THE ILLEGAL ALIEN: CRIMINAL OR ECONOMIC REFUGEE?

by

Austin T. Fragomen, Jr.

CENTER FOR MIGRATION STUDIES
209 Flagg Place
Staten Island, N.Y. 10304
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Immigrants have always been a creative part of America. Their intelligence, their skills and their work have directed the development of this country from its earliest history.

In moments of national crises and economic depression, however, immigrants have been made the target of irrational and discriminatory attacks. Perhaps as the weakest and most defenseless subgroup of society, the immigrants were looked upon as unable to protect their human rights and as a more convenient scapegoat.

Nativist movements in the not so distant past devised arguments of racial superiority and economic protectionism to discriminate against immigrant workers.

Today we witness another wave of restrictionism. Immigrant workers, especially if without proper papers, have their human rights threatened. Their talents and work are welcomed; their right to family unity and to the sharing of Earth's wealth are not. The newspapers and the television have called attention to the presence of immigrant workers without proper papers and from New York to Los Angeles a mood of suspicion has emerged because of a one-side presentation of the story. Hundreds of thousands of persons are suspected only because of their looks, their
color and their accent. Administrative procedures and proposed legislation are moving toward creating a worse condition. It is no longer a merely legal question which arises, but a moral one.

This paper is an effort, the beginning of a dialogue to clarify some of the issues involved in 'illegal' immigration. It has been prepared by a very authoritative and competent expert in the field of immigration legislation. Austin T. Fragomen, Jr., formerly Staff Counsel to the Subcommittee on Immigration and Nationality, Committee on the Judiciary, House of Representatives, holds a jurisprudence doctorate from Case Western Reserve University. He is presently a practicing attorney in New York specializing in immigration and nationality law. He is also a member of the Editorial Board of the International Migration Review.

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The movement of peoples from country to country and from continent to continent is as old a phenomena as the origin of man. Specific migrations throughout the centuries are attributable to a vast variety of factors, the complexity of which increases proportionately to the knowledge and general sophistication of man. Most recently, war, oppression, and genocide have been prevalent themes causing mass exodus of groups of persons. Much less noticed are the movement of persons seeking a greater opportunity, a higher quality of life. This migration has pervaded the history of the United States, and, in fact, was the most significant factor in the settlement and development of this country. American history is replete with the saga of migration to the United States of numerous ethnic groups, their composite and their individual accomplishments and failures. In the higher urban and industrialized twentieth century, the fact that the migration continues is sometimes obscured. Each year tens of thousands of persons come to the United States seeking the realization of the great American dream, economic security, and political tranquility.

The Government of the United States, from its inception, was cognizant of the need to impose certain restrictions
upon immigration. As the decades passed, the law of immigration and naturalization became progressively more refined. At present, the law permits only two classes of persons to acquire permanent resident alien status, thus permitting them to remain in the United States indefinitely, and to ultimately acquire citizenship -- persons with close family ties, and persons possessing skills needed in the United States.

Millions of aliens enter the United States each year, primarily as visitors. Several hundred thousand aliens enter without any authorization or permission. Of these numbers, many desire to remain permanently. Some are able to meet the criteria of the immigration law and legitimate their status through becoming permanent residents. Others remain beyond the authorized period of their temporary admission until detected and compelled to depart. The persons referred to as "illegal aliens" are those who violate the conditions of temporary admission by remaining beyond the period of authorization, and those who enter without any authorization. Generally, these persons are fleeing from impoverished nations, and a personal destiny of deprivation. They are the economic refugees.

It has been estimated by varying sources that there are anywhere from 500,000 and three million aliens illegally in the United States. There have been varying
reports as to the effect upon the labor market, balance of payments, and social welfare programs posed by this substantial number of persons. Attitudes towards these persons are diverse. There are those who believe that the aliens are depriving United States citizens of jobs and have a tremendously adverse effect upon the labor market. On the other hand, there are those who believe that the aliens provide manpower for basically unskilled occupations which are chronically unfilled and, therefore, constitute a positive factor in the labor force.

There are also differing views as to whether the alleged problem is regional in nature or national in scope. Some believe that the basic problem is economic and is restricted primarily to the Southwest border. Others are of the opinion that the problem affects all areas of the United States and, in particular, affects the large metropolitan areas, such as New York City, Chicago, Los Angeles, San Francisco, Washington, D.C., as well as the Southwest border.

Concepts of dealing with the problem believed to be posed, differ as well. Stringent criminal penalties for both aliens in the United States illegally and employers of such aliens have been proposed. Another faction believes that the current sanctions contained in the Immigration law,
primarily the threat of deportation, are sufficient to deal with the problem and any additional legislation would be superfluous and, unduly harsh.

To analyze the situation in depth, it is first necessary to set forth the component parts. It is necessary to identify the illegal aliens as to number, motivation for coming to the United States, regional distribution, and basic characteristics. Secondly, it is necessary to analyze the effect of these aliens both upon the labor market and social services. Thirdly, proposed remedies should be evaluated as to their efficacy, harshness, and enforceability. Fourthly, conclusions should be reached as to whether any remedies other than those already provided in the law are necessary.

