

LW's testimony
ILLEGAL ALIENS *at p. 1087*
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HEARINGS
BEFORE
SUBCOMMITTEE NO. 1
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-SECOND CONGRESS
SECOND SESSION
ON
ILLEGAL ALIENS

—
PART 4
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NEW YORK, N.Y.—MARCH 10 AND 11, 1972

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Serial No. 13
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Printed for the use of the Committee on the Judiciary



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I think, if we can solve those two problems we should be able to solve your problem too.

Mr. SHAPIRO. It is an excellent observation. I might point out that when and if—and I am optimistic that we will get that permission from the Federal Government and I accept Congressman Ryan's observation with regard to the home relief program—but once having established that somebody is an illegal alien that we make a referral to the Immigration and Naturalization Service at that point and have the INS take whatever action should be taken.

Mr. RODINO. That would be very helpful.

Mr. SEIBERLING. Thank you.

Mr. RODINO. Mr. Hogan?

Mr. HOGAN. I have no further questions.

Mr. RODINO. Thank you very much.

Our next witness is Mr. Leon Wildes on behalf of the Association of Immigration and Nationality Lawyers.

Mr. Wildes, it would be helpful to the committee if you could summarize your statement. I will insert the prepared statement in the record in its entirety.

STATEMENT OF LEON WILDES, ESQ., IN BEHALF OF THE ASSOCIATION OF IMMIGRATION AND NATIONALITY LAWYERS, NEW YORK CHAPTER; ACCOMPANIED BY EDWARD DUBROFF

Mr. WILDES. Thank you.

(The document referred to follows:)

PREPARED STATEMENT OF LEON WILDES, ESQ., IN BEHALF OF THE ASSOCIATION OF IMMIGRATION AND NATIONALITY LAWYERS, NEW YORK CHAPTER

My name is Leon Wildes. I am an attorney-at-law, duly admitted to practice in the State of New York. I appear pursuant to the authorization of the Board of Governors of the Association of Immigration and Nationality Lawyers and in behalf of its New York Chapter. During 1971 I had the privilege of holding the office of National President of the Association and presently serve as a member of its Board of Governors and of its New York Chapter.

The Association of Immigration and Nationality Lawyers is a bar association incorporated in 1946 under the laws of the State of New York with chapters in principal cities throughout the United States. It is comprised of some 600 practitioners in the specialized field of immigration law throughout the United States and has its largest concentration of members in the New York-New Jersey area. Our New York Chapter consists of approximately 250 immigration practitioners who, we believe, are in a position to touch the very pulse of the illegal alien problem and whose accumulated experience, we submit, qualifies us to comment upon the type of legislation which might best serve the interests of the United States. We share with the Immigration Service the common goal of striving to achieve the proper and fair administration of the immigration laws, though we may at times differ as to what we believe to be the proper content of those laws. In behalf of the officers and members of our Association and its New York Chapter, I wish to express my appreciation to the Chairman and members of the Subcommittee for this opportunity to present our views.

A cursory reading of the recent newspaper and other coverage of the problems relating to the illegal alien in the United States would lead the uninformed reader to believe that the problem is an enormous one, beyond the scope of existing law and enforcement procedures, which requires that drastic legislative provisions be enacted. It is intimated that our national problems of unemployment, balance of payments, and lawlessness can be substantially curtailed by

enacting repressive immigration legislation to discourage unauthorized employment. Nothing, in our experience, could be farther from the truth as far as the New York area is concerned.

We believe that the tendency to enact severe civil or criminal penalties for illegal employment stems from an incorrect analysis of the situation. A doctor, whose diagnosis of his patient's condition is in error, is likely to prescribe the wrong medicine; if his diagnosis is that the condition is more serious than it actually is, the medicine he prescribes may aggravate the very condition which he hopes to relieve. In its testimony before this Subcommittee, the Immigration Service has stated that 97% of the illegal aliens apprehended in this country are Mexicans. The large preponderance of Mexicans in the illegal alien population is a situation which commenced in 1965 with the discontinuance of the bracero program. That program, as you know, permitted Mexican seasonal workers to enter the United States under proper legal and labor-market controls to perform the same temporary work which they now enter to do illegally. Let there be no error: Mexicans by and large have no interest in emigrating to the United States. The typical Mexican who enters illegally wishes only to spend a temporary period of time in this country and returns to his family in the northern Mexican states. The problem which he has created, though it has national significance, is strictly a regional one, despite the fact that Mexican aliens are now to be found in other states beyond those immediately adjacent to the Mexican border. If indeed the problem can be so localized, we believe that a legislative approach beyond the scope of the problem would amount to a prescription of a medicine too strong for the ailment, particularly when it is applied to parts of our national anatomy which are in completely healthy condition.

