

## NO PLACE FOR ANGELS: IN REACTION TO KEVIN JOHNSON

*Bill Ong Hing\**

### I. THE IMMIGRATION SAGA OF ONG CHOON HING AND SOO HOO JUN FUNG

In the early summer of 1912, at the height of the racist Chinese exclusion era,<sup>1</sup> Ong Choon Hing boarded the SS *Siberia* destined for the Port of San Francisco. He arrived at the immigration inspection station at Angel Island on July 28, 1912. Angel Island, located in San Francisco Bay not far from Alcatraz Island, was used as a detention and inspection center from 1910 to 1940.<sup>2</sup> Some 175,000 Chinese were confined—often for months and years at a time—in Angel Island’s bleak wooden barracks, where inspectors conducted grueling interrogations.<sup>3</sup> Those detained referred to the place simply as “the Island,” because it was no place for angels.<sup>4</sup> Choon Hing (Ong was actually his family surname<sup>5</sup>) was seeking to enter the United States as the son of a U.S. citizen who

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1. Responding to anti-Chinese sentiment (based on economic and social complaints) in California and the West, Congress enacted the Chinese Exclusion Act, ch. 162, 22 Stat. 58 (1882). The law, which represented Congress’s first of many immigration control laws based on race or national origin, excluded laborers for ten years (later extended) and effectively slammed the door on all Chinese immigration. It did permit the entry of teachers, students, and merchants, but their quota was quite small. The act crippled the development of the Chinese American community because Chinese women were defined as laborers. Chinese laborers who had already immigrated, therefore, had no way to bring wives and families left behind in China. Chinese exclusion was extended indefinitely in 1904 and was not repealed until 1943, in large part because China had become an ally during World War II. *See* BILL ONG HING, *MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850–1990*, at 23–26, 36–37 (1993).

2. *See* ERIKA LEE, *AT AMERICA’S GATES: CHINESE IMMIGRANTS AND U.S. IMMIGRATION, 1910–1940*, at 301 (1999).

3. *See id.*

4. *See No Place for Angels—A Woman’s Experience on the Island*, in *MEMORIES OF MAMA AND PAPA HING 1* (Lilly Hing Fong ed., 1993) (unpublished family memoirs, on file with author) (containing an account by “Helen ‘Annie’ Soo Hoo Hing as told to her son Bill Ong Hing”); HIM MARK LAI ET AL., *ISLAND: POETRY AND HISTORY OF CHINESE IMMIGRANTS ON ANGEL ISLAND* 35 n.2 (1980). One immigrant thought the island should be called “Devil Island,” explaining, “we were not able to find any angels there, but we did see many heartless human beings.” LEE, *supra* note 2, at 355.

5. In providing a name in Chinese, the surname is usually provided first.

was born in the United States. As the son of a U.S. citizen, Choon Hing was also a citizen and, therefore, could not be excluded as an alien, even though he was born in China.<sup>6</sup> His father had sent for him, and Choon Hing wanted to join his father.

More than two weeks later, on August 14, 1912, Choon Hing was interrogated by Inspector W.H. Webber:

Applicant speaks See Yip dialect.

Interpreter speaks See Yip dialect.

Q: Names?

A: Ong Choon Hing, no other names, not married.

Q: Were you ever married?

A: No.

Q: Have you any children?

A: No.

Q: How old are you?

A: 19.

Q: What year, month, and date were you born?

A: KS 20-11-26. [Birth and death dates often made reference to the reigning dates of various Chinese emperors. The month and date would follow the lunar calendar, so that the second month might translate as March in the Gregorian calendar.<sup>7</sup>]

Q: Where were you born?

A: Gow May village, H.P.D.

Q: Did you ever live in any other village?

A: Yes. We now live at Ng Ong village.

Q: When did you move to Ng Ong Village?

A: When I was five years old.

Q: How far are those two villages apart?

A: Five lis.

Q: Are they in the same district?

A: Yes.

Q: What separates the two villages?

A: There are two villages between the old and new, Ei Low and Quoi Yuan.

Q: What is the nearest market place to your present village?

A: Woo Lun market— a little over one li.

Q: What are your father's names?

A: Ong To Ming and Ong Ging Lung. [In China, each person had as many as four names. It was customary for a person to have a

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6. Only aliens are subject to U.S. immigration laws; citizens are not. *See* BILL ONG HING, *HANDLING IMMIGRATION CASES* 12, 307 (2d ed. 1995).

7. *See* JEANIE W. CHOOEY LOW, *CHINA CONNECTION: FINDING ANCESTRAL ROOTS FOR CHINESE IN AMERICA* 22 (1994).

birth name, school name, married name, and a respectful title when he died.<sup>8]</sup>

Q: How old is he?

A: 36.

Q: Where is he?

A: Now at Phoenix, Arizona. He is a cook there.

Q: Did you ever see him in China?

A: Yes, KS 34 he returned to China.

Q: How long did he stay at that time?

A: A little over two years, returning to the United States ST 3-4.

Q: Did you ever see him in China before KS 34?

A: Yes, I do not just remember. I was a boy at that time.

Q: What is your mother's name?

A: Mar Shee.

Q: How old is she, and what kind of feet has she? [Questions related to the "kind of feet" women had were relevant to whether the feet were natural or bound. The binding of feet severely limited the growth of the feet and women's ability to walk and was a "marker of wealth and status" in China through the 1920s, even though the binding of women's feet was outlawed during the 1911 Revolution in China.<sup>9]</sup>

A: 36, natural feet, now living in the home village.

Q: What village is she from?

A: San Gok village, about two pos from my village.

Q: How many brothers and sisters have you?

A: Two brothers, no sisters.

Q: What are their names and ages and present whereabouts?

A: Ong Chung Wing, 17 years old, now at home in China; Chung Yep, 4 years old, at home in China.

Q: Are these all the brothers you ever had?

A: Yes.

Q: What is your paternal grandfather's name?

A: Ong Yep Thit. I do not know his other name.

Q: Where is he?

A: Now living at home.

Q: How old a man is he?

A: 61.

Q: What is he doing in China?

A: Nothing.

Q: Was he ever in the United States?

A: Yes.

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8. *See id.* at 22–23.

9. LEE, *supra* note 2, at 328; *see also* JUDY YUNG, UNBOUND FEET: A SOCIAL HISTORY OF CHINESE WOMEN IN SAN FRANCISCO (1995).

Q: When did he return to China?

A: I do not know.

Q: What is your paternal grandmother's name?

A: Gin Shee, now living at home in China.

Q: What kind of feet and age?

A: Bound feet, 59 years old.

Q: Did your grandfather ever have any other wife?

A: No.

Q: Was your grandmother ever in this country?

A: Yes.

Q: Do you know when she returned to China?

A: No.

Q: How many brothers and sister has your father?

A: Two brothers, no sisters.

Q: What are their names, ages and whereabouts?

A: Ong Doon Ong, 38 or 39 years old, now engaged in business in Hong Kong, China. I did not stop at this place and therefore do not know the address.

Q: Is he married?

A: Yes, his family lives in our home village.

Q: What is his wife's name and kind of feet?

A: Wong Shee, bound feet.

Q: Have they any children?

A: One boy, no girls.

Q: What is his name and age?

A: Ong Chun Hoy, six years old.

Q: Was your uncle ever in the United States?

A: Yes.

Q: Do you know when?

A: I do not know what year he went back to the home village.

Q: The other uncle?

A: Ong To Hong, I do not know his age, now in China, living at the old village, Gow Mee.

Q: Is that the village in which you were born?

A: Yes.

Q: Did he live in the village in which you lived?

A: Yes.

Q: Was he married?

A: Yes, natural-footed wife, one girl, no boys, Ong Poy Har, 3 years old.

Q: Was this uncle ever in the United States?

A: I do not know.

Q: Is he older or younger than your father?

A: Younger.

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Q: What is your maternal grandfather's name?

A: Mar May Jung.

Q: Where is he?

A: Now living in his home village.

Q: How old is he?

A: A little over 50.

Q: What is your maternal grandmother's name?

A: Gee Shee, bound feet, now in Son Gop village.

Q: How many brothers and sisters has your mother?

A: One brother, no sisters.

Q: What is his name?

A: Mar Wing Ging, now in Victoria, B.C.

Q: Is he older or younger than your mother?

A: Older.

Q: Is there anyone in this country whom you saw in China?

A: Ong Shi Ott.

Q: What other name has he?

A: Ong Poy Koon.

Q: When and where did you see him?

A: He came to our house ST 2; I do not remember the month. He often came. I do not remember the first time.

Q: How many times did he call at your house?

A: So often that I cannot count the times.

Q: When did he return to the United States?

A: ST 3, latter part.

Q: Where does he live in China?

A: Wing Lung village.

Q: How far is that from your village?

A: About two lis.

Q: Were you ever in his house?

A: Yes, I went there with my father and brother, Chim Wing.

Q: Is Ong Shi Ott married?

A: Yes, natural-footed wife, two boys, no girls.

Q: What are their names and ages?

A: I was only there once; I do not remember the boy's name. The eldest boy I remember is Ong Fook. I do not remember the other one.

Q: How old is Ong Fook?

A: 9.

Q: How old is Ong Shi Ott?

A: Is over 30.

Q: Where does he live in the United States?

A: In Phoenix.

Q: Is there any other person in this country that you know of?

A: I do not know of any other.

Q: Did your father ever send a letter or money home by any person?

A: No.

Q: With whom did he arrange for your passage to this country?

A: Ong Tuey Yep, who belongs to Gong Yick Wing store, Hong Kong, China, 83 Wing Lock Street.

Q: What have you been doing in China?

A: Attending school.

Q: How many years did you go to school?

A: I commenced when I was 11 years old and continued until the end of last year.

Q: How large is your home village?

A: 18 houses.

Q: How many rows of houses?

A: Six rows.

Q: Which way does the village face?

A: North.

Q: Where is your house located?

A: Second house, first row from the east.

Q: Where is the schoolhouse?

A: First building, east side.

Q: Is there an ancestral hall in the village?

A: No.

Q: Where is your house?

A: Second house, first row.

Q: How many houses on your row?

A: Three.

Q: Where is the schoolhouse?

A: Just ahead of the first row is the Ng On Lee school.

Q: Is that the school you went to?

A: Yes.

Q: And your brother also?

A: Yes.

Q: Who is [the] teacher?

A: Ong Hong Yep.

Q: Was he the teacher when your father was home?

A: Yes.

Q: Who lives in the first house?

A: Ong Fook Scheck, married, natural-footed wife, no children.

Q: Who lives in the third house, your row?

A: Ong Quon Yep, bound feet, no children.

Q: Where does your eldest uncle live?

A: In the same house as I do.

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Q: Do his wife and children live there too?

A: Yes.

Q: Where does the schoolteacher live?

A: At Gow Ong village.

Q: Where do you get water for your house?

A: There is a pool of water in front of the village outside of the gate.

Q: How many gates to the village?

A: Two.

Q: Who lives in the first house on the second row?

A: Ong Lai Yep, bound-footed wife, one boy, two girls.

Q: What is the boy's name?

A: Ong Kip, 12 years old.

Q: Are the girls older or younger than he is?

A: Younger.

Q: Who lives in the second house, second row?

A: Ong Ngep, bound-footed wife, one boy, no girls, Fook Chee, 26 years old.

Q: Who lives in the third house on the second row?

A: Ong Ngept Hing, bound-footed wife, one boy, and one girl.

Q: What is the boy's name?

A: Ong Teu Wee.

Q: Who lives in the first house, third row?

A: Ong Yuan Wee, bound-footed wife, one boy, no girls, Ong Fook Horn.

Q: To where are you going to have your baggage checked?

A: Kim Lung Chung, 831 Dupont St., San Francisco.

Q: Whom do you know in that store?

A: It belongs to the Ong family people. I do not know anyone there.<sup>10</sup>

Choon Hing's case was far from over. His detention continued as Inspector Webber contacted immigration officials in Arizona, requesting that statements be taken from Choon Hing's "alleged" father, Ong Tiu Ming, and his Chinese friend, Dong Sai Ott. Webber sent the following message:

This applicant claims that he is the son of Ong Tiu Meng, who resides in Phoenix, Ariz., where he follows the occupation of cook.

I have taken the statement of the applicant and the transcript is enclosed in the case.

The examining inspector of the Arizona district should ascertain the different trips the alleged father has made to China, the dates of departure and return, [and] also the names of the steamers. He

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10. Interview by Inspector W.H. Webber with Ong Choon Hing, San Francisco, Cal. (Aug. 14, 1912).

should procure copy of the paper on which alleged father bases his claim of citizenship.

Case is returned for further investigation in Arizona.<sup>11</sup>

Inspector V.F. Partch of the Office of Chinese Inspector, in Phoenix, conducted the questioning of Dong Sai Ott on August 23, 1912, through an interpreter.<sup>12</sup> The next day, August 24, 1912, Inspector Partch questioned Choon Hing's father:

Q: What are your names?