I. THE "ILLEGAL ALIEN"

A. How many?

In fiscal year 1972, over 500,000 aliens were located in the United States who were deportable under the Immigration and Nationality Act. Of this number, 467,185 were actually removed from the United States. In 1971, 420,126 deportable aliens were located, of which 387,713 were removed, and in fiscal year 1970, 349,353 deportable aliens were located and 320,241 removed. One cannot accurately predict whether the greater number of deportable aliens was the result of an increase in the number of aliens illegally in the United States or are
merely the result of increased law enforcement efforts by the Immigration & Naturalization Service which, of course, is charged with enforcement of the immigration laws. However, whichever is the case, the number has unquestionably been increasing.

Obviously, neither the number of deportable aliens located nor the number actually removed is indicative of the number present in the United States. Not every alien is apprehended. Although there are no additional hard statistics, one can safely conclude that the number of aliens illegally in the United States exceeds the 500,000 located in fiscal year 1972. Most frequent estimates of the number of illegal aliens in the country range between 1 and 2 million. The Commissioner of the Immigration & Naturalization Service estimates that there are 1,013,000 aliens illegally in this country. Consequently, it is assumed that one-half to one-quarter of those physically present are, in fact, located.

It is difficult to assess whether this estimate is accurate. Certainly in any given year, the number of aliens coming to the United States and violating their nonimmigrant status exceeds the number located. However, over a period of time, it is possible that there are not as many aliens who escape detection as one might at first imagine. For instance,
if an alien in 1968 is admitted for a 6 months visit, he may not be discovered in fiscal year 1968 or 1969 or 1970, but, if he is located in 1971, then he becomes a statistic for fiscal year 1971. If all aliens were eventually located, then the number located would be a direct reflection of the number present. To conclude that one out of four, or one out of five, or, as some suggest one out of ten aliens are never located would appear to be contrary to reality. Persons experienced in the field generally are of the opinion that a very high percentage of aliens illegally in the United States are eventually discovered. Few escape detection forever. Moreover, included in the estimates of the number of aliens illegally in the country are aliens actively in the process of obtaining permanent resident alien status either through adjustment of status or through issuance of an immigrant visa abroad, as well as aliens who have overstayed the period of admission as a visitor or other non-immigrant status, and will eventually depart from the country.

Although the exact number of aliens illegally in the United States is not known, there are certain conclusions which can be drawn from the analysis of these figures. First, at any one given point in time, there are in excess of 500,000 illegal aliens in the country. Secondly, some of these persons are what might be termed "technical illegal aliens" in that
they are in the process of regularizing their immigration status or departing after expiration of the period for which they were authorized to remain in the United States. Thirdly, there is a substantial turnover in the actual persons in the United States since, through the normal course of events, the majority of aliens illegal in the United States, are discovered and to depart. Whatever conclusions one must draw, there can be no doubt that the Immigration & Naturalization Service should compile more precise statistics citing the number of persons who have been admitted to the United States and those that departed. It is curious that if the Government believes that "illegal aliens" pose a significant problem that they have virtually no statistics.

B. WHERE ARE THE "ILLEGAL ALIENS"?

Approximately eight out of ten aliens apprehended in the United States are natives of Mexico, and the vast majority of these are located in the Southwestern United States in an area ranging from Texas to California. The remainder are apprehended primarily in the major metropolitan areas of the United States.
The New York District Office of the Immigration and Naturalization Service, between the years 1966-1971, located 76,344 deportable aliens, or, approximately, 15,000 per year. The Chicago District Office, in fiscal year 1971, located 9,572 deportable aliens. The Omaha District Office apprehended 771 in fiscal year 1972, while in the State of California, in excess of 100,000 deportable aliens were apprehended in California alone.

The figures are self-explanatory - of the 500,000 deportable aliens located in fiscal year 1972, the vast majority were apprehended in the Southwestern United States. By comparison, a smattering of aliens illegally in the United States were spread throughout the balance of the country with the only sizable concentrations in the major metropolitan areas. However, when one considers that the number of deportable aliens apprehended in a single year far exceeds the number apprehended in New York over a five year period, it is clear that the concentration on the Southwest border dwarfs the statistics for other sectors of the country.

One must assume that the dispersion of aliens illegally in the country who have not been located roughly parallels the distribution of those apprehended. A slightly greater percentage of those present to those apprehended may exist in metropolitan areas because of the increased difficulty of apprehending the aliens - attributable, primarily, to a lower concentration.
C. WHO ARE THE "ILLEGAL ALIENS?"

This question has two aspects which are interrelated -- the nationality of aliens unlawfully in the United States and their status at entry.

Once again, there are no concrete facts available as to the country of origin illegally in the United States. However, some light is shed on the question of identifying the alien illegal in the country by statistics analyzing the country of origin of deportable aliens located in the United States.

In fiscal year 1971, the following deportable aliens were located by country:

<table>
<thead>
<tr>
<th>NATIONALITY</th>
<th>NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mexican</td>
<td>348,178</td>
</tr>
<tr>
<td>Cuban</td>
<td>1,330</td>
</tr>
<tr>
<td>Canadian</td>
<td>10,461</td>
</tr>
<tr>
<td>Dominican</td>
<td>2,777</td>
</tr>
<tr>
<td>British West Indies</td>
<td>9,011</td>
</tr>
<tr>
<td>&amp; British Honduras</td>
<td></td>
</tr>
<tr>
<td>Other Western Hemisphere (led by Colombia, Ecuador &amp; Guatemala)</td>
<td>16,707</td>
</tr>
<tr>
<td>Chinese</td>
<td>4,861</td>
</tr>
<tr>
<td>Philippine</td>
<td>4,148</td>
</tr>
<tr>
<td>Greek</td>
<td>3,351</td>
</tr>
<tr>
<td>Italian</td>
<td>1,162</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>1,463</td>
</tr>
<tr>
<td>All Others</td>
<td>16,677</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>420,126</strong></td>
</tr>
</tbody>
</table>