In the New York area, one seldom finds a Mexican alien. We deal here, accordingly, with what the Immigration Service referred to as the other 3% of the illegal alien population. A major distinction is that most of our illegal aliens in the New York-New Jersey area have entered the United States legally. The illegality of their status lies in having remained here beyond their authorized period of stay or having worked without authorization. We do not have the large illegal entry or wetback problem which is prevalent along the Mexican border. Our experience demonstrates that the Immigration Service in this area has substantial control over the situation, both in regard to the detection of illegal aliens and their efficient removal, in the large majority of cases without the necessity of instituting deportation proceedings.

On the labor market scene, illegal aliens in the New York area generally hold positions for which resident American labor is simply not available or positions where resident aliens or citizens are unwilling to work. There is practically no opportunity for unscrupulous recruitment, as it is a violation of the law in New York for an employment agent to place in employment an alien who is in violation of his immigration status. Moreover, employers in this area generally pay prevailing wages and offer prevailing working conditions, since there is a strong competitive market for good reliable workers, strong union involvement, and minimum wage laws, among other factors which keep working conditions on a high level. The conditions bordering on peonage which are reported to exist among farm owners along the southwest border can not exist in this area.

As attorneys representing aliens and employers, we have had substantial experience in discussion with employers of aliens who have violated their status the necessity of filing applications for labor certification under Section 212(a) (14) of the Immigration and Nationality Act. Employers are generally willing to sponsor such aliens for permanent residence because they are in desperate need of their services in order to survive in a competitive economy. In each case where a labor certification application is filed, the employer must certify that he will meet prevailing wages and conditions of work. These employers devote valuable time and effort to assisting illegal aliens in regularizing their immigration status so that they may continue their needed employment. In fact, our experience has taught us that the alien may be the necessary link without which the chain of production is broken. If an alien is the only available tailor capable of setting a sleeve in the jacket, his presence is an absolute necessity to the continued employment of the other tailors and operators involved in the manufacture of a suit.

We believe that the imposition of a penalty, criminal or civil, upon an employer for having employed an alien in violation of the alien's status would not only be an inappropriate approach to the problem, but would constitute a massive overdose of the wrong medicine. One wonders whether the proponents of such

remedies have considered the practical problems of their implementation. To ask an employer to "search the title" of every prospective employee would have several obvious results: it would contribute to existing discrimination against aliens or Americans of ethnic extraction and afford opportunities to question prospective workers about their race, national origin, and other matters to question violative of law. Those who would suffer most perhaps are the legally presently aliens, or those whose names sound foreign, as an employer is in no position to take chances in hiring the wrong person and would prefer to steer clear of anyone whose name, appearance or documentation appeared alien. Which employer would be qualified to determine the legal authorization was limited to a specific employer? Would not of an H-1 alien whose authorization was limited to a specific employer? Would not of a technical owner of a business run the risk of being indicted for a criminal offense if a foreman in one of his plants misjudged an alien's right to work?

The imposition of an administrative fine upon an employer is equally improper in our estimation. In practice, such a fine proceeding would further burden our federal courts, already heavily overburdened with questions as to whether an employer "knowingly" or "wilfully" employed an alien in violation of his status. If the determination were to be placed in the hands of an administrative body, its practical implementation would be even more difficult. In such proceedings, there would be no element of discretion such as that exercised by a prosecutor, who determines which cases ought to be prosecuted and which not. Judicial review would be limited to the issue of whether the administrator abused his authority. In such cases, both the administrative agency and the courts would be tied up with altogether unnecessary enforcement procedures. Moreover, the judicial review would not be carried on by magistrates but would require the valuable time of District Court judges.

We also believe that any further incursion upon the confidentiality of Social Security information would be an equally undesirable alternative, as would be the requirement that all persons carry their citizenship or other identification card. Our founding fathers rejected the idea of internal passports as being essentially contrary to our system of freedom of political and economic movement, and reminiscent of a police state. To require an alien to carry a social security card marked "illegal alien—ineligible for employment," aside from Constitutional questions as to self-incrimination for the alien, is to relinquish for all Americans a substantial portion of their right to privacy which is so fundamental to our system.

We are quite certain that no one will appear before this body to advocate illegal immigration to the United States. Nor will anyone seriously contend that no problem exists. The more serious problem is the possibility that our government may embark upon a legislative remedy too strong or too widely applied than is warranted by the facts, making aliens the scapegoat for serious economic and other maladies, not properly related to the illegal alien. We acknowledge that there is a problem; that it has national significance, but that its solution lies in finding a sensible program to channel the Mexican alien to legal employment in the United States. There is more to be lost than gained in a more drastic approach, particularly one which penalizes employers. It is erroneous to believe that we can destroy the incentives which bring these aliens to our shores without dealing a telling blow to ourselves in the process. Aliens are attracted to this country by its outstanding social, political and economic opportunities as compared with conditions in their own countries. How can we on the one hand encourage foreigners to visit this country, attend our schools, purchase our products, use our facilities and contribute their currencies to our economy without acknowledging that a certain percentage of these guests are bound to violate their status? Though no retail store executive advocates stealing, all must take into account that any store which offers its merchandise on open counters must expect a certain amount of pilferage. Closing the store might solve the problem, but at what cost? If all the shoplifters entered by one door and confined their activities to one department, a business executive would be likely to concentrate his security efforts in that area.