A: Ong Tiu Ming. (Cert. name, Tong Chow Ming; as witness pronounces, it might be spelled either way; Ong Ngin Lung, married name; no other names)

Q: Where and when were you born?

A: Dong San Hong, #? Dupont St., upstairs, ? floor, San Francisco, Cal. KS 3/1/12, 36 years old.

Q: Describe your family.

A: Father, Ong Yep Thit, now 61 yrs old, in China; Mother, Gin Shee, 59 yrs old, in China; one brother, Ong Tiu Nun, now 39 yrs old, also born in San Francisco, went back to China KS 28, and is now in Hong Kong, a tailor; one brother, Tiu Hun, born in China after my mother went back, 30 yrs old; no other brothers or sisters; I was married to Ma Shee, KS 20/2/4, in China; wife now 36 yrs old; children, Ong Choon Hing, boy, 19, now at San Francisco; Ong Choon Wing, 17, China; Ong Choon Yip, 5 yrs old; no daughters.

Q: What was Choon Hing's birthday?

A: KS 20/11/26.

Q: Is he married?

A: No.

Q: Any children?

A: No.

Q: Where was he born?

A: Gow May, HP Dis't, China.

Q: Did he ever live in any other village?

A: Ng Hun Lee.

Q: How old was he when he moved there?

A: 4 or 5 yrs old.

Q: How far apart are the two villages?

A: About 2 or 3 li.

Q: Are they in the same Dis't?

A: Yes.

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Q: Do you know Ei Low and Quoi Yuan?

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11. Letter from Inspector in Charge, Chinese Division, Angel Island, Cal. (Aug. 14, 1912) (copy on file with author).

12. Interview by Inspector V.F. Partch with Dong Poy Coon, a.k.a. Dong Sai Ott, Phoenix, Ariz. (Aug. 23, 1912) (copy on file with author).

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A: Ei Low is the big road connecting Gow May and Ng Hun; Quoi Yuan is quite a number of houses between the two places.

Q: What is the nearest market?

A: Woo Lung, about ½ li from Ng Hun.

Q: Did you ever see Choon Hing in China?

A: Yes, when I returned to China KS 34/10/18 [until] I returned to the U.S. ST 3/3/24.

Q: You stayed there a little over two years then?

A: Yes.

Q: Did you ever see him when he was very little?

A: Yes, he was about 3 yrs old when I left.

Q: Has your wife bound or natural feet?

A: Nat.

Q: What village is she from?

A: San Gok, SN Dis't, 2 po's away

Q: Your wife, Choon Wing, and Choon Yip are all now in Ng Hun in China?

A: Yes.

Q: Did you ever have any other children?

A: No.

Q: Is your father living at the same place as your wife?

A: No, he still lives at Gow May.

Q: What does he do?

A: Nothing.

Q: When did your father return from the U.S. to China?

A: KS 5/10, SS *Gaelic*, Mother was with him, Tiu Ngun and I.

Q: What [kind of] feet [does] your mother [have]?

A: Bound.

Q: Did your father ever have any other wife?

A: No.

Q: Is Tiu Ngun married?

A: Yes; his family lives in Ng Hung Lee; wife, Wong Shee, bd feet; children, one boy, Chun How, 7 yrs old.

Q: Where does your young brother, Tiu Hun, live?

A: In Gow May, takes care of Father and Mother; is married, wife, Quan Shee, nat. ft.; children, 1 daughter, Toy Har, 3 or 4 yrs old.

Q: What is your wife's father's name?

A: Mar May Jung.

Q: Where does he live now?

A: In San Gok.

Q: How old is he?

A: 57 or 59 yrs.

Q: What is your mother-in-law's name?

A: Been dead 3 or 4 yrs; had bd. ft.

Q: How many brothers and sisters has your wife?

A: One older brother, no sisters. Mar Wing, lives in Victoria, B.C.

Q: Do you know Ong Sai Ott?

A: I have known him about 9 years; first knew him in Roosevelt, where we worked in the contractor's kitchen; now he with his partners runs the Casino Chophouse; I have been working for him since last year.

Q: Did you ever see him in China?

A: Yes, in ST 2 he went to China, where I had preceded him, then I came back to the U.S. first, but while we were there together 8 or 9 months we saw one another often.

Q: Did you call at his house?

A: Yes, when he first came.

Q: Did he call at your house?

A: Yes, lots of times.

Q: Did you take anyone with you when you called on him?

A: Yes, my two boys.

Q: Is Sai Ott married?

A: Yes, nat. ft.; children, 2 boys, Ong Fook, 9 yrs., Ong Wing, 7 or 8 yrs.

Q: How old is Sai Ott?

A: 32 or 33.

Q: Is there any one else besides Sai Ott that ever saw Choon Hing in China?

A: No.

Q: Did you ever send money to your wife by a messenger?

A: No.

Q: Who made arrangements for the boy's passage?

A: Ong Tuey Yep, boss of the Gong Yick Wing store in [Hong Kong], 74 Wing Lock St.

Q: What has the boy been doing in China?

A: Going to school.

Q: When did he commence going to school?

A: At 10 years of age.

Q: How many houses in Ng Hung Lee?

A: 18.

Q: How many rows?

A: 6.

Q: Which way does the town face?

A: North.

Q: Where is your house?

A: 1st row, 2nd house. East.

Q: Where is the school house?

A: First house on the east.

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Q: Is there an ancestral hall in the village?

A: No.

Q: How many houses in the first row?

A: 3.

Q: Did your son go to that school in the first row?

A: Yes.

Q: Choon Wing went there too?

A: Yes.

Q: Who was the teacher?

A: Ong Hong Yep.

Q: Was he the teacher when you were there?

A: Yes.

Q: Is the school house by itself or in the first row?

A: By itself.

Q: Who lives in the 1st house, 1st row?

A: Ong Fook Sheck, nat. ft. no children.

Q: Who [lives] in [the] 3rd house?

A: Quon Yep, bd. ft., no children.

Q: Where does your brother's family live?

A: In the same house with mine.

Q: Where does the school teacher live?

A: Gow Eng.

Q: Where do you get water for your house?

A: From a stream 3 or 4 feet wide running on the east.

Q: How many gates to the village?

A: No gates.

Q: Who lives [in the] 1st [house], 2nd row?

A: Lai Ngep, bd. ft., boy Kep, 13 or 14 yrs; 2 little girls younger than the boy.

Q: 2nd house, 2nd row?

A: Non Ngep, bd. ft., boy Fook Gee, no girl.

Q: Who lives [in the] 1st house, 3rd row?

A: Yun Wee, bd. ft., one boy, Fook Horn, no girls.

Q: Who is your agent in San Francisco?

A: Kim Lung Chung, 831 Dupont St., San Francisco.

Q: Do you know anyone in that store?

A: Yes, Ong Hen Lung, one of the proprietor's [sic].

Q: What was your father's business in the U.S.?

A: Kept a drug store, Doo Sang Hung, on Dupont St.  
(Recognizes picture of Choon Hing)<sup>13</sup>

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13. Interview by Inspector V.F. Partch with Ong Tiu Ming, Phoenix, Ariz. (Aug. 24, 1912) (copy on file with author).

Finally, on August 30, 1912, more than a month after Choon Hing had arrived at Angel Island, the Chinese inspector in charge made the following recommendation:

In re ONG CHOON HING, Son of Native, Phoenix, Arizona, No. 71, Siberia, July 28, 1912:

This applicant is under 18 years of age, and claims to be the son of Ong Too Ming, a prior-landed native now [residing] in Phoenix, Arizona. The record was forwarded to the Inspector in Charge of the Arizona District, and the statements of the father and one Chinese witness were taken in Phoenix.

There are no material contradictions in the testimony, and the prior-landing papers of the father show that he was in China at a time which would make his parentage to applicant possible (Ticket No. 107 Doric, September 29, 1897). The father returned from a subsequent trip, Ticket No. 34, Mongolia, May 26, 1911, and the testimony taken at that time is corroborative of the statements made in the present case. There is no adverse testimony in the case on which the father was landed on his first trip.

I recommend favorable action.<sup>14</sup>

Thus, on September 3, 1912, Choon Hing's application for admission was approved, and on September 12, 1912, he was issued certificate of identity number 8494. The approval form indicates:

Name: Ong Choon Hing

Age: 19

Height: 5 feet, 2 ¼ inches

Physical marks: Scar right forehead; moles left neck

Occupation: Cook

Place: Phoenix, Arizona

Admitted as: son of native.<sup>15</sup>

Choon Hing proceeded to Phoenix where he worked as a waiter and a cook at the American Café for a few years. Customers taught him English, and one of them told him about miners in the hills of Arizona and their need for supplies. With his savings and a loan from that friendly customer, Choon Hing headed for a copper and silver mining camp sixty miles southeast of Phoenix to open a general supply store. The friendly customer had been right; the need for food and dry goods supplies was high in the mineral-rich mountains of Arizona. Choon Hing's store was a success. The hours were long but worth it. Within a year he repaid the loan, and other relatives joined him in his efforts.

After more than eight years in Arizona, Choon Hing decided that it was time to look for a wife back in China. To leave the United States and

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14. Letter from W. H. Webber, Chinese Inspector, Dep't of Commerce and Labor (Aug. 30, 1912) (copy on file with author).

15. Application received from Commission of Immigration, Port of San Francisco (Sept. 10, 1912) (copy on file with author).

later return, Choon Hing had to submit a special application designed especially for American-born Chinese for “preinvestigation of status” on January 6, 1921:

It being my intention to leave the United States on a temporary visit abroad, departing and returning through the Chinese port of entry of San Francisco, California, I hereby apply, under the provisions of Rule 16 of the Chinese Regulations, for preinvestigation of my claimed status as an American citizen by birth, submitting herewith such documentary proofs (if any) as I possess, and agreeing to appear at such time and place as you may designate, and to produce then and there witnesses, for oral examination regarding the claim made by me.<sup>16</sup>

After another formal interrogation, Choon Hing’s application was approved by the Chinese and immigrant inspector in San Francisco more than four months later on January 24, 1921:

This is to certify that the person of Chinese descent named herein, and whose photograph is attached under the signature of the investigating officer and under my signature and seal, to the above application, has filed in my office the duplicate of this application, and evidence in corroboration of his claimed American birth. Upon his return to this port and his identification as the person to whom this paper, thus approved, is delivered, he will be permitted to reenter the United States, unless pending such return it has been found that his claim is false.<sup>17</sup>

In China, Choon Hing retained a matchmaker to assist him in his search for a wife. On a visit to one village, Nong Woo Village, Choon Hing met Soo Hoo Jun Fung. They fell in love and married on April 21, 1921. Choon Hing returned to the United States and began building a house for his bride adjacent to the Phoenix supply store. Three years later, he was able to arrange for Jun Fung’s trip to the United States.

Jun Fung’s voyage began with a small boat ride from her home to Hong Kong. After spending the night in a hotel, she boarded the SS *Tenyo Maru* in Kowloon for the twenty-one-day trip to the United States via Singapore, Hong Kong, and other ports. The ship entered the San Francisco Bay, and Jun Fung arrived at Angel Island on June 23, 1924.

As she struggled off the ship with her large, black footlocker, Jun Fung had an idea of what lay ahead. She arrived with high hopes and expectations, happy and relieved at the completion of the arduous voyage. San Francisco was just across the water, but Jun Fung was aware that she was not yet officially in the United States. An immigration interrogation and inspection was on the horizon, and she knew that if the immigration examiners were not satisfied, she would be forced to return to China, not setting foot on any part of the United States other than the Island.

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16. Application of Ong Choon Hing, signed by San Francisco Chinese and Immigrant Inspector, U.S. Dep’t of Labor (Jan. 24, 1921) (copy on file with author).

17. *Id.*

The housing was stark. Men and women were housed in separate barracks; small children stayed with the women. As Jun Fung walked into her assigned quarters, she was greeted by the other women. Bunk beds were crammed into a room with pale gray walls. The only beds available were on the top.

After a few hours of conversation with the other women, Jun Fung learned more about what to expect. She would be medically examined in a day or so, and then her papers would be preliminarily reviewed. Only a few interrogations took place daily, but it was likely that she would be questioned within a week or so. Interviews were fifteen to thirty minutes long on average, although some had been said to last up to two hours. The longer the interview, the more likely it was that the authorities suspected something. If discrepancies were noted or details forgotten, relatives waiting in San Francisco were often called to the Island to be interviewed separately. Additional records might also be requested. This process could go on indefinitely, and Jun Fung met several women who had been held on the Island for as long as two years.

That evening, Jun Fung joined the other women for her first meal on the Island. The food hall was an enormous room with long wooden tables and benches. The meal consisted of steamed rice and boiled mustard greens. The meal was typical, according to the other women. Around the room, Jun Fung could see that just about everyone was Chinese; only a few were Japanese and Korean. In fact, most of the other detainees were from southern China, as was she, and particularly from the province of Canton.

