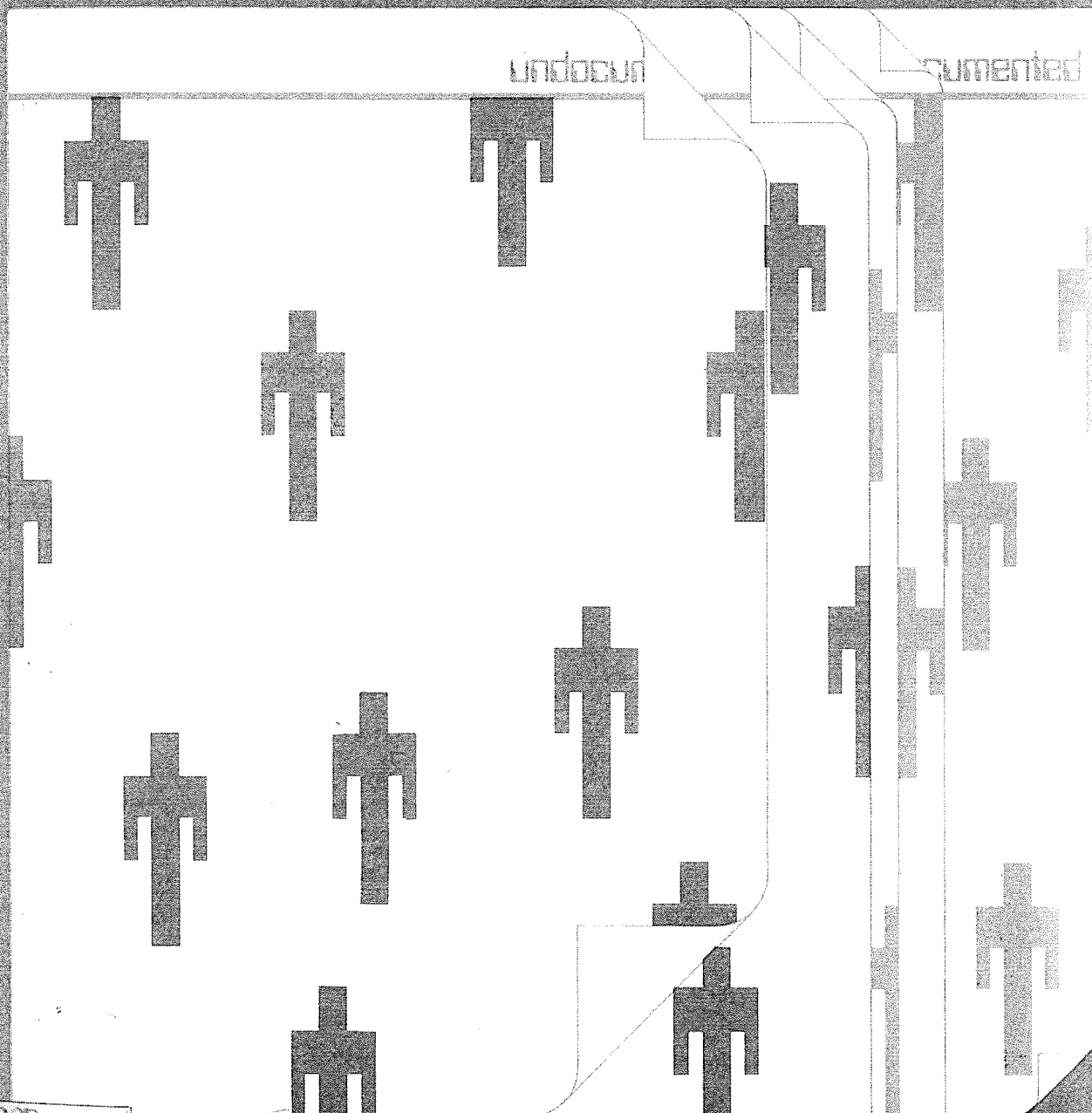




Documented and Undocumented Persons in New York City

April 1982



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New York State Advisory Committee to the United States Commission on Civil Rights prepared for the information of the Commission. This report will be considered by the Commission, and the Commission will make public its findings. In the meantime, the findings and recommendations of this report should not be attributed to the Commission but only to the State Advisory Committee.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

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An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

Documented and Undocumented Persons in New York City

—A report of the New York State Advisory
Committee to the U.S. Commission on Civil Rights

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Attribution:

The findings and recommendations contained in this report are those of the New York State Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and Congress.

Right of Response:

Prior to the publication of a report, the State Advisory Committee affords to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses have been incorporated, appended, or otherwise reflected in the publication.

LETTER OF TRANSMITTAL

New York State Advisory Committee to the
U.S. Commission on Civil Rights
April 1982

MEMBERS OF THE COMMISSION

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Mary Louise Smith, *Vice Chairman*

Mary F. Berry

Blandina Cardenas Ramirez

Jill S. Ruckelshaus

Murray Saltzman

John Hope III, *Acting Staff Director*

Dear Commissioners:

The New York State Advisory Committee submits this report, *Documented and Undocumented Persons in New York City*, as part of its responsibility to advise the Commission on relevant civil rights problems within the State. It hopes that the report will provide useful followup information to the Commission's national project on immigration.

The report provides a survey of the larger immigrant groups in New York City, reviews some of the problems of aliens making application to the New York district office of the U.S. Immigration and Naturalization Service (INS), and examines selected civil rights problems of undocumented workers apprehended by INS. It also includes a limited review of social services available to aliens. It is based on information gathered by the U.S. Commission on Civil Rights and the New York State Advisory Committee prior to and at its factfinding meeting in February 1978, which was held in conjunction with the national Commission project. In addition, the Advisory Committee held followup interviews with INS officials, visited the INS detention facility in Brooklyn, N.Y., and observed the administrative deportation hearings during a 3-week period in 1980.

Throughout its investigation the Advisory Committee found a minimum of data available on aliens and particularly on undocumented aliens. Because of the lack of hard data, it recommends further studies of many issues related to aliens including social services used by aliens, and INS procedures particularly during the apprehension and expulsion of undocumented aliens. Based on its interviews with a number of credible sources, the Advisory Committee believes that the use of social services by documented and undocumented aliens has been exaggerated. Furthermore, it believes that the circulation of these charges without factual proof is inflammatory. It also believes that some assistance should be available to all aliens, regardless of their status, and that they should receive financial and medical help in emergencies for at least a temporary period of time. In the area of INS procedures,

the report has pinpointed a number of issues with civil rights implications which merit further study.
We urge the Commissioners to support our recommendations.

Sincerely,

Franklin H. Williams, *Chairperson*
New York State Advisory Committee

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*Members of the subcommittee on immigration.

The following persons were also members of the subcommittee on immigration at the time of the factfinding meeting and are no longer members of the New York State Advisory Committee:

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Acknowledgments

The Advisory Committee wishes to thank the staff of the Commission's Eastern Regional Office, New York, New York, for its help in the organization of the symposium and the preparation of this report.

The theme of the symposium was developed by Antonio Stevens-Arroyo, chairperson of the immigration subcommittee, who also wrote the symposium summary included in this report. The symposium was organized by then deputy regional director Ruth J. Cubero. Staff support was provided by America Ortiz. Primary field investigation was conducted by Ira H. Krause, Eleanor W. Telemaque, and Yvonne V. Griffith, field representatives in the Eastern Regional Office at the time of the study, and Linda Huber and Deborah Miron, staff attorneys in the Commission's Office of the General Counsel. Research and writing assistance was provided by Linda Dunn, research writer. Legal research was conducted by Eugene Bogan, regional attorney until 1978, and legal review was conducted by Hector Soto, who became regional attorney in September 1979. Additional legal review was conducted by Larry D. Martin, who became regional attorney in December 1980. Additional staff support was provided by America Ortiz, Diane S. Diggs, Sandra Patterson, and Salvatore Martinez.

The project, a joint effort of the Eastern Regional Office and the national Office of the General Counsel, was initiated under the direction of Jacques E. Wilmore, regional director until October 1978, and Richard Baca, then general counsel of the Commission. It was completed under the supervision of Ruth J. Cubero, the new regional director.

The staff of the Publications Support Center, Office of Management, was responsible for final preparation of the document for publication.

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1. Introduction

In September 1977, the New York State Advisory Committee to the United States Commission on Civil Rights (USCCR) initiated a project reviewing the problems of immigrants, including both documented and undocumented aliens, in New York City. This project was part of a larger study undertaken by the USCCR national office reviewing civil rights problems related to immigration law, U.S. Immigration and Naturalization Service (INS) policies and procedures, and proposed Federal legislation on immigration.¹

There is much documentation to verify the historical discriminatory treatment suffered by the succeeding groups of immigrants who have come to the United States.² Charges of discrimination on the part of governmental agencies as well as the public have continued up to the present time. The national USCCR project was initiated as a result of recent allegations of civil rights violations in the administration and enforcement of the immigration laws and INS procedures. The Commission was concerned that these violations affected not only undocumented workers, but also legal resident aliens and U.S. citizens, particularly those legal resident aliens and citizens of the same ethnic and/or racial heritage as the undocumented workers.

¹ U.S., Commission on Civil Rights (USCCR), *The Tarnished Golden Door: Civil Rights Issues in Immigration* (September 1980).

² The Center for Migration Studies of New York, 209 Flagg Place, Staten Island, New York, is one of several organizations with an extensive library on migration issues including the United States history of discriminatory treatment of immigrants.

³ The Federal legislation, proposed by then President Carter, established a limited "amnesty" or regularization of status

As the first phase of its project, the New York State Advisory Committee held a symposium on September 28, 1977, at the Ethical Culture Society in New York City. At this symposium, entitled "Migration in a Global Context: The Problem of Aliens, Past, Present, and Future," participants explored the underlying causes of the immigration of foreign workers to the United States. Approximately 75 persons, including representatives of immigrant groups, lawyers, university professors and administrative staff, researchers, and public officials with expertise in the area of immigration attended.

In the next phase of its project, Commission staff conducted numerous interviews with city, State, and Federal officials, representatives of immigrant organizations, immigration attorneys, union officials, and representatives of employer associations. These individuals provided information on the economic impact of immigrants on New York City (primarily in terms of employment and services used), the problems encountered by immigrants, the practices of INS, and the implications of proposed Federal legislation regarding immigration.³ On February 16 and 17, 1978, in cooperation with the Commission's Office of the General Counsel, the New York State Advisory Committee held a factfinding meeting in

(permanent resident status for aliens arriving before January 1, 1970, and temporary resident status for aliens arriving between January 1, 1970, and January 1, 1977), sanctions against employers who hired undocumented aliens, and increased INS enforcement activities. Following widespread criticism of several aspects of the legislative package from immigrant, civil rights, and other groups (including the USCCR), the proposal died before reaching Congress.

the Federal Customs Courthouse in New York City.⁴ Approximately 40 individuals from among those interviewed made presentations to the Advisory Committee. The investigatory field work continued after the factfinding meeting. Advisory Committee members and Commission staff visited the INS detention center in Brooklyn and observed deportation proceedings in 1979.

The New York State Advisory Committee report does not cover all of the problems in New York City related to immigration policy nor is it an exhaustive analysis of the current immigration statutes, related court decisions, and INS policies and procedures. However, it provides a survey of the larger immigrant groups in New York City, reviews some of the problems encountered by aliens making application to the INS New York district office, and examines some civil rights related problems of undocumented workers apprehended by INS. The report contains information gathered by the New York State Advisory Committee at its factfinding meeting and in field interviews. Together with the findings and recommendations, this report has been submitted to the U.S. Commission on Civil Rights for use in making recommendations to the President and Congress.

The Commission's national immigration project included field investigations in different parts of the

country and State Advisory Committees held factfinding meetings in California and Texas in June and September 1978, respectively.⁵ In November 1978 the United States Commission on Civil Rights held a national hearing in Washington, D.C. A report was issued in September 1980.⁶ The Hawaii Advisory Committee also conducted a study and issued a report on issues related to immigration in 1978.⁷

Throughout this report the term undocumented alien is used for those aliens commonly described as "illegal aliens," who do not have proper documentation. The Advisory Committee is using this terminology for several reasons: first, the Advisory Committee wishes to emphasize that these persons are charged with violations of civil statutes, not criminal statutes as is implied in the terminology "illegal alien"; second, the Advisory Committee wishes to stress that many of these persons have "equity" (the word used to indicate that an alien does have factors in his/her favor) toward obtaining legal status. The term "undocumented," indicating simply the lack of proper documentation, best describes these persons. In fact, previous generations of immigrants who were here without properly documented papers were said in official parlance to be here "without papers."

⁴ USCCR, New York State Advisory Committee, "Transcript of Factfinding Meeting on Aliens in New York City," Feb. 16 and 17, 1978, New York City. A copy of the transcript is available in the USCCR Eastern Regional Office (ERO) files.

⁵ USCCR, California Advisory Committee, *A Study of Federal Immigration Policies and Practices in Southern California* (June

1980); Texas Advisory Committee, *Sin Papeles: The Undocumented in Texas* (January 1980).

⁶ USCCR, *The Tarnished Golden Door*.

⁷ USCCR, Hawaii Advisory Committee, *Immigration Issues in Hawaii* (September 1978).

2. Symposium

The symposium, entitled "Migration in a Global Context: The Problem of Aliens, Past, Present and Future," was held on Wednesday, September 28, 1977, at the New York Society for Ethical Culture in New York City. Featured speakers were Dr. David Gordon, professor of economics at the New School for Social Research, and Dr. Michael Piore, professor of economics at the Massachusetts Institute of Technology.¹ They presented differing perspectives on major issues related to the undocumented within the context of the economies of the United States and sending countries in the Western Hemisphere. A panel of reactors was moderated by Dr. Charles G. Keely of Fordham University and the Population Council. The panelists included: Henry Foner, president of the Fur, Leather, and Machine Workers Union, AFL/CIO; Susan Jacoby, research associate of the Center for Policy Research; Dr. Roy S. Bryce-Laporte, director of the Smithsonian Research Institute on Immigration and Ethnic Studies; Dr. Frank Bonilla, director of the Center for Puerto Rican Studies, City University of New York (CUNY); and Dr. John Griffin, chairman of the department of business administration at Fairfield University. The chairperson for the symposium, representing the New York State Advisory Committee to the U.S. Commission on Civil Rights, was Dr. Antonio Stevens-Arroyo.

¹ Papers presented by the two speakers were: Dr. David Gordon, New School for Social Research, "Thinking the Thinkable: Toward a Sensible Perspective on Undocumented Workers," unpublished, September 1977, and Dr. Michael Piore, Massachusetts Institute of Technology, "Undocumented Workers and U.S. Immigration Policy," unpublished, September 28, 1977.

Dr. Gordon entitled his presentation, "Thinking the Thinkable," and suggested steps toward what he called, "a sensible perspective on undocumented workers." Criticizing both conservative and liberal political opinion on immigration to this country, Dr. Gordon commented:

Conservatives focus on a single characteristic: illegality of entry. Because liberals do not, in fact, develop a "structural" analysis of the causes of low wages and immigration, they are forced to focus on individual characteristics associated with poverty and migration, like low skills, little education, and instability.²

Dr. Gordon provided an historical perspective on immigration of workers to the United States since the Civil War. He demonstrated that there was always a temporary dimension to immigration to the United States, but that the nature of employment in the United States made the migration more or less permanent. He stressed the role of automation in fragmenting jobs "into minute, routine, menial tasks."³ This generally meant that workers from agricultural backgrounds have been "more willing to accept this work than laborers from pre-industrial craft backgrounds," he said.⁴ Secondly, there has always been a "reserve army" of workers, who often

² Gordon, "Thinking the Thinkable," p. 8.

³ Ibid., p. 13.

⁴ Ibid.

assume the nature of permanently unemployed citizens or even strikebreakers.⁵ The present crisis of undocumented workers, suggested Dr. Gordon, is more a reaction to the economic crisis of the 1970s than any new phenomenon.

After painting a picture of international economics in broad strokes, he suggested that the long-range goals to contain immigration are to develop simultaneously full employment economies in Third World sending countries and in the United States. "Rapid movement toward full employment" in the United States, he argued, "would tend to reduce frictions among different working groups, boost the wages of the lowest-paid workers, relieve whatever tax burdens there may be from immigration, and reduce the fears of domestic workers for their own jobs."⁶ Full employment abroad would reduce the incentive to immigrate, and in fact, generate new possibilities for U.S. technology, technical assistance, and foreign aid.

Dr. Piore described similar perspectives on the historical nature and patterns of immigration to the United States. However, he did not directly address the macro-economics of Dr. Gordon. Instead he concentrated upon more discreet categories. For instance, he considered the second generation of immigrants, i.e., children born to immigrant workers, a key problem for U.S. society. He said:

There is nothing in the immigration process that ensures that this second generation will be able to move up to higher level jobs toward which they aspire. Indeed, historically industrial societies appear consistently to disappoint the expectations of the second generation in this regard. That disappointment has in turn been the source of enormous social tensions. The sit down strikes in the late thirties which sparked the industrial unions movement in the United States may in large measure be attributed to the reaction of the children of pre-World War I European immigrants to their labor market conditions. Similarly, the racial disturbances in the Northern urban ghettos in the middle and late 1960s may be looked upon as a revolt of the black migrants against a society bent upon confining them to their parents' jobs.⁷

Dr. Piore also saw the international connection suggested by the previous speaker:

... migration raises expectations in the communities of origin and, over time, changes the value structure in a way

which degrades traditional activities, reducing the willingness to perform them and, in a great many cases, ultimately destroying traditional industries altogether.⁸

Congruent with his desire to limit social tensions among second generation immigrant children and resident nationals, Dr. Piore described an ideal immigration policy as one which:

1) minimizes the number of jobs for which migrants are required in the first place; 2) minimizes the degree of competition between nationals and foreign workers in the first generation; 3) minimizes the size of the second generation; but 4) maximizes the chances of upward mobility for the second generation which does emerge.⁹

Dr. Piore called attention to the differences between Mexican migration and almost all other Western Hemisphere migrations. He suggested strongly that U.S. policies reflect the great differences between Mexico and the other Western Hemisphere countries and avoid applying one remedy to two different problems. He discouraged a simple restriction of reentry, demonstrating that in Western European countries, "workers, already in the country and fearing that they could not reenter, delayed departure, often illegally, so that while the inflow did in fact decline the outflow declined as well. The net effect may well have been an increase in the total alien population: there has certainly been an increase in the size of the second generation."¹⁰

Dr. Piore suggested a distinction be drawn between temporary workers and permanent settlers who should be allowed "to legitimize their status and that of their children as completely as possible so as to maximize access to channels of upward social mobility."¹¹ For temporary workers, on the other hand, "one wants to provide legitimization without encouraging any form of permanent attachment."¹² He recommended "a special temporary work permit for those people, who because of their status as relatives of resident aliens, would eventually become eligible for permanent immigration but are now barred by the quota and by administrative delays from immediate entry."¹³ Dr. Piore concluded his presentation by emphasizing that a cut-off in immigration would have disastrous social consequences. He stressed that as long as low-paying,

⁵ Ibid.

⁶ Ibid., p. 16.

⁷ Piore, "Undocumented Workers," p. 3.

⁸ Ibid., p. 4.

⁹ Ibid., p. 8.

¹⁰ Ibid., p. 10.

¹¹ Ibid., p. 20.

¹² Ibid.

¹³ Ibid., p. 22.

menial jobs were part of the economy in the United States, native-born workers or second generation immigrants would be unwilling to fill them for fear of being forced into permanent poverty. Moreover, if a clandestine and illegal labor market is created, the cheaper prices for goods derived from the lower wages would become a necessary part of the U.S. economy which could not be rejected without increased social tensions among the U.S. working class. The panel of speakers added to the information on these perspectives in several ways. Dr. Bonilla discussed the planned and controlled aspects of irregular industrial development such as that which has taken place in Puerto Rico, and the consequent migration created by this pattern of economic growth. Susan Jacoby highlighted the powerful and sometimes negative influence of the media in creating "scapegoats" out of undocumented workers, and called for a more responsible use of journalism. Other speakers stressed the need for

accurate statistics for a host of policy decisions including those touching labor organizing, quotas, and enforcement of existing statutes.