We recommend that this Subcommittee consider adopting a measure which would enable Mexican workers to be admitted for temporary periods of work under proper safeguards, such as the labor certification provisions of the present law, which would assure that minimum or prevailing wages and working conditions were adhered to. We have every confidence that this Subcommittee will find an appropriate remedy to cure the illness without killing the patient.

In behalf of the Association of Immigration and Nationality Lawyers and its New York Chapter, I wish to express my appreciation to the Chairman and members of the Subcommittee for having afforded us this opportunity to present our views on these important issues.

Mr. WILDES. Thank you very much for taking me out of order. The gentleman on my right, as you may know, is a senior member of our bar association, Mr. Edward Dubroff.

As a past president of the Immigration and Nationality Lawyers Association, a national bar association some 25 years old, I have been designated by the New York chapter to make this expression of its views, and I have been authorized by our national board of governors to do so.

Our association is comprised of over 600 lawyers throughout the United States who specialize in the field of immigration law. The largest concentration of our membership is located here in New York, where over 250 attorneys comprise our New York chapter.

We feel that this affords us a kind of expertise, enabling us to put our finger on the pulse of the illegal alien problem in the United States. We share with the Immigration Service the common goal of looking toward a proper, fair and impartial application of the immigration laws. However, we have some fairly definite views about what we think those laws should and should not include.

Looking at some of the newspaper articles and other coverage of this problem would lead an unwary reader to some terrible conclusions. One would conclude that our national problems of unemployment, balance of payment, lawlessness and other social maladies can be cured by a type of retrogressive legislation against aliens. Nothing, in our estimation, can be or is farther from the truth.

This hysteria is carried on in a manner which is pointed out quite vividly in the newspaper article which appeared today in the Daily News. The chairman of this subcommittee has just stated that he decries "the wide-ranging figures with no substance in fact" as to the number of aliens that might be obtaining assistance in the United States or in the New York area under welfare programs.

In today's Daily News those wide ranging figures are attributed to him. A further example of the type of hysteria which is possible under the type of legislation proposed by this committee is that a member of our association, an attorney at law duly admitted to practice in this state, was questioned at the door to this building and asked for his alien registration card, because he appears to be alien. Just think of this as a graphic example of the type of hysteria that a repressive law that might punish employers and aliens alike might have on the public.

When a doctor prescribes the wrong medicine it is usually because he has misdiagnosed the malady. We believe there is a tremendous misdiagnosis of the malady potentially available in this situation. The Commissioner of Immigration has explained that 97 percent of all illegal aliens apprehended during a certain period of time were illegal Mexican aliens or "wetbacks."

We here in the New York area—and I may speak for the cumulative experience of the members of our association—seldom, if ever, see a Mexican alien. In 14 years of practice in this field I have never met such a "wetback." I have a mental picture of a man coming into my office dripping with water from the Rio Grande.

The problem simply does not exist here. In the New York area we deal with a different kind of problem altogether. This major distinction has been pointed out by the representatives of the Immigration Service: that our aliens here generally enter legally and become illegal either by working without authorization or by overstaying their authorized stay.

We believe that the Immigration Service in the New York and New Jersey area has good control over the situation although we also would subscribe to the feeling that with additional staff they could do a much better job.

On the labor market scene, the feeling of hysteria is even more apparent. Aliens in the United States, in our experience, in the New York and New Jersey area, generally are filling jobs that Americans just don't want. Either that or they are filling jobs that Americans

Mr. RODINO. Excuse me, Mr. Wildes, I would like to stop you right there. We just had testimony from an official of the Department of Labor and Manpower Development, Mr. Redding, which absolutely contradicts what you say, and this man deals with this matter on a daily basis. He stated that there were qualified applicants waiting for jobs that are being filled by illegal aliens and nonimmigrants.

He stated that in his opinion—I have asked him for further information to this effect—the employer was not making an honest effort to recruit available and qualified legal resident aliens and American citizens.

Mr. WILDES. We have a great deal of experience on this particular issue because our clients are generally aliens, whether legal or illegal, who have retained us to assist them in applying to Mr. Redding's office for labor certifications.

We spend a great deal of time speaking with employers and discussing with them the problems they are having in recruitment. These employers, by and large—and there are exceptions to every rule—have found it impossible to recruit the kind of workers they need. They are generally not interested and not able to pay below prevailing rates of pay because of strong union involvement in this area and because of the many other competitive market conditions. They spend a great deal of time in the preparation of documents and in going through the placing of job orders with the local Labor Department offices, and cite their advertising, and other recruitment efforts in support of their application for labor certifications.

We are convinced that there are many, many employers in the New York and New Jersey area who would be thrilled to hire Americans for the jobs that are available. What happens is that local workers are referred by the Employment Service and the employer will advise us, "I tried out three of them. One fellow didn't come in until 11 in the morning. Another never showed up. The third told me he didn't want the job. He was only interested in his weekly unemployment check," and so on.