The next day, as was customary, Jun Fung and the women were allowed outside for fresh air and exercise. As she gazed through the fence down to the harbor, she saw several Chinese men alighting from the San Francisco ferry boat. She was sure that one of them was Choon Hing, so she waived and yelled, but because of the distance he could not hear her.

Weeks earlier, Choon Hing had received a cable from Jun Fung notifying him of her estimated arrival date. He traveled a thousand miles from southeastern Arizona to San Francisco by train—over rail that many of his relatives had helped to lay. When he arrived at the Island, he asked to see his bride, but his request was denied. No one could speak with such a relative prior to the interview; the fear was that advice on how to answer questions would be given to the person detained. He would have to wait for her case to be heard before he could speak on her behalf.

About a week later, Jun Fung's case was formally heard before the Board of Special Inquiry on Angel Island on June 30, 1924. The case was titled "In the Matter of Seeto Shee, Wife of citizen." Those present included two inspectors, C.B. Franklin (chairman) and A.E. Wessling; a stenographer, F.P. Murphy; and an interpreter, C. Rickards. The transcript of the proceedings reads as follows:

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Applicant sworn and admonished that if at any time she does not understand the Interpreter to at once so state; speaks See Yip Dialect; Interpreter qualified.

Q: What are your names?

A: Seeto Shee (pronounced Soo Hoo); Soo Hoo Jun Fung is my girlhood name.

(Correctly identifies photos of self and alleged husband in present record)

You are advised your right to admission to this country will be today considered by this Board. There is present as a witness in your behalf your alleged husband, Ong Choon Hing. The Regulations provide for your having a relative or friend present during the hearings to be conducted and such relative or friend cannot be your attorney; if he is a witness in your case he cannot be present until he shall have completed the giving of his testimony and he cannot be the Representative of any Immigrant Aid or other similar society; he must actually be a relative or friend of yours.

Q: Do you wish to use this right?

A: I would like to have my husband present.

Q: Can you sign your name?

A: Yes.

Q: Have you understood the Interpreter?

A: Yes (Fung Ming).

(Applicant dismissed)

ALLEGED HUSBAND sworn and admonished that if any time he does not understand the Interpreter to at once so state; speaks See Yip Dialect; Interpreter qualified.

Q: What are your names?

A: Ong Choon Hing, Ong Wong Lung; no others.

Q: How old are you?

A: 31 years old.

Q: Where were you born?

A: In the Ong On (Ung) Village, Hoy Ping District, China.

Q: When did you first come to this country?

A: CR 1 (1912) July. I was admitted as the son of a native.

Q: At that time you stated you were born in the Gow May Village?

A: I was born in the Gow May Village, HPD and moved to the Ung On Village when I was 3 or 4 years old.

(Presents C. I. No. 8494 of which he is the proper holder; same is endorsed and returned)

Q: How many trips have you made to China?

A: Only one.

(Note: His record shows he departed Feb. 19, 1921, and returned Oct. 14, 1921)

Q: In [sic] whose behalf do you appear today?

A: To testify for my wife, Soo Hoo Shee (Seeto), who is an applicant for admission.

Q: Will you present a corroborating witness in this case?

A: No.

Q: Do you desire to proceed to conclusion in this case without any other witnesses besides yourself?

A: I have a father and a brother in Superior, Arizona. Their testimony could be taken there if necessary.

Q: Is it your desire to delay the completion of this case in order that their testimony may be heard in Superior, Arizona?

A: No, I would rather proceed with the case [because] that would take up too much time. I have to return to Superior, Arizona to make preparation for a barbecue for the 4th of July celebration. I own property there. I am now building a five room house there. I brought with me a certificate of my character from the citizens of Superior.

(Note: Said certificate in duplicate is filed with the case)

Q: Do you then waive the right to produce other witnesses?

A: In case my wife is refused landing, I would like to present my father and brother as witnesses.

Q: Describe your wife.

A: Soo Hoo Shee (Seeto); 24 years old; natural feet; applicant.

Q: How many times have you been married?

A: Once.

Q: When and where were you married?

A: CR 10-3-14 (April 21, 1921) in the Ung On Village, HPD., China.

Q: Have you ever had any children?

A: One son; no daughters.

Q: Describe your son.

A: Ong Yit Sing, 4 years old; born CR 10-11-28 (Dec. 26, 1921); he is living in the Ung On Village where he was born with my mother.

Q: Are your parents both living?

A: Yes.

Q: Describe your father.

A: Ong Chew Ming, Ong Yin Lung; no other name; 48 years old; living in Superior, Arizona in my store.

Q: Describe your mother.

A: Mar Shee, 48 years, natural feet; living in the Ung On Village.

Q: Have you any brothers or sisters?

A: I have four brothers; no sisters.

Q: Describe your brothers.

A: Ong Choon Wing, I don't know his marriage name; 29 years old; he is in the United States. I haven't heard from him in a few years.

Ong Choon Yip; he has no other name; 16 years old; he is in my

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store in Arizona. Ong Choon Fat; 4 years old; he is living in the Ung On Village. Ong Choon Ott; 3 years old; he is living in the Ung On Village.

Q: When did your brother Ong Choon Yip come to this country?

A: Last year.

Q: Has your wife met your father, mother and all your brothers?

A: Yes.

Q: Any of your brothers married?

A: Ong Choon Wing is married.

Q: Describe his wife.

A: Hom Shee, 27 or 28 years old; natural feet; living in the Ung On Village.

Q: What family have they?

A: One son, no daughters.

Q: Describe that son.

A: Ong Yit Gong, 9 years old; living in the Ung On Village.

Q: How large is the Ung On Village?

A: 19 houses in all.

Q: Does that include the public buildings?

A: There are nineteen dwellings and one school.

Q: What direction does the village face?

A: North.

Q: Where is the school located?

A: It stands at the east or head of the village by itself in the first row.

Q: Where is your house located?

A: Counting from the east or head on the first row of dwellings, the first house; next to the school.

Q: How many rows in your village?

A: Seven rows of dwellings.

Q: Do you or your father own any other houses in that village?

A: No; only the one house.

Q: Have you and your brother's Ong Choon Wing's families been living in that house?

A: Yes.

Q: Do your mother and two younger brothers also live in that house?

A: Yes.

Q: What is your occupation in Superior, Arizona?

A: The Spring Garden Grocery.

Q: You state you are building a house for occupancy of yourself and wife?

A: Yes; I have 4 or 5 houses in Superior but I am building this for my own use.

Q: Under what ceremony were you married to your wife?

A: According to the new custom.

Q: Did you have any American or Christian ceremony?

A: No, Chinese custom.

Q: Did you ever see your wife before the day you married her?

A: No.

Q: Who arranged your marriage?

A: My mother.

Q: What is your wife's native village?

A: Nong Woo Village, 8 or 9 lis northwest from my village.

Q: At what time did your wife arrive at your house on the wedding day?

A: At 4 o'clock in the afternoon in a sedan chair.

Q: Who came with her?

A: Eight persons accompanied her, including two chair bearers, and some of her people carried trunks and some furniture belonging to her.

Q: Did she have any personal attendants?

A: No.

Q: What did she bring in the way of a dowry to your house?

A: Two trunks, one clothes closet, some stools, some wash basins and one wash tub; that's about all.

Q: Describe the ceremony.

A: Fire crackers were exploded on her arrival; there was no ancestral worship. My wife worshipped the Joss but not any Ancestral worship.

Q: Were there any feasts?

A: Yes, there were two feasts held; one on the 14th and one on the 15th day of the month. There were seven or eight tables set for each feast.

Q: Did the bride serve the guests with anything?

A: She poured tea for the guests and also beetle [sic] nuts.

Q: Did you give your wife any wedding presents?

A: No.

Q: Are her parents living?

A: Her father is dead, but her mother is living.

Q: What was her father's name?

A: Soo Hoo Ott.

Q: When did he die?

A: A long time ago; I don't know when.

Q: Describe her mother.

A: I don't know her mother's name; I never saw her.

Q: Has she any brothers or sisters?

A: I believe she has two brothers and two sisters.

Q: Have you ever seen them?

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A: No.

Q: Describe them.

A: Brothers, Soo Hoo Dung Deck; I don't know his age; he is in the Nong Woo Village. I don't know the name of her other brother. I don't know her sisters' names.

Q: While you were at home what room in your father's house did you and your wife occupy?

A: The room on the big door side or west.

Q: What room did your brother's, Choon Wing's, family occupy?

A: The room on the east or small door side.

Q: What room did your father and mother sleep in?

A: In the parlor.

Q: Are your father's parents living?

A: No.

(Correctly identifies all photos in present record)

Q: Have you anything further to state?

A: No.

Q: Have you understood the Interpreter?

A: Yes (English).

Interpreter: Fong Ming

Applicant's examination continued; she is admonished that she is still under oath. Alleged husband present and he and applicant are admonished that they shall not communicate with each other in any way. Applicant is also admonished as to crime of perjury and penalty therefor.

Q: What are your names?

A: Soo Hoo Shee (Seeto), 24 years old; female sex, Chinese Race; I was born in KS 27-1-29 (March 19, 1901) in the Nong Woo Village, Hoy Ping District, China. I have resided during the past five years in the Ung On Village, Hoy Ping District, China, since CR 10 (1921); before that I was living in my native village. I was married in CR 10-3-14 (April 21, 1921) in the Ung On Village. My husband is Ong Choon Hing, alias Ong Wong Lung; 31 years old; he is here in this room. My occupation is housewife. I can speak, read and write Chinese. My father, Soo Hoo Mung Goon, Soo Hoo Oo, died about ten years ago. My mother, Fong Shee, 58 years old, is living in the Nong Woo Village. I am destined to my husband at Superior, Arizona, who resides there. I am coming to the U.S. for the purpose of living with my husband and I intend to reside here permanently. I was never arrested or supported by charity. Neither myself or either of my parents have [ever] been an inmate in a hospital for the care and treatment of the insane. I have never been excluded and deported or arrested and deported. I am not a polygamist or an anarchist. I haven't very much money, but my husband will support me.  
PERSONAL DESCRIPTION: Height 5 feet 2 ½ inches in Ameri-

can shoes; complexion, dark brown; hair, black; eyes brown; Marks, two pits right temple.

Q: When did your husband last come to this country from China?

A: He returned to this country in CR 10-8 (September 1921).

Q: Have you any children?

A: Yes, one son; no daughters.

Q: Describe that son.

A: Ung Yit Sing, 4 years old; born CR 10-11-28 (Dec. 26, 1921); he is living at home with my mother-in-law.

Q: Are your husband's parents both living?

A: Yes, both living, but my father-in-law is in this country. He returned to this country in CR 12 about the 7th month (August 1923).

....

Q: Has your husband any brothers or sisters?

A: Yes, he has four brothers; no sisters.

Q: Describe them.

A: Ong Choon Wing; 20 odd years old; living in this country, Ong Choon Yip, 16 or 17 years old; he is with my father-in-law Ong Choon Fat, born in CR 11 (1922); Ong Choon Ott, born last year. The last two are living in the Ung On Village.

....

Q: Are any of your husband's brothers married?

A: Yes, Ong Choon Wing is married.

Q: Describe his wife.

A: Hom Shee, 20 odd years old; natural feet; living in China with my mother-in-law.

Q: Has she any children?

A: Yes, one son, Ong Yit Gong, 8 or 9 years old; living at home; no daughters.

....

Q: How large is the Ung On Village?

A: 19 houses.

Q: What direction does that village face?

A: North.

Q: On which side is the school?

A: East[.]

Q: Where is your husband's house located?

A: Right by the school—the small door faces the school.

Q: Then is your husband's house the first house in the first row of dwellings on the east?

A: Yes.

Q: How many rows of dwellings are there?

A: Seven rows.

....

Q: By what ceremony were you married?

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A: New Chinese custom.

Q: Did you ever see your husband before the day you were married?

A: No.

Q: Who arranged your marriage?

A: My mother-in-law and my husband.

Q: At what time did you arrive at your husband's house on the day of the wedding?

A: About four o'clock in the afternoon on a sedan chair.

Q: How many persons came with you?

A: Eight persons, including the go-between, the men who carried the sedan chair and some who carried the household goods and my baggage.

Q: What did you bring in the way of household goods and baggage?

A: I had a wardrobe, two trunks, table, basins and wearing apparel[.]

....

Q: Was there any ceremony after you arrived on that evening?

A: Yes, an offering of tea and betel nuts, and there was a feast.

Q: Were there any fire crackers fired after your arrival?

A: Yes.

Q: Did you do any worshipping?

A: Yes, I worshipped the Ancestral tablets and Joss both[.]

Q: How many feasts were held?

A: Two feasts; one was held on the day of my wedding and one on the following day on the 14th and 15th.

