Foreword

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Immigration is the root of America's national existence. The immigration process has fueled the growth of this country as well as shaped its character. Even the most cursory review of this country's history reminds us of the vital role played by immigrants in the development of the United States.

Immigrants have been major contributors to the building of our railroads, the organizing of labor, and the strengthening and maturing of our economy. They have made invaluable contributions to the arts and to the American intellectual community. The diverse cultures and strong traditions immigrants have brought from their homelands have formed the basis of, and continue to reinforce, our own culture and family life. In short, virtually no aspect of the "American experience" has not benefited in some way from the continuing process of immigration, and there is every reason to expect that these benefits will continue to accrue in the future.

However, while we should recognize these benefits, we should not lose sight of the fact that a poorly regulated and short-sighted immigration policy that does not take into consideration our national requirements could have detrimental effects on this country. In a time of rapidly growing pressures to immigrate into the United States—resulting from the combined "push" factors of population spirals and weak economies of many of the developing

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countries, and the "pull" factors arising out of relatively attractive United States employment opportunities—it is vital that United States immigration policy be given high national priority. Only through a thorough and careful study of immigration issues and their ramifications can an immigration policy that is at once responsive to our national needs and interests and consistent with the United States tradition of receptiveness towards immigrants be achieved.

Currently, United States immigration and naturalization is regulated by the Immigration and Nationality Act of 1952 as amended.[1] The 1952 Act brought within one comprehensive statute the multitude of laws which up to that time governed immigration and naturalization. It also significantly changed United States immigration policy.

Some of the major innovations achieved in the 1952 Act were the abolition of prohibitions and distinctions drawn in screening immigrants based on race and on sex and the establishment of a selective immigration quota by giving a preference to aliens who possessed skills needed in the United States. Other changes included the broadening of grounds for exclusion and deportation and the establishment of greater procedural safeguards for aliens subject to deportation.

The 1952 Act also continued the discriminatory national origins quota system, established previously, as a method of selecting immigrants. Not until the passage of the 1965 amendments to the Act[2] was this racially biased system of regulating United States immigration abolished. These amendments also established a revised system of preferences applicable to intending immigrants from the Eastern Hemisphere, which facilitated the admission of aliens with relatives in the United States as well as of those possessing skills and abilities in short supply here. The Immigration and Nationality Act Amendments of 1976 extended to the natives of the Western Hemisphere the preference system established by the 1965 amendments.[3]

Most recently, a measure signed into law[4] has replaced the prior, separate Eastern and Western Hemisphere ceilings on immigration (170,000 and 120,000 respectively) with a unified worldwide ceiling of 290,000. This change represents the final logical

1. 8 U.S.C.A. §§ 1101-1503 (West 1970 & Supp. 1978).

2. Act of Oct. 3, 1965, Pub. L. No. 89-236, 79 Stat. 911 (codified in scattered sections of 8 U.S.C. (1976)).

3. Immigration and Nationality Act Amendments of 1976, Pub. L. No. 94-571, 90 Stat. 2703 (codified in scattered sections of 8 U.S.C. (1976)).

4. Act of Oct. 5, 1978, Pub. L. No. 95-412, 92 Stat. 907 (amending 8 U.S.C. §§ 1151-1153 (1976)).

step in the process, begun by the passage of the Act's 1965 amendments, to eliminate discrimination based on an intending immigrant's place of birth.

In addition to establishing "equality of opportunity" for immigration, the amendment will allow greater flexibility in the application of the existing immigrant preference system. Thus the measure truly achieves the ultimate objective of basing selectivity in immigration solely on the "family unification" and "needed skills" criteria contained in the Act without imposing arbitrary disadvantages based on place of birth.

Despite these relatively recent improvements in United States immigration law, the need for a comprehensive review and revision of the 1952 Act is evident. In my judgment a reassessment of this nature can no longer be delayed in light of the tremendous changes that have occurred in this field.

The current deficiencies in United States immigration law and policy that are reflected in the numerous immigration-related problems currently confronting this country evidence the need for such a comprehensive review.

