The original documents are located in Box 58, folder "Refugees - Indochina General (1)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

UNITED STATES of America ex rel. Gyula PAKTOROVICS, Relator-Appellant,

v.

John L. MURFF, District Director, Immigration and Naturalization Service for the District of New York, Respondent-Appellee.

No. 274, Docket 24932.

United States Court of Appeals
Second Circuit.

Argued Feb. 7, 1958.

Decided Nov. 6, 1958.

Habeas corpus proceeding for review of revocation of Hungarian refugees' temporary paroles and their subsequent exclusion. From a judgment of the United States District Court for the Southern District of New York, Irving R. Kaufman, J., 156 F.Supp. 813, dismissing the writ, a relator appealed. The Court of Appeals, Medina, Circuit Judge, held, inter alia, that the doctrine that aliens as well as citizens are entitled to protection of procedural due process in deportation proceedings would be applied to Hungarian refugee who came to the United States as parolee, and hence his parole could not be revoked without a hearing at which the basis for discretionary ruling of revocation might be contested on the merits, in view of the special circumstances which made such case sui generis.

Reversed and remanded.

Moore, Circuit Judge, dissented.

1. Constitutional Law ⇐252

Aliens, even those who have entered the United States illegally, are entitled to the full protection of the constitutional requirements of due process in deportation proceedings. U.S.C.A.Const. Amend. 5.

2. Aliens ⇐54(10)
Constitutional Law ⇐252

The doctrine that aliens as well as citizens are entitled to protection of procedural due process in deportation proceedings would be applied to Hungarian refugee who came to the United States as parolee, and hence his parole could not be revoked without a hearing at which the basis for discretionary ruling of revocation might be contested on the merits, in view of the special circumstances which made such case sui generis. Immigration and Nationality Act, § 212(a) (20), (d) (5), 8 U.S.C.A. § 1182(a) (20), (d) (5); Act July 25, 1958, 72 Stat. 419; U.S.C.A.Const. Amend. 5.

3. Aliens ⇐54(10)

A Hungarian refugee whose temporary parole was revoked because of inconsistent statements and withholding of information regarding membership in Communist Party while in Hungary was not entitled to a hearing on merits on ground that hearing was to be implied from language of statute merely because hearings had been authorized by regulations promulgated pursuant to Immigration and Nationality Act as a preliminary to exercise of discretion by the Attorney General in withholding deportation, suspending deportation, authorizing voluntary departure in lieu of deportation and adjusting an alien's immigrant status, since the promulgation of regulations providing for hearing prior to exercise of discretion under certain sections of the Act does not dispose of question of whether or not a hearing is required with regard to matters involved in other sections of the Act with respect to which no such regulations have been formulated. Immigration and Nationality Act, §§ 103, 212(d) (5), 243 (h), 244, 245, 8 U.S.C.A. §§ 1103, 1182 (d) (5), 1253(h), 1254, 1255.

Edward J. Ennis, New York City (Ralph Goldstein and Clifford Forster, New York City, on the brief), for relator-appellant.

Roy Babitt, Sp. Asst. U. S. Atty., New York City (Paul W. Williams, U. S. Atty. for the Southern Dist. of New York, New York City, on the brief), for respondent-appellee.

this information when he was questioned in Austria. He claimed that the interpreter must have mistaken what he did say and thus the translation was incorrect. However, on September 6, 1957, an order that appellant "be excluded and deported," without a hearing, was issued on the basis of "information * * * of a confidential nature, the disclosure of which would be prejudicial to the public interest, safety or security." Subsequently, on September 13, 1957, this exclusion and deportation was withdrawn since the Acting Regional Commissioner learned that there were "sufficient bases for the exclusion of (appellant), apart from the confidential information warranting exclusion and deportation without hearing * * *." Appellant's case was referred to a Special Inquiry Officer for determination of appellant's "admissibility or excludability." The writ of habeas corpus allowed on August 26, 1957, was then dismissed upon a stipulation approved by the District Court.

An exclusion hearing, at which appellant was represented by counsel, was held on September 20, 1957. The proceedings were limited, however, to the question of whether or not appellant had a valid immigration visa. Upon appellant's admission that he had never been in possession of such a visa the Special Inquiry Officer found him to be inadmissible to the United States under Section 212(a) (20) of the Immigration and Nationality Act, 8 U.S.C.A. § 1182(a) (20). An appeal from this determination taken to the Board of Immigration Appeals was dismissed on October 22, 1957. A new writ of habeas corpus, allowed on October 26, 1957, was, after argument, dismissed as to appellant by the District Court on November 26, 1957. The appeal now before us was taken from this dismissal of the writ.