Granted, there are many jobs that perhaps aliens are filling which Americans might fill, but there are also moonlighting policemen, and perhaps also others who are filling jobs that perhaps others might fill. We believe that by and large the alien is performing a worthwhile service here.

Often what we will find is that the alien is the key to the employment of many Americans.

Mr. RODINO. Are you referring to the legal resident aliens or the illegal aliens?

Mr. WILDES. Often the illegal resident alien. Take the case of a tailor who happens to have come in from some European country and remained illegally by virtue of having overstayed his time and gains employment. He is the only sleevesetter in the factory. Dozens, perhaps hundreds, of operators depend upon his operation. In my estimation, he is performing a valuable service.

We don't appear here to condone illegal immigration to the United States; I don't think that any witness will appear here to say anything in favor of illegal immigration. We submit that the hysterical approach to the problem, as often comes through, not from the hearings of this committee, but from newspaper and other public accountings of what is going on, is not an appropriate approach.

Mr. RODINO. I would like to say at that point, Mr. Wildes, that this committee has very deliberately sought to delineate the area of its inquiry with no intent to conduct a witch hunt.

However, we do recognize that these are times when there is unemployment, that there are jobs that are being taken which Americans and other legally resident aliens are seeking to fill.

We want to know whether some illegal aliens are coming in and doing the kind of menial task that maybe other Americans won't do. This is what we seek to find out.

I think that while I agree with the substance of what you say, Mr. Wildes, you are suggesting that this committee is concerned with repressive type of legislation. You also mentioned that someone was stopped at the door and asked for an alien card.

I would like the gentleman in this audience to know that the chairman of this subcommittee was also stopped and asked for my identification card. I certainly am not going to resent the fact that the gentleman was there doing his job. I willingly presented my identification card.

Does the gentleman mean to say that because there are some people here who don't share the same color that they were harassed because they were asked for identification.

Mr. WILDES. We are very much impressed with the careful approach of the subcommittee over the last year throughout the United States to the study of this problem, but we are equally impressed by the general press coverage of the problem, at a time of severe unemployment and other social and legal problems, for in the press the alien problem and the general social and economic ills are tied together in a manner that we don't think is reasonable.

Mr. RODINO. You may continue.

Mr. WILDES. As a result, we oppose as repressive the type of legislation that might continue beyond the period when unemployment and the other social ills might no longer exist. We feel legislation which would penalize employers may seem acceptable at a time of great unemployment, but may give us much to be concerned about at a later time when the unemployment rate has subsided.

We are opposed in principle to this type of legislation, whether it provides for a criminal or civil remedy with respect to employers. We feel it is the type of remedy which misdiagnoses the illness. It assumes that the illness is so bad that it requires major surgery.

We are not here to state that there is no problem. On the contrary, we acknowledge that there is a serious problem. But we believe that problem is a localized one. If 97 percent of the illegal aliens apprehended in this country arrive over the Mexican border, would it not be perhaps inappropriate to take a national overall view of the problem?

In a business establishment you will never find an executive who is in favor of thievery or stealing. Yet, no reasonable businessman would fail to set aside a reserve for pilferage. The moment he opens the doors of the store to customers he knows that some may abuse the privilege. And if he were to find that all of the pilferers entered by one door and confined their activities to perhaps one counter, it seems to me that a businessman would confine his security efforts to that means of entrance and that counter.

Mr. RODINO. Mr. Wildes, you mentioned the legislation which is being considered by this subcommittee. As you know, the sanctions against the employer are designed to remove the economic incentive for aliens to illegally enter this country in search of employment and to prevent the exploitation of illegal aliens by unscrupulous employers.

The legislation covers both a visitor who had overextended his stay and the fellow who came across the border? Wouldn't he still be an illegal alien and shouldn't the person who is employing him knowingly be chargeable with something?

Mr. WILDES. That would amount to closing the store. Each year we expect millions of visitors to come to this country, to bring their currencies here, to take our styles back home, to purchase our products, to gain education in our schools and yet we expect that some of them will not abuse the privilege.

It seems to me that if only 3 percent of the illegal apprehended alien population consists of those who enter illegally, remain here and violate status, perhaps a more regional approach to the problem of the Mexican illegal aliens is the logical approach to the problem.

We have no specific formula. Just as the doctor, we have no cure-all remedy. But this problem of illegal Mexican immigration commenced, I believe, in 1965, with the closing of an established Bracero program. I don't purport to be an expert in that program, but it seems to me that perhaps we ought to devote some time to thinking about channeling and legalizing the illegal Mexican alien.

The illegal Mexican alien is not interested in settling in this country and gaining residence here. By and large, he enters to do seasonal work and earn money so he can support his family back in the northern states of Mexico and go back to his family.

Perhaps if we were able to channel that into a type of program we might approach the problem without losing, in the approach to the problem, many of the rights that we all have as Americans.

