965 permanent residents to exercise their rights as citizens to send for wider range of family members, both within and outside the ceiling. Immediate family exemption pierced the 20,000 ceiling in several countries such as the Philippines and Korea, as well as the total hemispherical ceiling of 170,000 by some 50,000.²

In the Western Hemisphere, before 1976, despite the hemispherical ceiling and strict labor certification, lack of a country ceiling allowed Mexican immigrants access to one third of

¹ Helsinki Final Act was signed by 33 European nations, the U.S., and Canada. Basket III concerns family ties and family reunification. Select Commission on Immigration and Refugee Policy, *U.S. Immigration Policy and the National Interest* (Washington D.C.: GPO, 1981), 112.

² David Reimers, *Still the Golden Door: The Third World Comes to America* (New York: Columbia University, 1992), 94-96; From Asia, the top country of origin was the Philippines (39,111), followed by Korea (30,917), China and Taiwan (19,754), and India (18,613). From Europe, the top country of origin was the United Kingdom (12,477). *INS Yearbook 1977*, 5.

all the visas available in the Western Hemisphere. This was no longer the case after 1976 and much less after 1978. While family preferences (both numerical preference and exemption from labor certification) made more prospective immigrants eligible for a visa, the country ceiling and global ceiling elongated the wait. In 1980, over one million applicants worldwide were registered on the waiting list for 270,000 visas. The backlog was particularly long in categories such as the second preference for spouse and unmarried children of permanent residents (176,000 applicants for 70,000 visas), and the fifth preference for siblings of U.S. citizens (508,000 applicants for 64,800 visas). In Mexico, families of permanent residents alone oversubscribed the country ceiling by 4 years. Surely, immediate relatives exemption enabled more than 20,000 immigrants to come from Mexico, but the backlog for families subject to the ceiling continued to grow.³

One of the outcomes was irregular immigration, which had become one of the central immigration issues by the mid-1970s. In 1977, for the first time since the 1954 Operation Wetback, the INS apprehended more than one million deportable immigrants, out of which 90 percent were from Mexico. Existence of a ceiling critically changed the consequences of voluntary departure, the most popular method after apprehension along the U.S.-Mexico border. Voluntary departure in the absence of a ceiling at least left the chance of return to the U.S. with a visa, but imposition of a ceiling made it impossible to return to the U.S. without being placed at the end of the waiting list. It was clear that imposition of a worldwide ceiling on top of the

³ The Refugee Act of 1980 removed refugees from the ceiling, who were previously allocated 20,000 visas under the ceiling of 290,000. Thus, the overall ceiling was lowered to 270,000.; Select Commission on Immigration and Refugee Policy, *U.S. Immigration Policy and the National Interest: Staff Report*, 377; Reimers, *Still the Golden Door*, 132.

country ceiling would not only extend visa backlog but also stimulate unauthorized immigration. Nevertheless, Congress chose to treat the issue strictly as a matter of law enforcement.⁴

The Select Commission on Immigration and Refugee Policy (SCIRP), created as part of the 1978 Act suggested a multifaceted approach that did not rely solely on border enforcement but recognized the various ties that undocumented immigrants developed with the society. The two most significant proposals, eventually incorporated into the Immigration Reform and Control Act of 1986 (IRCA), were granting of permanent residency to undocumented immigrants and employer sanctions. The latter met strong oppositions from civil rights organizations such as the Mexican American Legal Defense and Education fund, since there was a well-grounded fear of employment discrimination, but it was passed as part of the compromise to grant permanent residency to undocumented immigrants. Contestations over the cutoff-date for regularization brought to light how just like documented immigrants many undocumented immigrants preceded their families to prepare for their spouse and children to join later. Strict enforcement of the cutoff date could separate family members depending on whether they arrived before or after the deadline, and in case the latter was ordered to leave the U.S. a long visa backlog prevent the families' return to the U.S. Thus, Congress agreed to allow immigrants who had lived in the U.S. since before January 1982 as well as their spouse and minor children who had arrived later to both remain in the U.S.⁵

Passage of the IRCA, which enabled some 2.7 million undocumented immigrants to become permanent residents, brought the attention back to regular immigration that continued to

⁴ *INS Yearbook 1977*, 14; David G. Gutiérrez, *Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity* (Berkeley: University of California Press, 1995), 179-205.