Thus, of the total number of deportable aliens located, 83 percent were Mexican nationals.
An analysis of status of deportable aliens at entry is also instructive. In fiscal year 1971, 317,822 of the total 420,126 deportable aliens located (76%) had entered the United States illegally at other than ports of inspection. The balance of 102,304 deportable aliens had entered at designated ports of entry but had subsequently violated the conditions of their admissions. The following is a breakdown by status of those entering lawfully:

<table>
<thead>
<tr>
<th></th>
<th>Visitors</th>
<th>Crewman</th>
<th>Students</th>
<th>Immigrants</th>
<th>Temporary Agricultural Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Visitors</td>
<td>63,931</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crewman</td>
<td>12,286</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Students</td>
<td>7,119</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Immigrants</td>
<td>2,429</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Temporary Agricultural Workers</td>
<td>856</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Combining the two categories leads to the following result:

<table>
<thead>
<tr>
<th>Country</th>
<th>Visitors</th>
<th>Entry Without Inspection</th>
<th>Crewman</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mexico</td>
<td>25,526</td>
<td>312,943</td>
<td>22</td>
</tr>
<tr>
<td>Cuba</td>
<td>412</td>
<td>727</td>
<td>8</td>
</tr>
<tr>
<td>Canada</td>
<td>6,688</td>
<td>2,971</td>
<td>11</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>2,386</td>
<td>70</td>
<td>62</td>
</tr>
<tr>
<td>British West Indies</td>
<td>5,845</td>
<td>100</td>
<td>300</td>
</tr>
<tr>
<td>&amp; British Honduras</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Western Hemisphere</td>
<td>12,149</td>
<td>530</td>
<td>900</td>
</tr>
<tr>
<td>China</td>
<td>534</td>
<td>2,910</td>
<td>75</td>
</tr>
<tr>
<td>Philippines</td>
<td>2,215</td>
<td>4</td>
<td>152</td>
</tr>
<tr>
<td>Greece</td>
<td>418</td>
<td>69</td>
<td>2,449</td>
</tr>
<tr>
<td>Italy</td>
<td>674</td>
<td>80</td>
<td>235</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>778</td>
<td>64</td>
<td>368</td>
</tr>
</tbody>
</table>

This analysis clearly demonstrates that there are discernible patterns of how nationals of certain countries most frequently become aliens unlawfully in the United States.
The majority of Mexicans enter the United States surreptitiously, that is, without inspection at an authorized border crossing point, whereas nationals of China desert ships, and most other Western Hemisphere enter as visitors. This fact has great significance in evaluating the effectiveness of the present law to cope with aliens unlawful in the United States. For instance, rigorous controls along the Mexican border would stem the flow of aliens entering without inspection. More rigid screening in the issuance of visitor visas would reduce the number of aliens violating the conditions of admission as visitors.

II. THE EFFECT OF THE ILLEGAL ALIEN

A Congressional Committee studying the subject of "illegal aliens", after extensive hearings, concluded as follows: "The adverse impact of over 1 million illegal aliens on the employment, federal and state public assistance programs, and the United States balance of payments, is overwhelming". With respect to the impact of such aliens on the domestic labor market, one witness from the Department of Labor noted, "Our experience leads us to conclude that these illegally employed aliens: (1) take jobs which would normally be filled by Americans, (2) depress the wages and impair the working conditions of Americans, (3) compete with unskilled and undereducated American citizens - the disadvantages to whom our Manpower Programs are directed, (4) increase the burden on American taxpayers through added welfare
costs by taking jobs which may be filled by persons on welfare, thereby thwarting our efforts to find jobs for these welfare recipients through such programs as the Work Incentive Program, (5) reduce the effectiveness of employee organizations, (6) constitute for an employer a group highly susceptible for exploitation". This statement of the official of the Department of Labor apparently was adopted by the Committee since the fact sheet setting forth the same findings of the Subcommittee conducting the hearings contained the same information. Since the validity of these findings is the paramount consideration in determining what, if any, additional law enforcement mechanisms are necessary to deal with the "illegal aliens", and, more importantly, whether "illegal aliens" do in fact pose a "problem" justifying amendments to the law to aid law enforcement, a detailed analysis of these various allegations is imperative.

A. THE EFFECT ON THE EMPLOYMENT MARKET

There is no doubt that aliens unlawfully in the United States who are working have some effect on the employment market. However, as to the magnitude of this effect, a more thorough examination is in order. For instance, if it could be shown that the one to two million aliens which the Committee believes are unlawfully in the United States were working in unskilled labor jobs such as dishwashers, factory workers, porters, chauffeurs, live-in maids, and other such occupations in the same labor market area, such as New York City or El Paso, there can be no doubt that the effect on the employment market
would be substantial. However, as the preceding statistics clearly indicate, the only area of the country which would appear to have a substantial number of illegal aliens would be the area along the Southwest border.