Dr. Stevens-Arroyo concluded the symposium with a series of questions posed for the participants and all those interested in immigration from a civil rights perspective:

We ask if there are kinds of violations of civil rights that go beyond incidents between individuals or among races. Are there violations of civil rights when unions negotiate against the long-term benefits of some workers? Are there violations of civil rights when one branch of government fails to coordinate its policies with another? Or when a nation penalizes one region like the Northeast for the benefit of another like the Sun Belt?

These questions in addition to the other issues discussed in this report, he said, arose from the presentations at the symposium and would add new dimensions to the complete study of the Advisory Committee.

3. Immigrant Groups

A. Overview

New York City has long been a major port of entry and residence for first generation immigrants coming to the United States. This fact of history continues up to the present day and the U.S. Immigration and Naturalization Service (INS) reported that from 1970 through 1977 as many as 596,000 immigrants a year came to New York City. New York receives more immigrants than any other city in the United States.¹

According to the 1970 census, there were approximately 3,300,000 persons of "foreign stock" residing in New York City, a phrase used to include persons who are foreign born or of foreign or mixed parentage. Countries with more than 100,000 such persons residing in the city were the United Kingdom, Ireland, Germany, Poland, Austria, Italy, and Russia in Europe, Turkey in the Middle East and Asia, and Canada in the Western Hemisphere.²

During the 1970s, because of the liberalization of the immigration laws, the flow of migration changed

and a growing number of persons have come from Central and South America and Asia.³ Countries with major outmigrations to New York City in the past few years are the Dominican Republic, Ecuador, Colombia, Haiti, Trinidad and Tobago, and Jamaica in the Caribbean and Central and South America; China, Taiwan, India, and Korea in the Far East; and Italy, Greece, and Russia in Europe. A list of the total number of immigrants who stated New York City as their intended permanent residence by country of origin may be found in table A. Because Puerto Ricans have citizen status, migrants from Puerto Rico are not within the scope of this study. The Advisory Committee recognizes, nonetheless, that Puerto Ricans experienced many problems similar to those of immigrant aliens. Puerto Ricans were one of the first and are still the largest Hispanic migrant group in the East Coast. The Commission on Civil Rights as well as other organizations and institutions have studied aspects of Puerto Rican migration to this country.⁴ However, in this study in relation to Puerto Rico, only the

¹ U.S., Immigration and Naturalization Service (INS), *Annual Report*, from 1970 through 1977, table 12a in each report (hereafter cited as INS Data on Immigrants to New York City). In 1977, 76,625 immigrants listed New York City as their intended place of residence while only 21,563 listed Los Angeles, the city to receive the second largest number of aliens, as their intended place of residence. (INS, *Annual Report*, 1977, table 12a.)

² U.S., Department of Commerce, Bureau of the Census, "General Socio and Economic Characteristics: New York," tables 81 and 141 (hereafter cited as 1970 Census of Foreign Stock in New York City).

³ Immigration and Nationality Act of 1965, Pub. L. 86-236, §1-b, 8-15, 17-9, 24; 7a Stat. 911-920; 8 USC §1151-115b. This act eliminated discriminatory quota provisions based on a country's

representation in the U.S. population in 1920 and established a new more equitable system. A fuller discussion of this issue is found in the U.S. Commission on Civil Rights (USCCR) report, *The Tarnished Golden Door: Civil Rights Issues in Immigration* (September 1980), Chap. 1.

⁴ Two books are: The USCCR report, *Puerto Ricans in the Continental United States: An Uncertain Future* (October 1976) and City University of New York, Centro de Estudios Puertorriqueños report, *Taller de Migración: Conferencia de Historiografía* (April 1974). For further information, contact Centro de Estudios Puertorriqueños at the City University of New York, 475 West 59th Street, New York City or the Puerto Rican Migration Research Consortium, Inc., 41 Union Square West, Suite 1628, New York City 10003.

impact of noncitizen immigrants on Puerto Ricans—as well as other racial and ethnic minority citizens—is discussed.

In addition to the legal immigrants, a large number of undocumented aliens reside in New York City. Because these persons are here without proper papers, it is generally accepted that they avoid contact with Federal and other governmental agencies and are not counted. Although there is no exact figure on these persons, estimates range from a conservative estimate of 350,000 to the high estimate of 1.5 million persons.⁵ The New York City Planning Commission estimates what it acknowledges is an approximation of 750,000 undocumented persons.⁶

Because of the inadequacy of the census and other official local, State, and Federal figures, the exact number of immigrants in New York City and the country as a whole is unknown. The 1970 census undercounted black, Hispanic, and Asian groups to a significantly greater degree than other groups.⁷ Because many immigrant groups are black, Hispanic, or Asian, the factors leading to the undercount of U.S. citizens within these groups also apply to the count of noncitizens. Thus, official estimates are probably even less reliable for black, Hispanic, and Asian immigrant groups legally residing here than for blacks, Hispanics, and Asians who are citizens.

The inadequacy of data on undocumented aliens is even more serious. However, there are some commonly accepted indicators which have been used to estimate the size of the undocumented population. The indicators include the following:

- The size of the legal immigrant population. Most undocumented aliens settle in localities where relatives or friends with proper documentation are living;
- The number of persons deported by the U.S. Immigration and Naturalization Service; and
- The economic conditions of the countries of origin (most undocumented come looking for employment and countries with major outmigrations are often those with high unemployment and low per capita incomes).

⁵ *New York Times*, "Unrecorded Aliens Cost New York City Millions," Mar. 19, 1979, p. 1.

⁶ *Ibid.*

⁷ USCCR, *Counting the Forgotten* (April 1974). In this report the Commission estimates that the 1970 census undercounted Hispanics and other minority groups by at least the 7.7 percent undercount of the black population announced by the Census Bureau.

It is beyond the scope of this report to review these indicators in any detail. However, table A includes a summary of recent immigration to New York City by country of origin. Table B provides a list by country of origin of persons deported by INS. In 1976, the New York district office of INS apprehended a total of 13,704 aliens who then either left the country voluntarily or were deported. Countries which had more than 500 such persons were Colombia, Ecuador, El Salvador, Greece, Guatemala, Haiti, and Mexico.⁸

In the New York City area, the majority of undocumented persons are individuals who have overstayed their visas as opposed to individuals who have entered the country without any documentation. Generally, the undocumented alien in New York enters the United States on a tourist or student visa and then vanishes into the work force. However, INS officials report that a growing number of persons, primarily Mexicans, Ecuadoreans, and Colombians, are now smuggled across the Mexican border, provided transportation to Los Angeles, and flown to New York.⁹

The vast majority of immigrants, both documented and undocumented, apparently come to the United States in search of higher paying and better jobs. Economic conditions in their countries of origin, including low wages and high unemployment, cause thousands of aliens to leave their homelands and come to the United States where working conditions and opportunities are perceived to be better. With the liberalization of immigration policies in 1965, in addition to these workers, members of their immediate families entered the country under the family preference.

A few groups such as Hungarians and Cubans have come to escape political repression and have been granted political asylum in the United States. Haitians fleeing a repressive dictatorship have unsuccessfully sought refugee status and recently, a new wave of Cubans has come to the United States for political as well as economic reasons. The remainder of this chapter describes limited information available on the socioeconomic conditions of

⁸ INS, New York District Office, "Count by Country of Birth of Illegal Aliens," March 1977, available in the USCCR Eastern Regional Office (ERO) (hereafter cited as INS Data on Apprehended Aliens).

⁹ Harold Grace, then director of deportation and detention, INS, New York District Office, interview in New York, N.Y., June 22, 1977.

TABLE A**Aliens by Country of Origin Who Stated New York City As Intended Permanent Residence**

	1970	1971	1972	1973	1974	1975	1976	1977	Total
Canada	441	663	495	400	425	351	367	489	3,631
China & Taiwan	2,699	2,938	4,190	4,129	3,810	3,872	3,640	2,873	28,151
Colombia	2,316	2,185	1,778	1,951	2,318	2,349	2,116	2,866	17,879
Cuba	2,716	3,170	2,844	2,581	2,149	2,851	2,897	2,910	22,118
Dominican Republic	7,131	8,217	6,970	9,577	10,795	9,778	8,505	8,400	69,373
Germany	640	452	462	435	326	277	313	346	3,251
Greece	3,562	3,420	2,960	2,979	2,847	2,714	2,339	2,115	22,936
Haiti	4,703	5,129	4,134	3,355	—	3,447	3,586	3,514	27,868
Hong Kong	—	—	—	—	—	1,361	1,462	1,161	3,984
India	1,343	2,010	3,437	2,812	2,495	3,112	2,869	3,012	21,090
Italy	6,758	5,788	6,434	6,976	4,790	3,373	2,468	2,044	38,631
Japan	—	—	—	—	348	—	—	—	348
Jamaica	8,030	7,237	7,125	5,312	6,568	5,955	4,812	4,761	49,800
Korea	652	1,202	1,937	1,660	1,613	1,472	1,568	1,710	11,814
Mexico	162	171	173	196	316	355	365	268	2,006
Philippines	1,557	1,750	1,939	2,057	1,908	1,881	1,948	2,092	15,132
Poland	—	—	923	1,036	—	—	—	—	1,959
Portugal	476	495	396	424	435	393	394	460	3,473
Thailand	—	—	—	—	320	—	328	329	977
Trinidad Tobago	4,039	3,219	3,570	3,887	3,674	3,560	—	—	21,949
United Kingdom	1,407	1,255	1,260	1,067	979	1,085	1,043	1,233	9,329
Yugoslavia	2,500	1,908	1,921	2,603	1,732	—	—	—	10,664
U.S.S.R.	—	—	—	—	—	4,360	6,832	3,613	14,805
All other	23,483	20,228	23,029	23,165	25,368	21,084	26,060	32,429	194,846
Total	74,615	71,437	75,977	76,602	73,216	73,630	73,912	76,625	596,014

Source: U.S., Immigration and Naturalization Service, *Annual Report*, 1970-77, Table 12a.

TABLE B**Undocumented Aliens By Country of Birth Apprehended By The New York District Office, INS, 1976**

Argentina	248	India	224
Barbados	135	Iran	105
Chile	172	Israel	189
China & Taiwan	431	Italy	208
Colombia	1,283	Jamaica	489
Costa Rica	118	Japan	101
Dominican Republic	800	Mexico	1,342
Ecuador	1,281	Nigeria	110
El Salvador	588	Panama	102
Ghana	111	Peru	332
Greece	509	Philippines	198
Guatemala	506	Poland	180
Guyana	368	Thailand	125
Haiti	623	Trinidad & Tobago	291
Honduras	295	United Kingdom & Colonies	340
		All Others	1,900

GRAND TOTAL 13,704

Source: U.S., Immigration and Naturalization Service, Memorandum of March 4, 1977.

undocumented and documented aliens in New York City including their fields of employment and major social problems. It also briefly discusses the charges made by certain segments of the population about undocumented aliens. These charges include that undocumented aliens are taking jobs from workers who are United States citizens, that they are using public social services costing millions of dollars, and that they are responsible for a number of other problems in American communities. Although the chapter does not provide a thorough analysis of these charges, it does present and review the available data and the opinions of some of the more knowledgeable individuals involved with these issues.

B. Employment

1. Areas of Occupation

Although there is very little statistical information on the subject, evidence indicates that many aliens, both documented and undocumented, take lower paying, unskilled jobs.¹⁰ These aliens work in light manufacturing, the garment industry, the restaurant industry, and hospitals generally within domestic, maintenance, or custodial positions. Some of these industries such as the garment industry have traditionally employed large numbers of immigrants—Jews, Italians, and Puerto Ricans in that succession. These industries continue to employ first generation immigrant groups and now hire many Hispanics and Asians.¹¹ Other industries also have started to offer employment to aliens, probably because they are a source of cheap labor. Either because of the concentration of the same national origin group already in certain industries or because of previous experience in their native countries, some national origin groups tend to concentrate in selected industries. For instance, there are many Greeks in the fur industry, many Chinese in the restaurant and garment industries, many Koreans running green groceries, and many Pilipino pharmacists and nurses.

¹⁰ During this study, Advisory Committee members and Commission staff interviewed more than 60 persons including representatives of immigrant groups, immigration lawyers, other advocacy groups as well as INS staff. General information from these interviews are cited throughout this report as Commission Interviews. Copies of the interviews are available in the USCCR/ERO files.

¹¹ Commission Interviews.

¹² Commission Interviews.

¹³ Commission Interviews.

The concentration tends to be more intense if the employment area is one which requires greater skills. For example, there are many Greek semi-skilled machine operators in the garment industry and many highly trained Pilipino pharmacists and nurses. Doctors have come in significant numbers from several Asian countries.¹²

A few national origin groups such as Ecuadoreans, Pilipinos, and Koreans appear to have in this country a greater number of more highly educated persons as well as a greater number of persons in the professional or semiprofessional categories.¹³

2. Salaries

There are also little data available on the salaries of documented and undocumented workers. Documented workers often receive at least the minimum wage and probably earn the same wages earned by citizens holding similar jobs. The consensus of persons interviewed was that most undocumented workers hold unskilled jobs and receive low wages.¹⁴

A study of a limited sample of undocumented Haitians and Dominicans in New York City, the only study on New York City undocumented workers available to the Advisory Committee, concluded that those groups hold "low-skilled, low-paying and low-status jobs" at or slightly above the minimum wage. This study, by Charles B. Keely of the Population Council, Austin T. Fragomen, Jr., of New York University and Brooklyn Law School, and Silvano M. Tomasi of the Center for Migration Studies, was funded by the Ford-Rockefeller Foundation's Program in Population and Development Policy Research.¹⁵ The study found that 77.8 percent of 54 Haitians and all but one of 17 Dominicans worked. The average wage was about \$150 a week but half reported less than \$100 a week. The overwhelming majority were in operative or service positions, regardless of their previous employment in their country of origin.¹⁶ Data from the North-Houstoun study, a second study of other undocu-

¹⁴ Commission Interviews.

¹⁵ Patricia J. Elwell, Charles B. Keely, Austin T. Fragomen, Jr., Silvano M. Tomasi, "Haitian and Dominican Undocumented Aliens in New York City: A Preliminary Report," *Migration Today*, December 1977. A second study which has since been completed is the following: North American Congress on Latin America: A Report on the Americas, "Undocumented Immigrant Workers in New York City," vol. XII, number 6, Nov.-Dec. 1979.

¹⁶ *Ibid.*, pp. 7-8.

mented groups cited in the same report, indicate the same conclusions, except for household workers. The average salaries were only slightly higher than in the Haitian and Dominican groups.¹⁷

The persons interviewed in the Ford-Rockefeller study were reached through social service centers, while those in the other study were INS detainees.¹⁸ Since it is INS policy to apprehend first those undocumented persons in higher paying positions, the INS detainees probably have higher salaries than the general undocumented population. Thus, the employment profile depicted in the North-Houston study is probably not as accurate as that of the Ford-Rockefeller study.

3. Institutional and Societal Barriers

Alien workers in New York City as well as throughout the country face a wide range of problems as they enter the work force. First generation immigrants, particularly those who live together in enclaves and small communities throughout the city, are culturally and often racially, ethnically, and linguistically isolated in the predominantly white, English speaking society. Nonwhite and Hispanic alien workers are more likely to experience on the job prejudice and discrimination. In addition, many of these workers are unskilled or only have limited training and others are unable to exercise their skills because of inadequate English, licensing requirements, or hiring practices. The general public, believing that migrant groups have traditionally and will continue to "make it" through diligence and hard work, minimizes these problems. Nonetheless, persons interviewed said that a growing number of institutional barriers including union rules and civil service regulations make it harder and harder for these foreign born to enter the work force.¹⁹

Again and again, representatives of immigrant service agencies described the language barriers facing the alien worker and said that existing English language training programs were inadequate. Sever-

al persons cited improved English as a second language programs as their most important need.²⁰

Other problems described were the difficulty of obtaining union membership, meeting civil service requirements, passing civil service tests, and, particularly within the medical profession, passing State licensing requirements.²¹

4. Exploitation of Workers

The exploitation of alien workers, both documented and undocumented, is of critical concern to immigrant groups. A common form of exploitation is payment below the Federal minimum wage or requiring workers to work for more than the required day without adequate compensation. Another form is payment below the so-called "prevailing wage" by Federal contractors as required by Federal law. No hard data could be obtained on the degree of exploitation of "green card" aliens who have legal permits to work; however, most immigrant representatives said that they believed that those aliens were generally paid above the minimum wage, and received the same wages as American citizens.²² However, they said that in some instances aliens may be underpaid or required to work additional hours without the required overtime because of the failure of Federal, State, and city governments to enforce fair labor laws.²³

Edward Cleary, secretary/treasurer of the New York City Building and Construction Trades Council, charged that the major abuse is a failure on the part of government contractors to pay the required rate. Employers obtaining Federal contracts regularly failed to pay the so-called prevailing rate as required by the Davis Bacon Act to all workers, regardless of their alien status.²⁴ "The prevailing rate is a law on the books and it's broken every day of the week," he said. (II, 44-5) Mr. Cleary called for increased government enforcement of fair labor laws. (II, 56)

The undocumented, who are not free to report violations of these laws for fear of being detected

¹⁷ Ibid.

¹⁸ Ibid, p. 5.

¹⁹ Commission Interviews. For instance, aliens are excluded from Federal employment. Under Executive Order No. 11935, then President Gerald Ford established citizenship as a requirement for employment in the Federal civil service.

²⁰ Rev. Joseph A. Cogo, executive national secretary of the American Committee on Italian Migration, interview in New York, N.Y., Jan. 12, 1978 (hereafter cited as Cogo Interview); Oscar Monegro, founder of the Dominican Alliance, interview in

New York, N.Y., Jan. 30, 1978. Also, USCCR, New York State Advisory Committee, "Transcript of Factfinding Meeting on Aliens in New York City," Feb. 16 and 17, 1978, New York City, vol. 1, p. 41 (hereafter references to the transcript will be included in parenthesis in the text with the volume in roman numerals and the page in ordinal numbers).

²¹ Commission Interviews.

²² Commission Interviews.

²³ 40 U.S.C. 276a (1976).