ILLEGAL ALIENS

Foremost among immigration-related problems is that of illegal aliens. The Immigration and Naturalization Service (INS), the primary agency responsible for the administration and enforcement of our immigration laws, made over 1,000,000 apprehensions of illegal aliens in fiscal year 1977 compared to about 100,000 for the same period in 1965.

Although these apprehension figures may reflect in part a greater allocation of INS resources to enforcement and more efficient enforcement techniques, it is apparent that the illegal alien problem has reached staggering proportions. Although precise data on the effect of illegal immigration on the United States' economic and social structure have been difficult to gather, studies conducted under the auspices of the various federal agencies, private research groups, and the Domestic Council Committee on Illegal Aliens established by the Ford administration generally have concluded that illegal aliens have had their greatest impact on the domestic labor market. This conclusion conforms with the widely accepted notion that illegal immigration is largely a result of the desire of the poor and the unemployed of "source" coun-

tries to enhance their economic situation by migrating to an area in which employment opportunities are greater. In addition, there is some evidence that illegal aliens also adversely affect United States public assistance programs, educational and tax systems, and state and local medical assistance programs.

President Carter, in his August 4, 1977, message to Congress on the subject of "undocumented aliens,"[5] outlined his proposals for meeting the problem. Very briefly, highlights of the Administration package included proposals: (1) to make unlawful the hiring of undocumented aliens;[6] (2) to increase significantly the enforcement of the Fair Labor Standards Act and the Federal Farm Labor Contractor Registration Act; (3) to permit adjustment of status of undocumented aliens already residing in the United States;[7] (4) to increase substantially resources allocated to Southwest border enforcement; and (5) to promote international cooperation between the United States and the major undocumented alien "source" countries, including efforts to improve the economies of those countries.

Some limited progress has been made with respect to a few of the administration's proposals. With respect to others, the administration has, very disappointingly, failed to present the necessary implementing measures.

For example, with regard to increased resources for Southwest border enforcement, the President's August proposal called for the addition of 2,000 positions to the INS Border Patrol, the unit charged with patrolling United States borders between ports of entry. Unfortunately, the President's budget request for fiscal year 1979 called for only 293 additional border patrolmen. Recognizing the inadequacy of this request, I offered an amendment to the bill authorizing appropriations for the Department of Justice when it was considered by the House Judiciary Committee.[8] The amendment, which increases the number of border patrol positions by 1,000 (707 more than the administration's request), was unanimously adopted by the committee in reporting the bill to the House of Representatives, which approved it without further amendment.

I have also sponsored a measure in the 95th Congress, H.R.

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5. H.R. Doc. No. 202, 95th Cong., 1st Sess. (1977).

6. House Judiciary Committee Chairman Peter W. Rodino, Jr., introduced this proposal into Congress as H.R. 9531, 95th Cong., 1st Sess., 123 CONG. REC. H10,865 (daily ed. Oct. 12, 1977).

7. *Id.*

8. Act of Nov. 9, 1978, Pub. L. No. 95-624, 92 Stat. 3459. *See* S. 3151, 95th Cong., 2d Sess. (1978); H.R. 12005, 95th Cong., 2d Sess. (1978). *See also* H.R. REP. No. 1148, 95th Cong., 2d Sess. (1978).

1663,[9] referred to the Subcommittee on Immigration, Citizenship, and International Law, to deal with the issue. The major provision of that bill would make unlawful the knowing employment of illegal aliens and would provide for the issuance of administrative citations for violations, with civil/judicial enforcement and criminal penalties for repeat violators. Bills similar to H.R. 1663 were approved by the House Judiciary Committee in three previous Congresses and passed the House of Representatives in two of those Congresses.[10]

Although precise figures on the number of illegal aliens and on their impacts do not exist, it is clear from the obtainable evidence that widespread violation of United States immigration laws is occurring. Such total disregard for our laws cannot and should not be countenanced, and we must strive to restore the integrity of those laws. If we find that they are unreasonable, unworkable, or unenforceable, then they should be changed. In making such changes, we in the Congress must act with sensitivity and compassion, taking cognizance of the need for an orderly immigration system.

UNITED STATES REFUGEE POLICY

Another area warranting close and continued study is the United States' policy with respect to the admission of refugees. Since the Communist takeover in Southeast Asia, the number of persons fleeing from the newly formed regimes in Vietnam, Cambodia, and Laos has increased tremendously. On both humanitarian and foreign policy grounds, it is desirable for the United States to extend assistance, in dollars and resettlement opportunities, to these Indochinese refugees.

