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## Foreword

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# SYMPOSIUM

## IMMIGRATION AND REFUGEE LAW

### Foreword

*Rev. Theodore M. Hesburgh, C.S.C.\**

Although the United States' heritage as a land of immigrants has been maintained since the nation's founding, major immigration legislation has been rare. Not until the last quarter of the 19th century, when the United States became both more attractive and more readily accessible to residents of countries in distant continents, was the first regulating legislation passed establishing categories of persons ineligible to enter the United States.<sup>1</sup> The functional approach toward ineligibility represented by this legislation changed in 1924 with the National Origins Quota Law,<sup>2</sup> which imposed an overall numerical limitation and a series of geographic limitations on immigration.<sup>3</sup> The 1952 legislation continued the style and stringency of this approach.<sup>4</sup> More recent legislation has relaxed these limitations. The 1965 legislation<sup>5</sup> ended the discriminatory national origins quota system<sup>6</sup> and the 1980 Refugee Act<sup>7</sup> removed the geographic and ideological biases in America's acceptance of refugees.<sup>8</sup>

But these last two laws modify only a portion of the immigration law. The complex selection process, archaic exclusion requirements and questionable deportation procedures remain. Further, large numbers of undocumented/illegal aliens are entering the country—in some years perhaps as many as are entering through the normal immigration process. These problems led Congress and the Executive Branch to jointly call for a broad review of the United States immigration and refugee policy. The Select Commission on Immigration and Refugee Policy, of which I was Chairman, has just completed its report containing that review.

The Commission's mandate was clear and comprehensive: "[T]o study and evaluate . . . existing laws, policies, and procedures governing the admission of

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\* President, University of Notre Dame. Father Hesburgh served as Chairman of the Select Commission on Immigration and Refugee Policy.

1 The Act of Mar. 3, 1875, ch. 141, 18 Stat. 477 barred prostitutes and convicts. A more general regulatory act was passed in 1882. Act of Aug. 3, 1882, ch. 376, 22 Stat. 214.

2 Immigration Act of 1924, ch. 190, Pub. L. No. 139, 43 Stat. 153.

3 Immigration from outside the Western Hemisphere was limited to an annual overall total of 150,000 under the 1924 Act. *Id.* § 11(b). The annual quota of each nationality was based upon that nationality's percentage share of the American population in 1920. *Id.* § 11(c). Immigration from Africa was effectively restricted by exclusion of "the descendants of slave immigrants" from the 1920 population statistics. *Id.* § 11(d)(3). The quota system did not limit immigration from most of the nations of the Western Hemisphere, however. *Id.* § 4(c).

4 The Immigration and Nationality Act, Pub. L. No. 414, 66 Stat. 163 (1952).

5 Act of Oct. 3, 1965, Pub. L. No. 89-236, 79 Stat. 911.

6 *Id.* § 2.

7 Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102.

8 The Refugee Act of 1980, *id.*, repealed § 203(a)(7) which favored refugees from communist-dominated nations and the Middle East.

immigrants and refugees to the United States and to make such administrative and legislative recommendations to the President and to the Congress as are appropriate.”<sup>9</sup> The issues confronting the Commission were complex and interrelated, ranging from the appropriate role of the United States government in resettling refugees to the desirability of continuing the tradition of welcoming immigrants to our society. To answer the questions it confronted, the Commission systematically solicited the views of a wide array of groups and individuals: members of Congress; city, county and state officials; ethnic, religious, labor, business, agricultural, and environmental interests; and political, educational and senior citizen organizations. Many of these groups not only sent representatives to testify at the public hearings but also submitted papers and resolutions to the Commission and met informally with Commission staff members.

What are the Commission’s conclusions? Let me discuss them in the four broad areas constituting the Commission’s work: (1) the undocumented/illegal alien; (2) alien protections—procedural reform; (3) refugees and mass first asylum; and (4) the nonimmigrant.

### I. The Undocumented/Illegal Alien

Because the United States remains “a near and distant magnet,” many have taken great risks to come to the United States and reside here without legal authorization. Their unauthorized presence undercuts law enforcement, permits exploitation by unscrupulous employers, and prevents the aliens from contributing fully to their communities. The Commission proposed a balanced solution to the undocumented/illegal aliens issue: on the one hand, legalization of those aliens already in this country who have established substantial ties to their community; on the other hand, creation of a stronger enforcement program. Legalization is intended not to reward those coming to the United States outside the prescribed procedure but rather to permit our country to reestablish control over all residents while permitting all to contribute openly and fully to our growth. Enforcement is to be accomplished by increasing the professionalism of the Immigration and Naturalization Service, increasing the number of enforcement personnel, and increasing employer sanctions.

The Commission was aware that many people fear employer sanctions will endanger the rights of those legally present in the United States and might particularly discriminate against Hispanic Americans. We met these objections by structuring a program consistent with the rights of all United States citizens and residents. An effective employer sanctions law would ease the growing hostility in the marketplace toward undocumented aliens and remove the major attraction of the United States to undocumented aliens. The Commission was sharply divided, however, over one aspect of the employer-sanctions enforcement program: the system by which employers might readily identify the status of prospective employees. I personally favored an updated, counterfeit-resistant social security card. But others on the Commission felt as strongly that existing identification mechanisms, rather than a special social security card, should be used. Their view is that a new work authorization card or a call-in data bank system

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<sup>9</sup> Act of Oct. 5, 1978, Pub. L. No. 95-412, § 4(c), 92 Stat. 907.

might give the government control over the movements of individuals and be used by the government for unforeseen purposes. Existing forms of documentation, however, seem too easily forged to be useful enforcement tools.