All statistics dealing with the economic impact of aliens illegally in the United States upon the domestic labor force must be evaluated in terms of the size of total work force, which is approximately 100 million persons. From this statistic alone, it should be clear if the "illegal aliens" were dispersed both in geographically and in type of occupation, their impact would not be substantial. Assuming, for the sake of argument, that there are 1 to 2 million aliens illegally in the United States, then a far lesser number are actually working. Frequently, entire families or, at least husbands and wives, enter the country. Of such family units, often only the husband is working. One should assume that approximately 1/4th to 1/8th of the aliens unlawfully in the United States have not entered the employment market. Thus, if there are 1 to 2 million aliens illegally in the United States, there are approximately 250,000 to 500,000 aliens in the employment market. In evaluating even this number, the observer should be cautious to analyze how one becomes an illegal alien. The term "illegal alien" has been loosely applied to various groups of persons who are not in an legitimate immigration status. Illegality can have resulted
from entry without inspection or surreptitious entry, perhaps the truest form of "illegality". On the other hand, illegality may result from certain disfunctional aspects of the Immigration Act which result in mere processing delays when one is technically out of status and, therefore, a statistic for "illegal alien" - analysis purposes. For instance, if a person enters the United States as a visitor, and at approximately the time of termination of his visitors status marries a United States citizen, who immediately files an application on his behalf as an immediate relative and an application to change his status to that of a permanent resident alien, while that application is being processed, the alien is technically in an illegal status. Although he would be entering the employment market, one could hardly say that his doing so was inconsistent with the purpose of the law since he would have to work in order to support his United States citizen spouse, in many cases. Therefore, such persons should hardly count against the number of "illegal aliens". Moreover, upon acquiring permanent residence status, this person will presumably continue his employment and, therefore, does not adversely affect the labor market as a result of his being an "illegal alien" since if he were made to wait until he legitimated his status, he would still be an employee taking the same type of work.

Moreover, there are numerous other categories which should not be counted towards the overall number of "illegal aliens"
When viewing the impact upon the economic system, aliens who have certifications approved on their behalf by the Department of Labor to the effect that the job that they are being offered, most usually a job they already hold, would not adversely affect the Labor market since there are no Americans willing, able and available for the same position within that labor market, and who filed to become permanent residents based upon this approved certification from the Department of Labor, are frequently in an illegal status during a portion of their employment as well as during the processing time while awaiting adjustment of status. Clearly, these aliens do not adversely effect the labor market.

The waiting list for aliens from the Western Hemisphere who are registered either because they have an approved labor certification or because they are exempt from the labor certification because of close family relations or other less seldomly encountered criteria, are most frequently in an illegal status during a great portion of this time. However, since such persons will ultimately become permanent residents after the 18 month period elapsed, to consider their adverse impact upon the employment market is meaningless. They will be entering the labor market at the same jobs, in most cases, within that fixed duration. Their experience would only be germane to the extent that they seek lower level employment than that which they will ultimately have because of their illegal status. However, as recognized by the Subcommittee in their
deliberations, few employers inquire into alienage, and, thereby, carrying through this presumption, one must conclude that few aliens are underemployed. Therefore, if in considering the impact of "illegal aliens" upon the employment market we remove the categories of aliens who, either have approved labor certificates and, therefore, are unequivocally not depriving unemployed Americans of jobs, and, further, remove aliens who will be entering the employment market within a short period of time in any event, in most cases, the same position, we further reduce the number with which we are concerned. During the course of the year there are approximately 200,000 persons in this category. This number can be deduced by considering the fact that of the 170,000 natives of the Eastern Hemisphere and 120,000 natives of the Western Hemisphere who become immigrants each year and are subject to the numerical limitations, approximately 1/2 of this number are in a technically illegal status. Moreover, in addition to this number, there are the other approximately 100,000 per year who become permanent residents as immediate relatives or in other categories, approximately 1/2 of whom also are working illegally or who are technically in an illegal status during this period. There can be no doubt that this is a very conservative estimate since few persons become permanent residents of the United States through remaining abroad while immigrant visas are processed. Moreover, of substantial interest, is the fact that the Immigration and
Naturalization Service recognizes the hardships imposed on persons and the disfunctional nature of the law by permitting most of these categories of persons to remain in the United States and work during the period of administrative processing of permanent resident visas.

Thus, the 1 to 2 million figure must be reduced substantially, making provision for non-working aliens illegally in the United States and aliens pursuing permanent residence status.

The problem is further complicated by the fact that a one-to-one displacement ration of aliens not authorized to work for permanent residence and citizens does not exist even in totally unskilled types of jobs. In times of virtually full employment, the unemployment level still runs approximately 3.5%, not including persons who have dropped out of the statistics of those actively seeking employment. From this fact alone, it must be concluded that there are a certain number of persons who are not interested in working. The reasons for this are many-fold. Sociological patterns of work within certain minority groups frequently result in little interest in entering the employment market. As an indication of the validity of this premise, one only has to look in the jobs wanted section of the newspaper in any large metropolitan area of the country and will see numerous positions open in totally
unskilled occupations running week after week after week. Clearly, persons are not interested in seeking this type of work. The Department of Labor, in an effort to protect the job market, has placed a certain number of occupations on Schedule B, a group of occupations for which they have categorically found that labor certification applications should not be approved because there are resident aliens and citizens capable of filling such positions. Even using their Schedule B as criteria, and comparing it with the newspaper advertisements in major cities, it becomes apparent that many of these jobs cannot be filled. In speaking to employers in such occupations, such as the occupation of dishwasher, listed on Schedule B, or bartender, also listed on Schedule B one discovers that employers find a chronic labor shortage in the domestic labor market and frequently hire aliens illegally in the United States. It is impossible to assess how many aliens illegally in the United States occupy jobs that cannot be filled by Americans, and, consequently, do not pose a threat to the domestic employment market. However, there can be no doubt, that the number is substantial. Thus, the remaining number of illegal aliens who potentially effect the employment market must be further reduced.