⁵ Immigration Reform and Control Act of 1986 (IRCA) 100 Stat. 3445; Antonio Hernandez (Mexican American Legal Defense and Education Fund), "Immigration Reform: Employer Sanctions and Legalization," *In Defense of the Alien* 6 (1983): 99-107; Reimers, *Still the Golden Door*, 241-247, 249.

grow. In 1990, aside from 880,000 IRCA immigrants, some 600,000 persons became permanent residents. Majority was from Latin America and Asia, and the 1990 Census recorded more foreign-born population from Latin America (8.4 million) and Asia (5.0 million) than from Europe (4.4 million). Between 1981 and 1990, family-sponsored immigration averaged some 436,000, with 216,000 visas reserved for preference relatives, and some 220,000 immediate relatives admitted outside the ceiling. Family-sponsored immigrants comprised 68.9% of all new permanent residents exclusive of IRCA legalization. With family-exemption piercing the ceiling, various bills to place a firm impenetrable ceiling on annual immigration were submitted. At the same time, in the face of continuously growing backlog, immigrant groups demanded expansion of family-based admission either by raising the ceiling or by placing more families outside the ceiling altogether.⁶

One of the characteristics of the debate in the 1980s was increasing delineation of family-based admission from employment-based admission, a trend that would become more notable in the 1990s. With regard to legal immigration, the SCIRP argued that the seven-point preference system established in 1965 resulted in “mixing of family and independent worker (nonfamily) groups” and confused “the two main goals of immigration – family reunification and bringing in persons with needed skills.” The commission proposed to distinguish between the two by creating two distinct ceilings, one for family-based admission and another for employment-based admission, setting up preferences within each ceiling, and by providing more visas for both purposes.⁷ Importantly, the aim of the SCIRP was to counter a more restrictive

⁶ *INS Yearbook 1985*, 4; *INS Yearbook 1994*, 30; Reimers, *Still the Golden Door*, 253-263; Edward J. W. and John S. W. Park, *Probationary Americans: Contemporary Immigration Policies and the Shaping of Asian American Communities* (New York: Routledge, 2005), 18.

⁷ Select Commission on Immigration and Refugee Policy, *U.S. Immigration Policy and the National Interest*, 111.

view of family-based admission. Business interests insisted on recruiting immigrants with specific skills, and on placing more emphasis on employment and education as the primary criteria for admission to the U.S. Notably, those in support of a firm ceiling insisted on removing certain family preferences in order to reallocate visas to immigrants with specific skills, which was coupled with the idea that family-sponsored immigrants were less likely to be of valuable labor force. As serious disagreements began to emerge over how much priority should be placed on family as the admission criteria, the SCIRP sought to avoid placing family-based admission and employment-admission in dichotomous relations, where the increase of one would result in reduction of the other. The SCIRP not only opposed eliminating any family preference, but also proposed to expand family-based admission by increasing the number of family visas, and by placing wider range of families outside the ceiling.⁸

The resulting Immigration Act of 1990 changed the preference system in several significant ways. First, Congress replaced the seven-point preference system under a singular ceiling of 270,000 with two separate ceilings, one for family-based immigrants (480,000) and another for employment-based immigrants (140,000). In addition, Congress created a new category of “diversity visa” (50,000) for those without the necessary familial connections or jobs, a measure originally intended for immigrants from countries in Europe such as Ireland that had lost their quotas. In all, the 1990 Act capped annual immigrants visas at approximately

⁸ Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002), 269; Reimers, *Still the Golden Door*, 253-263; For an example of kinship as “nepotism” argument, Vernon M. Briggs Jr., “Report of the Select Commission on Immigration and Refugee Policy: A Critique,” *Texas Business Review* 56 no. 1 (1982): 11-15; Some argued that priority on family-sponsored admission led to a decline in skill of immigrants. Barry Chiswick, “Mexican immigrants: The Economic Dimension,” *Annals of the American Academy of Political and Social Science* 487 (1986): 92-113; George Borjas, *Friends or Strangers: The Impact of Immigration on the U.S. Economy* (New York: Basic Books, 1990). For a counter-argument, Guillermina Jasso and Mark R. Rosenzweig, “Do Immigrants Screened for Skills Do Better than Family Reunification Immigrants?” *International Migration Review* 29 no.1 (1995): 85-111.