Q: How many tables were set at each of those feasts?

A: About 7 tables on both occasions.

....

Q: While your husband was last at home in what room did you and he sleep in his house?

A: The room on the big door side or west.

Q: What room did his brother's, Choon Wing's, family occupy?

A: The room on the small door side.

Q: In what room did his father and mother sleep?

A: In the parlor.

(Applicant correctly identifies photos of her husband's father, Tong Chow Ming, and brother, Tong Chun Yip, contained in their respective connecting records herewith)

Q: Have you anything further to state?

A: No.

Q: Have you understood the Interpreter?

A: Yes (Peter Wong).

CHAIRMAN:

This applicant is applying for admission as the wife of a citizen.

Her alleged husband, Ong Wong Lung alias Ong Choon Hing, was born in China and was first admitted to this country as the son of a native September 3, 1912. He has made one subsequent trip to China, departing February 19, 1921 and returning October 14, 1921 and was admitted as a citizen on Form 430, at which time he stated on the steamer that he had been married, describing his wife and the date of his marriage being the same as that given in the present record.

The applicant and her alleged husband were heard by the Board on this date and their testimony was in good agreement. The alleged husband is a grocery merchant at Superior, Arizona, where he expects to take his wife to live and where he states he is now building a house for them to live. The applicant has the appearance of a respectable Chinese country woman and the case bears all indications of being genuine.

From the evidence adduced I believe that the claimed relationship has been reasonable [sic] established and move to admit.

Inspector Wessling:

I second the motion.

Clerk Murphy:

I concur.<sup>18</sup>

As a result, Jun Fung, a.k.a. Seeto Shee, was issued certificate of identity number 52237. Her application and receipt for certificate of identity, dated July 1, 1924, indicated the following:

Name: Seeto Shee

Height: 5 feet, 2 ½ inches

Occupation: Housewife

Place: Superior, Ariz.

Admitted as: Wife of Citizen

Physical marks: Scar on forehead above center of right eyebrow, pit right side nose.<sup>19</sup>

The detention that Choon Hing and Jun Fung endured at Angel Island was typical of the experience of other Chinese who attempted to enter the United States during the Chinese exclusion era. Choon Hing and Jun Fung were fortunate in that they were allowed to enter. Others were less fortunate and were sent back to China, having come within what today is a short ferry ride to San Francisco. For some, the frustration and humiliation were so painful that they committed suicide.<sup>20</sup> In contrast, at Ellis Island where Europeans passed, most new immigrants stayed for a mere few hours of processing before being permitted to continue to

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18. Transcript of meeting before a Board of Special Inquiry for the U.S. Department of Labor at Angel Island, Cal., In the Matter of Seeto Shee, Wife of citizen (June 30, 1924) (copy on file with author).

19. Application and Receipt for Certificate of Identity, Certificate of Identity No. 52237, U.S. Dep't of Labor (July 1, 1924) (copy on file with author).

20. See LEE, *supra* note 2, at 356, 359.

Manhattan and beyond.<sup>21</sup> One commentator described the Chinese experience:

In fact, the system of enforcing the Chinese exclusion laws on Angel Island (and across the country) created hardship and dilemmas for both Chinese immigrants and U.S. immigration officials. Undocumented immigration had resulted in stricter enforcement procedures which made it more difficult for immigrants with valid and invalid claims. All Chinese were subjected to the extensive interrogations and examinations, and all Chinese immigrants had to be prepared for the process or risk exclusion. The interrogations were frightening experiences for many Chinese. Moreover, they also lengthened the entire inspection process and forced Chinese to be detained in the crowded and dismal barracks of the station. Indeed, most immigrants selected for further investigation had to endure the additional hardship of being incarcerated on Angel Island for several days, months, and even years awaiting their turn to be questioned and given their final judgment of admission or deportation.<sup>22</sup>

Consider the case of Sang Li Yee. During the Chinese exclusionary period, merchants and their wives could still be admitted. Immigration officials often judged a merchant wife by her appearance and clothing and looked at whether she had bound feet, a marker of wealth and status.<sup>23</sup> Whether a woman was “decent” or of a “better class” might very well turn on whether she had the “badge of respectability of bandaged and small feet.”<sup>24</sup> Unfortunately, for Sang Li Yee, she had natural feet and was, therefore, locked up, suspected of being a prostitute rather than a wife. Not until the Santa Barbara sheriff and representatives from the local Chinese Presbyterian church intervened at the behest of her husband was she allowed to land.<sup>25</sup>

Humiliating physical examinations were also common:

These examinations apparently served the purpose of helping the staff to medically determine an immigrant’s age. Because immigration officials believed that Chinese routinely lied about their age in order to conform to the life history contained in bought papers, the Bureau ordered immigrants to be examined by doctors to verify the person’s age. One example of this continued practice is illustrated in the case of Yee Shew Ning, a son of a merchant who arrived in 1918. Stripped of all clothing, Yee was subjected to a lengthy and thorough examination by J.P. Hickely, a medical examiner on Angel Island. Charged with the task of determining Yee’s age, Hickely carefully scrutinized, measured and made notations on Yee’s “hair (caputal, axillary, facial, and pubic,) condition of skin, eruption and

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21. *See id.* at 301.

22. *Id.* at 353–54.

23. *See supra* text accompanying note 9.

24. LEE, *supra* note 2, at 328.

25. *See id.* at 328–29.

development of teeth, development of sexual organs, facial expression, and general attitude.” Though physicians on Angel Island conceded that this type of scrutiny and examination was in fact an unreliable method to determine the age of applicants, such detailed examinations [were] apparently allowed and recommended by immigration officials.<sup>26</sup>

The questions asked of Choon Hing and Jun Fung were common of most Chinese applicants: “How many rows of houses in your village?” “Who lives in the third row?” “How far is it from your village to the nearest hill?” Many of these questions were simply “unanswerable” but consistently used by inspectors who “seemed intent on harassing Chinese immigrants.”<sup>27</sup> For example, Fong Hoy Kun, who was seeking admission as the son of a native in 1938, was asked:

Q: Which direction does the front of your house face?

A: Face[s] west.

Q: Your alleged father has indicated that his house in How Chong Village faces east. How do you explain that?

A: I know the sun rises in the front of our house and sets in the back of our house. My mother told me that our house and also the How Chong Village faces west.

Q: Cannot you figure this matter out for yourself?

A: I really don't know directions . . . [.]

Q: How many rooms in all are there on the ground floor of your house?

A: Three; (changes) I mean there is a parlor, two bedrooms, and a kitchen. There are five rooms in all downstairs. The two bedrooms are together, side by side, and are between the parlor and kitchen.

Q: Do you wish us to understand you would forget how many bedrooms are in a house where you claim to have lived seventeen years?

A: Yes, I forgot about it.

Q: Describe the sleeping arrangements in your house while your father was last in China.

A: My parents occupied the left bedroom with my sister. I slept with my oldest brother, Hoy Yut, in one of the bedrooms upstairs, while Mee Wun and Fong Hoy Dong slept in the other bedroom upstairs.

Q: Why was it you slept with Hoy Yut rather than with your younger brother?

A: I don't know; that's the arrangement we had. Sometimes I slept with one of my brothers, and sometimes I slept with the other brother.

Q: If your alleged father should state otherwise, what would you have to say?

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26. *Id.* at 337 (footnote omitted).

27. *Id.* at 335.

A: How would my father know more about it than I would? He sleeps downstairs. I am the last one to go to sleep upstairs. I sleep wherever there is a place. My father knows the four of us sleep upstairs but he would not know who slept with [whom] very well.

Q: Did you visit the Sar Kai Market with your father when he was last in China?

A: No.

Q: Why not, if you really are his son?<sup>28</sup>

As Professor Kevin Johnson notes in his article, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, judges upheld Chinese exclusion laws and focused not on racism but on the Chinese's inability to assimilate due to racial and cultural differences.<sup>29</sup> Today the Chinese exclusion laws, formally repealed in 1943,<sup>30</sup> are uniformly recognized as being racist. Labeling that experience as "history" and a "thing of the past" is too easy, however, as it allows most observers to deny that anything as blatant exists or could happen today. The fact is that racism continues to be implanted in the immigration laws and enforcement mechanisms. And today's neo-nativist calls for tightening up the borders and restricting immigration have a peculiarly racist undercurrent.

In the following sections, I provide examples of this race-based phenomenon, including U.S. immigration policy vis-à-vis Mexicans, the emergence of "diversity visas" for non-Asians and non-Mexicans, and Congress's Refugee Act of 1980 and Immigration Reform and Control Act of 1986.

## II. ENFORCEMENT AGAINST MEXICANS

Mexicans continue to be victims of highly publicized Immigration and Naturalization Service (INS) raids. Dubbed "Operation Jobs" or "Operation Cooperation," the raids are reminiscent of "Operation Wetback."<sup>31</sup> In what the INS labeled "Operation Jobs" in April 1982, five

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28. *Id.* at 335–36.

29. Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2000 U. ILL. L. REV. 525, 529.

30. See Act of Dec. 17, 1943, ch. 344, 57 Stat. 600.

31. World War II created a labor shortage that resulted in a shift in American attitudes toward immigration from Mexico. Thus, at least for a short while, Mexican nationals were welcomed with open arms. In fact, a temporary worker program called the Bracero Program was implemented to provide thousands of low-wage workers in the Southwest during this era. See Kevin R. Johnson, *Race, the Immigration Laws, and Domestic Race Relations: A "Magic Mirror" into the Heart of Darkness*, 73 IND. L.J. 1111, 1136 (1998).

But in the 1950s, many Americans were alarmed by the number of immigrants from Mexico. See *id.* at 1136. As a result, a protection-of-the-labor-market reasoning was used against Mexicans in 1954, when the INS implemented "Operation Wetback" in the midst of the post-Korean War recession. See *id.* at 1136–37. Even U.S. citizens of Mexican descent were caught up in the expulsion frenzy. See *id.* at 1138. To ensure the effectiveness of the expulsion process, many of those apprehended were denied a hearing to assert their constitutional rights and to present evidence that would have prevented their deportation. More than a million persons of Mexican decent were expelled from the United States

thousand people of primarily Latin appearance were arrested in nine metropolitan areas across the country.<sup>32</sup> Critics of the raids charged that the operation was directed at Mexicans, whipped up anti-alien hysteria, and caused much fear in the Latino community while providing no jobs for native-born citizens.<sup>33</sup> Curiously, "Operation Jobs" was launched during the same week that restrictive legislation (the Simpson-Mazzoli Bill)<sup>34</sup> was being marked up in the Senate Subcommittee on Immigration. The raids also coincided with Congress's consideration of additional funds for the INS.<sup>35</sup>

"Operation Jobs" merely highlighted what had been going on for many years. A review of litigation initiated sometime before the 1982 operation indicates that the INS had long focused its sweeps on persons of Latin descent.<sup>36</sup> In fiscal year 1977, for example, of the deportable aliens arrested, more than ninety percent were Mexican.<sup>37</sup>

In 1976, the Supreme Court carved out an exception to the Fourth Amendment's protection against unreasonable search and seizure by allowing the border patrol to set up fixed checkpoints located on major highways leading away from the Mexican border to stop and question individuals suspected of being undocumented aliens.<sup>38</sup> One of the checkpoints in question was located on Interstate 5 (near San Clemente, California), which is the principal highway between San Diego and Los Angeles.<sup>39</sup> The checkpoint was sixty-six miles north of the Mexico border.<sup>40</sup>

The Court described the checkpoint operation as follows:

The "point" agent standing between the two lanes of traffic visually screens all northbound vehicles, which the checkpoint brings to a virtual, if not complete, halt. Most motorists are allowed to resume their progress without any oral inquiry or close visual examination. In a relatively small number of cases, the "point" agent will conclude that further inquiry was in order. He directs these cars to a secondary inspection area, where their occupants are asked about their citizenship and immigration status. . . . [T]he average length of an investigation in the secondary inspection area is three to five minutes. A direction to stop in the secondary inspection area could

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during Operation Wetback. See Gerald P. López, *Undocumented Mexican Migration: In Search of a Just Immigration Law and Policy*, 28 UCLA L. REV. 615, 632-33 (1981).

32. See Janice Castro, *Dragnet for Illegal Workers*, TIME, May 10, 1982, at 16.

33. See Mercedes Lynn De Uriarte, *Baiting Immigrants: Heartbreak for Latinos*, THE PROGRESSIVE, Sept. 1996, at 18, 20.

34. See *id.*; see also Castro, *supra* note 32, at 16.

35. See Castro, *supra* note 32, at 16.

36. See, e.g., *International Ladies' Garment Workers' Union v. Sureck*, 681 F.2d 624, 644 (9th Cir. 1982); *Illinois Migrant Council v. Pilliod*, 531 F. Supp. 1011, 1014, 1023-24 (N.D. Ill. 1982).