It seems to us that if we are to punish employers for hiring aliens who work in violation of their status, we encourage employers in interviewing prospective employees to pose questions concerning national

origin, race, religion, and a host of other issues which are now either illegal or in bad taste. Who would suffer most? It would seem to me that the ethnic American, the permanent resident alien who is trying to find a job, the fellow with the foreign-sounding name.

This, to me, seems to be the application of a remedy which, although it appears to be a cure-all, demands of us as American citizens that we give up a type of inalienable right which we have.

We feel that Congress should not resort to that type of measure.

Mr. BROWN. Mr. Ellberg?

Mr. ELLBERG. I have no questions.

Mr. BROWN. Mr. Mayne?

Mr. MARYN. I would just like to clarify this incident that seemed to cause a great deal of concern on your part this morning. Did you talk with the man who was required to produce some card?

Mr. WILSON. Yes; he is here.

Mr. MARYN. Were you there at the time of the incident?

Mr. WILSON. No; I heard this story from a fellow attorney.

Mr. MARYN. From the attorney?

Mr. WILSON. Yes; he is here today.

Mr. MARYN. You said he was asked to produce an alien registration card. Are you sure that was it or that he was just asked to produce some identification?

Mr. WILSON. This is a specialist in the field of immigration law who knows exactly what he was asked. He happens to appear foreign. He has a name that sounds foreign and I was pointing out the incident, not so much to show the type of interrogation that goes on in a Federal courthouse; but to show it as an example of what might go on when a gentleman applies for a job under the proposed legislation. What employer, upon penalty of a fine or criminal proceeding is going to take a chance on hiring a man who appears to be an alien and who has an accent or who perhaps cannot adequately explain his status?

Mr. MARYN. You don't think it was possible he was asked to produce identification and that was the nature of the request?

Mr. WILSON. He is available and I am perfectly willing, if the Congressman wishes to ask him.

Mr. MARYN. That is for the chairman to determine. But I, like the chairman, was asked to produce identification when I came to the entrance downstairs today. I did not feel it was an indication of hysteria for me to be asked to do that. I would submit, sir, that you are overreacting somewhat to a rather unfortunately normal requirement in urban America today.

I certainly did not feel I was being insulted or even incensed to have to fish through my pockets and have to get out my identification. I don't feel any American citizen or alien should take offense.

Mr. WILSON. Sir, I agree with you completely and neither did I feel offended when I was asked to show my identification. I showed my driver's license. This is a gentleman who was asked for his alien registration card specifically because he appears to be foreign.

I don't want to draw undue attention to this specific incident, except that it points out the type of question which might be raised under proposed legislation. I cannot see an employer placed in a position

origin, race, religion, and a host of other issues which are now either illegal or in bad taste. Who would suffer most? It would seem to me that the ethnic American, the permanent resident alien who is trying to find a job, the fellow with the foreign-sounding name.

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Mr. RODINO. Mr. Eilberg?

Mr. EILBERG. I have no questions.

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I don't want to draw undue attention to this specific incident, except that it points out the type of question which might be raised under proposed legislation. I cannot see an employer placed in a position

where he might have to subject himself to criminal or civil penalty for making a mistake in hiring the wrong person because he might be an illegal alien.

Mr. RODINO. But, Mr. Wildes, we are not saying "if he made a mistake." If we were to adopt such a measure, sanctions would be imposed only if he "knowingly" hired an illegal alien—"knowingly". We are considering these provisions in order to safeguard or protect Americans who are seeking employment—the native American or resident alien.

But the position you have taken—I am not going to prolong it—is to almost do nothing about the situation. You refer to the 97 percent figure which I have heard from time to time. Rightfully, of course, I gave it credence, but I found in the course of the conduct of these hearings that it isn't 97 percent a Mexican problem; that there are many others in other areas that are coming in.

The facts belie what you say. I am not going to belabor that any more. You have an opinion and I respect it for what it is. We will give it every consideration, but there appears to be a definite difference of opinion and this is what we have to try to resolve.

Mr. WILDES. Mr. Chairman, may I offer a comment on the use of the term "knowingly?" As attorneys we have experience in the use of that term in many criminal and civil penalty provisions. Always, in an interpretation of that term, the failure to inquire or the failure to take note of certain obvious elements is considered in determining whether a man "knowingly" did something.

It seems to me that if I were an employer I wouldn't want to get involved in the problem at all; as to whether some Federal judge might determine that I did something "knowingly" or that I should have known better. I would just prefer not to hire anyone who looked, sounded, or appeared to be foreign.

Mr. RODINO. Mr. Ryan?

Mr. RYAN. I should like to commend you for a very competent statement, having raised an issue to which the committee has to give very serious consideration, and that is the implications of any such proposed statute.

As the chairman says, it is a problem the committee is looking at in terms of whether or not there is a legislative solution. The one which you pointed to has opened the door to some very undesirable consequences.

If you have any suggestions I am sure the committee would welcome hearing it. This is what this committee has been grappling with and I thank you for pointing out the potential consequences of this kind of statement.

Mr. RODINO. Mr. Hogan?