²⁴ USCA 40 §276 a et. seq.

themselves, clearly may be exploited more easily than documented aliens or citizens. Representatives of immigrant groups charged again and again that aliens without working papers did not receive the required payment for their work. Marianna Terranova, of the American Committee on Italian Migration, said:

The (Italian undocumented) very often are discriminated against or exploited—that would be a better word—by an employer who knows of their status and therefore is paying them less money than they should be paid for the type of work they are doing or paying them the prevailing wage but requiring that they work 10 hours for the same wage that others worked 7 hours for. (I, 40)

Victor Maridueno of the Ecuadorean Cultural and Social House charged that undocumented Ecuadoreans often were not paid the minimum wage. (I, 62)

Union officials reported that employers at least occasionally used the threat of reporting undocumented aliens to INS to prevent unionization or other action by the employees. Francois Felix, a business agent for the fur, leather, and machine workers union, described the following incident:

Our union was organizing a plant in New Jersey. After we convinced the workers to sign the cards, we filed a petition with the National Labor Relations Board. As soon as we filed the petition, the employer got a copy of that petition. The next day he said that he received a call from the immigration people (who said) they were coming to the plant to see if the workers are illegal aliens or not. (II, 104)

Enio Carrion, president of local 140 of the United Furniture Workers of America and president of the Hispanic Labor Committee of the New York City Central Labor Council, said that the owner of a plant in Stamford, Connecticut, fired undocumented workers whom his union was attempting to organize. He said that the union filed a complaint with the National Labor Relations Board despite the questionable alien status of the workers. (II, 100-01) He described the fear of the workers:

You've got to understand that when people are here illegally they are just like thieves. They are trying to hide

²⁵ This is perhaps the most frequently heard charge against undocumented aliens. Senator Knorr, who introduced an employer sanction bill in the legislature, said that the source of these data was an INS survey of apprehended undocumented aliens. (II, 256) Since INS investigates those aliens believed to hold higher paying jobs, many aliens, particularly those earning lower wages, never come in contact with INS. Thus, it is questionable whether the

and not be caught. They are deathly afraid of being found out. (II, 100-01)

5. Taking Jobs From Americans: Fact or Fiction

The charge that undocumented workers are holding jobs which could be held by citizens is a common charge. At the Advisory Committee's factfinding meeting, New York State Senator Martin J. Knorr said that, of 800,000 undocumented in New York City, 400,000 were holding "respectable" \$4.00 an hour jobs which could be held by citizens. (II, 240)²⁵ Harry Avrutin, speaking for the New York City Central Labor Council, agreed that the undocumented workers are taking jobs from American workers:

We are now concerned that the entry of aliens without proper documents is causing serious problems. Jobs are being taken away from American workers by illegal aliens, from resident aliens as well, and working conditions are being undermined. (II, 41)

Because of the lack of statistical information, there cannot be any absolute answer to this charge. However, because of the low salary believed to be paid to most undocumented workers and the undesirable nature of many of the jobs, many persons interviewed deny that undocumented workers are taking jobs from U.S. citizens. At the factfinding meeting, Rev. Lydio G. Tomasi, director of the Center for Migration Studies, said that the studies he had seen showed that "the undocumented do not compete to a harmful degree with the American workers." (I, 90) He continued:

The evidence seems also to indicate that even if all documented aliens were to be deported today there would be no stampede of Americans to fill the void and take the jobs. Unemployment would very likely be unaffected or affected to a minimum degree by the deportation of all illegals. (I, 90)

Ira Gollobin, of the American Committee for the Protection of the Foreign Born, said:

We are really dealing with economic realities that the people coming here fill a necessary part at the bottom of the ladder. If there weren't those jobs, they would not be

INS sample is an accurate one for projecting an employment profile of undocumented workers. Edward Coyne, vice president of a coalition of neighborhood groups in Queens, made the same charge: "blacks cannot get off welfare and cannot get jobs because these jobs are being operated by undocumented aliens" (I, 160-1).

able to fill them no more than the waves of immigrants, sometimes millions at a time before World War I, that found opportunity for themselves, but made opportunities for the rest of us. (I, 109)

He suggested that, by expelling all undocumented workers, legal citizens would be deprived of employment and suggested that some industries would go out of business without the aliens. (I, 109-10) Many persons said they believed that, because undocumented workers held jobs that were not desired by the U.S. work force, they made a significant contribution to the American way of life and the American economy. Enio Carrion, president of the Hispanic Labor Committee of the New York City Central Labor Council, said:

They fill jobs that no American workers would want. In general we talk about workers that are doing work on the farms, doing hard labor that I know no American worker would want and that job is part of our economy. That is what makes our country grow and that is what feeds us. . . . We are talking about low paid jobs and we are talking about hotel work, restaurant work, dishwashers, and porters. (II, 88-9)

Rev. Douglas Franklin of Concerned Citizens for Immigration Justice said: "We do not think for one moment that (undocumented workers) are a threat to the economy of the country or to people who are willing to work in these United States." (I, 58) Victor Mariduen, director of social services at the Ecuadorean Cultural and Social House, went further saying: "The greatest economic impact of aliens is that by their cheap labor, they increase productivity while at the same time keeping prices down and businesses healthy." (I, 64-5)

C. Socioeconomic Problems and Social Programs

The following discussion on the social programs used by aliens is not intended to provide a comprehensive analysis of the socioeconomic problems and needs of such persons. Rather, this section provides a brief summary of the availability of only the most important social services such as health care, public assistance, and education and a review of the data on the users of those services. The goal is twofold:

²⁶ Commission Interviews.

²⁷ For instance, the former U.S. Department of Health, Education, and Welfare (HEW) extended eligibility for HEW benefits to include not only permanent resident aliens but also aliens who

- First, to determine whether aliens, and particularly undocumented aliens, have serious health, financial, or other life-related problems which cannot be resolved through existing sources of assistance;

- Second, to review the available data on the numbers of aliens, and particularly undocumented aliens, using the major social services.

The Advisory Committee believes that public agencies at all levels of government should take into account the fundamental human needs of documented and undocumented persons in planning programs. In order to raise this issue, this report highlights, but does not study in depth, the needs of and services used by these persons.

Aliens, whether documented or undocumented, share many social and economic problems. Since many hold low paying, unskilled jobs, they often are unable to afford adequate health services and do not have enough resources to meet other basic necessities. Furthermore, according to many persons interviewed, because of cultural and linguistic barriers, they are often unable or unwilling to use those social services which they need and for which they qualify. In many cases, they do not even know those services exist.²⁶

Although most Federal, State, and local programs do provide assistance to many aliens, distinctions are made among aliens who are lawful permanent residents, those who are legally admitted to the U.S. under other parts of the immigration law, those who have had prolonged permanent residence in U.S., and those who are here without proper documentation.²⁷ The category of aliens eligible varies with the type of benefit and the administering agency. Moreover, some aliens are excluded, not by their alien status, but by requirements such as a social security number. Other aliens are deterred from applying for needed assistance for which they are eligible because they fear they will be reported to INS.

1. Health Care and Public Assistance

Permanent Resident Aliens

Permanent resident aliens are eligible for Federal and State-funded health care and income maintenance programs including medicaid and public

had arrived in the U.S. before 1948 or those who had received an indefinite stay of voluntary departure from INS. This extension of benefits was mandated by a U.S. district court in *Silva v. Levi* and has been formally instituted in HEW regulations.

assistance (aid to families with dependent children and home relief) if they meet the other income and residency requirements. Furthermore, under New York State law and the original enabling legislation of the city's Health and Hospitals Corporation, New York City hospitals must provide emergency medical treatment to anyone who needs it.²⁸

Undocumented Aliens

For the undocumented, except for emergency medical treatment, there are few, if any, sources of assistance. Since 1974, undocumented persons have not been eligible for federally funded income maintenance programs.²⁹ Since 1977, when New York State eliminated a program under which all persons regardless of alien status were eligible for income maintenance for 30 days, they have not been eligible for those State public assistance programs.³⁰

State law requires that undocumented aliens as all other persons receive emergency medical treatment in city hospitals.³¹ Staff of the Health and Hospitals Corporation, which administers the city's 17 hospitals, said that emergency medical care is provided upon request.³²

At the time of the factfinding meeting, undocumented aliens were not eligible for Federal and State health care programs and probably did not receive non-emergency medical treatment. In 1975, at the beginning of the public discussion of New York City's fiscal crisis, the New York City Health and Hospitals Corporation initiated a policy of deferring or for all practical purposes refusing non-emergency treatment for persons unable to pay.³³ Although procedures for non-emergency service at both the city clinics and at the hospitals varied from hospital to hospital, such services were not generally available.³⁴

There are almost no hard data on the number of undocumented aliens using social services such as city hospitals, or receiving medicaid or public assistance. The only available study of New York

undocumented persons is that cited earlier by Keely, Fragomen, and Tomasi. According to that study, a number of the small sample of undocumented Haitians and Dominicans interviewed did use clinics and hospitals; however, these users also paid for hospital insurance. Specifically, 44.5 percent of the 54 Haitians and 76.5 percent of the 17 Dominicans used services, but 24 percent of the Haitians and 58.8 percent of the Dominicans also paid hospital insurance. In the other study cited in the same report, only 27.4 percent of the individuals used the services while 44 percent paid hospital insurance.³⁵

Because the Haitians and Dominicans interviewed were those recommended by social service agencies, the sample could have been based on a group of persons with a bias of using social service agencies. The other study, based on interviews with undocumented persons detained by INS, in this case may be a more typical sample of the undocumented population.

The same study showed that very few persons were recipients of financial assistance. Only 3.7 percent of the Haitians and 5.9 percent of the Dominicans received food stamps and no Haitians and 5.9 percent of the Dominicans received welfare. In the other study cited in the report, 1.3 percent of the persons received food stamps and 0.5 percent received welfare.³⁶

The range of estimates of the numbers of undocumented persons using city services and of the cost to the city is great. Estimates of the cost of medical services provided by New York City hospitals differ by as much as \$25 million. According to a *New York Times* article, Health and Hospitals Corporation staff estimates of the annual cost of medical services range from \$3 million to \$30 million.³⁷ Estimates of the cost of other services vary in a similar fashion.

However, at the factfinding meeting, representatives of immigrant service organizations and immigration lawyers stated repeatedly that very few aliens, and particularly undocumented aliens, used

statistics, telephone interview, Oct. 31, 1977, all New York City Health and Hospitals Corporation.

²⁸ Mark Kleiman, attorney, office of the general counsel, New York City Health and Hospitals Corporation, telephone interview, Dec. 7, 1977.

²⁹ Thomas Cuite, director of payments, New York City Health and Hospitals Corporation, telephone interview, Dec. 7, 1977.

³⁰ Elwell, Keely, Fragomen, and Tomasi, "Haitian and Dominican Undocumented Aliens," pp. 8-9.

³¹ Ibid.

³² *New York Times*, "Undocumented Aliens," p. B6.

²⁸ N.Y. Public Health Law, §2805-6(1) and (2); also see former §4421, repealed, L 1976, c 938, §1, eff. July 27, 1976.

²⁹ 45 C.F.R. §233.50 (1980).

³⁰ N.Y.S. Regulation 349.3.

³¹ N.Y. Public Health Law, §2805-6(1) and (2); also see former §4421, repealed, L 1976, c 938, §1, eff. July 27, 1976.

³² Persons interviewed included Lyman Robinson, director of public affairs, and Marvin Durrell, director of Elmhurst Hospital, telephone interviews, Dec. 6, 1977; Thomas Cuite, director of payments, and Mark Kleiman, attorney, telephone interviews, Dec. 7, 1977; and Howard Bochnek, assistant director for

public social services and that the costs of such services were exaggerated. These persons stressed that inadequate English and a general suspicion of government kept many legal aliens from applying to public agencies for assistance. Undocumented aliens, because of their fear of being reported to the INS, were even less likely to use public services.

Rev. Douglas Franklin, of the Concerned Citizens for Immigration Justice, said:

We have proof that at no time these (undocumented) people enjoy the medical and social services freely in this country. The number of aliens benefitting from public welfare tends to be very small or non-existent. (I,59)

He stressed the fear in which they live:

These people are frightened. They are prisoners within the walls. They are prisoners within their own homes and as a result of that, they would not expose themselves or lay themselves on the line to go and ask for free medical assistance. (I, 76)

At the factfinding meeting, Rev. Brian Karvelis, of the Brooklyn Diocese of the Roman Catholic Church, said:

It is very, very uncommon to find undocumented persons obtaining either social services or medical care from government agencies, and from my own long experience, it is very, very rare. (I, 119)

John P. Kaiteris, executive director of the Hellenic American Neighborhood Action Committee (HANAC), said that linguistic and cultural barriers also prevented many immigrants from using available social services:

For all immigrants, the language barrier is a major problem in the effective utilization of medical and social services and in general they do not fully avail themselves of these services. Our experience has shown, however, that the delivery process is key. When a service is delivered in a linguistically and culturally relevant manner through an ethnically identifiable institution, the major problems affecting utilization are overcome.

However, even when this occurs, there still remains the problem of lack of income and/or participation in social and health insurance programs. An additional factor is the general fear of immigrants of anyone or any facility that they associate with government. (I,21-2)

³⁸ N.Y. Education Law, §§3202, 3205; Also *Branche v. Board of Education*, 204 F. Supp. 150 (1962).

³⁹ Joseph Elias, director, office of zoning and integration, New York City Board of Education, interview in New York, N.Y., Nov. 28, 1977 (hereafter cited as Elias Interview).

The unavailability of services has serious consequences for undocumented persons. Representatives of the immigrant groups described the problems and even severe hardships endured by undocumented persons because the needed services were not available or because the aliens were afraid to use those services which were available.

Rev. Karvelis said:

I could give you a long series of tragic stories of pregnant women who could not obtain any kind of medical help anywhere simply because they were undocumented, of persons who were seriously injured and could not afford medical help and could not find it or obtain it anywhere. (I,119)

Representatives of these immigrant groups called for increased outreach on the part of government and other social service agencies to inform aliens of the available services and increased sensitivity in providing the services.

2. Education

New York City is required to provide free public education to all legal New York City residents³⁸ including permanent resident aliens. At the time of the factfinding meeting, the New York City Board of Education required all non-resident aliens including undocumented aliens to obtain student visas and to pay the non-resident fee for their children in the public schools. The fee ranged from \$664 for elementary schools to \$1,943 for the high schools.³⁹ That policy was followed to different degrees in the individual school districts and in some districts school officials were commonly known not to inquire about alien status while in others alien status was carefully scrutinized.⁴⁰

Education department officials said that school administrators did not "ferret out" aliens as a general rule because such inquiries would alienate many already suspicious parents.⁴¹ However, Rev. Douglas Franklin of Concerned Citizens for Immigration Justice said that many school officials did actively inquire about a student's status. He said:

They (school officials) are demanding to see documents to show that they came in legally and as a result of that, if these parents cannot afford to send these children to private schools, they have to remain home without an education. (I,59)

⁴⁰ Ibid.

⁴¹ Ibid.

It was the opinion of most representatives of immigrant groups that very few undocumented persons send their children to school. They expressed grave concerns that a great number of children of undocumented persons are growing up without a formal education and stress that the failure to provide free public education will have serious consequences not only for the individuals who do not go to school but also for the community in which they live.⁴²

The New York City School Department staff said that they had no estimate of the number of persons without adequate documentation enrolled in New York City public schools.⁴³

In December 1978, the Board of Education reversed its policy and required the admission of alien and foreign born students. The resolution approved by the board stated:

That it is the policy of the Board of Education to admit to its public schools all children without regard to their immigration status or the immigration status of their parents, provided that they have met all other appropriate requirements and. . . that the Chancellor is directed to remove from all school forms any reference to a child's or parent's immigration status.⁴⁴

3. Other Public Services, Benefits, and Programs

Although the Advisory Committee did not review undocumented alien participation in other programs such as unemployment insurance or their contributions to programs such as social security, income taxes, etc., the Keely, Fragomen, and Tomasi study of a limited sample of undocumented Haitians and Dominicans in New York concludes that a significant percentage of undocumented persons pay into the programs and relatively few receive the benefits.⁴⁵

Table C lists the complete findings (some of which have already been cited earlier in this chapter) on the two groups and those of the other study, known as the North and Houston survey.

At the factfinding meeting, persons stated that most aliens, particularly those holding relatively better paying jobs, paid taxes and social security.

⁴² Commission Interviews.

⁴³ Elias Interview.

⁴⁴ New York City, N.Y., Board of Education, resolution, Dec. 13, 1978.

⁴⁵ Elwell, Keely, Fragomen, and Tomasi, "Haitian and Dominican Undocumented Aliens," p.9.

Rev. Douglas Franklin, of the Concerned Citizens for Immigration Justice, said:

Most aliens working illegally are working officially for public companies and are carried by a company as normal employees with commensurate deduction of Federal withholding taxes as well as social security taxation. (I,59)

Undocumented as Scapegoats

Of the many charges made against aliens and particularly against undocumented aliens, a common allegation is that these persons are using public social services costing millions of taxpayer dollars. It is argued that undocumented persons place severe strains on public budgets and both New York City and New York State officials have asked the Federal government to absorb some of the costs related to the undocumented.⁴⁶ In some communities, these charges of the undocumented using public services have been akin to public hysteria. At the Advisory Committee's factfinding meeting, New York City Councilman Theodore Silverman charged that the undocumented were responsible for New York City's high unemployment rate and general financial crisis. He said:

The City of New York is still confronted by a fiscal crisis of continuing problems of unemployment and an ever increasing reduction of its tax base. These problems of the City are merely the effect and I believe they are caused (by the many) illegal aliens employed. The illegal aliens are taking jobs which could be filled by Americans and/or legal aliens. There are depressed wages and improper working conditions. (II, 245)

Edward Coyne, president of a coalition of Queens groups which has spoken out strongly against undocumented persons, attributed several problems to undocumented persons. Mr. Coyne, who prefers the terminology "illegal alien," stated that unpaid hospital bills for services to undocumented aliens were a "dollar drain" on New York City hospitals. He said further that such persons utilized other city services including police, fire, and sanitation department services and strained the city's ability to deliver such services. Such a strain has increased since most undocumented were not counted in the 1970 census and Federal, State, and city agencies

⁴⁶ *New York Times*, "Unrecorded Aliens," Mar. 19, 1979, pp. 1 and B6; at the factfinding meeting, representatives of the New York State Department of Social Services recommended that the Federal Government assume payment of public assistance and medicaid costs for all aliens. (I, 203-4)

TABLE C**Participation in Public Programs by Haitians, Dominicans, and North and Houston (as percentage of groups)**

Program Activity	Haitians	Dominicans	North and Houston
Social Security Taxes Withheld	57.4%	76.5%	77.3%
Federal Income Taxes Withheld	64.8	82.3	73.2
Hospital Insurance Withheld	24.0	58.8	44.0
Filed U.S. Income Tax Return	25.9*	70.5*	31.5
Used Clinic/Hospital	44.5**	76.5**	27.4
Collected 1 or more Weeks Unemployment Insurance	12.9	29.4	3.9
Have Children in U.S. School	12.9	29.4	3.7
Secured Food Stamps	3.7	5.9	1.3
Secured Welfare Payment	—	5.9	0.5

Notes: *1976

**Respondent only

Source: *Migration Today*, December, 1977, p.8.

failed to take into account their existence in planning such services.⁴⁷ At the factfinding meeting, Mr. Coyne said:

Some of the problems that we have on a local level are obvious. We have a strain on our hospitals. We have a strain on our police. We have a problem with fire. We have a problem with social services. (I, 161)

The previous sections on public social services indicate that, because of a lack of data, it is impossible to determine how many, if any, undocumented persons are using social services. However, with the possible exception of emergency medical service, representatives of immigrant groups stressed that aliens and particularly undocumented aliens do not use these services in order to avoid being referred to INS. Contrary to the charges that undocumented persons are using these services, they said that such persons would suffer severe hardships rather than apply to a governmental agency for help.⁴⁸

Representatives of immigrant groups, immigrant lawyers, and other persons knowledgeable about the field stated that undocumented aliens have been made scapegoats for larger, unsolved national ills.⁴⁹ They maintain that instead of affecting negatively the social and economic structure of our society, these undocumented persons have a strong interest in avoiding contact with public agencies and the public eye and do not participate in social service, cultural, or other programs.

At the factfinding meeting, Rev. Lydio S. Tomasi, of the Center for Migration Studies, stressed the importance of not making "the undocumented migrants or all immigrants of the United States scapegoats of the national problems of today." (I,96)

Persons interviewed charge that in the middle of a critical fiscal crisis, many city officials are eager to place the blame of excessive deficits on undocumented persons. First, there are no hard data on which these charges can be refuted. Second, undocumented persons themselves, because of their alien status, stay away from public institutions and are never in a

position to provide a defense. Third, the charge that the undocumented are users of city services enables the city officials to turn to State and Federal governments for additional funds for those programs which are funded on a per capita basis.⁵⁰

Finally, the charge was made against undocumented aliens that they contribute to the crime in New York City disproportionately to their numbers and that they are otherwise responsible for deteriorating neighborhoods.