675,000.⁹ At one level, the 1990 Act emphasized the uniting of the nuclear family, and doubled the number of visas for spouse and children of permanent residents (58,000 to a minimum of 114,200), and placed them outside the country ceiling. At the same time, Congress was deeply anxious about the increase in family-based immigration, and provided that all family-based immigrants including immediate family of U.S. citizens would be counted against the ceiling thereafter. In comparison with the pre-1990 level of family-based immigration of some 436,000, the new ceiling was at one level an expansion of family-based admission, but the very creation of a ceiling reaffirmed numerical restriction as the fundamental principle of immigration policy.¹⁰

Importantly, as originally intended by the SCIRP, separation of the two ceilings for family-based admission and employ-based admission was expected to protect family-based admission. Yet, the clear delineation of the two in a way reinforced the view of family-based immigrants as non-workers, not simply as a difference in the criteria of initial admission. In the 1990s, influential Congress members, business and economists increasingly insisted on prioritizing skill/education/employment than certain family relations. The U.S. Commission on Immigration Reform (USCIR), established by the Immigration Act of 1990, upheld family reunification, labor recruitment, and admission of refugees as the three main pillars of U.S. immigration policy, but their recommendations differed significantly from the SCIRP. First,

⁹ Family-based preferences include four categories. First preference- Unmarried sons and daughters of U.S. citizens (23,400); Second preference - Spouses and children of permanent residents (at least 114,200); Third preference – Married sons and daughters of U.S. citizens (23,400); Fourth preference – Siblings of U.S. citizens (65,000). Employment-based preferences include five categories. First Preference – Priority workers (37,520); Second Preference – Professionals with advanced degrees or immigrants with exceptional ability (37,520); Third Preference – Skilled workers, professionals, unskilled workers (37,520); Fourth Preference – Special immigrants (9,940); Fifth Preference – Employment creation (investors) (9,940). Ruth Ellen Wasem, *Numerical Limits on Employment-Based Immigration: Analysis of the Per-Country Ceilings*. CRS Report R42048 (Washington, DC: Library of Congress, Congressional Research Service, December 6, 2011), 3-6.

¹⁰ *INS Yearbook 1994*, 32; Aristede Zolberg, *A Nation by Design: Immigration Policy in the Fashioning of America* (New York: Russell Sage, 2006), 376-384.

whereas the SCIRP sought to differentiate between family and labor as criteria for admission, the USCIR depicted family-sponsored immigrants as distinct from labor immigrants. Second, while both the SCIRP and the USCIR spoke of immigration policy in terms of national interest, the former saw national interest in recognizing “the broader concept of family held by many nationalities,” which were not necessarily confined to the nuclear family. By contrast, the USCIR spoke of national interest more in terms of recruiting labor force, and insisted on shifting the priorities “away from the extended family and toward the nuclear family” and on removing preference for adult unmarried children, and siblings, whom the commission believed to serve “lesser national interest” as their ages tended to be high due to the long waiting period for a visa. Thus, the USCIR found direct conflict between admission of certain family members and employment-based admission.¹¹

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) reduced the family rights of immigrant families both on the admission side and on the removal side. Eventually, Congress did not narrow the definition of family for admission purposes, but adapted another economy-oriented method of restriction proposed by the USCIR. Emphasizing personal “responsibility” of immigrant families, the IIRIRA required citizens and permanent residents to be above a specific income level in order to sponsor family visas, and mandated a legally-binding affidavit of support from sponsors, which were enforceable until the naturalization of the beneficiary or for ten years. Although some were recovered later, Congress coupled this measure with a removal of public safety net from nearly all newcomers. Thus, although the 1996 Act maintained both the definition of family and the number of family visas,