Mr. HOGAN. The witness described in a kind of facetious vein about wetbacks coming into the office, but I think we ought to recognize that wetbacks covers more than those that actually and literally go through the Rio Grande.

There is ample indication there are ship-jumpers, there are people who come here in airplanes. In the general concept of that word and others, they would be considered wetbacks, so I don't think we ought to treat that facetiously.

I will add to what my colleague said. I too was asked to show identification going in the building. And this committee—if you are familiar with the hearings throughout the country—in no way would want to demean the legal alien or the American citizen who may speak with a flavor of foreign accent, and if you check the background of those on this committee you will learn we are not far removed from immigrant status ourselves in our progeny.

I also will state from attending numerous hearings throughout the country that your fears about employers not wanting to take the risk of hiring people because they look like they might be aliens is not well-founded at all.

We heard employers come before the subcommittee time and time again and pay high tribute to the quality of work they get from illegal aliens, and commenting gratuitously. In most instances it was superior to the quality of work they get from American citizens for one reason or another, so I don't think your comments are fair to the employers.

What this committee is attempting to do is to find workable solutions to cope with a serious problem. We in no way want to infringe the rights of citizens and subject them to any kind of embarrassment. I assure you of that.

We, as the chairman indicated—the word “knowingly” is in the law as it is now written. Most of us on this subcommittee feel we need to go even further to providing the employer who might potentially employ an alien, with more of an indication so he can satisfy this requirement. I won't go into the details, but most of us feel some kind of a designation on the social security card as to alien status would be helpful because illegal aliens can readily get social security cards. I think that while we do appreciate your coming before the subcommittee, frankly, as an attorney myself, I would have far better have seen an organization representing legal specialists in this area to come forward with more helpful suggestions rather than criticism of what is an honest effort to cope with a serious problem.

Mr. WILDES. Permit me to comment, if I may, Mr. Chairman. Asking an alien in applying for a social security card to acknowledge that he violated a criminal statute by having come in illegally is a severe violation of his right against self-incrimination.

Mr. HOGAN. I don't know what he said about that, Mr. Chairman, but you don't have to be a citizen to get a social security card.

Mr. WILDES. Absolutely not. But if you are here—

Mr. HOGAN. But if you are going to work you have to have a social security card.

Mr. WILDES. That is correct. And if you are called upon, in applying for a social security card, to admit the commission of a crime of having come in illegally, that is a type of self-incrimination in that the admission could be used against you to prove the crime of having come in illegally.

Therefore, to require an alien to submit to that would be unconstitutional.

Mr. HOGAN. Are you saying that Congress has no power to legislate controls on the issue—of allowing the aliens to work in the United States?

Mr. WILDES. No, I am not saying that. It has full power to legislate in this field, but I believe that any statute that would require a man to acknowledge the commission of a crime in order to obtain such a card would be held unconstitutional.

Mr. HOGAN. As a lawyer, are you saying all of our laws relating to border controls where an individual would be asked for citizenship, are you saying they are all unconstitutional?

Mr. WILDES. Absolutely not. We have a perfect right to legislate in those areas. The distinction lies in the fact that we are not asking the man to acknowledge that he is guilty of a criminal offense.

Mr. HOGAN. We are asking him if he is a U.S. citizen, and the answer is yes or no, which is the same kind of self-incrimination you described in applying for a social security card.

Mr. WILDES. The distinction is in the fact that it is an act he is performing himself in order to get into the country; he is committing a crime.

Mr. HOGAN. And he is misrepresenting the truth of his citizenship. That is a crime.

Mr. WILDES. Absolutely.

Mr. HOGAN. So, under what you said earlier, it would be unconstitutional.

Mr. WILDES. No; it would not be unconstitutional because you have a perfect right to legislate in that field. But when we make it a condition that he acknowledge the commission of a crime in order to obtain a benefit, I believe that the cases have held and it ought to be clear that that is an unconstitutional requirement.

I don't want to get into a constitutional law discussion here because there are attorneys who will differ on any constitutional issue.

I was not trying to point out that if I were an employer I would have any hesitance in hiring aliens under present law. I was speaking solely under a law that would punish me criminally or civilly. I would prefer, under those circumstances, not to take a chance in hiring anyone who appeared to be an alien.

Mr. HOGAN. I have no further comments.

Mr. EILBERG. From my point of view, your statement is interesting. As one individual member speaking, you seem to ignore what appears to be the national interest. From what we have heard here today by one or more witnesses and our other hearings indicate there is a substantial unemployment problem in the country and many, many jobs are being filled by people who are illegal aliens.

We have simply got to, in as speedy a way as we can, to provide an opportunity for citizens or persons legally here to see that they are employed first before we can condone the employment of illegal aliens.

Because of conditions in the country we cannot be, in my opinion, as academic as you are in this regard.

Mr. WILDES. Our message is simply that we believe there is no panacea and that before enacting legislation in panacea form, we ought to consider very carefully some of the dangers involved—the points I am trying to bring up in as forceful a manner as I can—because I believe we stand on the threshold of perhaps enacting some legislation which, a few years from now, is likely to give us a lot of trouble.