A second issue dividing the Commission was the timing of legalization. Some Commission members wished to postpone the legalization program until after the stronger enforcement program was initiated; others wished both programs to begin simultaneously. The Commission's compromise was to suggest phasing-in the legalization program after institution of the enforcement program.

## II. Alien Protections—Procedural Reform

As a country, we are concerned with protecting not only our citizens but all who reside here. The Commission made two key recommendations in this area.

First, we suggested expanding aliens' right to counsel. The Immigration and Naturalization Act presently affords aliens the right to counsel in both exclusion and deportation hearings.<sup>10</sup> We urged that the statutory right to counsel be expanded to protect aliens from the time of their arrest and whenever any benefit under the Act is adjudicated. Second, we recommended the establishment of a new court, described in some detail in this Symposium by a Commission staff member, Peter Levinson.<sup>11</sup> At present, in some immigration cases review may be obtained in the federal courts of appeals; in others, habeas corpus proceedings may be instituted in the district court; and in still others the Attorney General may intervene to review. An Immigration Court would help regularize the present diverse appellate process in immigration proceedings. Establishing such a court would also upgrade the status of immigration judges and professionalize their role. More consistent, rapid, and equitable enforcement of the law would result.

## III. Refugees and Mass First Asylees

With respect to refugees, the Commission reaffirmed the direction of the Refugee Act of 1980, which had made three major changes. First, the Act established as American law a definition of refugee which conformed to the internationally accepted standard of refugee.<sup>12</sup> The Act thus removed the ideological, anticommunist bias that had attended our refugee law and placed that law squarely within the international human rights tradition. Second, the Act recognized that our acceptance of refugees is a continuing rather than an ad hoc matter. The Act set forth 50,000 as the preliminary number of refugees to be accepted each year,<sup>13</sup> and stated that the President and the Congress should consult during the year on a more precise figure.<sup>14</sup> Finally, the Act authorized financing to assist in the resettlement of refugees.<sup>15</sup> Voluntary agencies, on

<sup>10</sup> See 8 U.S.C. § 1362 (1976).

<sup>11</sup> See Levinson, *A Specialized Court for Immigration Hearings and Appeals*, *infra*.

<sup>12</sup> The Act defines "refugee" as a person outside his native country who "is unable or unwilling to return . . . because of . . . a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion." Refugee Act of 1980 § 201, Pub. L. No. 96-212, 94 Stat. 102 (amending 8 U.S.C. § 1101(a)(42)).

<sup>13</sup> *Id.* (adding 8 U.S.C. § 1157(a)(1)).

<sup>14</sup> *Id.* (adding 8 U.S.C. § 1157 (d)(1)).

<sup>15</sup> *Id.* § 311 (adding 8 U.S.C. § 1522).

whom much of the burden for refugees' resettlement traditionally has fallen, cannot meet the refugee needs from their own resources alone. Governmental support is required to permit these agencies to continue to provide refugees with language and vocational training. The Commission strongly endorsed all of these 1980 Refugee Act changes.

Mass first asylum raised novel questions. In the past, the United States had never been a country of *mass* first asylum and the 1980 Refugee Act assumed a limited number (5,000) of asylees entering the United States each year. We were taken aback when the Cuban-Haitian "boat people" came to our shores pleading first asylum. The Commission recognized that this was an international question and that the world community should share the burden of receiving and assisting the less fortunate. The Commission also recognized the need for speedy determination of the status of those requesting asylum. Resettlement in the United States or deportation should follow promptly. To accomplish this, the Commission recommended expeditious processing of asylum claims by specially trained asylum admission officers using group profiles drawn by the refugee coordinator with the assistance of area experts. The Commission also recommended that only one appeal to the new Immigration Court be permitted for persons whose petitions had been denied.

#### IV. Nonimmigrant Policy

The United States issues over six million visas annually for nonimmigrant purposes to students, tourists, and businessmen. The presence of these nonimmigrants is important to us: They broaden our range of knowledge, contribute to our educational institutions and, in many cases, contribute to the economic welfare of our country.

The recent Iranian student demonstrations raised questions concerning the true purposes of many foreign students in this country, and caused embarrassment when we found we did not know the number or location of these students. The Commission urged greater control over visiting students, computerizing the visa control process so we can determine each student's location. We recommended placing responsibility for monitoring educational institutions and student work authorizations with the Department of Education (rather than the Department of Justice) because it is familiar with student needs and the capabilities of particular universities.

All of the Commission's recommendations were made with the premise that America would continue its tradition of welcoming newcomers. Through immigration we reunite families, provide opportunity for creative persons, and revitalize our society with new ideas and new persons who tend to be strongly committed to the ideals of freedom and equality.

I am most pleased that *The Notre Dame Lawyer* is dedicating a Symposium to immigration and refugee matters. The timing is most appropriate, since the Symposium bring the issues in this area before the legal community at the same time the Select Commission issues its report and gives further emphasis to the problems the Commission has addressed.