Thus the facts may be summarized as follows: in order to find some sort of temporary or permanent asylum in the United States, and in response to what must have appeared to them to be a generous and humanitarian invitation from a freedom-loving people, this family of Hungarian refugees came here as parolees. They had no visas when they left Austria, and the United States officials handling the matter knew at all times that they had no visas and were not expected to have any visas. Having raised the issue of whether Gyula Paktorovics had communistic or subversive tendencies, all of which he vigorously denied, the issue of his communist connections was abandoned, and he was ruled to be deportable on the sole ground of his failure to produce the visa which everyone knew all along he did not possess. The wife and the two daughters are to be permitted to remain here; but the husband and father must go. The effect of this ruling, if upheld, may be disastrous to the balance of the 30,000 odd Hungarian parolees, who will then be permitted to remain in the United States only so long as the Government officials, who decided that Paktorovics must go, refrain from making a similar decision as to the others. Moreover, if the Government position is sustained, any one or all of this large number of Hungarians who fled from the might of Soviet Russia must leave our shores on the mere say-so of a Government official, however unreasonable or capricious this say-so may be, and even if there is no basis whatever for such a ruling. None of them have any visas; and the only hearing to which any of these parolees will be entitled under the law, as thus interpreted, will be a hearing to determine the already obvious fact that they have no visas. We cannot agree that such is the law. Under the special circumstances of the case of these Hungarian refugees, we think their parole may not be revoked without a hearing at which the basis for the discretionary ruling of revocation may be contested on the merits.

Appellant argues that Section 212(d) (5), 8 U.S.C.A. § 1182(d) (5), in the light of certain sections of the Immigration and Nationality Act, 8 U.S.C.A. § 1101 et seq., which do not by their terms provide for a hearing, requires that a hearing be had on the subject

of revocation of parole, at least in the case of the Hungarian refugees. He also notes the President's directive of December 1, 1956 referred to in his Message to the Congress on January 31, 1957 which reviews the sad plight of the "(t)housands of men, women, and children (who) have fled their homes to escape Communist suppression," mentions the fact that most of the refugees have been admitted "only temporarily on an emergency basis," that some "may ultimately decide that they should settle abroad," but "many will wish to remain in the United States permanently." In the meantime, the President adds, "(P)rompt action by the Congress is needed looking toward the revision and improvement" of the Immigration and Nationality Act. 103 Cong.Rec. 1355.

Appellant also contends that he is entitled to procedural due process in any event, and thus to a hearing on the subject of revocation of parole, even if we should not adopt his interpretation of Section 212(d) (5), 8 U.S.C.A. § 1182 (d) (5), pursuant to the terms of which the Hungarian refugees were paroled into this country.[1]

The position of the Government, on the other hand, is that this is an exclusion case pure and simple, that the expulsion cases have no bearing on the problem before us, and that it has been held again and again that the parole of a person seeking entry into the United States is nothing more nor less than an "enlargement" of the place of detention or temporary refuge ashore, for which purpose Ellis Island had long been used, pending determination of an alien's application for admission into the United States. Thus, argues the Government, an alien physically present in the United States on parole is, nevertheless, "in contemplation of law" still outside this country and subject to the same treatment, after the Attorney General has exercised his discretion to revoke that alien's parole, as is accorded an alien en route from foreign soil. On the basis of this reasoning it is claimed that appellant has no constitutional rights, and is not within the protection of the Due Process Clause of the Fifth Amendment, citing Kaplan v. Tod, 267 U.S. 228, 45 S.Ct. 257, 69 L.Ed. 585, and two lower court cases the holdings of which have been sustained by the recent Supreme Court decision in Leng May Ma v. Barber, 357 U.S. 185, 78 S.Ct. 1072, 2 L. Ed.2d 1246. Largely on the basis of the decisions just referred to, and the absence of any clause in Section 212(d) (5), 8 U.S.C.A. § 1182(d) (5) stating in so many words that a hearing must be had, the Government insists that no hearing other than the barren formality here resorted to need be had in instances where aliens paroled into the United States pursuant to Section 212(d) (5), 8 U.S.C.A. § 1182(d) (5), are to be deported after the revocation of the parole by the Attorney General.

But we think this case is different. By reason of the circumstances under which the Hungarian refugees were paroled into the United States this case in *sui generis*. We are mindful of the opening paragraph of the President's Message to the Congress, above referred to:

> "The eyes of the free world have been fixed on Hungary over the past 2½ months. Thousands of men, women, and children have fled their homes to escape Communist oppression. They seek asylum in countries that are free. Their opposition to Communist tyranny is evidence of a growing resistance throughout the world. Our position of world leadership demands that, in partnership with the other nations of the free

[1] "On December 1, I directed that above and beyond the available visas under the Refugee Relief Act—approximately 6,500 in all—emergency admission should be granted to 15,000 additional Hungarians through the exercise by the Attorney General of his discretionary authority under section 212(d) (5) of the Immigration and Nationality Act; and that when these numbers had been exhausted, the situation be reexamined." Message from the President of the United States to the Congress, January 31, 1957, 103 Cong.Rec. 1355.

world, we be in a position to grant that asylum."