Referring back to the regional distribution of aliens illegally in the United States, the major portion of these persons are located in the Southwestern United States. Studies conducted in the Southwestern United States to evaluate the impact of both
"commuter aliens" and "illegal aliens" upon the labor market in that area, conclusively demonstrate a significant impact in that area. Many of these aliens work in agricultural positions and in highly unskilled labor along the Southwestern border at depressed wage levels and under oppressive working conditions. Surveys have found that unemployment rates among citizens and permanent residents in counties contiguous to the border such as Laredo, Texas, Texarkana, Texas are 5 to 20%, far exceeding the national average. The presence in those areas of substantial numbers of illegal aliens contributes to these excessive unemployment statistics. Following is a chart by county along the Southwestern border-of areas having high alien concentrations and high unemployment statistics:

<table>
<thead>
<tr>
<th>County</th>
<th>Unemployment Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Starr</td>
<td>21.6%</td>
</tr>
<tr>
<td>Zapata</td>
<td>13.9%</td>
</tr>
<tr>
<td>Webb</td>
<td>10.4%</td>
</tr>
<tr>
<td>La Salle</td>
<td>10.1%</td>
</tr>
<tr>
<td>Dimmit</td>
<td>9.1%</td>
</tr>
<tr>
<td>Maverick</td>
<td>15.1%</td>
</tr>
</tbody>
</table>

The unemployment rate in the entire border area of Texas is twice the rate in the State as a whole.

Of the total number of aliens illegally in the United States with regard to whom the adverse employment impact is important, approximately 75% should be estimated to be present in the Southwestern United States. The impact along the border
is also the greatest because of normal competitive factors. The alien who is hired at substandard wages or unacceptable working conditions adversely affects the labor market to a much greater extent than the alien who is hired at the prevailing wage under normal working conditions, perhaps even a union member, since in the later category, the employer has hired the alien solely because he believes him to be more competent to handle the job, whereas in the former situation the alien is hired in preference to the citizen or resident because he can be exploited by the employer. As indicated by the high unemployment rates findings from studies along the Southwest border, there can be no question that exploitation of aliens is the major factor.

An assessment of the impact of aliens unlawfully in the United States upon employment leads to certain conclusions. First, the inquiry should be bifurcated into the Southwestern sector of the country and the remaining areas, primarily in the Northeast. In the Southwest, particularly in immediate proximity of the border, there are hard facts which would support the conclusion that the inflow of foreign labor has an adverse economic impact. If the border were tightly sealed, there is no doubt that the depressed nature of this area would be improved.

There are no facts available as to any adverse economic effect of aliens in other portions of the country. Complaints have been lodged with the Immigration authorities and Labor
authorities in metropolitan areas by citizens and residents alleging denial of employment opportunities because positions they have sought are filled with aliens. As to the actual impact, however, no statistical evidence indicates adverse economic impact in areas other than the border. In large part this is attributable to two factors. First, the number of aliens dispersed in other geographical areas is such that their numerical impact on the local employment market is inconsequential. For instance, the gargantuan size of the New York employment market is such that the aliens are not a significant factor. Secondly, there is little evidence to support any claim of exploitation of such aliens. In actual interviews of aliens and of employers it is apparent that the hard-working, industrious alien generally has a number of job positions from which he can choose and is not immediately placed in a position whereby he can be exploited because of a poor employment situation. Where wages and working conditions are not in issue, normal competitive market forces will prevent the alien working unlawfully from having a detrimental economic effect. The employer will hire the most qualified applicant for the position, thus, allowing citizens and residents an edge because of their knowledge of the English language.

B. THE EFFECT ON BALANCE OF PAYMENT POSITION OF THE UNITED STATES

It has been alleged that aliens working illegally in the United States have a tendency to send a major portion of their
earnings abroad and, thus, adversely affect the balance of payment position of the United States. There are no statistics available as to the amount of money exported by aliens working illegally in this country, or, in fact, the number of aliens who export money from the United States or, even, what is typical for an alien to export. Any estimation as to the amount of money flowing out of the country is absolutely impossible.

There is an equally vocal group which holds that the alien as a consumer is more more important as a contributor to money distribution within the country. For every dollar that the illegal alien might export, he puts approximately 5 to 10 dollars into the local economy. For the most part, such persons pay taxes, since they are carried as regular payrol employees by most employers and are subject to both withholding and social security taxation. Thus, any effect they have of a negative nature through exporting money is generally believed to be off-set by their contribution and the positive benefit to the local economy.

C. ALIENS PARTICIPATING IN PUBLIC WELFARE AND ASSISTANCE PROGRAMS

Aliens are not eligible for public assistance or welfare programs. However, studies have been conducted which demonstrate that there are aliens illegally in the United States
who are benefiting from publically supported programs. The number of aliens benefiting is difficult to determine, since when they are discovered they are terminated. Since a certain degree of screening transpires to determine eligibility for welfare, the number of aliens on welfare tends to be quite small. Moreover, in assessing the highly undesirable spector of persons illegally in the United States receiving public welfare, one must be cognizant of the fact that most aliens working illegally are working officially for companies and are carried by the company as a normal employee, with the commensurate deduction of federal withholding tax as well as social security taxation. The amount of money deducted from "illegal aliens" for public programs can be estimated to far exceed the amount of money received by unqualified alien recipients of welfare.