At the factfinding meeting, Edward Coyne, president of a coalition of Queens neighborhood groups, citing an article by columnist Harriet Van Horne, charged that "some 20 percent of inmates in New York City jails are illegal aliens." (I, 181) In fact, at that time approximately 2.7 percent of the 7,000 inmates in New York City jails were not citizens, including both documented and undocumented aliens, and only 1.5 percent of the inmates in State prisons were not citizens. The citizen status of an additional 1.8 percent of foreign born State prison inmates was not known. (I,284; II,3)⁵¹

At the factfinding meeting, Michael Hernandez, then executive director of the New York City Human Rights Commission, responded to the charge, saying:

A myth exists that illegal aliens are engaged in almost wholesale criminality. In fact, illegal aliens are probably more law-abiding and docile than the general population. Because they are here illegally, they simply cannot afford to come into contact with the police. (II,201)

D. Selected Immigrant Groups

The remainder of this chapter reviews the information collected by the Advisory Committee on selected immigrant groups. The nationality groups discussed include some which have relatively great numbers of documented or undocumented members in the New York City area and some which have particular problems such as the Haitians who state they have fled the political repression of the Duvalier regime.⁵² Because of the lack of definitive demographic or socioeconomic data on these groups, a

Bassett, Sr. Research Analyst, New York State Department of Correctional Services, letter to Ruth J. Cubero, Regional Director, USCCR, Sept, 8, 1980). Information was not available from the city prison system.

⁵² Representatives of several other national origin groups not listed below also were interviewed. Among them were Ann Rabinovitz, associate executive director, HIAS, and Julia Desgun, associate executive director, New York Association for New Americans, interviews in New York, N.Y., Jan. 9, 1978. Both

⁴⁷ Edward Coyne, telephone interview, Nov. 13, 1980.

⁴⁸ Commission Interviews.

⁴⁹ Commission Interviews.

⁵⁰ *New York Times*, "Unrecorded Aliens," Mar. 19, 1979, pp. 1 and B6.

⁵¹ The 2.7 percent and 1.5 percent estimates for city and State jails were made verbally by telephone. In an effort to obtain the information at a later date in writing, the Advisory Committee was informed that 2.3 percent (486 persons) of the approximately 21,500 inmates in State correctional facilities were aliens. (Jeanne

number of sources are used in this report. These sources include official data such as the 1970 census, INS immigration and alien statistics, INS estimates of immigrant groups as well as other estimates provided by unions, employers, and other groups.

The Advisory Committee emphasizes that the list of immigrant groups described below is in no way comprehensive.

1. Italians

In 1970, according to the census, there were a total of 682,613 foreign born or first generation Italians in New York City.⁵³ INS reports that a total of 38,631 immigrating Italians stated New York City as their intended place of residence between 1970 and 1977.⁵⁴ As one indicator of the undocumented population in 1976, 208 undocumented Italians—a relatively small number—were apprehended by INS and forced to leave the country.⁵⁵

The American Committee on Italian Migration, established in 1962 to assist newly arrived immigrants, estimates that Italians, citizens and non-citizens, make up one of the largest ethnic groups in the city.⁵⁶ The vast majority of Italians are documented and come to the U.S. under the family preference provisions of the Immigration and Nationality Act in order to be reunited with their families. (I,35-6,39)

Most Italian immigrants are skilled or semi-skilled and usually earn above the minimum wage. (I,36) Areas of employment include the construction and garment industries, light manufacturing, restaurants, and domestic work. Italian communities may be found in all five boroughs of the city, although "Little Italy" on the Lower East Side of Manhattan traditionally is identified as the city's focus of Italian life.

2. Greeks

In 1970, according to the census, there were 63,854 foreign born and first generation Greeks living in New York City.⁵⁷ INS reports that 22,936 Greeks admitted to the U.S. between 1970 and 1977

organizations, which were established to help Jewish immigrants in New York City, requested not to make presentations at the factfinding meeting and said that Jewish immigrants did not have problems in dealing with INS.

⁵³ U.S., Department of Commerce, Bureau of the Census, 1970 Census of Population, PC (1) D34, New York, Table 141 (hereafter cited as 1970 Census of Foreign Stock in New York City).

⁵⁴ INS Data on Immigrants to New York City.

⁵⁵ INS Data on Apprehended Aliens.

⁵⁶ Cogo Interview.

stated New York City as their intended place of residence.⁵⁸ As one indicator of the undocumented population, in 1976, 509 undocumented Greeks were apprehended and forced to leave the country.⁵⁹

The Hellenic American Neighborhood Action Committee (HANAC), which was established in 1972, provides services to the growing Greek community. Many recent arrivals are unskilled workers. Areas of employment include the restaurant industry including ice cream and hot dog wagons, florist shops, fur trades, and fruit and vegetable markets. Although Greeks live throughout the city, Astoria in Queens is the location of HANAC and the new heart of the Greek community in New York City.⁶⁰

3. Dominicans

In 1970, according to the census, there were 66,914 foreign born and first generation Dominicans in New York City.⁶¹ INS reports that 69,373 Dominicans stated New York City as their intended place of residence between 1970 and 1977.⁶² In 1976, 800 undocumented Dominicans were apprehended by INS and forced to leave the country.⁶³

Oscar Monegro, a spokesperson for the Dominican Alliance, a major Dominican organization in the city, estimates that there are approximately 300,000 Dominicans in New York City. Of those, 30,000 to 45,000 are undocumented.⁶⁴ Dominicans live in all five boroughs but are concentrated in pockets on the Upper West Side in Manhattan, the South Bronx, and areas in Brooklyn and Queens.

Many Dominicans are unskilled and are employed as dishwashers, delivery-persons, custodial workers, and domestics. They work in the restaurant and garment industries as well as in light manufacturing plants such as plastics and electronic factories where there are other Hispanic workers.

Dominicans have been migrating to New York City for several decades. In the past many came to escape the political repression of the Trujillo regime;

⁵⁷ 1970 Census of Foreign Stock in New York City.

⁵⁸ INS Data on Immigrants to New York City.

⁵⁹ INS Data on Apprehended Aliens.

⁶⁰ John Kaiteris, HANAC, interview in New York, N.Y., Dec. 20, 1977.

⁶¹ 1970 Census of Foreign Stock in New York City.

⁶² INS Data on Immigrants to New York City.

⁶³ INS Data on Apprehended Aliens.

⁶⁴ Oscar Monegro, of the Dominican Alliance, interview in New York, N.Y., Jan. 30, 1978.

however, during the last 10 years, Dominicans have come largely for economic reasons. (I, 51)

4. Haitians

In 1970, according to the census, there were 25,727 foreign born and first generation Haitians in New York City.⁶⁵ INS reports that 27,868 Haitians who stated New York City as their intended place of residence were admitted to the U.S. between 1970 and 1977.⁶⁶ In 1976, a total of 623 Haitians were apprehended by INS and forced to leave the country.⁶⁷

The Haitian Neighborhood Service Center, the largest Haitian organization in the city, estimates that there are as many as 300,000 Haitians in metropolitan New York. Jean Dupuy, the organization's director, said that approximately two thirds or 200,000 persons are undocumented (most of whom have overstayed their visas).⁶⁸

In New York City, Haitian communities exist in the Bedford Stuyvesant and Flatbush sections of Brooklyn, Jamaica and Queens Village in Queens, and the northern sections of the Bronx. Many Haitians move from Brooklyn to the Bronx and Queens as they improve their economic situation. Many have left their country to escape the political repression of the Duvalier regime, although the extreme poverty in the country also encourages out migration. At the factfinding meeting Mr. Dupuy dramatically described the horrors which lead to the continuing exodus:

No words can describe the crimes committed by the Tontons Macoutes private militia of Duvalier against the peaceful citizens. A pale description of the hideous acts of repression would appear unbelievable. Who would admit that innocent people were killed while walking the streets, that peaceful homes have been broken into at night, wives and daughters raped and beaten, husbands, fathers, brothers, killed? Who would believe that executions have taken place at the rate of 25 to 50 people a day? (I, 27)

For many years, the U.S. did not grant Haitians refugee status as has been granted to persons fleeing communist regimes such as Hungary or Cuba. Haitians were required to apply for asylum on a case by case basis.⁶⁹ Mr. Dupuy, who had met with White House staff to urge that former President Carter change the traditional policy of refusing political refugee status, was very critical of the U.S. refusal in the past to admit Haitians as political refugees. "Haitians have no other alternative than flee their country like the Hungarians and the Cubans; but unlike the Hungarians and the Cubans, the Haitians have been denied asylum," he said. (I, 28)

Most Haitian workers are unskilled or semi-skilled. Areas of employment, particularly for the undocumented, include unskilled jobs in the service industries such as hospitals, light manufacturing, the garment industry, and domestic work.⁷⁰

5. Jamaicans

In 1970, according to the census, there were 55,157 foreign born and first generation Jamaicans in New York City.⁷¹ INS reports that 49,800 Jamaicans who stated New York City as their intended place of residence entered the U.S. between 1970 and 1977.⁷² In 1976, 489 Jamaicans were apprehended by INS and forced to leave the country.⁷³

Although the Advisory Committee did not receive an estimate from immigrant groups of the number of Jamaicans in New York, it is generally agreed that the Jamaican population is higher than the census and INS figures. Rev. Douglas Franklin, president of Concerned Citizens for Immigration Justice, a loose coalition of groups which assists Caribbean, Central and South American, and African immigrants, said that a large number of Jamaicans come to the U.S. either for employment or to be reunited with their families. Undocumented

Haitians who arrived between June 20 and October 10 were subsequently given the same status. These persons are eligible for many public social services. The State Department also stated that legislation would be submitted creating "Cuban-Haitian entrant" status for recently arrived Cubans and Haitians. (U.S., Department of State, Bureau of Public Affairs, Cuban-Haitian Arrivals in U.S., "Current Policy No. 193," June 20, 1980.)

⁷⁰ Dupuy Interview.

⁷¹ 1970 Census of Foreign Stock in New York City.

⁷² INS Data on Immigrants to New York City.

⁷³ INS Data on Apprehended Aliens.

⁶⁵ 1970 Census of Foreign Stock in New York City.

⁶⁶ INS Data on Immigrants to New York City.

⁶⁷ INS Data on Apprehended Aliens.

⁶⁸ Jean Dupuy, Haitian Neighborhood Service Center, interview in New York, N.Y., July 1, 1977 (hereafter cited as Dupuy Interview).

⁶⁹ 8 C.F.R. §106 (1980) as amended by 8 C.F.R. §108 (1980). On June 20, 1980, the State Department announced that Cubans arriving in the U.S. between April 21 and June 19, 1980, and all Haitians in INS proceedings as of June 19 are "Cuban-Haitian entrants" (status pending) for a 6-month period. Cubans and

Jamaicans generally have overstayed their visas rather than entered the country illegally.⁷⁴

The majority of Jamaicans are unskilled or semi-skilled workers. Areas of employment include the restaurant industry, factories, and domestic and maintenance work.

6. Ecuadoreans

In 1970, according to the census, there were 20,326 foreign born and first generation Ecuadoreans in New York City.⁷⁵ The INS annual reports do not specifically identify the number of Ecuadoreans who have stated New York City as their intended permanent residence since 1970. In 1976, the Immigration Service apprehended 1,281 undocumented Ecuadoreans who were forced to leave the country.⁷⁶ Ecuadoreans made up the third largest number of undocumented persons apprehended by INS in New York City.

Victor Mariduena, past president of the Association of Ecuadorean Professionals Overseas and director of social services of the Ecuadorean Cultural and Social House, estimated that there are approximately 100,000 Ecuadoreans in New York City. Of those, approximately 50 percent are undocumented. (I, 61) The Ecuadorean community is well organized and includes more than 200 social, civic, and sports organizations. (I, 61)⁷⁷

Ecuadoreans who come to New York generally are better educated and often have more skills than other migrating groups. The large majority of immigrants have completed high school and 20 percent are university graduates. Most come from urban areas in Ecuador and are not members of the lower income groups. Although the country has an extremely low per capita income, Ecuadorean immigrants include many persons in a newly emerging middle class with a higher educational and income level. (I, 61-2)

According to Mr. Mariduena, most Ecuadoreans, regardless of their educational background, initially take menial jobs, often in the garment, restaurant, or hotel industries. However, many, because of their educational background, learn English, acquire oth-

er skills, and move to skilled or professional positions. (I, 62-3)

7. Asians

Although the Advisory Committee recognizes that the histories and current problems of persons from the individual Asian countries are each very different, in this project the Advisory Committee did not investigate the separate difficulties facing people from different Asian countries. The Advisory Committee conducted a more detailed investigation in a previous study and in 1977 released its findings and recommendations in a report entitled *The Forgotten Minority: Asian Americans in New York City*.⁷⁸ It also held a followup conference in May 1978. The report investigated problems related to employment, INS policies, and stereotyping, particularly in the media. The conference explored issues including employment, voter participation, and problems of youth and the elderly.⁷⁹

In this study the Advisory Committee focused on the general problems facing persons of Asian origin who immigrate to the United States. Although the Advisory Committee interviewed representatives from many Asian groups, only the Pacific Asian Coalition (PAC), a coalition of Asian groups in New York, New Jersey, Philadelphia, and Washington, D.C., was invited to make a presentation at the factfinding meeting.

In 1970, according to the census, there were 160,720 foreign born and first generation Asians in New York City.⁸⁰ This figure includes persons from Turkey, Lebanon, Israel, Syria, Pakistan, India, China, Japan, Korea, the Philippines, and other Asian countries. INS reported that 80,171 individuals from China, Taiwan, India, Hong Kong, Korea, and the Philippines who came to the U.S. between 1970 and 1977 stated New York City as their intended place of residence.⁸¹

The immigration from Asian countries to the United States has escalated rapidly since the change in immigration laws in 1965. The total immigration from Asia increased by 540 percent from 1965 to

⁷⁴ Rev. Douglas Franklin, Concerned Citizens for Immigration Justice, interview in New York, N.Y., July 1, 1977.

⁷⁵ 1970 Census of Foreign Stock in New York City.

⁷⁶ INS Data on Apprehended Aliens.

⁷⁷ Victor Mariduena, interview in New York, N.Y., Jan. 30, 1978.

⁷⁸ USSCR, New York State Advisory Committee, *The Forgotten Minority: Asian Americans in New York City* (November 1977).

⁷⁹ USSCR, New York State Advisory Committee, *Asian Americans: An Agenda for Action* (February 1980).

⁸⁰ 1970 Census of Foreign Stock in New York City.

⁸¹ INS Data on Immigrants to New York City.

1975 while immigration from all countries increased by only 30 percent during the same period.⁸² In 1965 the countries sending the greatest number of immigrants to the U.S. were Canada, Mexico, the United Kingdom, Germany, and Cuba; while in 1975, the countries were Mexico, the Philippines, Korea, Cuba, and China and Taiwan. (I, 14) Data on the number of Asian immigrants from selected individual countries since 1970 are included in table A.

Because of the distance from their native countries, it is generally believed there are relatively few

⁸² INS, *Annual Report*, 1974 and 1975, table 14.

undocumented Asians in New York City, particularly in comparison with countries such as Mexico. Those Asians in New York without documentation include many Chinese and other Asian national origin persons who came many years ago. These undocumented as a group are much older than the average undocumented person from the Western Hemisphere or Europe. In 1976, persons apprehended by INS included 431 Chinese and Taiwanese, 224 Indians, 101 Japanese, 90 Koreans, 56 Pakistani, 198 Pilipinos, and 125 Thais.⁸³

⁸³ INS Data on Apprehended Aliens.

4. U.S. Immigration and Naturalization Service

A. Overview.

The U.S. Immigration and Naturalization Service (INS) is empowered to administer and enforce the country's immigration and naturalization laws.¹ In its administrative capacity INS assists persons to immigrate to and remain in the United States, and to obtain benefits available under the immigration laws (such as the right to bring close relatives to the United States). In its enforcement role, the INS has the responsibility of preventing unlawful entry into the United States and of expelling those who do not have a lawful right to remain in the United States. The INS performs this latter function by apprehending those thought not to have proper documentation, determining whether they are deportable, and finally expelling those found to be such.

The New York district office of INS covers the five boroughs of New York City, Long Island, and seven counties north of the city. It is one of 12 district offices in the eastern region, which has its headquarters in Burlington, Vermont. There are four such regions in the country.

At the time of the study, the New York district office was composed of four divisions: naturalization, which was responsible for citizenship applica-

tions; travel control, which was responsible for inspection at seaports and airports, processing visas, and handling adjustment of status applications; investigations, which was responsible for apprehending criminal and undocumented aliens; and deportation and detention, which was responsible for the deportation of the undocumented alien and his or her detention prior to deportation or voluntary departure. The investigations division consisted of three units: a unit investigating aliens involved in criminal activities including narcotics; a unit investigating fraudulent practices related to immigration such as the sale of false documents; and a general investigation unit which includes both routine investigations of documented aliens who apply for a change of status and apprehension of aliens without proper documentation.²

This chapter describes and examines some of the problems of persons seeking services or information from the New York INS district office. It also includes a review of the dual functions of INS service and enforcement. Finally, the chapter analyzes the enforcement function for possible civil rights violations in the apprehension, detention, and deportation of undocumented persons.

¹ 8 U.S.C. §1103 (1976) and 8 U.S.C. +s§1551-1557 (1976). Also, see, *U.S. ex. rel. Circella v. Sahll*, 216 F.2d 33, cert. denied 155 S. CT 525, 348 U.S. 964, 99 L.Ed. 752 (1954). This act gives the Attorney General, who appoints the U.S. Immigration and Naturalization Service (INS) Commissioner, authority to administer the immigration laws and policies.

² U.S., Commission on Civil Rights (USCCR), New York State

Advisory Committee, "Transcript of Factfinding Meeting on Aliens in New York City," Feb. 16 and 17, 1978, New York City, vol. II, pp. 123-135 (hereafter references to the transcript will be included in parenthesis in the text with the volume indicated in roman numerals and the page in ordinal numbers). In addition, 12 INS officials were interviewed on INS functions.

B. Service Function

The New York district office of the U.S. Immigration and Naturalization Service (INS) processes a great and rapidly increasing number of visa, naturalization, and adjustment of status applications every year. The processing of these applications is the service function of INS in that INS is fulfilling its statutory requirement to assist persons coming to the United States. Table D shows that the number of visa applications received has increased from approximately 82,800 in fiscal year 1977 to 130,400 in 1979. The number of other adjudications has grown from 109,400 in 1977 to 143,400 in 1979.

These applications reflect a diversity of request based upon privileges permissible under immigration law. For instance, permanent resident aliens may apply for visas for relatives, tourists may request an extension of visas, or aliens with one type of status may petition for a change to a different status such as permanent resident status or citizenship. In acting on the applications, INS has the power to reunite families or keep them apart; it has the power to change totally the lives of the thousands of aliens who apply for permanent resident status. Even for the tourist, INS plays a significant role. How INS handles visa and other applications affects how an alien views this country and what happens when the individual enters the United States.

The staff of the New York district office has not increased in proportion to the increase in caseload. While the number of applications received grew by 42.5 percent between 1977 and 1979, the staff grew by only 1 percent. The total staff in the New York office increased from 992 in 1977 to 1,043 in 1978 and decreased to 1,002 in 1979.³

The Advisory Committee did not review the adjustment of status and naturalization functions of INS per se. However, prior to and during the 1978 factfinding meeting, the Committee had received many charges concerning the manner in which INS treats its clients. Almost every person interviewed charged many, but not all, INS personnel with unnecessary rudeness and inefficiency in performing their work.

John P. Kaiteris, executive director of the Hellenic American Neighborhood Action Committee, said:

³ Data provided by Maryanne Monteodorisio, administrative officer, INS New York district office, interview, Oct. 24, 1979,

INS has a legitimate service function to carry out. Our experience has been that this function is carried out in an indifferent and inefficient manner. There are long waits to see representatives. Waits of 3 hours or more are not unusual, even if you arrive at 8:30 a.m., (nor is) excessive waiting time (for) the processing of petitions, requests, and forms. Representatives carry out their role in an offensive manner and with what can be termed as an anti-alien attitude, as well as the attitude that they are doing one a big favor when it is their job to provide information and service. In many cases, they fail to carefully listen to petitioners and as a result frequently give erroneous information which complicates the lives of immigrants and their families. Difficult problem cases are not properly addressed and there is a lack of staff to do that.

This is not meant as an indictment of all staff. Certainly there are sympathetic professionals in the INS. (I, 18)

Almost all persons said that the heavy caseload and understaffing of most INS divisions contributed to the difficulties encountered by the aliens. However, they still charged that many persons are subjected to long delays and rude treatment, and sometimes receive erroneous or incomplete information.