¹¹ Select Commission on Immigration and Refugee Policy, *U.S. Immigration Policy and the National Interest*, 111; U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy* (Washington D.C.; GPO, 1997), xvii.

critics have pointed out that raising of the financial bar for sponsoring family visas amounted to de facto limitation on family unification rights of families with lesser financial means.¹²

Legal scholars have observed that in deportation cases, even the most-privileged relations on the admission side such as spouses and minor children matter little under the IIRIRA.¹³ After the IRCA, Congress devoted less effort to implementing measures to recognize ties that immigrants of various status developed with the society than to law enforcement, by increasing the budget of the immigration agency or by according the INS with stronger deportation power. The IIRIRA expanded the grounds for deportation, where deportation was mandatory, with no chance of cancellation of removal. The trend began with the Anti-drug Abuse Act of 1988, which defined crimes such as murder, kidnapping, and weapons possession as an “aggravated felony” with mandatory deportation and little prospect of readmission to the U.S. The range of offenses classified as “aggravated felony” was expanded to include much wider range of offenses such as shoplifting. Equities that courts had weighed against deportation such as existence of family, length of residence in the U.S., and good character carry little weight in case of mandatory deportation.¹⁴ In mixed-status families including minor U.S.-born children, criticism has amounted that deportation of parents amount to the removal of children who are U.S. citizens but that it is becoming more difficult to avoid deportation on the grounds of the child’s interest.¹⁵

¹² The sponsor must maintain the beneficiary at an income level of 125 percent of the federal poverty line. Park and Park, *Probationary Americans*, 70-73; Zolberg, *A Nation by Design*, 410-412.

¹³ Nora V. Demleitner, “How Much Do Western Democracies Value Family and Marriage?: Immigration Law’s Conflicted Answers,” *Hofstra Law Review* 32 (2003-2004): 298-299.

¹⁴ Nancy Morawetz, “Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms,” *Harvard Law Review* 113 (1999-2000): 1937, 1951-1954.

¹⁵ David B. Thronson, “Choiceless Choices: Deportation and the Parent-Child Relationship,” *Nevada Law Journal* 6 (2006): 1189; Hiroshi Motomura, “We Asked for Workers, but Families Came: Time, Law, and the Family in Immigration and Citizenship,” *Virginia Journal of Social Policy and Law* 14 no.1 (2006):

Despite the resemblance in the volume of immigration, today's families immigrate to the U.S. under legal conditions that those before the imposition of numerical restriction in the 1920s did not experience. In 2011, 1.06 million persons became permanent residents of the U.S. Some 688,000 were family-sponsored, with 453,000 immediate relatives of U.S. citizens, followed by 109,000 spouse and minor children of permanent residents, who can immigrate to the U.S. after a relatively short wait. At the same time, a one-year difference in age compels adult children of U.S. citizens to wait for a visa for over twenty years.¹⁶ According to a 2008 study, some 8.8 people were estimated to belong to mixed-status families consisting of both unauthorized immigrants and U.S. citizens and permanent residents. Half were U.S.-born children with birthright citizenship, born to 3.8 million parents with deep ties with American society but without formal permanent residency.¹⁷ "Preserving the integrity of the family" or "preservation of the family unit"¹⁸ is commonly believed to be the principle of U.S. immigration policy, and is central to the idea of the U.S. as a settler immigrant nation and as a "nation of immigrants." But it was also the norm of immigration restriction that gave rise to issues such as "family unification" and created "mixed-status families," and its practice continue to be contested today as part of the ongoing struggles of immigrants families.

103-118; Jacqueline Bhaba, "Arendt's Children: Do Today's Migrant Children Have a Right to Have Rights?" *Human Rights Quarterly* 31 (2009): 447; "Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy," *Human Rights Watch* 19 no. 3 (2007).

¹⁶ *2011 Yearbook of Immigration Statistics*, 18.

¹⁷ Jeffrey S. Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States* (Washington D.C.: Pew Research Center, 2009), 7-8.