37. See IMMIGRATION & NATURALIZATION SERV., 1977 ANN. REP. 14 (1978).

38. See *United States v. Martinez-Fuerte*, 428 U.S. 543, 545 (1975).

39. See *id.*

40. See *id.*

be based on something suspicious about a particular car passing through the checkpoint . . . .<sup>41</sup>

Another checkpoint that was part of this case was on Highway 77 near Sarita, Texas, ninety miles north of Brownsville, Texas, and the Mexican border.<sup>42</sup> Unlike the San Clemente checkpoint, the officers in Sarita customarily stopped all northbound motorists for a brief inquiry.<sup>43</sup>

The Supreme Court found the checkpoints constitutional because of the minimal intrusion on motorists.<sup>44</sup> Even selective referrals to secondary inspection such as that at San Clemente were permissible.<sup>45</sup> Of course, virtually all of the people detained at these checkpoints were Latino in appearance. In fact, even if “such referrals [were] made largely on the basis of apparent Mexican ancestry,” the Court “perceive[d] no constitutional violation.”<sup>46</sup> As the intrusion was sufficiently minimal that no particularized reason needed to exist to justify it, the Border patrol officers were permitted wide discretion in selecting the motorists to be diverted for the brief questioning.

Since the court found “no constitutional violation” in Mexican ancestry-based referrals, should that be the end of the inquiry? What the Supreme Court has done or said usually does not end the inquiry for most academics. In fact, it is often the basis for the beginning of the inquiry in an academic’s search for the truth. Yet both the racial overtones of fixed checkpoints and the Supreme Court’s imprimatur on the procedures have been ignored.

The trend of enforcement targeting of Latinos continues, although, as Professor Johnson correctly states in his article, immigration scholars wrongly assume that the immigration laws are enforced in a race-neutral fashion.<sup>47</sup> In recent years, when the INS has boasted of increased deportation statistics, the vast majority—over eighty percent—of those arrested and deported are Mexican.<sup>48</sup> At the very least this deserves a raised eyebrow, if not serious scrutiny, since the proportion of undocumented that are Mexican is about fifty-four percent, according to demographers.<sup>49</sup>

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41. *Id.* at 546–47.

42. *See id.* at 549–50.

43. *See id.* at 550.

44. *See id.* at 560.

45. *See id.*

46. *Id.* at 563.

47. *See* Johnson, *supra* note 29, at 551.

48. *See Airlines Want More Guidelines as Deportee Numbers Rise*, AVIATION DAILY, May 5, 1997, at 208; Patricia McDonnell, *Deportations Increase Almost 50% in U.S.*, L.A. TIMES, Jan. 9, 1999, at A17.

49. *See* Rik Espinosa, *Hispanic Immigrants Come Here from Far and Wide*, TULSA WORLD, Apr. 28, 1999, at 6.

## III. REDUCTIONS IN MEXICAN IMMIGRATION: 1965–1976

Although the national origins quota system and statutory vestiges of Asian exclusion laws were abolished in 1965,<sup>50</sup> the changes represented a blow to Mexican immigrants. Between 1965 and 1976, while the rest of the world enjoyed an expansion of numerical limitations and a definite preference system, Mexico and the Western Hemisphere were suddenly faced with numerical restrictions for the first time.<sup>51</sup> Additionally, although the first-come, first-served basis for immigration sounded fair, applicants had to meet strict labor certification requirements.<sup>52</sup> Of course, waivers of the labor certification requirement were obtainable for certain applicants, such as parents of U.S. citizen children.<sup>53</sup> As one might expect, given the new numerical limitations, by 1976 the procedure resulted in a severe backlog of approximately three years and a waiting list with nearly 400,000 names.<sup>54</sup> Also, by that time, Mexicans used about 40,000 of the Western Hemisphere's 120,000 annual allocation.<sup>55</sup>

In 1976, legislation overhauled the Western Hemisphere immigration system, purportedly placing countries there in line with those of the Eastern Hemisphere.<sup>56</sup> The first-come, first-served Western Hemisphere system was replaced with the statutory preference system along with the 20,000-visa-per-country numerical limitation. Thus, Mexico's annual visa usage was virtually cut in half overnight, and thousands were left stranded on the old system's waiting list.<sup>57</sup> Some of those on the waiting list were rescued by litigation that recaptured some previously misallocated visas.<sup>58</sup> Most, however, were forgotten.

To make matters worse, in the first year of the preference system and the 20,000 limitation imposed on countries of the Western Hemisphere, Mexico lost 14,000 visas due to a congressional mistake.<sup>59</sup> The effective date of the new law was January 1, 1977. Because the government's fiscal year runs from October 1 to September 30, by January 1, one full quarter of fiscal year 1977 had expired.<sup>60</sup>

During that first quarter, 14,203 visas were issued to Mexicans pursuant to the immigration system which prevailed in the Western Hemisphere before the new law became effective. The State Department nevertheless charged those visas against the newly im-

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50. See CHARLES GORDON ET AL., IMMIGRATION LAW AND PROCEDURE § 2.04[3] (1999).

51. See *id.*

52. See *id.*

53. See *id.*

54. See *Silva v. Bell*, 605 F.2d 978, 986 (7th Cir. 1979).

55. See *id.* at 980–82.

56. See Act of Oct. 20, 1976, Pub. L. No. 94-571, 90 Stat. 2703.

57. See *Silva*, 605 F.2d at 980–82.

58. See *id.* at 982–83.

59. See *De Avila v. Civiletti*, 643 F.2d 471, 476 (7th Cir. 1981).

60. See *id.* at 472.

posed national quota of 20,000, leaving only 5797 visas available for Mexican immigrants between January 1 and September 30, 1977.<sup>61</sup>

In *De Avila v. Civiletti*,<sup>62</sup> the Seventh Circuit Court of Appeals sustained the State Department's visa approach, even though it was "obvious that Congress . . . through inadvertence failed to inform the State Department how to administer during a fraction of the fiscal year a statute designed to apply on a full fiscal year basis."<sup>63</sup>

The effect on Mexican immigration of the 1977 imposition of the preference system and 20,000 visa limitation (modified in 1990)<sup>64</sup> is not surprising. Mexico and Asian countries share the largest backlogs in family reunification categories.<sup>65</sup> For example, the category for married sons and daughters of U.S. citizens (third preference) for Mexico is backlogged more than eight years.<sup>66</sup> Brothers and sisters of U.S. citizens (fourth preference) have waited about eleven years if they are from Mexico and twenty years if from the Philippines.<sup>67</sup> These numbers bear out Professor Johnson's assertion that current immigration laws—namely, the per-country limits on immigration, diversity visas, and the public charge exclusion—have a disparate impact on race.<sup>68</sup>

#### IV. "DIVERSITY" VISAS FOR NON-ASIANS AND NON-MEXICANS AND STRICTER ENFORCEMENT: 1986–1996

By the end of the 1970s and through the 1980s, immigrant visa demands from Mexico have remained high, and demand from certain Asian countries has surged.<sup>69</sup> By 1990, immigrants from Mexico, the Philippines, India, Korea, and Chinese from China, Taiwan, and Hong Kong dominated legal immigration categories.<sup>70</sup> Given the per-country numerical limitations, Mexico and Asian countries shared (and continue to share) the largest backlogs in family reunification categories.<sup>71</sup> This was especially true for siblings of U.S. citizens and relatives of lawful permanent resident aliens.<sup>72</sup>

The policymakers who enacted the 1965 amendments did not presage that Asian immigration would reach such high levels.<sup>73</sup> The number

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61. *Id.*

62. 643 F.2d 471 (7th Cir. 1981).

63. *Id.* at 476.

64. *See* Pub. L. No. 101-649, 104 Stat. 4982–86 (1990) (codified as amended at 8 U.S.C. § 1151 (1994)).

65. *See* BUREAU OF CONSULAR AFFAIRS, U.S. DEP'T OF STATE, *Immigrant Numbers for June 1999*, 8 VISA BULL. NO. 6, June 1999, ¶ 5.

66. *See id.*

67. *See id.*

68. *See* Johnson, *supra* note 29, at 532.

69. *See* IMMIGRATION & NATURALIZATION SERV., 1997 STAT. Y.B. 25–26 tbl.2 (1998).

70. *See id.* at 28–31 tbl.3.

71. *See* HING, *supra* note 6, at 366–77.

72. *See id.*

73. *See* HING, *supra* note 1, at 39–40.

of Asian immigrants began to increase in the early 1970s, then exploded in the late 1970s and 1980s, when Asian and Latin immigrants represented over eighty percent of the total.<sup>74</sup> This did not go unnoticed by modern-day nativists. In 1982, as part of a major legislative package, Republican Senator Alan Simpson of Wyoming initiated a crusade to eliminate the immigration category allowing U.S. citizens to be reunited with siblings and persisted in his efforts to abolish the category until his retirement in 1996.<sup>75</sup> These efforts were a direct assault on Asians and Mexicans who combined to make up the vast majority of sibling-of-citizen immigrants.

A different approach was used to respond to the rising domination of Asians and Latinos in immigration totals in the 1980s. Although the country's population was still overwhelmingly white, Congress, in 1986, added a provision to the Immigration Reform and Control Act to help thirty-six countries that had been "adversely affected" by the 1965 changes.<sup>76</sup> To be considered "adversely affected," a country must have been issued fewer visas after 1965 than before.<sup>77</sup> Thus, the list included such countries as Great Britain, Germany, and France but no countries from Africa who sent few immigrants prior to 1965.<sup>78</sup> The 1986 law provided an extra 5000 such visas a year for 1987 and 1988, but the number increased to 15,000 per year for 1989 and 1990 through additional legislation.<sup>79</sup>

In 1988, Congress set aside an extra 20,000 visas to increase immigration diversity over a period of two years.<sup>80</sup> This time, the lottery for the visas was available to nationals of countries that were "under-represented," namely a foreign state that used less than twenty-five percent of its 20,000 preference visas in 1988.<sup>81</sup> As a result, all but thirteen countries in the world (for example, Mexico, the Philippines, China, Korea, and India) were eligible.<sup>82</sup> Over 3.2 million applications were received for the 20,000 visas.<sup>83</sup>

Legislation in 1990 extended the diversity visa concept even more. Until October 1, 1994, a transition diversity program provided 40,000 visas per year for countries "adversely affected" by the 1965 amendments, except that forty percent of the visas were effectively designated for Ireland.<sup>84</sup> Since October 1, 1994, 55,000 diversity visas have been available

74. See IMMIGRATION & NATURALIZATION SERV., *supra* note 69, at 28–31 tbl.3.

75. See *All in the Family?*, WASH. POST, Feb. 20, 1988, at A22; *U.S. Bill Threatens Visas for 100,000*, SOUTH CHINA MORNING POST, Feb. 29, 1996, at 5.

76. GORDON ET AL., *supra* note 50, § 39B.03.

77. See *id.*

78. See *id.*

79. See Immigration Amendments of 1988, Pub. L. No. 100-658, § 2, 102 Stat. 3908, 3908.

80. See *id.* § 3, 102 Stat. 3908, 3908–09.

81. See *id.*

82. See *State Department Reports Country Figures for OP-I Program*, 66 INTERPRETER RELEASES 659, 669–70 tbl.IV (1989).

83. See *id.*

84. See HING, *supra* note 6, at 97–98.

annually in a lottery-type program to natives of countries from which immigration was lower than 50,000 over the preceding five years—certainly not Mexico, China, South Korea, the Philippines, or India.<sup>85</sup> Under a complicated formula that weighs countries and regions of the world and uses relative populations, the State Department determines the distribution of lottery visas.<sup>86</sup> The diversity visa program—especially its least savory aspect, the forty percent allocation to Ireland—is evidence of Professor Johnson’s observation that current immigration law is tainted by race discrimination.<sup>87</sup>

## V. THE REFUGEE ACT OF 1980

The United States takes considerable pride in its long history of providing refuge to foreign nationals displaced by the ravages of war or persecuted by totalitarian governments. From George Washington’s 1783 expression of open arms to the “oppressed and persecuted”<sup>88</sup> to the admission of some number of Kosovo refugees in 1999,<sup>89</sup> two centuries of similar statements from leaders and citizenry alike have helped to project, even if they did not always accurately reflect, a certain national generosity of spirit.

Thousands of refugees, sometimes hundreds of thousands, have been escorted here by an array of congressional acts that, on an ad hoc basis, superseded the national quota systems. Prominent among these was the 1948 Displaced Persons Act,<sup>90</sup> which enabled 400,000 refugees and displaced persons to enter the United States, most of whom were from Europe.<sup>91</sup> The 1953 Refugee Relief Act<sup>92</sup> admitted 200,000 refugees, including 38,000 Hungarians and about 2800 refugees of the Chinese Revolution.<sup>93</sup>

Refugee migration to the United States finds its origin in the noble pursuit of humanitarian-oriented foreign policy objectives. Refugee sympathizers invariably invoke the need to respond compassionately to those in other countries confronted with life-threatening crises. Indeed, in passing the Displaced Persons Act, Congress explicitly adopted the defi-

85. *See id.*

86. *See* 8 U.S.C. §§ 1151(a)(3), 1151(e), 1153(c), 1154(a)(1)(G) (1994); BUREAU OF CONSULAR AFFAIRS, U.S. DEP’T OF STATE, 7 VISA BULL. NO. 44, *reprinted in* HING, *supra* note 6, at 476–83.