The welfare problem is also diminished by the general propensity, so the alien to work diligently and to strive to get ahead.

Worthy of special note was the conclusion by the official of the Department of Labor that the presence of "illegal aliens" was increasing the burdens of American tax payers through added welfare costs by taking jobs which may be filled by persons on welfare, thus, thwarting the efforts of the Department of Labor to find jobs for welfare recipients. As statistics of state and local welfare agencies consistently reflect, there are very few able bodied persons ready, willing and able to work who are
receiving welfare. The vast majority of welfare recipients are persons who cannot enter the employment market because of their position as heads of a family. In fact, many welfare programs categorically exclude from eligibility any person who is capable of working who does not actively seek work. The experience of such programs has been that a person who desires work is readily placed into a position. The specter of the Department of Labor leading welfare recipients by the hand who are eager to find employment and being turned away by employers because they are fully staffed due to the presence of excessive numbers of "illegal aliens" is colossally absurd. In the City of New York, for instance, the public welfare agency, working in conjunction with the New York State Employment Service prides itself on its ability to find employment for virtually every welfare recipient who wishes to work. The allegation that aliens thwart the efforts of welfare officials to find jobs for welfare recipients is merely an example of the type of inflammatory illogical statement designed to lead to a general prejudice against all aliens. Moreover, it is commonly known that the efforts of the Department of Labor to find jobs for persons either unemployed or underemployed, not to mention welfare recipients, have been abysmal. Work incentive programs and manpower training programs have, for the most part, been relatively ineffective.

III. PROPOSED SOLUTIONS

A. CONGRESS

The most publicized issue involving immigration matters
before the 93rd Congress was the "problem of illegal aliens". Legislative thrusts into the topic of illegal aliens were initiated in both the House, by the Immigration and Nationality Subcommittee, and the Senate, by the Select Subcommittee on Labor.

The Fair Labor Act Amendments, S. 1861, in the 93rd Congress, would have amended the labor law by increasing the minimum wage. This bill also contained a provision, little noticed by the public, which was added in Committee by Senator Stevenson (D. Illinois) to provide criminal penalties of a $1000.00 fine and/or one year in prison for any employer who knowingly employed an alien not legally authorized to work. Moreover, this bill would prohibit the granting of exemptions to employers of aliens falling within certain groups or classes by the Attorney General. Obviously, if such a bill were enacted, the burden would be upon the Government to demonstrate that the employer knowingly employed the alien and, further, that the employer knew that the alien was not legally authorized to work. The penalty of $1000.00 fine and/or one year imprisonment is severe in nature. The employer would be unquestionably be at the mercy of arbitrary and uneven law enforcement by the Government. For instance, there are many situations where a major corporation or other employer not having any intention whatsoever of transgressing the immigration law, might, for temporary periods of time, employ aliens not lawfully entitled to work. An employee with a valid L visa or H visa may wish to apply to become a permanent resident. Once such a person has an approved 3rd preference petition, approved 6th preference petition, or an approved labor
certification, he may file to change his status to that of a lawful permanent resident. If, while the application for change of status is pending, his nonimmigrant visa expires, he is not entitled to renewal of his temporary visa, and until the adjustment of status process is completed, he is an "illegal" alien.

Similarly, the alien who commences work for a corporation or other employer, while processing a nonimmigrant visa, is working illegally. The employment of "illegal aliens" is prevalent where a physician, scientist, or executive, who has an approved 3rd preference petition is awaiting the availability of a visa number to become a permanent resident. The employer of an alien not legally entitled to work could be subject to criminal penalties even though he is doing no more than the Immigration and Naturalization Service presently administratively permits - for the employment of many types of "illegal" aliens is presently condoned by the Immigration and Naturalization Service. The bill as written would expressly forbid the Immigration and Naturalization Service from continuing such benevolent practices and require that these employment situations be treated as "illegal". Thus, the inability of the Attorney General to grant blanket exemptions for employers of certain classes of aliens who are now administratively entitled to work would result in thousands of technical violations of the law which would make its universal enforcement impossible.

The House of Representatives proposal to amend the Fair Labor Standards Act was amended on the floor of the House and as passed did not contain any sanctions for employers of aliens.
Both bills were destined for consideration by a joint House-
Senate conference; however, the House could not agree on conferees
and, consequently, the proposal was never considered by the House.
There is little doubt that this legislative initiative will be
resumed in the 94th Congress.

A more comprehensive bill, H.R. 16188, introduced by Repre-
sentative Peter W. Rodino, Jr. (D.-N.J.), then Chairman of the
House Immigration and Nationality Subcommittee, and recently
affirmed as Chairman of the House Judiciary Committee, passed
the House on September 12, 1972. Section 2 of this bill would
establish a 3-step procedure for imposition of sanctions against
employers who knowingly hire aliens who are in the United
States in violation of law or are in an immigration status in
which employment is not authorized. As described in the Committee
2d Sess. (1971)), "Section 2": Repeals the provision in Section
274 of the Immigration and Nationality Act which provides that
normal employment practices should not be deemed to constitute
the harboring or concealing illegal aliens - an offense presently
punishable by a fine of $2000.00 and/or 5 years in prison.