¹⁸ The former quotation is from Truman's Veto Message of McCarran-Walter Bill on June 25, 1952. President's Commission on Immigration and Naturalization, *Whom We Shall Welcome* (Washington: G.P.O, 1952), 276; The latter quotation is from the House Report accompanying the vetoed bill. *Revising the Laws Relating to Immigration, Naturalization, and Nationality* H.R. Rep. 1365 at 29 (1952).

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Appendix A: Terminology

family-based admission: This dissertation will use the term to refer to admission to the U.S. by virtue of one's family relation to a U.S. citizen or resident as defined by immigration law. It does not refer generally to immigration of family members but only when the government recognizes such family relation as the principal ground for admission. For instance, if a person with a family in the U.S. applies for a visa based on one's occupation, such admission will be described as occupation-based.

non-immigrant: A legal status first created by the Immigration Act of 1924. A foreigner admitted to the U.S. as a non-immigrant neither has the right to reside in the U.S. indefinitely nor the right to naturalization. Initially, there was no firm numerical ceiling on annual admission of non-immigrants, although certain classes of nonimmigrants are also placed under a ceiling today.

immigrant: Since 1924, any foreigner that is not listed as "non-immigrant" must apply for admission as an "immigrant." The central feature of post-1924 immigration regulation is 1) the distinction between non-immigrant and immigrant, and 2) the numerical limitation on the annual number of immigrants.

migrant: In order to differentiate between colloquial usage of the term "immigrant" and "immigrant" as a legal status since 1924, this dissertation will use the term "migrant" as a general term to include any foreign-born person residing in the U.S. A migrant would include any status under immigration law, and those without any formal immigration status.

permanent resident alien / lawful permanent resident: In contemporary usage, holding an “immigrant” status and being a permanent resident are interchangeable, and permanent residency includes the right to naturalization. Until 1952, permanent residency and eligibility for naturalization were separate concepts, as persons of Asian descent were barred from naturalization despite their permanent residency.

alien ineligible to citizenship: Until 1952, acquisition of U.S. citizenship through naturalization was limited to “white” persons and persons of “African nativity and descent” by the Naturalization Act of 1870. Without referring to a specific country or nationality, the Immigration Act of 1924 excluded “aliens ineligible to citizenship,” euphemism for people of Asian descent, from immigrating to the U.S. or from acquiring permanent residency.

declarant: Before 1952, naturalization was a two-step process. The first step was to file a “declaration of intention to naturalization” at least three years before applying for final naturalization. The declaration of intention was also called the “first paper.” A person with the first paper acquired the status of a “declarant,” and gained rights closer to citizens under federal and state laws than foreigners without first papers.

adjustment of status: To change one’s status from one immigration status to another (particularly from a non-immigrant to an immigrant / permanent resident) without having to leave the U.S. The term is also used when an unauthorized immigrant, thereby having no formal legal status under immigration law, acquires formal immigration status.

quota: Annual ceiling on the number of immigrants admitted from each country. The size of the quota was different according to the country of birth. The quota system was in effect since 1921 until 1968. Between 1921 and 1943, quotas only applied to immigrants born in Europe. For one, persons of Asian descent were summarily excluded, and Congress assigned no quota for countries in Asia until repeal of Chinese exclusion in 1943. For another, until 1968, natives of the independent countries of the Western Hemisphere were not subjected to a firm prefixed ceiling, and were placed outside the quotas system.

non-quota immigrant: A term used between 1924 and 1968 to refer to an immigrant exempted from quota restrictions. The difference between a “non-immigrant” and a “non-quota immigrant,” both exempted from quota restrictions, was that the latter were admitted for permanent residence. The term referred to immigrants from the Eastern Hemisphere exempted from quota restrictions based on profession or as family of U.S. citizens. The term also referred to all immigrants from the Western Hemisphere, categorically outside the quotas system.

non-quota family / immediate relative: Immigrants exempted from numerical restriction based on their familial relation with a U.S. citizen. Under the quotas system, such families were called non-quota family (subcategory of non-quota immigrant). After the abolition of the quotas system by the Immigration Act of 1965, such relations have been called “immediate relatives.”