87. *See* Johnson, *supra* note 29, at 532–34.

88. JAMES T. FLEXNER, WASHINGTON: THE INDISPENSABLE MAN 179 (1974).

89. *See* Blaine Harden, *Crisis in the Balkans: Immigrants, Kosovars Relocated to U.S. Would Be Eligible to Remain*, N.Y. TIMES, Apr. 23, 1999, at A1.

90. *See* Displaced Persons Act of 1948, Pub. L. No. 80-774, 62 Stat. 1009, *amended by* Act of June 16, 1950, Pub. L. No. 81-555, ch. 262, 64 Stat. 219.

91. *See* SELECT COMM’N ON IMMIGRATION AND REFUGEE POLICY, 97TH CONG., U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST 154 (Comm. Print 1981) [hereinafter IMMIGRATION POLICY AND THE NATIONAL INTEREST].

92. *See* Pub. L. No. 83-203, 67 Stat. 400 (1953), *amended by* Act of Aug. 31, 1954, Pub. L. No. 83-751, 68 Stat. 1044.

93. *See* VICTOR G. NEE & BRETT DE BARRY NEE, LONGTIME CALIFORN’: A DOCUMENTARY STUDY OF AN AMERICAN CHINATOWN 410 (1973).

nition of the terms “displaced person” and “refugee” set forth in the 1946 Constitution of the International Refugee Organization.<sup>94</sup>

The rhetoric notwithstanding, refugee law and policy have reflected the tensions between humanitarian aims and practical domestic and international concerns. These tensions—evident over the years in even the least obvious situations—make plain the link between refugee and immigration policy. In the 1930s, for example, the United States turned away thousands of Jews fleeing Nazi persecution (for example, the SS *St. Louis*, discussed below), in large part because of powerful restrictionist views against certain ethnic, religious, and racial groups. Congress and U.S. consular officers consistently resisted Jewish efforts to emigrate and impeded any significant emergency relaxation of quota limitations.<sup>95</sup>

The plight of European Jews fleeing Nazi Germany aboard the ship SS *St. Louis* in 1939 is a horrific example of how restrictionist views were manifested toward refugees at the time. In a diabolical propaganda ploy in the spring of 1939, the Nazis had allowed this ship carrying destitute European Jewish refugees to leave Hamburg bound for Cuba but had arranged for corrupt Cuban officials to deny them entry even after they had been granted visas.<sup>96</sup> The German propaganda machine sought to demonstrate that no country wanted the Jews, and the world obliged.<sup>97</sup> The *St. Louis* was not allowed to discharge its passengers and was ordered out of Havana harbor.<sup>98</sup> As it sailed north, it neared U.S. territorial waters, yet the U.S. Coast Guard warned it away.<sup>99</sup> President Franklin D. Roosevelt had said that the United States could not accept any more European refugees because of immigration quotas, as untold thousands had already fled Nazi terror in Central Europe, and many had come to the Depression-racked United States.<sup>100</sup>

Nearly two months after leaving Hamburg and due to the efforts of U.S. Jewish refugee assistance groups, the ship was allowed to land in Holland.<sup>101</sup> Four nations agreed to accept the refugees—Great Britain, Holland, Belgium, and France.<sup>102</sup> Two months later, the Nazis invaded Poland, and the Second World War began. Over 600 of the 937 passen-

94. See *INS v. Stevic*, 467 U.S. 407, 415 (1984); *Rosenberg v. Yee Chien Woo*, 402 U.S. 49, 52 (1971).

95. See IMMIGRATION POLICY AND THE NATIONAL INTEREST, *supra* note 91, at 154; H.L. KITANO & ROGER DANIELS, *ASIAN AMERICANS: EMERGING MINORITIES* 13–14 (1988).

96. See Michael Kernan, *Around the Mall and Beyond: Smithsonian Institution's National Postal Museum*, SMITHSONIAN, June 1995, at 18, 18.

97. See *U.S. Policy Toward Cuba: Hearings Before the Subcomm. on the W. Hemisphere of the House Comm. on Int'l Relations*, 104th Cong. 91–100 (1995) (statement of Hon. Otto J. Reich, Brock Group Director, and Senior Associate, Center for Strategic and International Studies) [hereinafter Reich's Statement].

98. See Kernan, *supra* note 96, at 18.

99. See *id.*

100. See James A. Haught, *The Horror and Guilt of the Holocaust*, CHARLESTON GAZETTE, Apr. 22, 1994, at 8A; *Holocaust*, SOCIETY, Sept.-Oct. 1997, at 54, 58.

101. See Reich's Statement, *supra* note 97, at 96–98.

102. See Margaret Sheridan & Katherine Seigenthaler, *Nazi Victims Gather to Recall Tragic Voyage*, CHI. TRIB., Apr. 2, 1989, § 1, at 1.

gers on the *St. Louis* were killed by the Nazis before the war was over.<sup>103</sup> When the United States refused the *St. Louis* permission to land, many Americans were embarrassed; when the country discovered after the war what happened to the refugees, there was shame.

Maintaining a generally restrictive immigration policy during this era, the United States did accept an estimated 105,000 refugees from Nazi Germany in the 1930s (including such luminaries as Albert Einstein),<sup>104</sup> but many more—primarily Jews—were refused entry, returning to Europe and oblivion. During the war, the Roosevelt administration brought fewer than 1000 Jewish refugees out of Europe.<sup>105</sup>

The Roosevelt administration's record on Hitler's "final solution" could not have been more indifferent. Initial reaction to evidence of genocide in Europe was denial.<sup>106</sup> By June 1942, the State Department had reliable reports about the Nazis' systematic extermination of the Jews.<sup>107</sup> Even then, after learning from U.S. officials in Switzerland that Nazis were already killing 6000 Jews per day at one site in Poland alone, the State Department in February 1943 instructed the officials not to transmit any more information of this kind.<sup>108</sup>

When news of Nazi death camps became public in late November 1942, civic and religious groups began urging President Roosevelt to rescue those Jews still alive, but he refused.<sup>109</sup> Some speculate that he refused because he did not want to bring Jewish refugees to the United States for fear he would lose the votes of Jew haters and immigration opponents in the 1944 election.<sup>110</sup> He also supported the British government, which, under Winston Churchill, bitterly opposed rescuing Jews.<sup>111</sup> The British were afraid that if Jewish refugees demanded entry into Palestine, an Arab rebellion could begin.<sup>112</sup>

As if collectively to deny the tensions between humanitarian aims and practical domestic and international concerns, policymakers showed every sign through the early 1970s of being pleased by their system of policies, laws, and ad hoc decisions. As they saw it, whenever large numbers of deserving refugees appeared, new legislation could be enacted or existing laws and regulations manipulated. That sort of flexibility in a legal regime was, to policymakers, to be unashamedly admired. It also

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103. See Haught, *supra* note 100, at 8A; Sheridan & Seigenthaler, *supra* note 102, §1, at 1.

104. See James Podgers, *The Longest Victory: Fifty Years Later, Profound Changes Spawned by World War II Are Still Shaping American and International Law*, A.B.A. J., May 1995, at 58, 59–60.

105. See Jonathan Power, *Working Toward a Refugee Solution*, DES MOINES REGISTER, July 22, 1994, at 13.

106. See Frank Kofsky, *Roosevelt First Denied, then Ignored Genocide*, STAR TRIB. (Minneapolis), May 21, 1995, at 19A.

107. See *id.*

108. See *id.*

109. See *id.*

110. See *id.*

111. See *id.*

112. See *id.*

permitted policymaking consistent with their political preference for refugees from communism.

A closer look at the basic structure of the system and the policies that informed it bears witness to this ideological bias. Consider the 1952 McCarran-Walter Act, which granted the attorney general discretionary authority to “parole” into the United States any alien for “emergent reasons or for reasons deemed strictly in the public interest.”<sup>113</sup> Although the original intent was to apply this parole authority on an individual basis,<sup>114</sup> the 1956 Hungarian refugee crisis led to its expanded use to accommodate those fleeing Communist oppression.<sup>115</sup> The parole authority was also used to admit more than 15,000 Chinese who fled mainland China after the 1949 Communist takeover<sup>116</sup> and more than 145,000 Cubans who sought refuge after Fidel Castro’s 1959 coup.<sup>117</sup>

Using the parole authority, the attorney general also permitted over 400,000 refugees from Southeast Asia to enter between 1975 and 1980.<sup>118</sup> By 1980, 99.7% of the more than one million refugees admitted under the parole system were from countries under Communist rule.<sup>119</sup> These figures belie any claim that U.S. refugee policy was based solely on humanitarian considerations.

The preference afforded refugees from Communist countries is also reflected in the 1965 reforms, when Congress created the first permanent statutory basis for the admission of refugees. Incorporating prior refugee language into a seventh preference category, conditional entry was provided for refugees fleeing Communist-dominated areas or the Middle East.<sup>120</sup> Immigration controls were manifest as well in this category, since it included a worldwide annual quota of 17,400 and a geographic restriction that limited its use through 1977 to countries outside the Western Hemisphere.<sup>121</sup> Until its repeal in 1980, the seventh preference was frequently used by refugees fleeing China, the Soviet Union, and other Communist societies.<sup>122</sup>

Shortly after the creation of the seventh preference, the United States acceded to the 1968 United Nations Protocol Relating to the

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113. Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163, 188.

114. See Deborah E. Anker & Michael H. Posner, *The Forty Year Crisis: A Legislative History of the Refugee Act of 1980*, 19 SAN DIEGO L. REV. 9, 15 (1981).

115. See Fair Share Law of 1960, Pub. L. No. 86-648, 74 Stat. 504.

116. See THOMAS W. CHINN ET AL., A HISTORY OF THE CHINESE IN CALIFORNIA: A SYLLABUS 29 (1969); ABBA P. SCHWARTZ, THE OPEN SOCIETY 139-40 (1968).

117. By the mid-1960s, more than 3000 Cubans were admitted each month. See IMMIGRATION & NATURALIZATION SERV., 1966 ANN. REP. 6 (1967). By 1976, 145,000 Cubans were paroled into the United States. See *Silva v. Bell*, 605 F.2d 978, 981 (7th Cir. 1979).

118. See Linda W. Gordon, *Southeast Asian Refugee Migration to the United States*, in PACIFIC BRIDGES 153, 156 (James T. Fawcett & Benjamin V. Cariño eds., 1987).

119. See D.H. Laufman, *Political Bias in United States Refugee Policy Since the Refugee Act of 1980*, 1 GEO. IMMIGR. L.J. 495, 504 (1986).

120. See *id.* at 503.

121. See 8 U.S.C. §§ 1151, 1152(a)(7) (1994).

122. See, e.g., IMMIGRATION & NATURALIZATION SERV., 1977 ANN. REP. 43 tbl.6E (1978).

Status of Refugees.<sup>123</sup> The protocol obligated compliance with the guidelines established by the United Nations Convention Relating to the Status of Refugees.<sup>124</sup> The ideological and geographic restrictions of the seventh preference, however, were inconsistent with the ideologically neutral protocol, so the United States attempted to jury rig compliance by using the attorney general's discretionary parole authority.<sup>125</sup> Yet that authority did not conform to the protocol's principles of neutrality either.

Few complaints about refugee policies and laws were registered on the floors of Congress during most of the 1970s. Some liberal observers did challenge the bias favoring refugees from Communist countries, but mostly it affected applications for political asylum filed by individuals who had already gained entry.<sup>126</sup> As for the greater numbers seeking refugee status from abroad, policymakers seemed satisfied with the status quo.

After 1975, policymakers became less complacent as Asians began entering in increasing numbers under existing guidelines. Fewer than 7000 Chinese benefited before 1975 from the 1953 Refugee Relief Act.<sup>127</sup> Through 1966, about 15,000 were admitted under the parole provision.<sup>128</sup> These low numbers were not perceived as threatening, since the seventh preference category restricted Chinese refugees through its annual worldwide limitation of 17,400 that had to be shared with others. Indeed, until it was repealed in 1980, only 14,000 who fled mainland China were able to take advantage of the seventh preference.<sup>129</sup>

Following the military withdrawal from Vietnam in April 1975, however, the flow of Asian refugees increased markedly almost overnight.<sup>130</sup> Invoking numerical restrictions in the midst of a controversial and devastating war would have been unacceptable; too many understood such inflexibility as morally treacherous and politically high priced. Consequently, the attorney general on several occasions used the parole authority to permit Asians to enter<sup>131</sup> — the first time it was so employed since the 1965 amendments.