Marianna Terranova, a representative of the American Committee on Italian Migration, emphasized the long delays caused by understaffing:

The delays encountered in the processing of these applications are excessive beyond any reasonable expectation, notwithstanding the occasional task forces which have been utilized to help alleviate the problem. These long delays create countless hardships and human problems. (I,35)

Victor Mariduena, director of social services at the Ecuadorean Cultural and Social House, not only criticized the rudeness of many INS officials but suggested that the treatment had overtones of racial and ethnic discrimination. He said:

There is no question in my mind that the most rude, imperious, and insensitive officials that I have ever observed are those of Immigration. I do not know if it is because they are overworked or because they believe that they are imbued with divine right that they perform their services in the contemptuous manner and maltreat the aliens that they are paid to service.

More than one time I have heard officials addressing with ethnic slurs or abruptly brushing off the person who has approached them. These immigration officers are the antithesis of what this country stands for. (I,63-4)

available in the USCCR Eastern Regional Office (ERO) (hereafter cited as Monteodorisio Interview).

TABLE D**Visa and Adjustment of Status Applications, U.S. Immigration and Naturalization Service****New York District Office Fiscal 1977-1979**

		<u>Visas</u>		
	Carry Over	Received	Pending	Processed
1977	13,718	82,862	6,676	98,904
1978		104,157	24,148	86,685
1979		130,457	20,233	134,372

		<u>Other Adjudications</u>		
	Carry Over	Received	Pending	Processed
1977	12,602	109,475	16,070	106,077
1978		126,722	21,355	121,437
1979		143,436	26,568	138,223

Source: U.S., Immigration and Naturalization Service, data compiled by Maryanne Monteodorisio, administrative officer of New York District Office. Interview October 24, 1979.

Rev. Brian Karvelis, of the immigration office of the Roman Catholic Diocese of Brooklyn, called the attitudes of most INS officials "negative." (I,117) Lydia Savoyka, a representative of the United States Catholic Conference to the New York General Committee on Immigration and Naturalization, agreed that many INS clients endured unnecessary "delays" and "discourtesies." (I,135) Ms. Savoyka, assigned to work in an INS office in the Federal Building, said that the treatment varied depending upon the officer, but argued that there is "no deliberate abuse" of aliens. (I,146)

When asked about the charges of rudeness and inefficiency, INS officials at the factfinding meeting generally defended INS personnel. Henry Wagner, former assistant district director of the investigations branch, said that he never had any problem dealing with clients during the 30 years he worked for INS and said that he believed the large majority of the complaints came from clients who refused to understand that their problem could not be solved immediately: "They want a yes answer, when you can't give them a yes." (II,173) However, he also said that staff were "under a lot of tension" because of the heavy workload. (II,173)

1. Employment Policies and Practices

In addition to the heavy workload, another factor believed to affect the treatment of aliens applying to INS was the underrepresentation of minority and bilingual staff, particularly in positions which have frequent contact with the clients.

In 1979, of 1,002 persons in the New York district office, 285 or 28.4 percent were black, 88 or 8.8 percent were Hispanic, and 9 or 0.9 percent were Asian.⁴ As indicated in table A, of 357,159 persons identified by nationality coming to New York City between 1970 and 1977, 47.0 percent came from the Spanish speaking countries of Colombia, Cuba, the Dominican Republic, and Mexico; 19.0 percent came from the predominantly black countries of Haiti and Jamaica; and 19.8 percent came from the Asian countries of China, Japan, Korea, and the Philippines.

Persons interviewed said that clients who had a different national origin and linguistic background had difficulty communicating with INS staff. Specifically, information was received on the problems of

Spanish speaking persons, who make up approximately 50 percent of the New York City INS client population, and Asians.

Hispanics are not only underrepresented in the work force in general, but also in key jobs where personnel have continual contact with the client population. For instance, contact representatives first answer the questions of aliens coming to INS and direct the aliens to the appropriate division for assistance. In 1979, of 58 contact representatives, 33 or 56.9 percent were black, 3 or 5.2 percent were Hispanic, 1 or 1.7 percent was Oriental, and 21 or 36.2 percent were white.⁵

It was suggested that additional persons with bilingual skills, of other cultural backgrounds, and different racial and ethnic heritages would improve the INS capability to serve its client population.

Although the Advisory Committee did not do a comprehensive review of the INS personnel system to determine whether racial and linguistic minorities had equal access to job opportunities, it received limited information on the district office's affirmative action plan and recruitment policies. Oswald Kramer, eastern regional commissioner of INS, said at the 1978 factfinding meeting, that the regional office had developed an affirmative action plan and hired an equal employment opportunity officer in 1976 in order to recruit more minority persons. (II,157-8) He said that INS had established some jobs with a language requirement such as French or Spanish to improve communication between INS personnel and non-English speaking clients. (II,159-60)

However, in 1979, the New York district office, where most of the hiring takes place, had not had input into the affirmative action plan. An equal employment opportunity (EEO) committee was established in February 1979 by a new administrative officer. The committee consisted of one black male and three white males. Maryanne Montedorisio, the administrative officer, said that she was unable to identify a woman to serve on the committee.⁶ The district office submitted materials for inclusion into the regional affirmative action plan in 1980.

One barrier to increasing the number of racial and linguistic minorities on INS staff is that the large majority of openings in the New York office are

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

filled from within. Nonetheless, notices of vacancies are sent to a number of agencies and minority organizations including the National Puerto Rican Forum, the Chinatown Planning Council, and the State Department of Social Services at the New York State office building in Harlem. However, at the time of the study INS staff had not made personal visits to these groups. In the summer of 1979, staff participated in career counseling programs at several New York City high schools for purposes of recruiting lower level clerical staff. Perhaps the most significant step toward furthering affirmative action is that in the past several years, three job categories, deportation officer, investigator, and immigration inspector, were opened to merit promotion. This personnel action permits lower grade INS staff to enter the higher grade career ladders.⁷

2. Training

Training for INS staff varies according to the position. All officers including criminal investigators, immigration investigators, and the deportation officers attend a 14-week training program at the Federal law enforcement training facility in Glynnco, Georgia.⁸ The Advisory Committee did not review the training offered for any particular position; however, the 14-week course includes both basic Spanish and human relations. It is followed by on-the-job and classroom training for one year in New York.

Training, including courses on immigration history and INS operations, is also offered to the clerical and secretarial staff. Additional training is offered to selected staff at different times. For example, in 1978, the contact representatives, who first answer the questions of persons coming to INS, participated in a basic Spanish and human relations program. In fiscal 1981, after the Advisory Committee's study, a program including human relations, Spanish, speech, and interviewing techniques was instituted and offered to a majority of district office personnel.⁹

At the factfinding meeting, Oswald Kramer, then INS regional commissioner, said that he doubted whether it was possible to establish training pro-

grams to sensitize INS staff to the great number of national origin and different language groups served. He said:

In recent months in the New York district, they apprehended aliens of 112 different nationalities. Now, I would like you to tell me how we are going to train our people to deal with the customs and sensitivities of each different nationality? (II,169)

However, Mr. Kramer did acknowledge the lack of Spanish language ability among his personnel. Mr. Kramer stated:

We have a program under which we are now teaching our contact representatives Spanish in order to meet the needs of the Spanish speaking people. It's a difficult process. It's a slow process. (We) have a staff that doesn't speak Spanish. (II,160)

The problem of communication for other non-English speaking aliens is even greater. At the factfinding meeting, Mr. Kramer said that the district office staff had language skills in 40 to 50 languages. (II,160) In 1979, the office had 11 full-time interpreters who spoke Greek, French, Croatian, Italian, Hungarian, and Chinese (Mandarin and Cantonese dialects) as well as Spanish. In addition, the office had available either in house or on standby other part-time interpreters as well as other INS staff who could be called from their regular positions to help with interpretation on an as needed basis. There was also an intercom system throughout the INS offices so that an interpreter in one location if needed could assist an alien at another location.

C. The Impact of the Enforcement Function on the Service Function

An alien with a tourist visa in the United States may be permitted to stay for 3 to 6 months or longer. As the expiration date of the visa draws near, the alien may apply for an extension. If the visa expires, the individual, though then in the country illegally, may still apply for an extension. If he or she fails to apply or if the extension application is denied, he or she becomes subject to deportation.

Monteodorisio, administrative officer, INS, to Ruth J. Cubero, regional director, USCCR. This information has been incorporated whenever possible into the report. The memorandum is hereafter cited as INS 1980 Response.)

⁸ Ibid.

⁹ Ibid.

⁷ Ibid. Since the Advisory Committee study, INS in 1979 established an upward mobility program enabling persons in higher grade clerical positions to move to entry trainee positions for the officer corps. As of November 1980, 10 such trainee positions had been filled. (This and additional information was provided to the Advisory Committee in response to a draft of the report in a memorandum of November 20, 1980, from Maryanne

Separate branches of the U.S. Immigration and Naturalization Service handle these functions. The INS grants or denies visa extensions; and, if such an extension is denied, under its enforcement function it deports the individual if he or she refuses to leave.

Prior to and during the factfinding meeting, a number of persons interviewed including immigration-lawyers, representatives of immigrant groups, and other persons who have worked with INS staff criticized the dual service and enforcement functions of INS. They alleged that this dual function affects the way INS staff treat the clients. Furthermore, they charged there was a conflict of interest between the INS responsibility for the citizenship and adjustment of status applications (including applications made by persons without any or without proper papers), and the responsibility for apprehending and deporting undocumented persons.

Austin T. Fragomen, Jr., an attorney specializing in immigration and nationality law, charged that the failure of INS to perform its service functions adequately stemmed in part from the greater priority assigned to enforcement. He charged that career advancement in INS lay primarily within the law enforcement sphere:

The root of the problem or one of the real causes of the problem is the confusion between the law enforcement and service functions of the Immigration and Naturalization Service. The majority of employees of the immigration service—control, detention and deportation, immigration judges, trial attorneys—are involved in law enforcement, investigation. Thus the majority of higher grade level positions with the agency are in the enforcement area. . . . Subsequently, as an employee ascends the career ladder, he serves in law enforcement capacities along the way. So, indirectly, the system forces persons who actually aren't that interested in the law enforcement aspect of the immigration service to become involved in the law enforcement area, because that's where the high grade levels exist. The result is that on a functional district office or sub-office level, most employees who reach the hierarchy are all law enforcement. . . .

Law enforcement mentality results in looking for fraud everywhere which causes the undue harassment of individuals as well as unnecessary delays. (I,247-8)

Martin Needelman, an attorney with Williamsburg Legal Services and a member of the New York Committee of the National Lawyers Guild Immigration Committee, stated the same problem in a slightly different manner:

Part of the problem is that the system is an adversary system even at the processing level. Even where it should be a service function, it is an adversary situation. (I,254-5)

Angela Cruz, a representative of the Pacific Asian Coalition, said:

INS to Asians has never been anything but a policing agency. It seems to be concerned only with its law enforcement function to the complete disregard of any service delivery. (I,14-5)

Oswald Kramer, then regional commissioner of INS, defended the joint enforcement and service function of his office. He said:

We do have enforcement functions, and we do have service functions; but why really regard those as different things? I think they are both different sides of the same coin. To do a good enforcement job, you have to have in mind the service function that we have, and to do the service function, you have to have the enforcement function. Our investigators primarily go out to apprehend aliens illegally here; but if he is required to check to make sure, does this person have eligibility for relief under the immigration laws, and to expose that to the individual and offer it to him, and if he gets the relief, that's good enforcement too. (II,168)

Mr. Fragomen, the immigration lawyer, recommended that the two functions of INS should be divided or, as an interim measure, that resources including staff be shifted from the enforcement to the service functions. (I,251)

D. Enforcement Function

The enforcement effort of the INS New York district office includes inspection of persons entering the country at the region's airports and ports; apprehension of persons believed to be without proper documentation; investigation of fraudulent activities such as forged documents; and detention and deportation of persons found to be in the country without proper documentation.

The Advisory Committee limited its review to the apprehension, detention, and deportation responsibilities. Although the Advisory Committee had received a number of charges of civil rights violations occurring during INS apprehension of suspected undocumented persons, the Committee did not conduct any primary research in this area. However, the Advisory Committee did investigate civil rights problems related to detention at the INS facility in Brooklyn, and to the administrative deportation hearings. Advisory Committee members and Com-

mission staff visited the Brooklyn facility in February and in November 1979. They also observed deportation hearings during October and November 1979.¹⁰ Many changes have been instituted since the Advisory Committee's visit, particularly at the Brooklyn detention facility. The Advisory Committee commends these improvements, which are noted as is appropriate either in the body of the text or in the footnotes.

The INS enforcement effort is not a criminal law enforcement activity, one which results in an arrest and the application of formal criminal procedures together with all of the ensuing constitutional guarantees. The INS enforcement process has been defined by the courts (as well as INS) as an administrative function necessary to implement immigration and naturalization law.¹¹ Immigration lawyers have fought in recent years to secure for the alien the same protections that are provided in other situations in which the liberty of a person is at stake. However, although the courts have affirmed at least in part the applicability of these amendments, the exact scope of the protection offered has not been clearly defined and the protections have varied from case to case.¹²

The information in the following sections was gathered prior to and during the Advisory Committee's factfinding meeting. There are very little hard data on many of the issues. Because of the difficulty in interviewing undocumented persons who do not want to risk exposure to INS or other authorities, the Advisory Committee did not attempt to obtain information from such persons. Instead, the Committee relied on the views of immigration lawyers, representatives of immigration groups and service agencies, and INS staff. In many instances, the

discussion is based solely on the views of these persons. However, in every instance the Advisory Committee attempted to identify persons respected in the field of immigration and to include the views of INS staff or other persons with different opinions. The Advisory Committee recognizes that INS has made many changes in its practices while and since Leonel Castillo was Commissioner and has tried to credit the agency with these changes in this report.

1. Apprehension

At the time of the factfinding meeting, a staff of 30 to 40 investigators comprised the general investigation unit of the division of investigation. These individuals conduct investigations and area control operations, which are more commonly known as "raids," in order to locate undocumented aliens. Other activities of this staff include verifying information on visa and citizenship applications and other routine investigations. (II, 148-50)

An important constitutional protection against abusive enforcement activities by all law enforcement officers is afforded by the fourth amendment, which guarantees the "right of the people to be secure in their persons, houses, papers, and effects from unreasonable searches and seizures."¹³ Recent court decisions have affirmed that the fourth amendment protects all "people," regardless of their immigration status, from unreasonable searches and seizures, including arrests.¹⁴ In application, the amendment requires procedures to safeguard the people's rights by providing that warrants may only be issued upon probable cause supported by oath or affirmation and that they must describe with particularity the persons or things to be searched or seized.¹⁵ However, the scope of the protection in

¹⁰ USCCR staff and Advisory Committee members visited the INS deportation facility Feb. 1 and again on Nov. 16, 1979. They observed deportation administrative hearings at 26 Federal Plaza on Oct. 17 and 24, 1979, and at the Brooklyn House of Detention on Oct. 22, 23, 25, and 29 and Nov. 1, 6, 7, 15 and 16, 1979. Summaries of the visits and data on the administrative hearings are available in USCCR/ERO files.

¹¹ 8 U.S.C. §1251(a)(2). Also, *Ramirez v. INS*, 550 F. 2d 560 (1977).

¹² For a fuller discussion of these protections and their applicability or non-applicability to the deportable alien, see USCCR, *The Tarnished Golden Door: Civil Rights Issues in Immigration* (September 1980), Chaps. 6 and 7; and David Carliner, *The Rights of Aliens: The Basic ACLU Guide to an Alien's Rights* (New York: Avon, 1979). The discussion herein is limited to an examination of the fourth and fifth amendment guarantees of freedom from unreasonable searches and seizures and of due process of law.

¹³ The Fourth Amendment states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const., Amend. IV.

¹⁴ The extent of the protection afforded has varied depending on the nature of the situation. For example, certain enforcement practices have been upheld by the Supreme Court specifically in the Mexican border area. *U.S. v. Brignoni-Ponce*, 422 U.S. 873 (1975).

¹⁵ INS regulations require not only that an arrest warrant be obtained at the outset of any deportation enforcement activity, but also that when the warrant is served and a person apprehended, the person is to be explained the contents of the show cause order, the reason for the arrest, the right to representation, the

immigration cases is less than that afforded in criminal cases and, for example, searches and seizures have been permitted that would not be allowed in criminal cases.¹⁶

Information presented to the Advisory Committee raised questions as to whether the right to be free from unreasonable searches and seizures is protected adequately in the enforcement of the immigration laws, particularly for those persons of identifiable racial and ethnic origin. Immigration lawyers and other advocates for rights of aliens charged that INS officers violated individual's constitutional rights during street interrogations and during interrogations and arrests in establishments. They charged that noncitizen Hispanics, blacks, and Asians were subject to these abuses to a greater extent than noncitizen whites. They also argued that all the fourth amendment protections afforded to citizens should be extended to noncitizens.¹⁷

For instance, the street interrogation procedures utilized by INS officers have come under criticism. The Supreme Court has held that while less than probable cause is needed to justify so called "brief stops" and street interrogations, the fourth amendment requires that there be specific articulable facts giving rise to the reasonable suspicion.¹⁸ Although the Court has not yet decided whether, in the course of enforcing the immigration laws, the reasonable suspicion necessary to sustain an investigative stop must be a violation of the immigration laws or of alienage alone. It has determined that ethnic appearance, without more evidence, is not a sufficient basis for reasonable suspicion as to justify such questioning.¹⁹ Persons appearing before the Advisory Committee charged that when persons are stopped and interrogated on the basis of ethnic appearance, the effect has been the harassment of citizens and lawful resident aliens who are of the same racial or ethnic heritage as immigrant groups which have a great number of undocumented aliens in the United States.

Many persons charged that Hispanics and Asians were subject to abuses to a greater extent than white persons. Rev. Douglas Franklin, founder of Con-

cerned Citizens for Immigration Justice, described the problem as follows:

The officers of the INS go to look for an alien. Usually they go to where the alien works or lives or perhaps they may pick up the alien in the street because of the alien's appearance. He looks like a Latino or he may look like a West Indian or perhaps his accent. (I,55-6)

Victor Mariduena, social services director of the Ecuadorean Cultural and Social House, charged:

Even though INS officials say that there are illegals from all over the world, it is the Latin American who is a target of raids and persecution. (I,68)

He said that an INS official told him that some INS investigators approach anyone reading a Spanish language newspaper. "If that's not racism, nothing is," he said. (I,68) Finally, Austin Frago-men, the immigration lawyer, agreed that racially and ethnically identifiable persons were singled out by INS. He said:

It virtually never happens that an individual, who is in the United States and has violated the conditions of admission for instance by overstaying on a visitor's visa and who is a native of the United Kingdom, would be stopped and questioned at random by an immigration officer. . . . It is the person who appears foreign, a person with a foreign sounding name, the person who dresses differently etc., who is stopped, interrogated, arrested. (I,244-5)

Angela Cruz, a representative of the Pacific Asian Coalition, said Asians experienced similar harassment:

As Asians, with very distinctive looks, we are easy targets of the police tendencies of INS. Our race appears to be the very cause of blatant INS discrimination and complete disregard of civil and human rights. I tend to believe that as far as INS is concerned, all Asians are considered illegal, unless they can show a green card, a system of justice so inconsistent with America's democratic principles. (I,15)

Also criticized by the presentors is the INS practice of "raiding" places of employment or other establishments in search of undocumented persons. According to INS officials, the majority of apprehensions in the New York district were made during

groups as well as INS staff. General information from these interviews are cited throughout this report as Commission interviews. Copies of these interviews are available in the USCCR/ERO files. Also, see subsequent discussion in this chapter.

¹⁶ Terry v. Ohio, 392 U.S. 1 (1963).

¹⁷ U.S. v. Brignoni-Ponce, 422 U.S. 873 (1975).

right to remain silent, and the availability of bond. 8 C.F.R. §242.2(a)(1980). See also, Almeida-Sanchez v. U.S., 413 U.S. 266(1973).