preference family: Immigrants given priority over others in the issuance of numerically limited immigrant visas, based on their family relations with a U.S. citizen or with a permanent resident.

petitioner/ sponsor, beneficiary: A family visa (non-quota family / immediate relative, preference family) does not allow direct application by the prospective immigrant but requires

petition and sponsorship by the family in the U.S. This expresses the notion that family-based admission is about the rights and privileges of U.S. citizens and residents than about admission of foreigners. The recipient is called the “beneficiary” that receives a visa by virtue of one’s relation to the “petitioner” or “sponsor.”

Appendix B: Legislations Regarding Family-Based Admission, 1921-1965

Legislations	Sponsor	Beneficiary	Non-quota or Preference	Temporal Limit	Note
Emergency Quota Act of May 19, 1921 (42 Stat. 5)	Citizen	Child under 18	Non-quota		
	Citizen Alien who has applied for citizenship W/WI veteran	Wife, parents, siblings, children under 18 (not of citizens), fiancées	Preference		Only wives and fiancées.
Immigration Act of May 6, 1924 (43 Stat. 153)	Citizen	Wife Unmarried children under 18	Non-quota	NO	Only wives, not husbands. Not for "aliens ineligible to citizenship."
	Citizen-21 or over	Unmarried children under 21 Parents	Preference		
Alien Veterans Act of May 26, 1926 (44 Stat. 654)	W/WI veteran alien	Spouse Unmarried children under 18	Non-quota	YES	Alien veteran considered as non-quota. Beneficiaries accompanying the alien or joining within 6 months considered as non-quota.
Act of May 29, 1928 (45 Stat. 1009)	Citizen	Unmarried children under 21	Non-quota	NO	
	Citizen-Female-21 or over	Husband	Non-quota	YES	Marriage prior to 1928/6/1
	Citizen-21 or over	Parents	Preference	NO	Marriage after 1928/5/31
	Resident Alien	Unmarried child under 21 Wife	Preference	NO	
Act of July 11, 1932 (47 Stat. 656)	Citizen-Female	Husband	Non-quota	YES	Marriage prior to 1932/7/1
			Preference	NO	Marriage on or after 1932/7/1

War Brides Act of December 28, 1945 (59 Stat. 659)	WWII veteran citizen	Spouses	Reduced procedure.	YES	Application within three years of the effective date of the act.
G.I. Fiancées Act of June 29, 1946 (60 Stat. 339)	WWII veteran citizen	Fiancée or fiancé	Temporary admission for three months (to marry)	YES	Initially until 1947/7/1, extended until 1948/12/31 by the Act of June 28, 1947 (61 Stat. 190) Further extension by the Act of April 20, 1949 (63 Stat. 56)
Act of Aug. 9, 1946 (60 Stat. 975)	Citizen-Male	Chinese wife	Non-quota	YES	Only wives, not husbands. Marriage prior to 1924/5/26
Act of May 19, 1948 (62 Stat. 241)	Citizen-Female	Husband	Non-quota	YES	Marriage prior to 1948/1/1
			Preference	NO	Marriage on or after 1948/1/1
Act of June 16, 1950	Citizen		Non-quota (Limited)		Amendment to DP Act of 1948 5,000 non-quota visa (Not deducted from per-country quota but limited)
Act of Aug. 19, 1950 (64 Stat. 464)	WWII veteran citizen	Spouse Unmarried child under 18 (Exemption from the "aliens ineligible to citizenship" clause.)	Non-quota	YES	Marriage prior to 1952/3/19 (Initially, before 6 months after enactment. Extended by the Act of March 19, 1951—65 Stat. 5)