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123. See Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

124. See Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150; see also *INS v. Cardoza-Fonseca*, 480 U.S. 421, 429 (1987) (stating that the Supreme Court will apply the substantive provisions of the United Nations Convention Relating to the Status of Refugees).

125. See H.R. REP. NO. 96-608, at 3-4 (1979).

126. See Peter Grier, 'Yearning to Breathe Free,' *Thousands Seek, Few Get Asylum in U.S.*, CHRISTIAN SCIENCE MONITOR, Oct. 13, 1983, at 1; Robert Pear, *U.S. Aides' Uncertainty on Rules Keeping Thousands in Refugee Camps*, N.Y. TIMES, May 17, 1981, at A1.

127. See IMMIGRATION & NATURALIZATION SERV., 1966 ANN. REP. 38 tbl.6D (1967).

128. See *id.* at 61 tbl.14B.

129. This figure is derived from table 7A of the INS's Annual Reports from 1966 through 1977 and table 7A of the INS's 1978-1980 Statistical Yearbook.

130. See PAUL J. STRAND & WOODROW JONES, JR., *INDOCHINESE REFUGEES IN AMERICA: PROBLEMS OF ADAPTATION AND ASSIMILATION* 32-34 (1985).

131. See *id.*

Initially, the United States merely wanted to evacuate fewer than 18,000 American dependents and government employees from Vietnam.<sup>132</sup> Immediately before the fall of Saigon in April 1975, however, former employees and others whose lives were threatened were included. These evacuees included approximately 4000 orphans, 75,000 relatives of American citizens or lawful permanent residents, and 50,000 Vietnamese government officials and employees.<sup>133</sup> Mass confusion permitted many who did not fit into these categories to also be evacuated.<sup>134</sup> Between April and December 1975, the United States thus admitted 130,400 Southeast Asian refugees, 125,000 of whom were Vietnamese.<sup>135</sup>

Yet the exodus did not stop there. By 1978 thousands more were admitted under a series of Indochinese parole programs, authorized by the attorney general.<sup>136</sup> The number of Southeast Asian refugees swelled to 14,000 a month by the summer of 1979.<sup>137</sup> Following the tightening of Vietnam's grip on Cambodia, several hundred thousand "boat people" and many Cambodian and Laotian refugees entered the United States between 1978 and 1980.<sup>138</sup> In fact, annual arrivals of Southeast Asian refugees had increased almost exponentially: 20,400 in 1978, 80,700 in 1979, and 166,700 in 1980.<sup>139</sup>

In general, the flow of Southeast Asians was poorly coordinated. The executive branch repeatedly waited until the number of refugees in the countries of "first asylum" (those first reached by refugees) reached crisis proportions before declaring an emergency.<sup>140</sup> Only then would a new parole program be instituted.<sup>141</sup> Attacks on the inconsistent treatment of refugees and calls for a consistent policy became commonplace.<sup>142</sup> Many were uncomfortable with the attorney general's considerable unstructured power to hastily admit tens of thousands of refugees under the parole mechanism.<sup>143</sup> Others were genuinely concerned with the government's erratic response to the plight of Southeast Asian refugees.<sup>144</sup> Dissatisfaction with ad hoc admissions provided the impetus for reform and, ultimately, the passage of the 1980 Refugee Act.<sup>145</sup>

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132. *See id.*

133. *See id.*

134. *See id.*

135. *See* Robert W. Gardner et al., *Asian Americans: Growth, Change, and Diversity*, POPULATION BULL., Oct. 1985, at 1, 9.

136. *See* Gordon, *supra* note 118, at 155.

137. "In early 1979, the United States had committed itself to accept [seven thousand] refugees monthly, [but] the figure [] doubled by [] summer in response to the desperate conditions in the refugee camps." *Id.*

138. *See id.*

139. *See id.*

140. *See* Anker & Posner, *supra* note 114, at 30–31.

141. *See id.*

142. *See* Kathy Swyer, *Refugee Policy Draws Fire in Hearing*, WASH. POST, May 13, 1980, at A6.

143. *See* *Refugee Bill Proposed*, FACTS ON FILE WORLD NEWS DIGEST, Apr. 27, 1979, at 307 E3, available in LEXIS, Facts on File World News Digest Database.

144. Some felt that the parole authority had been misused and were dissatisfied with the inconsistent treatment for refugees that resulted in some being granted parole while others received "indefi-

This new refugee law was an attempt by Congress to treat refugee and immigration policies as separate and distinct. A major catalyst for the new refugee law was a disturbing anxiety felt by some members of Congress that the influx of thousands of Southeast Asians would destabilize many communities.<sup>146</sup> Concerns about controlling immigration have dominated Refugee Act applications ever since.<sup>147</sup>

Those who passed the 1980 Refugee Act and those who enacted earlier legislation claimed that they desired a less biased system.<sup>148</sup> The new law provided two tracks for refugee admission into the United States. The first provides the president with the power to admit refugees who are outside the United States only after consultation with Congress, while the second relates to procedures by which aliens in the United States or at ports of entry may apply for asylum.<sup>149</sup>

Under the first track of the 1980 Refugee Act, the numbers of refugees from abroad have been more strictly regulated than under the previous parole authority, even though the United States has allowed in more than a million refugees since 1980.<sup>150</sup> The ideologically and geographically restrictive seventh preference category was replaced with a general provision that allowed any person with a “well-founded fear of persecution” to enter as a refugee.<sup>151</sup> The Act requires the president, after “appropriate consultation” with Congress, to determine who will be offered refugee status and to establish corresponding limits on how many people will be admitted.<sup>152</sup> The reforms restrict the attorney general’s authority to parole refugees, thereby foreclosing large, *ex parte* admissions.<sup>153</sup>

In practice, however, the new law has been administered in a manner reminiscent of the heavy-handed use of the seventh preference and parole provisions. Without much congressional opposition,<sup>154</sup> presidents have continued to favor refugees from Communist countries while con-

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nite voluntary departure.” S. REP. NO. 96-256, at 9 (1979), *reprinted in* 1980 U.S.C.C.A.N. 141, 149. Indefinite or extended voluntary departure was a type of group temporary safe haven that the attorney general used for certain nationals of particular countries. *See Hotel & Restaurant Employees Union v. Attorney Gen.*, 804 F.2d 1256, 1261 (D.C. Cir. 1986).

145. *See* Pub. L. No. 96-212, 94 Stat. 102 (1980).

146. *See, e.g., America’s Bold Example*, *ECONOMIST*, July 21, 1979, at 26; *And We Are Still Boat People*, *WASH. POST*, Oct. 12, 1980, at C6; Patricia Camp, *Jewish Group Announces National Drive to Resettle Refugees from Indochina*, *WASH. POST*, Sept. 8, 1979, at B3.

147. *See, e.g., Merrick Carey, Too Many Americans*, *WASH. TIMES*, Sept. 6, 1995, at A19; Robert Pear, *U.S. Bends Law to Admit Armenians, Officials Say*, *COURIER-J.* (Louisville), May 29, 1988, at 2A.

148. *See* Swyer, *supra* note 142, at A6.

149. *See* 8 U.S.C. §§ 1157–1158 (1994).

150. *See* IMMIGRATION & NATURALIZATION SERV., 1997 STAT. Y.B. 80 tbl.22 (1998).

151. 8 U.S.C. §§ 1101(a)(42), 1157(a).

152. *Id.* § 1157(a)(1).

153. *See id.* § 1182(d)(5)(B).

154. *See* DENNIS GALLAGHER ET AL., OF SPECIAL HUMANITARIAN CONCERN: U.S. REFUGEE ADMISSIONS SINCE PASSAGE OF THE REFUGEE ACT 27–30 (1985).

sistently ignoring pleas of those from U.S. allies.<sup>155</sup> The number of Asian refugees has declined dramatically.<sup>156</sup>

The executive branch and Congress established a limit of 231,700 refugees for fiscal year 1980.<sup>157</sup> Of that number, the Carter administration designated 169,000 openings for Southeast Asia, 33,000 for the Soviet Union, 19,500 for Cuba, and 1000 for the remainder of Latin America.<sup>158</sup> By 1986, the total number of refugees allotted by the Reagan administration dropped to 67,000, with 45,500 reserved for East Asia.<sup>159</sup> For 1992, under the Bush administration, the total was increased to 142,000, primarily to accommodate an increase to 61,000 for the former Soviet Union.<sup>160</sup> The number for East Asians remained at 52,000, despite dire circumstances in Asian refugee camps.<sup>161</sup> By 1997, under the Clinton administration, the total number was down to 78,000, with 10,000 for East Asia and 48,000 for Europe.<sup>162</sup> The Clinton administration did, however, propose an overall increase of refugee admissions to 90,000 for fiscal year 2000.<sup>163</sup>

In contrast, only between 2000 and 8000 asylum applications were approved per year between 1980 and 1994; more recently, annual approvals have remained less than 15,000.<sup>164</sup> To say the least, the United States has not reacted warmly to groups who have reached its borders seeking asylum under the second track of refugee admissions. When Haitians, El Salvadorans, Guatemalans, and Chinese boat people began arriving in significant numbers, for instance, the various administrations were quick to label them economic rather than political refugees.<sup>165</sup>

This response has manifested itself in humiliating ways. In the early 1980s, the INS implemented an efficiency plan in Miami by which Haitian asylum hearings were often limited to fifteen minutes, immigration judges were ordered to increase productivity and hear at least eighteen cases per day, and some attorneys were scheduled for hearings at the

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155. See James J. Silk, *Ruling on Asylum Could Aid Refugees Worldwide Series: Commentary*, ST. PETERSBURG TIMES, Mar. 15, 1987, at 4D.

156. See IMMIGRATION AND NATURALIZATION SERV., 1988 STAT. Y.B. 50 tbl.25 (1989); IMMIGRATION AND NATURALIZATION SERV., 1990 STAT. Y.B. 103 tbl.26 (1991); IMMIGRATION AND NATURALIZATION SERV., 1997 STAT. Y.B. 82 tbl.24 (1998). The seventh preference is labeled "conditional entrants" in the *Statistical Yearbook* tables cited *supra* to conform to 8 U.S.C. § 1153(a)(7).

157. See IMMIGRATION & NATURALIZATION SERV., 1980 STAT. Y.B. 27 tbl.10. (1981).

158. See *id.*

159. See IMMIGRATION & NATURALIZATION SERV., 1988 STAT. Y.B. 50 tbl.25 (1989).

160. See IMMIGRATION & NATURALIZATION SERV., 1992 STAT. Y.B. 72 (1993).

161. See *Administration Proposes Admitting 144,000 Refugees for This Fiscal Year*, 68 INTERPRETER RELEASES 1290, 1291 (1991).

162. See IMMIGRATION & NATURALIZATION SERV., 1997 STAT. Y.B. 70 (1998).

163. See *Clinton Administration to Admit 90,000 Refugees this Year*, 76 INTERPRETER RELEASES 1255 (1999).

164. See IMMIGRATION & NATURALIZATION SERV., 1997 ANN. REP. 85 tbl.27 (1998).

165. See *A Bloodbath in El Salvador: Refugees, Murder and Atrocities*, SAN DIEGO UNION-TRIB., Nov. 29, 1989, available in 1989 WL 6977790; David Carliner, *The Wrong Message to Beijing*, WASH. POST, Dec. 3, 1989, at C7; *Stop the Snakeheads: U.S.-Mexico Cooperation is Needed*, SAN DIEGO UNION-TRIB., July 17, 1993, available in 1993 WL 7499712.

same time for different clients in different parts of the city.<sup>166</sup> The Fifth Circuit Court of Appeals ultimately chastised immigration officials for violating due process and ordered a new plan for the reprocessing of asylum claims.<sup>167</sup> A similar suit concluded with the INS agreeing to re-evaluate potentially up to half a million Salvadoran and Guatemalan asylum cases from the 1980s in light of strong evidence of INS political bias and discrimination against these applicants.<sup>168</sup>

The great influence that anti-immigrant groups have enjoyed in recent years is rooted in the exposure of the INS's illegal actions against Haitian, Guatemalan, and El Salvadoran asylum applicants. The illegal processing of applications was the Service's response to complaints that the asylum system was too generous or manipulable.<sup>169</sup> But once the INS's illegal actions were exposed, exclusionists focused on the laws themselves, and their complaining about the asylum system spiraled dramatically.<sup>170</sup> This led to many of the restrictive measures placed on asylum applicants in the 1990s.<sup>171</sup>

When boatloads of Chinese began arriving in 1992 and 1993, the exclusionists were given new fuel. After all, Chinese were fleeing Communism, but the situation seemed somehow different from those immigrants fleeing the Soviet bloc or Cuba. Two incidents that occurred in late 1992 only days apart demonstrated the dilemma. In one, a Cuban commercial pilot commandeered a flight and landed in Miami. All aboard who wanted asylum, including the pilot, were welcomed with open arms, and none were taken into custody.<sup>172</sup> Yet, a few days later, a boatload of Chinese seeking asylum landed in San Francisco Bay, and every person on board who could be rounded up was incarcerated.<sup>173</sup> Many applied for asylum arguing that they feared persecution because of their opposition to China's one-child-per-family birth policy or because they had supported the protesting students at Tiananmen Square in 1989.<sup>174</sup> It was the nature of these claims that exclusionists labeled outrageous, citing the Chinese as perfect examples of how the asylum system was being exploited.<sup>175</sup> After several Chinese boats arrived—particularly the highly

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166. See *Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023, 1030–31 (5th Cir. 1982).