Mr. EILBERG. Mr. Seiberling?

Mr. SEIBERLING. Mr. Wildes, like Mr. Ryan, I think that you have provided a service to this committee in flagging some of the dangers that should be avoided in considering any legislation. I think, where you and I part company is that I don't throw up my hands and say because there are dangers we can't do anything.

I have been at some of the hearings where we dealt with the problem of wetbacks in Los Angeles and El Paso. These people are being exploited by employers who are knowingly employing them. They have no rights because they know that their employers know they can be thrown out of the country at any moment when their illegal presence is revealed. Therefore, they don't get the benefits that workers come to expect in this country.

So, to talk about a self-incrimination problem, as far as these people are concerned, that is the least of their worries. They are being oppressed in far more realistic and brutal ways than any possible self-incrimination.

When you get to the point of self-incrimination, if the man is not legally entitled to work in this country because he hasn't been legally admitted, then he has no right to have a social security number, the whole purpose of which is to earn social security benefits, which you can only do by working.

So, I consider that to be a purely academic point.

On this business of the 97 percent being all Mexicans, to me that falls of its own weight. Mr. Redding testified that last year 9,197 deportable aliens were located in the metropolitan New York City area alone.

Approximately 400,000 illegal aliens were located and deported from this country last year. Some of them actually were repeaters, so the figure isn't 400,000. But even if you take 400,000, 3 percent of that is 12,000 and if you subtract from that 9,000 in New York City, that only leaves 3,000 for the rest of the country.

While I have seen the famous map of the New Yorker's idea of the rest of the country, it really is a lot bigger than New York City. I just feel that those percentages that were being thrown around don't mean very much, like some of the other figures that have been thrown around in the press.

We have a problem and I would like to focus on that problem and get your reaction. It seems to me this question of the right of privacy through the revealing of social security information is the only question that I think hasn't been really answered here, and this committee is going to have to consider it at further length.

We certainly do not want to have a passport that every American has to carry with him at all times. That would be moving very far toward a police state. But I see nothing wrong with an alien being identifiable as such through the social security number which he must have in order to work, and in a way that permits the Social Security Administration to inform the Immigration Service and the Immigration Service in turn to inform the employer if their records show that that alien is illegally in the United States, or illegally being employed.

At that point, of course, if the alien can be apprehended, he can be dealt with under our law and deported if appropriate. But at that point, certainly the employer has been put on notice and he obviously

should not be allowed to continue once he has been given actual notice, not constructive notice or he "should have known" or "should have been put on inquiry," but actual notice.

And I believe we can come up with a system that can enable us to do that. I don't think it violates the right of privacy and I would like to get your reaction to a very narrowly drawn statute of that type, or system of that type.

Mr. WILDES. I think our reaction would be that, although you draw the issue quite narrowly and remove many of the objectionable problems, it was an inappropriate approach to that problem.

We think that there exist other methods for an enforcement agency as efficient as the Immigration Service to increase its efficiency. It has been obvious, I believe, in these hearings that they need more men. It has been obvious from your general knowledge of the immigration law that there are many other inequities in the law which help to solve this problem.

We have a situation, for instance, where a man who is a citizen can bring his brother if the brother is born in Europe, but that same brother may have to enter illegally and not be able to stay, if he happens to be born in Mexico. Perhaps there ought to be some other changes in the law that will correct this inequity.

Mr. SEIBERLING. This committee is going to undertake a complete review of our immigration laws to correct some of these inequities, and I couldn't agree with you more.

But I still feel that is getting away from the problem.

Mr. WILDES. I don't mean to divert attention from the narrowly phrased question, but we would still feel that the approach should be an approach to the law itself and we ought not seek this type of cure-all.

Mr. SEIBERLING. I would just like to say I think you pointed out some of problems and I would like you to address yourself to some specific solutions, which is really what we are up against.

I don't think we are doing our job if we just throw up our hands and say we can't do anything about this problem.

Mr. WILDES. Perhaps a suggestion might be made in this form.

Mr. EILBERG. Will the gentleman yield? You might be interested in knowing the subcommittee will be holding hearings in May on the preference system in the Western Hemisphere. We are anxious to move along with the hearing. Unless you have a particularly vital comment you want to make in reaction to Mr. Seiberling, we will have Mr. McKeivitt at this point.

Mr. McKEVITT. Mr. Wildes, I have been thinking about the 97-percent figure. That figure came from the leadership of the INS in testimony before this committee. It didn't take into account the fact that we had a lot of repeater offenses on this south of the border. This would increase the figure so far as the influx might be concerned. I think I agree with the chairman and other members of the committee. We do have a problem on the southwest border, and all over the United States, as far as the different borders are concerned.

One thing that has been brought to my attention is that it has been too little or too late, as far as applications for personnel, money, budgeting, or what have you is concerned. At the same time, I do think we are going to have to face this need for adequate identification.

You raised the question about identification by the Social Security Administration. What we really need is primary cooperation from the Social Security Administration. I think they are too "ivory tower" about the whole thing.