Makes unlawful the unknowing employment of illegal aliens.
Provides, however, that an employer, who makes a bona fide effort
to determine if a prospective employee is entitled to work in
the United States, shall be exempt from civil and criminal liability.

Establishes the following 3-step procedure for the imposition
of sanctions, against employers who knowingly hire aliens:
(a) for a first violation, the Attorney General is directed to serve a citation against the employer informing him of such apparent violation;

(b) if such employer commits a subsequent violation within two years after receiving a citation, the Attorney General is directed to impose a fine of not more than $500.00 for each alien; and

(c) following the imposition of such a fine, if an employer commits an additional violation, he shall be subject to a fine of $1000.00 and/or one year in prison for each alien.

The Committee report as drafted by the proponents of the bill clearly manifests a desire to penalize the employer who employs aliens by unreasonably using indentured labor, the smuggler, the chronic offender, and not the innocent and casual employer. It is important to note that the Immigration and Nationality Subcommittee arrived upon the somewhat less arduous 3-step procedure after consideration of a bill sponsored by the Administration - H.R. 2328 which would provide for a fine of $1000.00 and/or a 1 year prison sentence for any person who knowingly employs an alien who is in the United States in violation of law or in any immigration status in which such employment is not authorized. Moreover, this bill provided that if a defendant is shown to have employed an alien without inquiring whether the prospective employee was a citizen of the United States or an alien, such employment shall be deemed prima facie evidence of the defendant's
knowledge that the alien is in the United State of the law.

Through a study of the hearings as well members of the Committee, one can only assume that the originally sponsored by the Administration was considered to be too stringent and, therefore, the Committee embarked upon an effort to find a less auspicious penalty. In the opinion of this author, the aspect of the more rigorous penalty which troubled the members of the Committee was the fact that relatively innocent employment would be treated in the same manner as illegal importation for virtually indentured labor. In other words, the chronic offender would be subject to the same penalties in the same order of priority as the relatively innocent offender. Unfortunately, the 3-tiered solution fails to deal with the problem head on. The basic consideration should be that innocent or casual employers of perhaps one or two aliens who attempt to comply with the law but are subject to long processing delays and other disfunctional aspects of the law should not be subject to any penalties whatsoever, for they are clearly not criminals. On the other hand, the employer, generally, in the area of the Southwest border, who engages in a course of conduct whereby he hires aliens not lawfully entitled to work and pays them substandard wages and works them unreasonable hours should be subject to stringent penalties. Moreover, the compromise solution does not deal with the problem of discrimination against members of ethnic or minority groups in employment which will result from enactment of a proposal of this type. In the Committee
report the statement is made, "In addition, the legislation establishes a graduated three-step procedure for the imposition of sanctions upon employers for the purpose of insuring that only an employer who "knowingly" hires illegal aliens be penalized. Consequently, there is no valid reason for an employer to be reluctant to hire a member of a minority group and the Committee intends this legislation be implemented in a manner, which prevents job discrimination against the members of ethnic or minority groups". The logic of this statement is indeed dubious. To presume that an employer who does not "knowingly hire illegal aliens" will be more or less likely to do so because the first violation only results in the serving of a citation is absurd. A conscientious or scrupulous employer will be afraid to hire any person whose right to work is in question out of fear of receiving a citation. To the conscientious employer being officially served by a citation by the Government is tantamount to a criminal sanction. On the other hand, the less stringent three-step penalty process gives the chronic offender a warning and an administrative fine before imposition of criminal penalties which he arguable deserves. It is only reasonable to assume that he will take the attitude of hiring aliens with the feeling that he will have ample warning before he is adversely effected by this course of action. To impose this type of burden upon smaller employers who only occasionally employ aliens, upon private households who have live-in domestics help, and upon other persons totally unfamiliar with the immigration laws is unwarranted and unjustifiable.
Employers have difficulty concerning the questions of citizenship, not to mention other types of non-citizen status which either bear the right to work or do not bear the right to work. There are thousands of persons in the United States who claim to be naturalized citizens but do not have certificates of citizenship. Many of these persons claim to have derived citizenship from a parent. Questions of derivative citizenship can be exceedingly complex and certainly are outside the competency of the average employer to make such a determination. Native born U.S. citizens are frequently required to work abroad or do work abroad and before returning to the United States, frequently engage in conduct which may occasion loss of citizenship. Questions of retention and loss of citizenship are most complicated. To force the employer to make such determinations under the threat of criminal sanctions would be exceedingly detrimental. Moreover many applicants for jobs do not have proper documentation to prove citizenship. Vital statistics and records may have been destroyed. A naturalized U.S. citizen may have failed to obtain a certificate of citizenship. The experience of the social Security Administration, clearly indicates that thousands of persons do not have proper documentation.

The interpretation of documents shown by aliens is a complicated technical matter - even the Supreme Court of the United States divided on the interpretation of the meaning of an ordinary Alien Registration Receipt Card under a criminal statute. Numerous other Supreme Court decisions have dwelled at length with the question of whether a person is a citizen.
The problem of interpretation is compounded by proliferation of types of visas and types of documentary proof and data. For instance, in an address entitled "Lawful Work for Nonimmigrants" delivered by Mr. Sam Bernsen, Assistant Commissioner, Adjudications, he observed that the spouses and children of certain nonimmigrant categories could accept employment without sanctions (A-1, A-2 A-3, E-1, E-2, G), spouses of other classes can work if exceptional circumstances (J-1), and spouses and children of other classes are strictly forbidden to work (H-1, H-2, H-3, L-1).