INA of June 27, 1952 (66 Stat. 163) -Removed racial bar to naturalization. Effective since 1952/12/24	Citizen	Spouse – elimination of formal sex discrimination Unmarried child under 21 Parents Spouse and minor children Siblings, sons and daughters (married or adult) Adopted orphan under 10	Non-quota Preference 2 (30%) Preference 3 (20%) Preference	NO	In the case of stepchild, marriage before 18 years old.	
	Citizen-21 or over					
	Resident Alien					
Act of July 29, 1953 (67 Stat. 229)	Member of 1) Armed Forces 2) U.S. Gov.	Adopted orphan under 10	Non-quota (Limited)	YES	500 non-quota visa (Not deducted from quotas but capped) Until 1954/12/31	
						Citizen
						Adopted orphan under 10
Refugee Relief Act of Aug. 7, 1953 (67 Stat. 400) Sec. 4 and Sec. 5	Citizen	Adopted orphan under 10	Non-quota (Limited)	YES	4,000 non-quota visa (Not deducted from quotas but capped) Until 1956/12/31	
						Italians, who qualified as preference families under the 1952 Act
						Greek, as above
Act of Sept. 11, 1957 (71 Stat. 639) Sec. 12	Citizen	Adopted children under 14			Capped at 2,000. Capped at 2,000.	
						Citizen-21 or over
						Parents Spouse, and child
Resident Alien			Non-quota for preference family to clear backlog.	YES	Petition approved prior to 1957/7/1	

Act of Sept. 22, 1959 (73 Stat. 644) Sec.4 and Sec.6	Citizen-21 or over	Parents	Backlog clearance	YES	On the consular waiting since before 1953/12/31 and petition approved prior to 1959/1/1
	Resident Alien	Spouse, and child			
Act of Sept 26, 1961 (75 Stat. 650) Sec. 25	Citizen-21 or over	Parents	Backlog clearance	YES	Petition filed prior to 1961/7/1
	Resident Alien	Spouse, and child			
Act of Oct. 24, 1962 (76 Stat. 1247) Sec. 1	Citizen	Siblings	Backlog clearance	YES	On the consular waiting since before 1954/3/31 and petition filed prior to 1962/1/1
		Quota sons and daughters (and their spouse, children)			
Act of Oct. 3, 1965 (79 Stat. 911) -National origins quota abolished. -For the WH, immediate relative exemption from 1969, and preference system from 1977.	Citizen	Spouse	Immediate Relatives	NO	
		Unmarried child under 21			
		Parents			
		Unmarried sons and daughters			
		Spouse, and unmarried son and daughter			
Resident Alien	Spouse, and unmarried son and daughter	Preference 2 (20%)			
Citizen	Married sons and daughters	Preference 4 (10%)			
	Siblings	Preference 5 (24%)			