The current refugee provision in the Act, section 203(a)(7),[11] gives preference status to aliens who have fled Communist, Communist-dominated or Middle Eastern countries and who are unable or unwilling to return for fear of persecution. Conditional

9. H.R. 1663, 95th Cong., 1st Sess. (1977).

10. H.R. 1663 is almost identical to a bill reported out of the House Judiciary Committee in the 94th Congress, H.R. 8713, 94th Cong., 1st Sess. (1975), accompanied by H.R. REP. No. 506, 94th Cong., 1st Sess. (1975). *See also* similar bills from previous Congresses, H.R. 982, 93d Cong., 1st Sess. (1973) and H.R. REP. No. 108, 93d Cong., 1st Sess. (1973); H.R. 16188, 92d Cong., 2d Sess. (1972) and H.R. REP. No. 1366, 92d Cong., 2d Sess. (1972).

11. 8 U.S.C. § 1153(a)(7) (1976).

entries under that section are limited to 17,400 (until very recently,[12] 10,200 of this number reserved for the Eastern Hemisphere, which accommodated primarily Soviet, Eastern European, and some Indochinese refugees, and 7,200 for the Western Hemisphere). This number is insufficient to meet the exigencies of refugee situations of an emergency nature such as that of the Indochinese. At the Secretary of State's request, the Attorney General, pursuant to section 212(d)(5) of the Act,[13] has paroled into the United States groups of Indochinese refugees for whom conditional entry numbers are not available. In my opinion, repeated resort to this procedure is a distortion of the original purpose of section 212(d)(5)—to grant the Attorney General authority, under emergency circumstances, to allow the admission of individual aliens. The Attorney General's use of the section has had the effect of delegating entirely to the executive branch all responsibility for refugee policy and decisionmaking. Although to date all group admissions of refugees authorized by the Attorney General have been preceded by congressional "consultations," such "consultations" most recently have become perfunctory and have occurred only after the particular refugee program has been formulated.

The United States Constitution has vested the Congress with plenary authority to legislate in the area of immigration and naturalization.[14] The refugee admission procedure described above, in which the Congress has been relegated to a minor advisory role, is indefensible in light of this constitutional mandate.

I introduced legislation in the 95th Congress to rectify this situation by providing for a fair, flexible, and clearly defined process of admission for refugees. That bill, H.R. 7175,[15] would eliminate the present ideological and geographical limitations currently applied to refugees by changing the definition of "refugees" to conform with that contained in the 1951 United Nations Convention Relating to the Status of Refugees[16] and in the 1967 United Nations Protocol Relating to the Status of Refugees,[17] acceded to by

12. *See* text accompanying note 4 *supra*.

13. 8 U.S.C. § 1182(d)(5) (1976). The Attorney General has similarly used this § to admit other large groups of refugees such as Czechoslovakian, Cuban, Ugandan Asian and most recently Latin American refugees. This use conflicts with the express prohibition contained in the committee report accompanying the 1965 amendments. *See* H.R. REP. No. 745, 89th Cong., 1st Sess. 15-16 (1965).

14. U.S. CONST. art. I, § 8, cl. 4.

15. H.R. 7175, 95th Cong., 1st Sess. (1977). The Subcommittee on Immigration, Citizenship, and International Law held hearings on this and on similar proposed legislation, H.R. 3056, 95th Cong., 1st Sess. (1977).

16. *Done* July 28, 1951, 19 U.S.T. 6259, T.I.A.S. No. 6577, 189 U.N.T.S. 150.

17. *Done* Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267.

the United States in 1968.[18] Further, in order to provide a mechanism to respond to situations similar to that of the Indochinese refugees, the bill provides for admission of refugees above the established normal flow in cases involving "emergent" circumstances in which the United States has "special concern" or in which a special international appeal has been made.

It is my belief that the United States should have an established refugee admission program that advances both our humanitarian and foreign policy interests. The random, "stop-gap" manner in which refugees are currently being admitted into the United States serves neither of these interests.