167. See *id.* at 1040–41.

168. See *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (approving a settlement agreement permitting reevaluation of asylum applications for a defined class of Salvadorans and Guatemalans).

169. See *id.*

170. See Vlae Kershner, *Why Immigration Laws Are So Hard to Change*, S.F. CHRON., June 21, 1993, at A7; *U.S. Asylum Seekers to be Charged \$130*, CHI. TRIB., Feb. 17, 1994, § 1, at 3.

171. See, e.g., David LaGeese, *Approval of Overhaul Caps Immigration Fight*, DALLAS MORNING NEWS, Oct. 1, 1996, at 1A; Tim Weiner, *Political Asylum Soon to Cost \$130*, HOUSTON CHRON., Feb. 17, 1994, at 2.

172. See Deborah Sharp, *Cubans Divert Plane, Seek Asylum*, USA TODAY, Dec. 30, 1992, at 1A.

173. See David Dietz, *INS District Director Defends His Turf*, S.F. CHRON., Feb. 1, 1993, at A5.

174. See Patrick Brogan, *U.S. Supreme Court Backs Return of Haitians*, THE HERALD (Glasgow), June 22, 1993, at 4.

175. See Pamela Burdman, *Two Smuggler Ship Passengers Win Political Asylum in U.S.*, S.F. CHRON., Aug. 7, 1993, at A9.

publicized *Golden Venture* in New York Harbor in 1993—exclusionists were able to rally great public and political support for their cause, and asylum and undocumented immigration played on the front page for some time after that.<sup>176</sup> Interestingly, a coalition of Chinese asylum supporters and right-to-life proponents were able to convince Congress in 1996 to add an automatic asylum eligibility provision for those Chinese fleeing China's one-child policy.<sup>177</sup>

## VI. THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

The Immigration Reform and Control Act of 1986 (IRCA)<sup>178</sup> represented a surprising, last-minute compromise reached in the closing days of Congress's 1986 legislative session that came as a surprise to many observers of immigration policy.<sup>179</sup> The IRCA was enacted to reform certain aspects of existing immigration law and to reduce the numbers of undocumented aliens coming to the United States.<sup>180</sup> The targeted undocumented aliens were clearly those from Mexico.<sup>181</sup> The plan to reduce the number of undocumented workers was twofold: (1) grant amnesty or legalization to many of the undocumented workers; and (2) make it unlawful for employers to hire undocumented workers, thus removing the incentive for unauthorized workers to come to the United States (employer sanctions).<sup>182</sup> The two methods of controlling undocumented workers represented a political compromise. Because Congress was concerned that some employers might use the threat of sanctions to justify discriminating against "foreign-looking" workers, the IRCA also added prohibitions against certain unfair immigration-related employment practices.<sup>183</sup> Specifically, the IRCA made it unlawful for an employer to discriminate against someone because of that person's national origin or

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176. See, e.g., Gordon Dillow, *Illegal Immigrants Threaten Death over Return to China*, HOUSTON CHRON., Jan. 21, 1996, at 27; Ashley Dunn, *After Crackdown, Smugglers of Chinese Find New Routes*, N.Y. TIMES, Nov. 1, 1994, at A5; Jack Kemp, *A Cure That Is Worse than the Disease*, WASH. TIMES, July 21, 1997, at A17.

177. After 1996, the definition of "refugee" provides, in pertinent part:

For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

8 U.S.C. § 1101(a)(42) (1994 & Supp. IV 1998).

178. Pub. L. No. 99-603, 100 Stat. 3359 (codified in scattered sections of 8 U.S.C.).

179. See generally, e.g., Richard Lacayo, *Against All Odds, Congress Acts on Immigration*, TIME, Oct. 27, 1986, at 43.

180. See *Amnesty: Do It Right*, L.A. TIMES, May 3, 1987, § 5, at 4.

181. See, e.g., 132 CONG. REC. H9791 (daily ed. Oct. 19, 1986) (statements of Rep. Hyde and Sen. McCollum).

182. See *Amnesty: Do It Right*, supra note 180, § 5, at 4.

183. See HING, supra note 6, at 120–22.

because of his or her citizenship or immigration status (citizenship discrimination).<sup>184</sup>

Viewing the grant of amnesty or legalization to undocumented aliens as a means of controlling undocumented immigration was a puzzling concept to many. At the time the legislation was enacted (as well as today), there was no clear idea of how many undocumented aliens were in the country. The range of numbers was wide. Legalization supporters predicted between 1.4 million to nine million potential applicants, while the opponents claimed up to 20 million would apply.<sup>185</sup> One opponent opined that a third of the population of Mexico would use the IRCA to legalize themselves in the United States.<sup>186</sup> To make matters worse, argued the doomsayers, each legalization applicant would eventually petition for family members, thus creating a calamitous “chain migration” effect.<sup>187</sup> Some estimated that within a decade, the IRCA would add 70, 90, or even 100 million new citizens to the United States.<sup>188</sup> Yet, what could Congress do to deal with the undocumented population already in the country? Members of Congress only had a handful of alternatives: first, legalize some or all of the aliens; second, find and deport some or all of them; or third, do nothing. The second alternative would have required a huge effort to “round up” aliens, would likely have violated many civil rights and engendered a horde of lawsuits, would have cost a great deal, and simply never would have worked. The third alternative was not possible since Congress was under pressure to do something about the perceived undocumented problem. Legalization was the only alternative.

The legalization programs for undocumented aliens consisted of one for those who had resided in the United States since January 1, 1982, and another for special agricultural workers (SAWs) who had performed agricultural work for at least ninety days between May 1, 1985, and May 1, 1986.<sup>189</sup>

Ultimately, 1.7 million applicants filed under the pre-1982 program, and 1.3 million applied as SAWs.<sup>190</sup> About 70% who ultimately applied under the pre-1982 program were Mexican; the next largest groups were El Salvadoran (8.1%) and Guatemalan (3%).<sup>191</sup> Those qualifying under the farm worker program were also mostly Mexican. Mexicans filed 81.6% of the SAW applications; Haitians, 3.4%; El Salvadorans, 2%; and Guatemalans and Asian Indians, 1.4% each.<sup>192</sup>

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184. See 8 U.S.C. § 1324b (1994).

185. See H.R. REP. NO. 99-682, at 132 (1986).

186. See 132 CONG. REC. H9791 (daily ed. Oct. 19, 1986) (statement of Rep. Hyde).

187. *Id.* at H9790 (statement of Rep. Daub).

188. See *id.*

189. See 8 U.S.C. §§ 1160, 1255a (1988).

190. See Dick Kirschten, *Immigration Law Is Booming*, 21 NAT'L J. 2097, 2097 (1989).

191. See IMMIGRATION & NATURALIZATION SERV., INS REP., VOL. 36, at 7 (1989).

192. See *id.*

The passage of the IRCA represented the culmination of years of social, political, and congressional debate about the perceived lack of control over the United States's southern border. The belief that something had to be done about the large numbers of undocumented workers who had entered the United States from Mexico in the 1970s was reinforced by the flood of Central Americans that began to arrive in the early 1980s. Although the political turmoil of civil wars in El Salvador, Guatemala, and Nicaragua drove many Central Americans from their homeland, they, along with the Mexicans who continued to arrive, were generally labeled economic migrants by the Reagan administration, the INS, and the courts.<sup>193</sup> Beginning in 1971, legislative proposals featuring employer sanctions as a centerpiece were touted as resolutions to the undocumented alien problem.<sup>194</sup> By the end of the Carter administration in 1980, an appointed commission on immigration and refugee policy portrayed legalization as a necessary balance to sanctions.<sup>195</sup>

Although strong public sentiment to respond to the perceived problem of undocumented aliens drove Congress to pass the IRCA, this legislation did not indicate support for legalization per se. In fact, opposition to legalization was so intense that the IRCA narrowly survived the House of Representatives. One opponent exaggerated that a third of the population of Mexico would use the IRCA to legalize themselves in the United States.<sup>196</sup> In the eleventh hour, on October 10, 1986, Representative Bill McCollum introduced an amendment to completely delete legalization from the IRCA.<sup>197</sup> The House defeated the amendment—thereby saving the legalization program—though by a vote of 199 to save it, 192 to kill it, with 41 absent.<sup>198</sup> A swing vote of only four members would have reversed the result.

Casual observers of immigration policy in the 1980s might cite the IRCA's legalization provisions as an example of a congressional swing toward a pro-immigration policy. That observation, however, would be wrong. The amnesty provisions just barely eked through the House of Representatives, while the employer sanctions provisions received overwhelming legislative support. The perception of who the undocumented were in terms of race (for example, that a third of the Mexican population would qualify) was a huge factor that made the passage of legislation difficult.

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193. See, e.g., *Reynoso v. INS*, 627 F.2d 958, 959 (9th Cir. 1980); Bob Baker, *Probe of INS' Handling of Guatemalans Asked*, L.A. TIMES, May 21, 1985, § 1, at 18; Norman Kempster, *U.S. Shelves Duarte's Plea of Refugees*, L.A. TIMES, May 13, 1987, § 1, at 1.

194. See SUSAN GONZÁLEZ BAKER, *THE CAUTIOUS WELCOME: THE LEGALIZATION PROGRAMS OF THE IMMIGRATION REFORM AND CONTROL ACT 27-29* (1990).

195. See *IMMIGRATION POLICY AND THE NATIONAL INTEREST*, *supra* note 91, at 72-85.

196. See 132 CONG. REC. H9791 (daily ed. Oct. 19, 1986) (statement of Rep. Hyde) (stating that 24 million people will come from Mexico through legalization).

197. See *id.* (various statements of Sen. McCollum).

198. See *id.* at H9791-92.

## VII. CONCLUSION

Professor Kevin Johnson's essay is on target in both its observations and analyses. A question that underlies his thesis is whether immigration enforcement, policy, and debates involve race. The obvious answer to me is "yes." In fact, the obvious answer to me is not simply that these issues *involve* race but that race is *central* to all of these issues. Professor Johnson's charges against the ivory tower scholars do make me wonder: why is race so obvious to me and apparently not to the ivory tower scholars? Observing how INS enforcement priorities are manifested, how the debate over legalization went, how the "diversity visa" concept evolved, how the selection system has institutionalized backlogs in certain countries, the racial as well as ideological implications of refugee laws, how Proposition 187 came about,<sup>199</sup> and the harassment of all Iranian foreign students in the United States in response to the 1979 Tehran hostage crisis<sup>200</sup> makes the relevance of race quite apparent to me. This is undoubtedly clear to those caught up in the web of current immigration law and enforcement, just as it was undoubtedly apparent to those caught up in the historical nightmares. It was certainly apparent to Ong Choon Hing and Soo Hoo Jun Fung.

Years after Soo Hoo Jun Fung had been released from Angel Island, she recounted the details of her confinement to her children. Even though her confinement was for a week, while others had to stay several weeks or months, her tale of entry into the United States was not one of particular joy or adventure. The experience was painful and humiliating. The Island did not evoke fond memories to Jun Fung. Why is the issue of race so apparent to me? Perhaps because of my parents, Choon Hing and Jun Fung.

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199. In 1994, the voters of California passed a voter initiative directed at discouraging undocumented immigration to California. *See, e.g.,* Frank del Olmo, *Perspective on Proposition 187*, L.A. TIMES, Nov. 26, 1995, at 5. The sweeping language of Proposition 187 would have denied public education benefits to undocumented alien children and the documented children of undocumented alien parents and cut off their access to public benefits and health benefits. A federal district court has ruled that Proposition 187 is unconstitutional, and a federal appeals court has approved an agreement under which the state will seek no further appeals. *See id.*; *see also* Johnson, *supra* note 29, at 533 n.35.

200. Following the takeover of the U.S. embassy and holding of American hostages in Tehran in 1979, the INS, apparently with the blessing of the Carter administration, ordered all Iranian foreign students in the United States to report to INS offices so that each person's status could be reviewed. *See* Yassini v. Crosland, 618 F.2d 1356, 1358 (9th Cir. 1980); Yassini v. Crosland, 613 F.2d 219, 220 (9th Cir. 1980); Narenji v. Civiletti, 617 F.2d 745, 746 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 957 (1980).