Appendix C: Statutes Cited

Act of March 26, 1790 (1 Stat. 103 - Nationality Act of 1790)
Act of February 10, 1855 (10 Stat. 604 – Nationality Act of 1855)
Act of July 14, 1870 (16 Stat. 254 - Naturalization Act of 1870)
Act of May 6, 1882 (22 Stat. 58 - Chinese Exclusion Act of 1882)
Act of October 1, 1888 (25 Stat. 504 - Scott Act)
Act of March 3, 1903 (32 Stat. 1213)
Act of June 29, 1906 (34 Stat. 596 - Naturalization Act)
Act of March 2, 1907 (34 Stat. 1228 - Expatriation Act)
Act of February 5, 1917 (39 Stat. 874 - Immigration Act of 1917)
Act of May 19, 1921 (41 Stat. 5 - Emergency Quota Act)
Act of September 22, 1922 (42 Stat. 1021 - Cable Act)
Act of May 26, 1924 (43 Stat. 153 - Immigration Act of 1924, Johnson-Reed Act)
Act of May 28, 1928 (45 Stat. 1009 - Amendment to the 1924 Act)
Act of March 2, 1929 (45 Stat. 1512 - Registry Act of 1929)
Act of March 4, 1929 (45 Stat. 1551 - Deportation Act of 1929)
Act of June 13, 1930 (46 Stat. 581 - Chinese Wives Act)
Act of March 25, 1932 (47 Stat. 165)
Act of May 24, 1934 (48 Stat. 797 - Nationality Act of 1934)
Act of May 14, 1937 (50 Stat. 162)
Act of August 7, 1939 (45 Stat. 536 – Registry Act of 1939)
Act of June 28, 1940 (54 Stat. 670 - Alien Registration Act)
Act of October 14, 1940 (54 Stat. 1137 - Nationality Act of 1940)
Act of December 17, 1943 (57 Stat. 600 - Chinese Exclusion Repeal Act)
Act of December 28, 1945 (59 Stat. 659 – War Brides Act)
Act of June 11, 1946 (60 Stat. 237 - Administrative Procedures Act)
Act of August 9, 1946 (60 Stat. 975 - Act to Place Chinese Wives on Non-quota Basis)
Act of June 25, 1948 (62 Stat. 1009 - Displaced Persons Act)
Act of September 22, 1950 (64 Stat. 987 - Internal Security Act)
Act of June 17, 1952 (66 Stat. 13 - Immigration and Nationality Act of 1952, McCarran-Walter Act)
Act of August 7, 1953 (67 Stat. 401 - Refugee Relief Act)
Act of September 11, 1957 (71 Stat. 639)
Act of August 21, 1958 (72 Stat. 699)
Act of September 22, 1959 (73 Stat. 644)
Act of September 26, 1961 (75 Stat. 650)
Act of October 24, 1962 (76 Stat. 1247)
Act of October 3, 1965 (79 Stat. 911 - Immigration Act of 1965, Hart-Celler Act)
Act of October 26, 1976 (90 Stat. 2703 – Country Ceiling on the Western Hemisphere):
Act of October 5, 1978 (92 Stat. 907 - Worldwide Ceiling)
Act of October 10, 1978 (92 stat. 1046)
Act of March 17, 1980 (94 Stat. 102. – Refugee Act of 1980)
Act of November 6, 1986 (100 Stat. 3359 – Immigration Reform and Control Act of 1986)
Act of November 14, 1986 (100 stat. 3655)
Act of November 29, 1990 (104 Stat. 4978 – Immigration Act of 1990)

Act of September 30, 1996 (110 Stat. 3009 – Illegal Immigration Reform and Responsibility Act of 1996)

Appendix D: Legal Cases Cited

<Federal Court>

Chae Chan Ping v. United States, 130 U.S. 581 (1889)
Chang Chan et al. v. Nagle, 268 U.S. 346 (1925)
Cheung Sum Shee et al. v. Nagle, 268 U.S. 336 (1925)
Chung Fook v. White, 264 U.S. 443 (1924)
Commissioner of Immigration v. Gottlieb, 265 U.S. 310 (1924)
Lee You Fee v. Dulles, 355 U.S. 61 (1957)
Montana v. Kennedy, 366 U.S. 308 (1961)
Ozawa v. United States 260 U.S. 178 (1922)
Pace v. Alabama, 106 U.S. 583 (1883)
Perkins v. Elg, 307 U.S. 325 (1939)
Philippides v. Day, 283 U.S. 48 (1931)
United States v. Bhagat Singh Thind, 261 U.S. 204 (1923)
United States v. Mrs. Gue Lim, 176 U.S. 459 (1900)
United States v. Wong Kim Ark, 169 U.S. 649 (1898)
Weedin v. Chin Bow, 274 U.S. 657 (1927)
Wong Yang Sung v. McGrath, 339 U.S. 33 (1950)
Zartarian v. Billings, 204 U.S. 170 (1907)

<Board of Immigration Appeals>

Matter of A-M-, 7 I. & N. Dec. 332 (1956)
Matter of B, 5 I. & N. Dec. 291 (1953)
Matter of G, 2 I. & N. Dec. 692 (1946)
Matter of L-B-D-, 4 I & N Dec. 639 (1952)
Matter of M, 2 I. & N. Dec. 751 (1946)
Matter of M, 7 I. & N. Dec. 646 (1958)
Matter of Padilla-Munoz, 11 I. & N. Dec. 836 (1966)
Matter of T-, 3 I&N Dec. 707 (1949)
Matter of T-F-, 4 I. & N. Dec. 711 (1952)
Matter of T-G-, 4 I & N 715 (1952)
Matter of V, 6 I. & N. Dec. 9 (1954)