NAZI WAR CRIMINALS

In August, 1977, the INS established, within its Office of the General Counsel, a Special Litigation Unit for the purpose of handling cases involving persons alleged to have engaged in persecution on account of race, religion, or political opinion in association with the Nazi government. Establishment of this unit was the culmination of a renewed effort on the part of the INS which resulted in large part from a greater focusing on these cases by the Congress and in particular by the Subcommittee on Immigration, Citizenship, and International Law.

The Displaced Persons Act of 1948,[19] as amended, and the Refugee Relief Act of 1953,[20] providing for the resettlement in the United States of certain refugees and other displaced persons, excluded from admission persons who had personally advocated or assisted in "persecution . . . because of race, religion, or national origin." Despite this prohibition, individuals who allegedly have engaged in such acts have nonetheless been admitted into the United States and remain here, some as naturalized United States citizens.

As a result of the intensified investigative and prosecutorial efforts by the INS with respect to these persons, the number of denaturalization or deportation cases that have been instituted or considered "active" has markedly increased. The INS has assured the committee that the processing of these cases will proceed ex-

18. S. EXEC. DOC. K, 90th Cong., 2d Sess. (1968), *reprinted in* 114 CONG. REC. 29,607 (1968).
19. Ch. 647, § 13, 62 Stat. 1009 (as amended) (expired 1952).
20. Ch. 336, § 14, 67 Stat. 400 (expired 1956).

peditiously and that all allegations received by the United States government against these individuals will be fully investigated.

NEED FOR COMPREHENSIVE REVIEW OF IMMIGRATION AND REFUGEE POLICY

United States immigration policy reform is long overdue. Since the enactment of the 1952 Act, tremendous changes have occurred in this country's social, economic, political, and cultural life. It is of vital importance that United States immigration policy be tailored accurately to reflect these changes. Moreover, the thinking that served as the basis for immigration policy at the time of the Act's enactment should be reexamined.

Although the 1965, 1976, and 1978 amendments to the Act represent significant progress in achieving an effective and equitable immigration policy, much more needs to be done in this area. To fulfil this need the President has appointed an Inter-Agency Task Force on Immigration Law and Policy to assess the operation and impact of current immigration law.[21] Because I strongly believe that Congress should play a significant role in review, I proposed the creation of a Select Commission on Immigration and Refugee Policy composed of Members of Congress and representatives from both the executive branch and the public. Congress recently enacted a law establishing this Commission.[22] The purpose of the Select Commission is to conduct a comprehensive evaluation of our current immigration, naturalization, and refugee policies and to submit administrative/legislative recommendations for change. Included in this review will be: (1) a study of the effects of immigration on our economic and political systems, as well as on our demographic trends and foreign policy interests; (2) an evaluation of our refugee policy and its domestic impact; and (3) a reassessment and review of the Act with a view toward simplifying and clarifying its provisions.

The administration supports the concept of the Select Commission and has indicated a willingness to combine its task-force efforts with the efforts of the Commission. The anticipated goal is that the Commission's information and recommendations will aid the Congress in enacting legislation leading to an improved and updated immigration policy.

It is imperative that this country have an immigration policy responsive to the economic and humanitarian concerns of our

21. 123 CONG. REC. H8682 (daily ed. Aug. 4, 1977).

22. Act of Oct. 5, 1978, Pub. L. No. 95-412, 92 Stat. 907 (amending 8 U.S.C. §§ 1151-1153 (1976)).

brethren in other countries. However, this policy must also advance the interests of our own citizenry and recognize our own needs and concerns. Striking this sensitive balance is not an easy task, but it presents a challenge the Congress can and must meet.

A thorough analysis of the previous impacts of our immigration law and policies on our life as a nation and a continuous dialogue on the future role of immigration in our country's development are essential if we are to chart a course that will best promote our national interest. I would therefore like to take this opportunity to thank and commend the *San Diego Law Review* for providing this forum for the exchange of ideas on the critical subject of immigration. In this *Foreword* I have touched only briefly on some of the many topics that warrant careful examination and exploration. The detailed and frank discussion of these and other issues, which this Symposium facilitates, is indispensable if we are to clarify the objectives of our immigration policy and to develop appropriate law and procedures for their implementation.