¹⁸ For a fuller discussion see the USCCR report, *The Tarnished Golden Door*, Chap. 6.

¹⁹ During its study Advisory Committee members and Commission staff interviewed more than 60 persons including representatives of immigrant groups, immigration lawyers, other advocacy

the so-called "area control operation" or "raid" at work places. In a typical operation, a team of INS officers surround an establishment at which they believe there is a concentration of undocumented persons. The "surrounding" is effectuated by cordoning off all the entrances and exits of the location. INS representatives stated that within the New York district consent is usually obtained from the owner of the establishment prior to the raid. (I,144) However, several persons from advocacy and legal organizations questioned the voluntariness of such consent.²⁰ The fourth amendment questions raised by the "area control operation" and the issue of voluntary consent are many and complex.²¹ These search warrant issues are separate from, although related to questions raised by the issuance and manner of issuance of INS arrest warrants.²²

The problem of persons being subjected to enforcement efforts by INS officials on the basis of ethnic appearance arises not only as regards street interrogations but also as regards arrests made during raids at places of employment. Even if the INS officers went into the place of employment to locate, on the basis of an informant's tip, an individual who is believed to be unlawfully in the United States, it was alleged that the officers in the New York City area typically question other persons present, particularly those of certain racial or ethnic backgrounds, as to their status under the immigration laws. If the individual cannot prove that he or she is lawfully in the United States, the person is often arrested.²³ Persons interviewed charged that, as in street interrogations, lawful residents and citizens belonging to Hispanic, black, or Asian groups often become subject to questioning. If they are not carrying adequate identification, they also are subject to possible arrest.

At the factfinding meeting Rev. Karvelis, of the Roman Catholic Diocese of Brooklyn, charged that INS raids at factories and places of employment caused major disruptions and in some instances panic and hysteria. He said:

The raids made on places of work, small factories, are a traumatic experience, and they are frequent, very frequent. The buses pull up and the agents surround the building and enter, and there is absolute pandemonium in the factory.

²⁰ Commission Interviews.

²¹ For a discussion of these issues, see the USCCR report, *The Tarnished Golden Door*, Chap. 6. Also see 8 U.S.C. §1357(a)(c)(1976).

²² 8 U.S.C. §1252(1976), and corresponding regulations at 8 CFR §242.2(a)(1980).

People are screaming, running. You have read in the papers recently of the Mexican undocumented person who jumped out the window. They are put into absolute terror and fright and become irrational in their reactions. (I,120)

Also at issue is whether INS officials conduct area operations at locations other than places of employment such as private residences and other public locations such as subways. At the factfinding meeting, immigration lawyer Leon Rosen said:

Until very recently, no place was immune from INS raids: homes, places of employment, public streets. My colleagues at the immigration bar and I have known of numerous instances of warrantless entries into private homes, interrogations, arrests in clear violation of the fourth amendment. (I,221)

Oscar Monegro, of the Dominican Alliance, said that INS officials stopped groups of persons and transported suspected undocumented aliens in trucks to the INS detention center for further questioning. He described these activities as "Gestapo" techniques. (I,53) Rev. Karvelis charged specifically that INS had raided a private home at night, 3 months before the Advisory Committee's 1978 factfinding meeting. He said:

Agents came down the fire escape through the window and arrested everyone and put handcuffs on them while they were still in night clothes. I could repeat case after case of illegal entrance into the homes of undocumented persons. (I,120)

INS officials denied that "raids" at private residences or street and subway checks still occurred. INS staff said that such allegations were "completely untrue" and that such practices had been discontinued in the New York district office "long before any policy directive came from the central office." (II,142-3)

In November 1979, a national directive was issued prohibiting investigations at private residences "except in unusual circumstances." The Iranian project is identified as an "exceptional situation" warranting area control operations at private residences.²⁴ Four Iranian students, interviewed during the Advisory Committee's tour of the INS detention facility in

²³ For a fuller discussion of these issues, see USCCR report, *The Tarnished Golden Door*, Chap. 7.

²⁴ INS, Priority Directive, received by district director, Nov. 29, 1979, copy available in USCCR ERO files.

November 1979, said that they had been apprehended in their apartment.²⁵ The students criticized the INS officers and said that, although they knocked and asked to be admitted, they rudely searched the entire apartment. One student said that an INS officer had entered the bedroom where his sister was sleeping and woke her up, demanding to see her passport.

In January 1980, INS staff conducted a raid, well publicized in the press, at Port Authority bus terminal, and apprehended more than 85 persons believed to be illegal aliens who were traveling to domestic jobs in New Jersey.²⁶ The Advisory Committee is concerned that the civil rights of citizens or resident aliens, particularly Hispanic or other racially or ethnically identifiable persons, not be violated during these events.

Immigration lawyer Leon Rosen broadly criticized the court's failure to extend the so-called procedural due process guarantees to immigration law. He said:

Over the years in criminal cases, our courts have recognized and accepted the very important concept that if the law enforcement officer, the man who has sworn to uphold the law, has himself violated the law, then the defendant whose rights were thereby violated should not be made to suffer the consequences of the illegality; but, in the field of immigration law, there is a deep rooted reluctance to adopt this safeguard. The immigration judge, the Board of Immigration Appeals, and all too often the courts will recognize that an arrest was illegal, the search was unlawful; but will differentiate and rationalize and accept the fruits of such illegalities apparently on the theory that if the alien is, in fact, unlawfully in the United States, then, the impropriety in finding evidence of and establishing that point can and should be overlooked. The result is, for all practical purposes, an encouragement of illegality. (I,224-5)

Under the Immigration and Nationality Act, an INS officer in non-border areas may arrest without a warrant if an alien is believed to be in the United States in violation of the law and the officer believes that the alien is likely to escape.²⁷ Even where an arrest warrant is obtained, the rights of those apprehended may not be adequately protected. The arrest warrant procedure used by the INS has been criticized for having serious deficiencies in its

protection of the rights of persons to be free from unreasonable seizure. The fourth amendment requires that no warrant may be issued except upon a showing of probable cause supported by oath or affirmation. In the criminal justice system a neutral, independent official must rule on the propriety of the issuance of a warrant. In contrast, the Immigration and Nationality Act permits an arrest to be made on the authorization of one INS official to another. A warrant may be issued whenever in the discretion of the authorizing official "it appears that the arrest is necessary or desirable."²⁸ Finally, the facts upon which the officer justifies the necessity of the warrant need not be sworn to, a safeguard provided within the terms of the fourth amendment. According to INS officials, a warrant can be obtained by telephone. (II,146)²⁹

Several persons criticized how INS officers treated aliens whom they had apprehended. Victor Mariduena of the Ecuadorean Cultural and Social House charged that the treatment by INS officers was "degrading." "The way the undocumented aliens are handled by immigration officials when detained is degrading. They are handcuffed, roughly treated, called epithets, etc.," he said. (I,64)

It was suggested that the underrepresentation of minority, and particularly of Hispanic investigators, contributed to alleged mistreatment of suspected undocumented persons. In 1979, of 32 area control investigators (who conduct the raids), 3 were black, 1 was Hispanic, and 28 were white. There was only one woman, who was white. Of the 165 other criminal investigators, 8 were black, 4 were Hispanic, 2 were Oriental, and 151 were white. All were male except for 1 black and 7 white women.³⁰ In contrast, in 1976, approximately 52 percent of the aliens apprehended were Hispanic.

In support of the INS, several persons stated that methods used by INS investigators had improved in recent years, particularly under the former Commissioner Leonel Castillo, who took office in 1977. Lydia Savoyka of the U.S. Catholic Conference said:

Since the appointment of Commissioner Castillo, we are very pleased to see that there is a marked improvement in the attitude and approach to undocumented aliens. (I,136)

²⁵ A summary of the visit by Commission staff to the INS Brooklyn detention facility on November 16, 1979, is available in USCCR/ERO files.

²⁶ *New York Times*, "Agents Detain 84 Domestic at Terminal as Illegal Aliens," Jan. 30, 1980, p.B 1.

²⁷ 8 U.S.C. §1357(a)(2)(1976).

²⁸ 8 C.F.R. §242.2(1980).

²⁹ *Id.*

³⁰ Montedorisio Data.

Immigration lawyer Austin Fragomen agreed that attitudes of many INS officials had changed under the former Commissioner Castillo; however, he added that "this change in attitude takes a long time to sift down to a functional level." (I,244)

Leon Rosen, another immigration lawyer, also agreed that some of the worst policies of the past have changed:

The recent past practices of the Immigration and Naturalization Service were so inconsistent with democratic principles that they ought to be recalled if for no other reason than to remind a post-Watergate concerned American public that that must never again happen in this great land. The tunnel has been very long. It has been cold and dark and extremely terrifying; but there appeared to be light at its end. One (light is) Commissioner Leon Castillo, a vast improvement in attitude and concern over his predecessor. . . . (I,220)

However, he continued:

I must concede that sometimes old practices die hard and that there are some investigative agents who have not yet gotten the message and still occasionally there are homes entered without warrants, and there are factories that are entered without warrants, and when payroll records are exhibited to these agents by the employer who may or may not know his legal right to refuse to do so. . . . the names that are called out for interviews are those that sound Latin, that sound Oriental, that sound East European. The Smiths and Joneses and Rosens are not interrogated. (I,224)

After apprehension, an alien is questioned by an INS officer in a process that is known as the examination. The examining officer, who may be the same officer who apprehended the individual, informs the alien of his rights including the right to remain silent, the right to counsel, and the availability of free legal services.³¹ If the alien cannot prove that he is in the United States legally, a show cause order is issued by the same examining officer to support the apprehension.³²

2. Bonding

Following issuance of the show cause order, the alien is either released on his own recognizance or detained. The bond later may be reviewed at the detainee's request at a bond redetermination hearing

before an immigration judge. The judge's decision may be appealed to the Immigration Board of Appeals in Washington. The bond or parole also may be revoked at the discretion of the Attorney General and the alien returned to custody.³³ The authority to detain has been delegated to INS district directors and certain assistants.

The only statutory check on this discretion is the provision of the Immigration and Nationality Act that allows the Federal court to assess whether the "Attorney General is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances in the case of any alien to determine deportability."³⁴ Under this standard, a determination regarding bail will be overturned by the Federal courts only on a showing of "clear abuse."³⁵

At the 1978 factfinding meeting, many persons charged that the bond imposed on alleged undocumented aliens was often too high and that higher bonds often were imposed on persons of Asian or Hispanic origin than on persons of European origin. They charged that bond often is not set pursuant to the goal of assuring that the person appear in court or in accordance with the individual's other equities.³⁶ Immigration lawyer Austin Fragomen said:

If an Englishman is arrested by the Immigration Service, you can be almost assured that he will be released on his own recognizance. If the individual arrested were Asian or were Hispanic, there would be a minimum of a \$2,500 bond requested notwithstanding the fact that in most cases, the European person can more easily post a higher bond and the bond that's required of an Asian or Hispanic is totally unrelated to his ability to pay. . . . They don't look to the strength of family ties. They just routinely require standard amounts for persons of certain ethnic origin with total disregard of the situation. (I,245-6)

Immigration lawyer Leon Rosen criticized the entire procedure by which bond is set. He charged that there is a conflict of interest in that the director of investigations who is responsible for the apprehension process also in practice often sets the bond. Although a review process was set up several years ago to correct the potential conflict, Mr. Rosen maintained that often the review "served no real

³¹ 8 C.F.R. §287.30(1980).

³² Ibid. And 8 C.F.R. §242.2(a)(1980).

³³ 8 C.F.R. §242.2(b)(1980) and 242.2(c); 8 U.S.C. §1252(a)(1976).

³⁴ Id.

³⁵ *Carlson v. Landon*, 342 U.S. 524 (1952); *Rubinstein v. Brunnel*, 206 F. 2d 449 (1953). See USCCR report, *The Tarnished Golden Door*, chap. 7.

³⁶ In its response to the report, INS staff denied that the setting of bond is influenced by an individual's racial origin. INS stated: "The determination as to the amount of a bond in each case is a question of judgment subject to the criteria set forth by the Board of Immigration Appeals. The purpose of which is to insure the respondent's appearance at the deportation hearing." (INS 1980 Response, p. 4.)

purpose." (I,226) He suggested that the reviewing immigration judge too often reduced an "unrealistically 'high bail' only a small percentage." (I,227)

Advisory Committee members and Commission staff observed approximately 27 bond redetermination hearings.³⁷ In most cases, bond was initially set at \$3,000 or \$2,500 and the reviewing judge generally reduced the bond by \$500. However, in some cases the bond was as high as \$5,000 or \$10,000. In many cases, the apprehended alien stated that he or she was not able to post bond even after the reduction. If the alien had not worked in the U.S. and had a legal relative in the New York City area, the bond was reduced further. In some cases, the INS judge attempted to ascertain the amount of money that could be posted and did reduce the bond to that amount. In one case observed by Commission staff, the bond was reduced from \$5,000 to \$1,500. INS staff maintained that bonds of \$2,000 to \$3,000 were needed in order to prevent aliens from absconding. Mr. Rosen also charged that the New York district director set higher bonds than those set in any other part of the country. (I,273)

3. Detention

In the New York district, aliens awaiting deportation hearings are detained at an INS facility at 136 Flushing Avenue in Brooklyn, within the complex of the old Brooklyn Navy Yard. The facility is housed on the fifth floor of a former Navy building which served as a brig during the Second World War.³⁸ INS staff state that the building is being used temporarily until a permanent facility is located; however this "temporary" facility has been in use since 1975.

The facility contains four modules, three for men and one for women. Each module consists of a dormitory with 56 beds, a connecting hall with a bathroom and shower area, and a "dayroom" with a television, candy and cigarette machines, and tables and chairs. The facility houses a maximum of 168

men and 56 women. However, according to Robert Schmidt, the former facility supervisor, the average facility population was 120 men and 18 to 20 women at any given time.³⁹ Men stayed at the center on an average of 6.5 days and women stayed an average of 4.5 days.⁴⁰ According to Mr. Schmidt, women remained at the center for a shorter period of time because they are generally more cooperative, are less likely to have a criminal record, and are more likely to be released on bond.

INS staff maintain that the detention center is designed to hold detainees for only a short period of time. Although the average length of stay of detainees is 4 to 6 days, many persons are detained for only 2 to 3 days. Therefore, some persons are detained for significantly longer than the average—in some cases several months. Most persons who are held more than a week or 10 days are detained while waiting for a bond or deportation ruling to be appealed. INS staff said that persons who are to be detained for long periods of time are sent to the Metropolitan Correctional Center in Manhattan, where space is reserved for as many as 10 detainees at any one time.

The detainees are locked into the dormitory from 11:00 p.m. until 6:30 a.m. Detainees interviewed by the Commission staff charged that the lights were sometimes left on all night in sleeping areas.⁴¹ During the day, the detainees are limited to the dayroom area. At the time of the study no bedrest was permitted during the day except with medical authorization.⁴² Advisory Committee members visiting the center during the afternoon observed detainees sleeping on top of the hardtop tables or between two chairs placed facing each other. The detainees complained about the rigid scheduling and lack of access to the sleeping quarters during the day.

decreased to approximately 50 to 60 because of cutbacks in apprehension due to the census. The number of women increased on account of the Cuban program to approximately 35 to 40. (INS 1980 Response, p. 9.)

⁴⁰ Cuban women, several of whom were held from 3 to 6 months, increased the average stay for females although the average stay for non-Cuban females remained constant.

⁴¹ INS reported that "only minimal lighting is left on to insure that dorms are not in total darkness." (INS 1980 Response, p. 9.)

⁴² Since August 1980, detainees have been allowed access to the sleeping area 24 hours daily. (INS 1980 Response p. 9.)

³⁷ A summary of the INS administrative hearings observed by Advisory Committee members and USCCR staff is available at the USCCR/ERO.

³⁸ The following information on the U.S. Brooklyn House of Detention was obtained, unless another source is cited, during the Advisory Committee's two trips to the facility from either Robert Schmidt, facility supervisor at the time of the February 1 visit, or Kevin Doyle, supervisor at the time of the November 16 visit. In addition, approximately 15 detainees were interviewed during the November 16 visit.

³⁹ INS reported that in 1980 the average number of men

The New York Civil Liberties Union has challenged conditions at the center in Federal district court in *Man Chung Lam v. Griffin Bell*.⁴³ The Advisory Committee reviewed the brief for this suit as well as a report on the conditions in the center prepared by the Legal Aid Society.⁴⁴ In addition, the Advisory Committee received information and criticism about the center during the 1978 factfinding meeting and through the interviews with the detainees. Some changes were instituted as a result of the Legal Aid Society report; however, the Advisory Committee found that additional improvements were needed.

The number of beds in the dormitory was reduced from 76 to 56 beds per room several years ago. Nonetheless, the narrow metal bunk beds were only several feet apart and gave the room the appearance of overcrowdedness. Many persons including the Legal Aid lawyers and detainees who were interviewed criticized the conditions for being overcrowded.⁴⁵

The dayroom also appeared to be overcrowded. Several detainees interviewed by the Advisory Committee said that on occasion detainees from two modules were confined in one dayroom during the evening, probably due to a shortage of detention officers. At those times, as many as 80 to 90 detainees would be in one room, and access to facilities such as the telephones was difficult. Several persons suggested that the confining of even as many as 56 detainees in one room created a crowded condition which increased the level of tension and number of disagreements among detainees.⁴⁶ According to Kevin Doyle, the facility supervisor, arguments and fights between inmates and between inmates and guards are not uncommon. As a result of a recommendation by a consultant who evaluated the facility, INS staff has requested funds to divide each dormitory and dayroom into two different living and sleeping areas. Under the new arrangement approximately half the number of detainees would be confined in a room, each of which would contain both a living and a sleeping area.

⁴³ *Man Chung Lam v. Griffin Bell*, No. 79 CIV No. 795 (E.D. N.Y., filed Mar. 26, 1979) (hereafter cited as *Man Chung Lam*).

⁴⁴ The Legal Aid Society, "Report on Visit to Immigration Detention Facilities at 136 Flushing Avenue, Brooklyn, New York," 1979 (hereafter cited as *Legal Aid Report*).

⁴⁵ *Legal Aid Report*, p. 40.

⁴⁶ INS reported that the reduction in the number of detainees and

All detainees are provided with a uniform (the same color as the module to which they are assigned), bed linen, and towels. Additional necessities such as a tooth brush and tooth paste may be purchased from vending machines in dayroom and are made available without charge to indigent persons. Both detainees and detention center personnel complained about the great number of roaches throughout the facility; however, INS reported that better sanitary conditions have been instituted since the Advisory Committee visit.⁴⁷ Other detainees said that, although the rooms were cleaned once a day, the dayroom was not cleaned overnight and detainees were forced each morning to return to a dayroom which was still dirty with the litter from the previous night. The Legal Aid Society report criticized the antiseptic smell of the cleaning agent.⁴⁸ The *Man Chung Lam* suit charged that "the dayrooms house 50 to 60 people each for approximately 12 hours a day in crowded, unsanitary conditions."⁴⁹

The ceilings of the dayrooms were insulated during the summer of 1979. The general atmosphere was somber. The cement block walls were painted dreary colors; and the paint in many areas was peeling. INS reported that the rooms were repainted in January 1980 and would be repainted at least annually.⁵⁰

Each dayroom has a television, ping pong table, and tables with magazines and newspapers. The facility receives 30 copies of *El Diario*, 4 for the women's unit and 26 for the men's unit. At the time of the Advisory Committee visits, detainees were not taking advantage of the few activities allowed in the room.

Full length movies are shown Tuesday and Saturday nights, with one English and one Spanish film shown each week. At the time of the Advisory Committee visits, the men were permitted to use a gym elsewhere in the building for an hour or an hour and a half each morning upon request. Subsequently a minigym was set up on the fifth floor and

the 24-hour access to sleeping areas greatly reduced overcrowding. (INS 1980 Response, p. 11.)

⁴⁷ INS 1980 Response, p. 10.

⁴⁸ *Legal Aid Report*, p. 4.

⁴⁹ *Man Chung Lam*, p. 6.