Obviously, the easiest way to avoid any problems would be to hire only U.S. citizens who can produce birth certificates. There can be no doubt this simplistic solution to a complicated and technical problem will be adopted by a great number of employers. In summation, the criminal penalty provisions provided to date by Congress are broadly drawn without due regard to the prejudicial effect upon all persons, citizen or resident with foreign-sounding names or foreign appearances or without due regard for the tremendous burden placed upon all employers to ascertain alienage and immigration status.

The inevitable prejudice enactment of such proposals would cause was quickly recognized by Members of Congress representing State and Congressional Districts in the Southwest. The floor debate in both the House and the Senate is replete with admonitions by these legislators as to discrimination in hiring persons with Spanish surnames and accents which would occur. The reality of warnings was manifest during the rather brief period of validity of a
California statute, subsequently found unlawful, providing for
criminal penalties for employers of aliens working illegally. 
During this several month period, hundreds of complaints 
were lodged by citizens and resident aliens with state legal 
assistance and public assistance agencies of denial of employment 
opportunities by prospective employers fearing the criminal 
sanctions.

B. AN ALTERNATIVE PERSPECTIVE

The Immigration and Nationality Act, as presently 
written, contains numerous remedies to deal with the increasing 
number of aliens entering the United States without inspection 
and violating the conditions of lawful entry. Not only are both 
categories of aliens subject to deportation, but entering 
without inspection, using false or fraudulent documentation to 
gain entry, assisting aliens to enter illegally, and numerous 
other categories of conduct are punishable through criminal 
penalties. The existence of these criminal sanctions and 
their sporadic implementation have been totally ineffective in de- 
terring the surreptitious entry of aliens.

Congress now seeks to enact additional criminal provisions, 
with the hope that fear of their invocation by employers will 
deprive aliens not authorized to work of gainful employment 
and ergo, the incentive to migrate to the United States in 
an unlawful manner will be destroyed, thus, forcing compliance 
with the procedures set forth in the Immigration and Nationality 
Act. As long as the economic opportunity of the United States
surpasses the limited opportunity of developing nations, the incentive to migrate will exist. The enactment of criminal penalties will not solve or significantly alter this national phenomena for the basic incentive will still exist. Perhaps, it will become more difficult for the "illegal alien" to find employment, but the industrious foreigner coming to the United States to seek a new life, will not be easily discouraged. Through persistent effort, he will find a job.

Moreover, the backbone of the criminal penalty, because of limited manpower and resources, will be voluntary compliance by the employer growing out of his fear of sanctions. There cannot realistically be rigid law enforcement. Consequently, the true exploiter of aliens, the person who should be the primary thrust of penal legislation, will hire the alien and await the citation, if and when it ever comes forth. The legitimate employer will tend to comply and more aliens will be forced into the hands of the unscrupulous. Exploitation in the United States is frequently far more attractive than abject poverty in Brazil.

The social cost of the sanctions will be enormous. Prejudice and discrimination against persons with accents and "foreign appearance" will be rampant.

The proponents of the penal sanctions have not thoroughly explored the facts. As with so many varieties of social phenomena, the root cause is ignored and simplistic penalties proposed.
First, an analysis of who are the "illegal aliens" must result in the conclusion that many aliens are "illegal" only because of certain disfunctional aspects of the law, such as the eighteen month backlogs for qualified natives of the Western Hemisphere. The needed revisions in the law are in order before the proscription of criminal penalties - otherwise, inherent discriminatory aspects of the law will only be exacerbated, certainly an unjustifiable and immoral result.

Secondly, the predominance of natives of Mexico who gain entry to the United States without inspection indicates that far greater efforts must be exerted to seal the U.S.-Mexican border. Increased border patrol manpower would be imperative.

Thirdly, it is obvious that if as many as 500,000 to 1 million Mexicans enter the United States and apparently have little difficulty securing employment in the Southwestern United States, there must be a significant economic need for their labor. It would be absurd to conclude that each of the "illegal aliens" is displacing an American worker. The same is true of aliens from other countries migrating to other parts of the country.

A detailed review of the efficacy of issuing temporary working visas (H-2) in occupations constantly filled by these aliens should be made. Additionally, the labor certification process should be reexamined with emphasis upon occupations for an unskilled native, many of which are listed on Schedule B.
(categorial denial of labor certification), to determine whether citizen and resident workers really are ready, willing available and able to take such employment.

Fourthly, American Consulates should be more discerning in the granting of visitor visas, since of those who do not enter the country illegally, the visitors who violate the terms of admission constitute the next largest category contributing to "illegal aliens". The right to travel to the United States should not be unreasonably withheld, but Consular screening should be more sophisticated, for instance, requiring the posting of bond in questionable cases and the granting of visas; good for one admission for a period of several months.

Fifthly, the Immigration and Naturalization Service must have the resources necessary to keep tighter control over aliens once they enter the country.

Criminal penalties are unwarranted, unworkable and unnecessary. There are sufficient mechanisms provided by the law to control the conduct of aliens. Sanctions will not effectively alter the sociological and economic factors underlying the migration of peoples into the United States. If any criminal penalties are required, they should be directed exclusively against the employer who exploits the aliens.
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