Mr. WILDES. Perhaps it would, but then again, at the cost, as Mr. Seiberling points out, of a further invasion of privacy. The question always resolves itself and I feel most inadequate in not being able to offer remedies but only pose problems which might arise from proposed legislation.

The question resolves itself to a balance of the factors involved as to how much invasion we are willing to put up with in order to solve this problem.

Mr. McKEVITT. That is where we come to the fork in the road. In this country you have to have identification to cash a check, drive a motor vehicle or get in some buildings.

One technicality of it is this: The population explosion in this country is not coming from within this country, but from without. It is based on one thing, economic desire. Because more and more people are coming into this country, we have to develop some form of selectivity, and identification for them.

I can't get over the fact that we put so much emphasis on the explosion within this country when the real explosion comes from without. Yet we are without any controls to handle the situation. Therefore, don't you think we have to have some form of identification to go with any remedial program that might be developed?

Mr. WILDES. As a matter of fact, the present law authorizes the Immigration Service to obtain information from the Social Security Administration in individual cases.

Mr. McKEVITT. Do you think that law is adequate?

Mr. WILDES. That is a question, I suppose, that should be put to a person on the other side of the table enforcing the law. I am interested in seeing that any law that might be passed should take adequate consideration, as I am sure the subcommittee does, of the individual rights of all Americans relating to privacy and self-incrimination.

Mr. McKEVITT. This has been discussed in committee in Washington, and across the country in hearings. We don't want to get into a state of superidentification. Maybe there is a reaction so far as this is concerned. However, there has to be some form of identification as we go along.

One of the problems that has popped up in these hearings over and over again is the lack of cooperation between the Social Security Administration and INS. That is why I asked you the question. Do we have a remedy now, either regulatory or statutorywise? If not, we can pursue it. This is what we try to resolve in hearings across the country.

Mr. WILDES. You certainly have an existing remedy in that in an individual's investigation, the Immigration Service can call upon the Social Security Administration to get a record of the man's employment.

Mr. EILBERG. Mr. Wildes, I want to thank you on behalf of the subcommittee, particularly because you come here with some courage in defending a point of view you know may be unpopular with the subcommittee, and we thank you all the more for speaking so eloquently

in behalf of your cause. I want to thank you, your associate and your association for a very fine presentation.

Mr. SEINERLING. Mr. Chairman, could I just correct the record. Mr. Wildes said he felt as I did, that to request an applicant for a social security number to show proof of citizenship for his right to work as an alien was an invasion of privacy. I want to make it clear that I do not consider that an invasion of privacy.

Until he can establish either through citizenship or proper papers that he has a legal right to work under our law, he should not be given a social security number because he doesn't need it for any other purpose.

I think we ought to correct the record in one other regard. This committee is the bastion of civil liberties in the House of Representatives of the United States. I think we have a long record, certainly since Chairman Celler has been chairman of this committee, as being very vigilant in that respect and in defending the right of privacy, too.

But what we are up against here is a practical problem which we are trying to solve within that framework. My personal feeling is that some day we should reach the stage that Benjamin Franklin said we should reach, a philosopher could go to any country in the world and say, this is my country. But until we reach that happy state of affairs in this world, we have to do something to solve the practical problems we are faced with, and I think this is one we can't slough aside.

Mr. EILBERG. Thank you very much. Our next witness will be Mr. Henry Foner, president of the Joint Board Fur, Leather & Machine Workers Union.

STATEMENT OF HENRY FONER, PRESIDENT, JOINT BOARD FUR, LEATHER & MACHINE WORKERS UNION

Mr. FONER. Mr. Chairman, my name is Henry Foner. I am the president of the Joint Board Fur, Leather & Machine Workers Union.

I have submitted a statement to the committee which represents a resolution that was adopted by the executive board of our union in response to what we consider to be a very irrational hysteria being manufactured in our society against the alien, and I would like to read that statement and make a few comments:

We are deeply disturbed by the campaign being conducted by some newspapers against the foreign-born in our midst. Scare headlines trumpet the charge that illegal aliens are depriving Americans of jobs and inflating relief rolls.

That there are some aliens who are here illegally or who have overstayed their authorized time is certainly true—but the extent of the problem is by no means as great as the headline writers would have us believe.

Even the Immigration and Naturalization Service has conceded that 97 percent of the so-called "illegals" are Mexicans who have been induced to come here by unscrupulous employers.

Nevertheless, the House of Representatives Subcommittee on Immigration is holding hearings on an administration bill that would impose criminal penalties on all employers knowingly hiring noncitizens in illegal status.

Since the early days of our republic, the reactionary forces in our country have tried to make the foreign-born scapegoats for the failure of our Government to solve the problems of our people. In Jefferson's day, it was the alien and sedition laws. Today, it is the Walter-McCarran Act and other legislation that persecutes the aliens in our country.

Unemployment and rising relief costs are real problems. They will not be solved by pitting the native-born workers against the foreign born, but rather by measures that will provide jobs and security for all Americans.