⁵⁰ INS 1980 Response, p. 11.

detainees were given access to the exercise area all day.⁵¹ The women's unit has an exercise bike, which, according to Mr. Schmidt, is rarely used.

At the time of the study, the bathrooms contained an open shower area, toilets without doors, and a line of sinks. In addition, there was a washing machine and dryer for each module. The lack of privacy was criticized by many people. The Legal Aid Society report states:

There appears to be no privacy at all for any of the detainees. The urinals and toilets are entirely public and there are no stalls except for community showers. We noted that some of the toilet seats were broken and unsafe and there was a lot of water on the floor. The lack of privacy is particularly unpleasant since the lavatory facilities for two of the modules are part of a large open passageway.⁵²

Subsequently panels were installed in the bathrooms and a maintenance person hired to correct the plumbing problem.⁵³

There are five or six public telephones in each dayroom. The telephones, which are without any form of shield, are several feet apart and no privacy is afforded to persons trying to make calls. In some cases, despite the new insulation, noise in the rooms makes it difficult to carry on a telephone conversation.

Outside Contact

Visiting hours are from 1:00 p.m. to 4:00 p.m. 7 days a week. Visitors sit in a long narrow room separated from the detainees by a wall with 22 small screened windows. According to Robert Schmidt, the length of the visit is determined only by the number of persons waiting. On weekends, when as many as 100 to 150 visitors come, visits may be limited to 20 minutes.⁵⁴

Contact visits are permitted upon request. In such cases, the detainee sits with the visitor at a table in an open area in the administrative section of the facility. The detainee is subject to a contact search after the visit and this, according to Kevin Doyle, discourages detainees from requesting such visits.

Detainees may see their lawyers from 6:30 a.m. until 10:00 p.m. when the dayroom is open. Mr.

Schmidt said that in an emergency the lawyer would be permitted in during the night. Detainees see their lawyers in the administrative section where contact visits are held. In 1980, an area was set aside for private consultations between a detainee and his or her attorney.⁵⁵

Enforcement of Regulations and Grievances

Maximum Confinement

The detention facility also contains 14 maximum security rooms for disciplining detainees. Three routinely are ready for use. These rooms, formally described as "individual confinement" but commonly referred to as "max," are small, windowless cells with a bed and built-in wash basin and toilet.⁵⁶ Confinement in max is authorized by the facility supervisor or chief of detention. At the time of the study, there was no requirement for a formal hearing when a detainee is put in max and the facility supervisor sometimes authorized the confinement at the recommendation of his staff without actually interviewing the detainee. Detainees interviewed by Commission staff charged that individuals were and could be confined based solely on the word of a detention officer. A formal hearing procedure was instituted in 1980.⁵⁷ The confinement is reviewed by the facility supervisor 24 hours later and again 72 hours after the confinement began. There is no external review process of persons confined in max and no formal appeal open to the detainee confined there. The average time in confinement is a "day or two" according to Kevin Doyle, the facility supervisor. However the *Man Chung Lam* suit charges that detainees sometimes are confined "in isolation for up to 3 weeks."⁵⁸ Persons in max are let out for one hour every evening and permitted one telephone call after every meal. There is a telephone within the max section. Meals generally are served in the cells and there are no exercise periods.

The Legal Aid Society report concludes that the cells constitute "cruel and unusual punishment" and recommends that they no longer be used.⁵⁹ The report states:

refurbished with better lighting which could be controlled by the detainees. (INS 1980 Response, p. 11.)

⁵¹ Ibid.

⁵² Legal Aid Report, p. 5.

⁵³ INS 1980 Response, p. 10.

⁵⁴ INS reported that a new noncontact visiting area would be completed in 1981. (INS 1980 Response, p. 11.)

⁵⁵ Ibid.

⁵⁶ INS reported that four of the cells were repainted in 1980 and

⁵⁷ Ibid.

⁵⁸ *Man Chung Lam*, p. 8.

⁵⁹ Legal Aid Report, p. 11.

The atmosphere of the maximum security cells can only be compared to dog kennels. . . . It seems intolerable that any of the men held as civil detainees should be compelled to spend even one night in these cells, which were clearly designed for punishment in a less enlightened day.⁶⁰

The *Man Chung Lam* suit charges that confining detainees in isolation "without any procedural due process" violates their fifth amendment rights.⁶¹

Rules

A copy of the facility rules (which have been translated into several languages) is given to each detainee upon arrival. The rules are also posted in all of the recreation areas.

Mr. Schmidt said that enforcement of discipline was a problem.⁶² He said that the facility provided for administrative rather than punitive detention.

The less important rules are not enforced and minor infringements of rules such as failure of a detainee to make his/her bed was not punished. More serious rules are enforced through confinement in "max." Finally criminal prosecution is a possibility if criminal acts occur.

At the time of the study, there was no formal grievance procedure for detainees who may want to make a complaint either about conditions at the center or about the handling of his/her case. However a grievance procedure was instituted in 1980.⁶³

Medical Treatment

Health services in the facility are provided by a doctor who holds sick call at 10:00 a.m., 7 days a week and a practical nurse who is stationed in the medical area 24 hours a day. The doctor and nurse handle only minor problems. Persons with serious medical problems are taken to either the public health service hospitals in Manhattan or Staten Island or Cumberland Hospital, which is a block away from the facility.

Conclusion

Many persons questioned the need for detaining persons who are charged with violating civil statutes in conditions which they characterize as worse than most prisons. At the 1978 factfinding meeting, Rev. Douglas Franklin, president of the Concerned Citi-

zens for Immigration Justice, said: "The treatment in the detention center is harsh and the alien is treated like a common criminal." (I,56) Immigration attorney Leon Rosen called the detention center "unfit for human habitation. . . . a veritable Devil's Island." (I,226) He argued for a total elimination of the practice of detaining suspected undocumented persons:

I absolutely feel it is inappropriate in virtually every case to detain an alien who is charged solely with a documentary violation. The alien who overstays his temporary stay should not be detained and should not have a bail fixed in such a high amount that it constitutes, for all intents and purposes, a detention. (I,272-3)

These persons argue that, if conditions at the detention center are similar to or worse than conditions at a Federal prison, then the constitutional protections and guarantees afforded to Federal criminal defendants should be applicable to the detained alien.

4. Deportation

Aliens are expelled from this country through the deportation process. Although the consequences of expulsion to an alien and his/her family may be very severe, the Supreme Court has refused to equate deportation with punishment and has characterized the administrative proceeding at which aliens are determined to be deportable (the deportation proceeding) as a civil rather than a criminal proceeding.⁶⁴ Certain constitutional rights, such as the right to counsel, the right against self-incrimination (including Miranda warnings), and the prohibition against *ex post facto* laws have been considered to be available only in criminal proceedings.⁶⁵ In short, although the 14th amendment guarantees to all "persons," citizens and noncitizens alike, due process of law, the Supreme Court has construed that the "process that is due" to persons facing expulsion is less than the due process afforded to persons facing criminal charges.

Nevertheless, it has been established that due process requires that to sustain an order of deporta-

⁶⁰ Ibid., pp. 9-10.

⁶¹ *Man Chung Lam*, pp. 9-10.

⁶² INS reported that the institution and publication of new maximum confinement procedures has "alleviated the disciplinary problems." (INS 1980 Response, p. 11.)

⁶³ Ibid.

⁶⁴ *McJunkin v. INS*, 579 F. 2d 533 (1978); *U.S. v. Floulis*, 457 F. Supp. 1350 (1978).

⁶⁵ *Asel v. U.S.*, 362 U.S. 217, rehearing and, 362 U.S. 984 (1960); *Mahler v. Eoby*, 264 U.S. 32 (1964); *Burques v. INS*, 513 F. 2d 751 (1975); *Jolley v. INS*, 441 F. 2d 1245, cert. denied 400 U.S. 854 (1969).

tion an alien must be given a fair opportunity to be heard.⁶⁶ At the time of the study, deportation hearings in the New York district were held at two locations. Cases in which any of the charges against the alien were disputed or those which may have other complications were heard at INS headquarters in the Federal Building at 26 Federal Plaza in Manhattan. Other cases, which were considered to be of a routine nature, were heard at the detention facility in Brooklyn. The Advisory Committee focused primarily on those cases heard at the Brooklyn detention center where the detainee generally is not represented. Since March 1980, cases of all detained aliens are held at the Brooklyn facility where an immigration judge is assigned on a permanent basis.⁶⁷

The Advisory Committee observed the hearings at the Brooklyn facility on 10 different days. The cases observed lasted from 5 to 20 minutes. The cases of most detainees were heard separately; however, in some instances as many as five or six aliens, who were either from the same country or apprehended at the same place of employment, were tried simultaneously. A judge frequently conducted 10 to 20 hearings in an afternoon.

Deportation proceedings commence with the issuance of an order to show cause which puts the detained person on notice of the charges against the individual and of the time and place of the deportation proceedings.⁶⁸ In theory, at least 7 days must elapse from the time the order to show cause is served until the date of the deportation proceedings.⁶⁹ However, the aliens detained at the Brooklyn center generally waive the right to the 7-day notification in order to be heard at an earlier date and shorten the period of detention. The 7-day period was established to provide an opportunity for the alien to make a meaningful determination whether to proceed with counsel and to prepare for the deportation hearing.⁷⁰ Immigration lawyer Leon Rosen said that the waiting period was generally

obtained only by those aliens with counsel who ask for an adjournment. (I,227)

The immigration laws and regulations grant the right to counsel, and counsel may, but need not necessarily, be an attorney. Unlike the criminal justice system, regulations require that such counsel be at no expense to the government and the government not bear the cost of providing counsel to aliens in deportation hearings.⁷¹ However, INS regulations provide that aliens under exclusion and deportation must be advised of organizations which provide free legal service.⁷² When aliens are brought to the detention center, they are given written notification in English and Spanish of their right to counsel. They are also given a list of organizations which provide free representation. At the opening of the deportation hearing, the immigration judge must "advise the respondent of his right to representation."⁷³

In addition to the right to notification of the charges and to be represented by counsel, the alien's due process rights at the hearing include the opportunity to cross-examine adverse witnesses, the right to present evidence on his/her behalf, and to have a decision by an unbiased judge based solely on the evidence presented.⁷⁴ These rights, however, may be waived. Often the INS encourages aliens to depart voluntarily prior to the deportation hearing.⁷⁵

An alien who does have a hearing and is found to be deportable may apply for various types of discretionary relief including permission to leave the country under an order of voluntary departure.⁷⁶ If an alien is deported at government expense, the alien is prohibited from returning to the United States. Under the terms of voluntary departure, he or she pays his own fare home and is eligible to seek readmission to the U.S. at a later date.

which provides for counsel "in an exclusion or deportation proceeding" has created confusion as to the right to counsel for aliens in earlier stages of enforcement. See the USCCR report, *The Tarnished Golden Door*, Chap. 7.

⁷² 8 C.F.R. §242.1(c) and §242.16(a); 8 C.F.R. §287.3; Also see generally 8 C.F.R. §292(1980).

⁷³ 8 C.F.R. §242.16(a)(1980).

⁷⁴ U.S.C. §1252(b)(1976); generally 8 C.F.R. §242.10-16(1980).

⁷⁵ 8 C.F.R. §244.1(1980). For a discussion of the problems raised by this procedure see the USCCR report, *The Tarnished Golden Door*, Chap. 2.

⁷⁶ 8 C.F.R. §243.5; 8 C.F.R. §244.1(1980).

⁶⁶ *The Japanese Immigrant Case*, 189 U.S. 86 (1903).

⁶⁷ INS 1980 Response, pp. 5, 11.

⁶⁸ 8 C.F.R. §242.1(a)(1980), 8 U.S.C. §1252(1976).

⁶⁹ The only exceptions to the 7-day rule are when the issuing officer determines that the public interest, safety, or security requires a shorter period of time, or when the respondent requests a shorter period of time for his/her convenience. 8 C.F.R. §242.1(b)(1980).

⁷⁰ *Yiu Fong Cheung v. INS*, 418 F. 2d 460 (D.C. Cir. 1969).

⁷¹ 8 U.S.C. §1362(1976); 8 C.F.R. §242.10(1980); also see generally, 8 C.F.R. §292 (1980). Moreover, a narrow interpretation given by INS to Section 292 of the Immigration and Nationality Act

An unfavorable decision regarding deportability or relief from deportation may be appealed to the Board of Immigration Appeals⁷⁷ and then reviewed by a U.S. Court of Appeals⁷⁸ or in an action for a writ of habeas corpus in a U.S. district court.⁷⁹ An alien must be informed of this right to appeal.⁸⁰

Much of the criticism of INS received by the Advisory Committee consisted of allegations that INS does not protect the rights guaranteed to the alien under current INS regulations and court decisions. For example, Leon Rosen, an immigration lawyer, charged that an alien is not always informed of his/her right to appeal as required by regulations. Mr. Rosen said:

The courts have held that obligation extends to the specific requirement that the judge advise and hand to the alien appeal forms. In actuality, in their haste to dispose of cases, in their effort to save words and to save time, most immigration judges simply ask the unrepresented detained alien, "Are you satisfied with my decision?" and accept an affirmative response as a waiver of that very basic right of appeal. (I,229)

Mr. Rosen stressed that he did not believe that this informal question gave adequate protection to the alien:

Faced with this enormous, traumatic moment in his life, the unrepresented detained alien, standing before the Bar of Justice and watching a judge or an administrative law judge who is not in fact a judge, (but who has) a judicial robe, peering over his glasses and looking down at the poor soul, is asked a question, "Are you satisfied with my decision?" I submit that if the decision was that you be shot at dawn that the answer would probably be, "Yes sir." (I,229-30)⁸¹

Mr. Rosen also charged that an alien frequently received the bond hearing at the same time as the deportation hearing so that "in actuality the two (hearings) are merged." He said that the alien often was not informed of his rights to a separate hearing on each issue. (I,228) During the administrative hearings monitored by the Advisory Committee, in many instances the deportation hearing immediately followed the bond hearing. However, INS staff said that INS regulations did not require a "lapse of time" between the two hearings. "As a matter of

practice the alien is given sufficient time to post the bond before the hearing on his deportation takes place, unless the respondent or his attorney requests that such hearing be held on the same day."⁸²

Other rights taken for granted in criminal proceedings are not guaranteed in the INS administrative hearing. For instance, INS regulations, which have been upheld in court, do not require the government to finance counsel for aliens who desire legal representation. Martin Needelman, another immigration lawyer, criticized this aspect of the process. He stressed that many aliens were "low income, marginal people" who had little understanding of their legal rights and who often needed counsel from the time the bond is set through the deportation hearing. (I,252-4) Although several groups including the Legal Aid Society and the U.S. Catholic Conference provide free counsel to aliens, Mr. Needelman charged that there were not enough lawyers available to do the necessary work. Immigration lawyer Austin Fragomen agreed that additional legal assistance was needed:

Certainly the legal services people do not have the capacity to represent a quarter of the aliens that need representation. . . .aliens should have a due process right to counsel and the (legal services) program should be expanded to the point that there are enough attorneys available. (I,265)

The problem of free legal counsel became more critical after the transfer of all cases of detained aliens to the Brooklyn facility and the appointment of an immigration judge to those hearings. INS staff reported to the Advisory Committee:

(Only) a few voluntary organizations have cooperated by appearing at the (Brooklyn facility). The majority of the voluntary organizations authorized to appear in INS proceedings have refused to render such local services at the (Brooklyn facility), insisting that detained aliens' hearings. . . be held at 26 Federal Plaza.⁸³

The protection against the admissibility of evidence obtained during an illegal search is also not extended to the alien. Currently an undocumented alien can be deported even if the arrest or search leading to the arrest was improper. *In Abel v. U.S.* the court upheld the deportation order although the

intended to communicate with the respondents in a simple and easily understood manner, avoiding the use of legal and technical language." (INS 1980 Response, p. 6.)

⁸² INS 1980 Response, p. 4.

⁸³ *Ibid.*

⁷⁷ 8 C.F.R. §3.1(b)(1980).

⁷⁸ 8 U.S.C. §1105(a)(1980).

⁷⁹ U.S. Cons. Art. I, Sec. 9, Ct 2; 8 U.S.C. §1105 (a)(9)(1976).

⁸⁰ 8 C.F.R. §3.3(a)(1980).

⁸¹ In its response to the draft, INS staff stated "The language used by Immigration judges 'are you satisfied with my decision' is

alien was arrested on the basis of evidence obtained without a proper search warrant.⁸⁴ This is in marked contrast to the current criminal procedure which would generally bar a conviction under the same circumstances. Mr. Rosen criticized INS policy saying:

The immigration judge, the Board of Immigration Appeals, and all too often the courts will recognize that an arrest was illegal, the search was unlawful; but they will differentiate and rationalize and accept the fruits of such illegalities, apparently on the theory that if the alien is, in fact, unlawfully in the United States, the impropriety in finding evidence and establishing that point can and should be overlooked. The result is, for all practical purposes, an encouragement of illegality. (I,225)

Court Monitoring

Commission staff and Advisory Committee members observed the deportation hearings at the Brooklyn facility 10 days during a 4-week period. During that time they observed approximately 140 cases. Four different judges presided and several different trial attorneys presented the INS position on the cases.⁸⁵ The Advisory Committee considers its observations of the proceedings not as a conclusive review but rather as a barometer indicating the need for a more detailed study of the proceedings and reports on its observations accordingly.

Observers noted a wide variation in the hearings. The primary factor determining the procedural correctness of the hearing appeared to be the presiding judge. Some judges carefully advised the detainees of their rights, explained clearly the deportation process, and treated the detainees and the defense attorney (if the alien was represented) in a respectful and courteous manner. Other judges failed to do any of the above.

During the first 2 weeks, the observers witnessed numerous violations of INS regulations and of the detainees' civil rights. These violations included the following:

- At least two judges frequently failed to advise, as required by recent INS regulation, the detainees of the availability of free legal service. The judges informed the aliens of their right to counsel at no government expense and then asked whether they had seen the list of immigration lawyers. They did not specify that the legal services on the list provided by INS were free.

- At least two judges more than once failed to notify detainees that they had a right to separate bond and deportation hearings as required by INS regulations. Instead the judges proceeded and held both hearings at one time.

- At least two judges regularly failed to advise the detainees of their right to appeal either the bond and/or the deportation ruling. Instead of referring to the right to appeal, they simply asked "Are you satisfied with my decision?" One judge in one instance said: "You have the right to appeal my decision, although it will not do you any good." Another judge stressed that the detainee must remain in detention during the appeal process and did not refer to the possibility of bond.

- Two judges regularly failed to adequately explain the advantages of voluntary departure. They did not inform the detainees that those persons who accepted the decision to depart voluntarily would be eligible for readmission to the U.S. without special permission.

- One judge appeared to conduct the prosecutions himself. He not only read the charges on the show cause order but injected information on the detainee's case history into the trial, and generally played the role of the trial attorney.

- The attitude of at least one of the judges was overbearing and others were discourteous as a minimum. The one judge, in a statement made before the proceedings formally began, in a voice audible to the entire court, said: "Where are my candidates for oblivion?" Another judge regularly interrupted the defense attorney and told him to stop repeating information or providing irrelevant information while during the same hearing permitting the trial attorney to repeat his statements and information. The same judge told several aliens: "You heard what happened to the other cases" instead of informing them of their rights.

In the latter weeks of the court monitoring, the quality of the hearings improved noticeably. The judges asked the detainees whether they wanted free legal assistance. (The day the judge first clearly informed the detainees of free legal services, all aliens asked for the assistance and their cases were postponed until the following day. During the previous 3 days when the notification had not been clear, only three aliens had asked for assistance.) The

monitoring of the INS administrative hearings is available in the USCCR/ERO files.

⁸⁴ 362 U.S. 217 (1960).

⁸⁵ A summary of the Advisory Committee and Commission staff

judges advised the aliens of their right to appeal and carefully explained the deportation process. The observing USCCR staff and Advisory Committee members could not determine whether the presence of the Commission on Civil Rights and its New York State Advisory Committee had caused the INS staff to be more careful.

Throughout the hearings observed by Commission staff and Advisory Committee members, interpreters were available for non-English speaking aliens. In most cases, the interpreter was present at the Brooklyn facility, but in one case an interpreter spoke Arabic over an intercom from 26 Federal Plaza. The Advisory Committee staff listened to the translations of the Spanish interpreters and concluded that the general quality of translation was good. However, the following criticisms were made:

- Some interpreters failed to translate the judge's inquiry as to whether the alien wanted counsel. Others failed to specify that the available legal assistance was free. They did not appear to be knowledgeable of the actual legal rights of the alien and to be aware of the importance of communicating those rights. In many instances, because of what appeared to be an attempt to simplify the translation, the interpreter omitted the word "free" altogether. In one instance the interpreter said "abogado legal" or "legal lawyer," a phrase without meaning.

- On several occasions, just before the hearings began, the interpreter informally approached several of the Spanish speaking detainees and asked them if they wanted to leave the country. The interpreter then asked if they would accept voluntary departure. The observers concluded that these questions should not be initiated by the interpreter and should be left to the judge and prosecuting staff.

The observers criticized several aspects of the physical plant of the INS hearing rooms in Brooklyn. INS regulations require that INS hearings be open to the public; however, access to the hearings is not easy. The hearing rooms are behind the locked door of the detention center and all visitors must provide identification to detention officers at the first floor entrance to the building and again at the locked door on the fifth floor where the inmates are detained. The main hearing room is a large formal room with a large desk for the judge facing lines of chairs for the aliens who are awaiting a hearing.

⁸⁶ Since the Advisory Committee visit in 1979, the desk used by the trial attorneys was replaced by a large table available to both

Although the trial attorney has a desk, the defense attorney does not.⁸⁶ As a consequence, the defense attorney and the detainee must stand up at the side of the judge's desk during the proceedings. When the cases of several detainees are conducted simultaneously, the detainees are lined up against the nearby wall. The impression conveyed to the observers was not one of impartiality and the atmosphere of the proceedings at the Brooklyn facility appeared to be less appropriate than that at the INS rooms in 26 Federal Plaza.

Judges

In the eastern district, there are 10 judges, 8 in New York, 1 in Buffalo, and 1 in Boston. (II,153) Some judges are assigned to two locations and, for instance, the judge in Boston holds regular hearings in Hartford, Connecticut. At the time of the factfinding meeting, almost all the judges were former prosecuting attorneys. (II,155-6) Several persons charged that some judges who were former prosecuting attorneys for INS did not have the objectivity needed for the judicial process. (I,249-50)

Immigration lawyer Leon Rosen said:

Perhaps the real problem is that the majority of the special inquiry officers or administrative law judges as they are now known have come from the ranks of Immigration Service trial attorneys. They have the prosecutor's background. Most of them think alike. They make their offices in the office of Immigration Service. They fraternize with service personnel. I do not infer that improprieties result; but I suggest that the appearance of improprieties is itself improper. (I,230-1)

Another lawyer, Austin Fragomen, said:

Virtually every immigration judge, for instance, in the district of New York was a trial attorney before he was an immigration judge which is tantamount to making every criminal law judge in office having been in the district attorney's office before being a criminal law judge. (I,248-49)

The Hon. Ira Fieldsteel, the liaison officer for the judges at the time of the factfinding meeting, said that many judges formerly were trial attorneys. However, he argued that the trial experience was helpful to the individual after he was appointed judge. "The one way to learn how a case should be presented and what the nature of the evidence is is to try to present it as a trial attorney," he said. (II,156)

the trial attorneys and the detainees and their attorneys or representatives. (INS 1980 Response, p. 12.)

5. Findings and Recommendations

In this study, the Advisory Committee looked at a wide range of problems facing documented and undocumented aliens in New York City. These problems ranged from difficulties in obtaining such basic and fundamental human services as financial and medical assistance to difficulties in making application to the U.S. Immigration and Naturalization Service (INS). The Committee also reviewed civil rights issues related to the INS apprehension, detention, and deportation process. The reality is that each of these issues is complex with the variations depending upon whether or not an alien has "papers" or other "equity" toward obtaining legal status and upon factors related to different nationality groups. Hispanic aliens share a number of common problems based on language and cultural background that are different from European aliens. Asians face another set of problems. Furthermore, among Hispanics, persons from Caribbean countries face different problems from those from South America. Japanese face different problems from Koreans.

In addition to the cultural, linguistic, and national origin variations, any study of aliens, particularly of undocumented aliens, is complicated further because of the lack of data. There are almost no hard data on undocumented aliens and because these aliens go to great lengths to stay away from governmental or other official organizations, much of the data obtained is of questionable reliability.

The study focused on the protection and preservation of rights of aliens, documented or undocumented, who are in this country, and on the impact of

these aliens on racial, ethnic, and linguistic minorities who are U.S. citizens. The Committee recognizes that international economic issues and questions regarding future migration of persons to the country directly affect issues related to aliens now in this country. It held a symposium in 1977 to explore some of these larger policy questions. However, the Committee did not attempt to reach specific findings and recommendations on any of these issues such as U.S. foreign policy toward developing nations, immigration policy toward future immigrants to the country, or amnesty for persons now in this country.

The Advisory Committee reviewed the hard data which were available and relied to a great extent on the knowledge of persons working in the field. The Advisory Committee contacted representatives of immigrant groups, immigration lawyers, INS staff and persons working in agencies providing services to aliens. It attempted to solicit comment from persons and groups who have taken different positions on an issue. For instance, regarding the question of what jobs aliens hold, the Advisory Committee interviewed some union leaders who charge that aliens are taking jobs from U.S. citizens and others who believe the contrary. The Committee interviewed community and neighborhood groups who have spoken out strongly against aliens as well as advocates for immigrant groups.

The Advisory Committee also reviewed conditions at the INS detention facility in Brooklyn and observed the administrative deportation hearings over a period of several weeks. The Advisory Committee recognizes that these interviews were

not comprehensive, and it does not consider its findings as conclusive. Furthermore, many of the problems identified by the Advisory Committee have at least in part been corrected since the Advisory Committee's visit and the Committee commends INS for these changes. Nonetheless problems remain. The findings issued in this report are viewed as flags to bring to the public's attention certain allegations of possible civil rights violations, some of which are very serious, and highlight other issues for policymakers of governmental and nongovernmental agencies. The Advisory Committee believes that these issues must be raised, even if they are not resolved conclusively in this report, in order to meet the needs of this growing, often maligned, and often overlooked segment of New York City's population.

Immigrants in New York City share many of the same experiences as those in other parts of the country. They came looking for jobs, better working conditions, and improved life styles. Upon arrival, the large majority are immersed in a society in which the language, culture, and customs are foreign. At best they become isolated in this white, English speaking community; at worst they become victims of discrimination, either in its overt or more subtle forms. Nonetheless, the experience of migrants to New York City is different in many ways from those to other areas such as the Southwest. The large majority here are persons who have overstayed their visas. They have come to join families and relatives. They plan to remain, not simply for a season's work, but for a lifetime.

Social Services

1. Although there are little hard data on the social services needed and used by aliens and less data regarding undocumented aliens, the Advisory Committee received a substantial amount of information from credible sources that aliens, and certainly undocumented aliens, avoid using public social services. In addition to a fear of governmental agencies shared by many documented as well as undocumented aliens, the undocumented have a strong self interest in staying away from such agencies in order to avoid detection. The range of estimates of the cost to the providers of these services to aliens is great. However, the Advisory Committee suspects that the use of these services by the undocumented is exaggerated. Furthermore, the Advisory Committee believes that even the circula-

tion of some of these estimates without a factual basis is inflammatory. The fears and insecurities of certain groups of people have been fed by some who are looking for scapegoats upon whom to assign blame for pressing national social and economic problems.

2. Both State and Federal governments have eliminated provisions under which aliens whose papers are not in order are eligible on a temporary basis for public services such as medicaid and public assistance. The Advisory Committee accepts the premise that the vast majority of undocumented came to the U.S. to work. Nonetheless, whatever the reasons, some undocumented may find themselves without financial or other support. Because these programs providing fundamental human services are not available, these undocumented in desperate need may suffer extreme and inhumane hardship.

3. At the time of the factfinding study, it was the New York City Board of Education's policy to deny free education to aliens unless they had permanent resident status. The tuition required of those aliens who obtained student visas imposed a financial hardship which probably meant that many persons kept their children out of school. However, in 1978 the board reversed its policy and now provides a free education to all students regardless of their alien status. The Advisory Committee highly commends this new policy and believes that the board is making a vital contribution not only to the healthy growth and development of alien children but also to the communities in this country in which they will live.

Jobs

1. The Advisory Committee reviewed the wide variety of opinion on whether the undocumented in New York City are taking jobs from U.S. citizens. Because there are almost no hard data, the Committee recognized that it was impossible to determine conclusively the realities on this issue. However, based on the information it received from persons working with immigrant groups in New York City and on the limited available hard data, the Advisory Committee accepts the view that most undocumented hold the lower income, unskilled positions regardless of their own skills or educational qualifications. The Committee also accepts the view that these jobs by and large are not desirable to most U.S. citizens and that most undocumented are not competing for jobs with U.S. citizens, either the employed or unemployed. The Advisory Committee

believes that INS studies based on INS detainees do not portray an accurate employment profile of the undocumented since INS pursues those in higher paying jobs.

2. The Advisory Committee believes that, because the undocumented are afraid to report violations of fair labor laws to the authorities, they are more likely to be exploited on the job.

U.S. Immigration and Naturalization Service

Service Function

1. Staff in the INS district office grew by 1 percent between 1977 and 1979 while the caseload grew by 42 percent. The increase in workload without a commensurate increase in staff has clearly contributed to the quality of INS staff performance. The Advisory Committee's review of the services provided by INS was limited; however, it heard repeatedly that many INS staff performed their work in a rude and discourteous manner. Representatives of immigrant groups described lengthy waits in making application to INS and some charged INS staff with a lack of impartiality and even racism.

2. Persons with the same linguistic and cultural background as the client population are underrepresented among INS staff. This underrepresentation, primarily of Hispanics and Asians, contributes to and increases INS service delivery problems. Hispanics, who constitute as much as one half of the client population, are seriously underrepresented.

The Advisory Committee heard repeatedly that INS staff were not sensitive or responsive to the needs of Hispanic clients. This problem was intensified by a lack of Hispanic language ability among non Hispanic staff. Similar problems were reported for Asians.

3. The Advisory Committee concluded that attitudes arising from the enforcement function of INS affect how INS staff provide services to its clients. It believes that there is an inherent conflict of interest between the two functions. It believes that there is a potential for abuse if the same agency processes the papers of the alien who is applying for adjustment of status as well as apprehends or expels that alien if his or her application is not accepted. Because there is an advocacy role implicit in each activity, the Committee finds that enforcement and service should be separated.

Enforcement

The Advisory Committee recognizes the importance of and strongly supports the need for consistent enforcement of the laws of the land. However, it believes that such enforcement can be carried out within the principles of due process and democracy that are also guaranteed by our country's legal system and without instilling fear. Charges were made to the Committee that INS personnel violate the due process rights guaranteed in current immigration law and INS procedures. Charges also were made that INS procedures did not provide adequate due process to the aliens who are apprehended and deported. They charged that due process afforded aliens was not equal to that afforded to persons facing criminal charges although the results of the charges, confinement and deportation, are certainly as severe as in the criminal justice system. The charges are discussed in greater specificity below.

Apprehension

1. Because no primary research was available on INS apprehension activities, the Advisory Committee's findings in this area are limited. Nonetheless, the Committee heard allegations that the INS conducted "raids" and "spot checks" creating an atmosphere of insecurity and fear and that a pattern of "gestapo techniques" prevailed. The Committee heard that these methods constituted harassment of many racial and ethnic minority U.S. citizens who were "checked" along with the suspected aliens. The Committee believes that these methods are detrimental to society based on democratic principles and the rule of law.

2. The Committee heard allegations that INS violated due process rights in a number of its procedures including the arrest of aliens. For instance, persons alleged that INS violated the fourth amendment rights in interrogations on the street or in places of employment and that arrest warrants were always obtained. The Committee did not conduct research in these areas or receive conclusive evidence from those interviewed. However, it believes that the allegations are of such a serious nature they must be heard.

3. The Committee finds that the INS arrest warrant procedures are insufficient. The problems include, first, the practice of permitting one INS official instead of a neutral individual—to issue an arrest warrant to other INS staff; second, a lower standard of evidence than probable cause (namely when

appears necessary or desirable"); and third, the lack of a sworn statement by the persons requesting the warrant (in fact, the information may be forwarded by telephone).

Detention

The Advisory Committee's findings are based on two visits to the INS detention facility in Brooklyn as well as a report by the Legal Aid Society and a suit filed by the American Civil Liberties Union. It recognized that many improvements have been made as a result of the report and suit, but believes that much is left to be done.

1. In the opinion of the Advisory Committee, conditions at the INS facility in Brooklyn were as bad if not worse than many municipal, State, and Federal prisons. It believes that confinement in such conditions was not appropriate for persons apprehended for violations of civil statutes. The Advisory Committee strongly commends the changes made at the facility since its visit. Because the Committee has not seen or evaluated these changes, it is not in a position to speak to current conditions.

At the time of the study, the Committee found that overcrowding was a serious problem at the facility and that such overcrowding contributed to tension among the detainees and between officers and the detainees. INS reported that the overcrowding was reduced because of a cutback in apprehensions because of the census. The Advisory Committee is concerned that with the new national emphasis on enforcement, overcrowding will again become a problem at the facility.

2. At the time of the study, there was a lack of privacy afforded to detainees. In the bathroom the lack of doors in front of the toilet and the lack of stalls around the showers failed to provide the privacy necessary for basic human dignity, at least for those racial and ethnic groups whose cultural background places great emphasis on privacy. The lack of shields around the telephones also made it difficult for a detainee to speak without the conversation being overheard and, because of the noise arising from the room, to speak on the telephone in a normal tone of voice. INS reports that these problems have been corrected.

3. Maximum security cells, small windowless rooms with no furniture, are used to punish detainees who violate the detention facility rules and regulations. At the time of the study, persons could be assigned to these cells without formal hearings and in some

cases upon simply the word of the deportation officer. The confinement in these cells was continued upon the authority of the facility supervisor and the detainee had no formal avenue within INS for appeal. The Advisory Committee commends the institution of disciplinary procedures regarding confinement in these cells.

Deportation

1. The Advisory Committee's study focused solely on the hearings at the Brooklyn facility, not those at 26 Federal Plaza. Although the performance of the judges observed by the Committee varied widely, in several instances serious due process issues were raised. At least two judges failed to advise the detainees of the availability of free legal service—although they did inform them of their right to counsel at no government expense and of the list of immigration lawyers. At least two judges asked the detainees if they were "satisfied" with the judge's decision instead of informing them of their right to an appeal. One judge conducted the bail review and the deportation hearing without informing the alien of his right to separate hearings.

2. The general demeanor of the judges varied widely. Several judges did not give the appearance of impartiality. At least one judge appeared to conduct the prosecution himself. Several judges made judgmental comments regarding aliens. At the same time, other judges conducted the hearings with courteousness and impartiality and treated both the detainees and their lawyers with respect.

3. All these factors contributed to an impression that these hearings in many instances provided only "railroad justice." INS officials state that cases heard at the Brooklyn facility are those in which the facts are not disputed and no problems are anticipated. The average hearing lasts no more than a few minutes and the rapid succession of cases, however appropriate the treatment, does contribute to the sense of excessively rapid hearings.

Recommendations

Social Services

1. The U.S. Department of Health and Human Services should modify citizenship or resident alien requirements for programs such as medicaid and public assistance and include aliens regardless of their status providing they met other eligibility criteria for a temporary period of time. These

programs are imperative for aliens who have no other means of assistance to meet their basic human needs until their status is adjusted or they arrange to leave the country.

2. The State Legislature similarly should change State eligibility requirements for programs such as medicaid and public assistance to include aliens regardless of their status for a temporary period of time. These programs are necessary for aliens who have no other means of assistance to meet their basic human needs until their status is adjusted or they arrange to leave the country.

3. The U.S. Department of Labor should increase enforcement of the Fair Labor Standards Act and other labor laws including the Davis Bacon Act to ensure that neither citizens nor aliens are required to work under unfair working conditions and for less than the minimum or prevailing wage.

U.S. Immigration and Naturalization Service (INS)

Service

1. INS should continue training for all personnel in the New York district office who come into contact with the client population. The Advisory Committee has not reviewed the training introduced in 1980. It commends INS for instituting such training and it believes that an ongoing effort must be made to improve INS service delivery.

2. The INS New York district office should regularly review the regional affirmative action plan to make sure it provides solutions for New York City. The plan should include numerical goals and timetables for hiring and promoting nonwhite, multilingual, and female staff. Particular attention should be given to develop goals so as to make the ethnic background and linguistic capabilities of the staff more representative of the client population. The Advisory Committee recognizes that, because of civil service requirements such as citizenship, it is difficult to have a staff which is as diverse as the client population; and the Committee does not believe that the staff should necessarily include persons from every country represented by the clients. However, it feels very strongly that broad representation is critical to improving INS service delivery. New York City has a large Hispanic and Asian population and every effort should be taken to recruit persons from this available labor pool.

Enforcement

Even though the courts have held deportation to be a civil proceeding not subject to the fourth amendment and other constitutional protections offered in criminal proceedings, the Advisory Committee believes that the severe and penal character of being deported requires that additional protections be extended to aliens in the deportation process. It further believes that INS should take steps to ensure that those protections now granted to aliens either under INS regulations or as a result of recent court hearings should be adhered to more strictly than is presently the case. The specific issues are discussed in greater detail below.

1. INS should conduct a thorough review of all INS apprehension activities of the New York district office including the use of search and arrest warrants, the practices related to area control operations or raids, and the practices related to interrogations in the street or other locations.

2. Congress should amend the Immigration and Nationality Act to provide that administrative arrest warrants may be issued only by a neutral judicial officer on the basis of the finding of probable cause. Criteria should be established to guarantee the truthfulness and accuracy of the request for the warrant.

Detention

1. Although the Advisory Committee commends the improvements at the Brooklyn facility, it believes INS should move the detention center to more suitable facilities than the one now in use. As long as the former Navy quarters are used, INS should continue to improve conditions there.

2. INS should take appropriate steps to correct the abuses, real and potential, arising from the joint functions of service and enforcement now lodged with INS. As an alternative, if it is not possible to administratively separate the functions to a greater degree, Congress should amend the Immigration and Nationality Act to establish a separate immigration court independent from the Immigration and Naturalization Service to hear all INS cases. In any case, a procedure should be established by which persons apprehended or detained by INS could file a complaint alleging violations of INS regulations which would be reviewed by personnel other than the immediate supervisors responsible for the actions.

3. Congress should allocate additional funds to increase resources to handle the growing caseload of applications filed for INS benefits or at least transfer resources from the enforcement to the service function. While the Advisory Committee recognizes the importance of all INS functions, it believes that the service function, through which aliens who are in this country legally follow legal procedures to stay in this country, should be more adequately staffed. The failure to provide these services may result in hardships in terms of human lives and certainly projects a negative and undesirable image of this country in the eyes of aliens coming here. The Advisory Committee finds it deplorable that families may be kept apart for extensive periods of time simply because of administrative delays.

Deportation

1. INS should conduct a thorough review of the deportation process to ensure that due process rights

now guaranteed by INS regulations are enforced and to determine whether recommendations should be made for extending such rights. Particular attention should be given to deficiencies cited in the findings of this report and to other issues raised by the Advisory Committee members and Commission staff attending the deportation hearings.

2. INS should take steps to assure that administrative deportation hearings held at the Brooklyn facility take place in an atmosphere of impartiality, dignity, and solemnity fitting for a judicial process.

3. INS should conduct a study of the background of the immigration judges in the New York district office to determine how many judges were former prosecuting attorneys. If the large majority of judges have a prosecuting background, steps should be taken to offset the representation of enforcement personnel and achieve a more balanced representation of persons among the judges.