[1, 2] It is well established law that aliens, even those who have entered the United States illegally, are entitled to the full protection of the constitutional requirements of due process in deportation proceedings. Kwong Hai Chew v. Colding, 344 U.S. 590, 73 S.Ct. 472, 97 L.Ed. 576; The Japanese Immigrant Case (Yamataya v. Fisher), 189 U.S. 86, 23 S.Ct. 611, 47 L.Ed. 721; see also Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206, 73 S.Ct. 625, 97 L.Ed. 956. The principles underlying those decisions are applicable here, despite the fact that the proceeding is in form one of exclusion rather than expulsion. If this means an extension of the doctrine that aliens as well as citizens are entitled to the protection of procedural due process in deportation proceedings so as to include within the protected class of persons parolees who have come to the United States as have the Hungarian refugees of whom appellant is merely one of thousands, we do not hesitate to take that forward step, in view of all the circumstances of this case to which reference has been made. What makes this case different from other exclusion cases, such as United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 70 S.Ct. 309, 94 L.Ed. 317; Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206, 73 S.Ct. 625, 97 L.Ed. 956; Leng May Ma v. Barber, 357 U.S. 185, 78 S. Ct. 1072, 2 L.Ed.2d 1246, and Rogers v. Quan, 357 U.S. 193, 78 S.Ct. 1076, 2 L.Ed.2d 1252, is that Paktorovics was invited here pursuant to the announced foreign policy of the United States as formulated by the President in his directive of December 1, 1956, referred to in his Message to the Congress, of January 31, 1957, from which we have already quoted. Furthermore, the Congress has recently enacted legislation endorsing the extraordinary action of the President with respect to these Hungarian refugees. See Public Law 85-559, 72 Stat. 419 (approved July 25, 1958).

True it is that the President has no power to change the law by inviting Paktorovics and the other Hungarian refugees to come here, but this is not to say that the tender of such an invitation and its acceptance by him did not effect a change in the status of Paktorovics sufficient to entitle him to the protection of our Constitution.

We also hold that, in order to bring Section 212(d) (5), 8 U.S.C.A. § 1182 (d) (5), "into harmony with the Constitution," [2] a hearing is required prior to the revocation of parole when this section is applied to persons situated in the United States as is appellant in the case at bar. Section 212(d) (5) provides:

> "The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States."

[3] We are not persuaded by appellant's argument that the requirement of such a hearing is to be implied from the language of the section merely because hearings have been authorized by regulations promulgated pursuant to the Immigration and Nationality Act as a preliminary to the exercise of discretion by the Attorney General in withholding deportation, suspending deportation, au-

2. The Japanese Immigrant Case (Yamataya v. Fisher), 189 U.S. 86, 101, 23 S.Ct. 611, 615, 47 L.Ed. 721.

orizing voluntary departure in lieu of eportation, and adjusting an alien's im-igrant status. We find no relation be-ween the hearings authorized by ap-ropriate regulations to aid the Attorney eneral in exercising his discretion to withhold the deportation of an alien who otherwise is likely to be subjected to physical persecution, Section 243(h), 8 U.S.C.A. § 1253(h), or to adjust the status of an alien so as to give that per-on a more favorable position with ref-erence to the administration of the im-migration laws, Sections 244 and 245, 8 U.S.C.A. §§ 1254, 1255, and the hear-ings sought by appellant as a condition precedent to the Attorney General's ex-ercising his discretion to revoke parole n order to place appellant in a posi-ion more amenable to deportation. The Attorney General is given authority to establish such regulations * * * as he deems necessary for carrying out his authority" under the Act, Section 103, 8 U.S.C.A. § 1103, and the promulga-tion of regulations providing for a hear-ing prior to the exercise of discretion nder certain sections of the Act does not dispose of the question of whether or not a hearing is required with regard to the matters involved in other sections of the Act with respect to which no such regulations have been formulated.

However, the grave constitutional im-plications of a decision that appellant is not entitled to the hearing he seeks are clear. Were the views advanced by the Government adopted it is difficult to see how the statute, interpreted to au-thorize deportation of appellant without a hearing on the merits, could satisfy the requirements of due process. Ac-cordingly, since a construction of Sec-tion 212(d) (5), 8 U.S.C.A. § 1182(d) (5), which requires a hearing on the subject of revocation of parole will re-move serious doubt regarding the valid-ity of the statute, we so construe the section and hold that appellant is enti-tled to a hearing prior to the revocation of his parole. United States v. Witko-vich, 353 U.S. 194, 201–202, 77 S.Ct. 779, 1 L.Ed.2d 765; also Kwong Hai Chew v. Colding, 344 U.S. 590, 73 S.Ct. 472, 97 L.Ed. 576; Wong Yang Sung v. McGrath, 339 U.S. 33, 70 S.Ct. 445, 94 L.Ed. 616.

We do not say that the discretion of the courts should be substituted for the discretion to be exercised by the Attor-ney General as provided by law. We do say that there must be a hearing which will give assurance that the discretion of the Attorney General shall be exer-cised against a background of facts fair-ly contested in the open.

Reversed and remanded.

MOORE, Circuit Judge (dissenting).

I dissent.

The relator, Gyula Paktorovics, his wife, Szeren Paktorovics, and their two minor daughters were part of a group of some 30,000 Hungarians who had fled to Austria from Hungary at the time of the uprising in the fall of 1956. To relieve Austria of the burden of this large influx, various countries, includ-ing the United States, sympathetic to those who were seeking freedom from Communistic oppression offered to re-ceive certain numbers within their bor-ders. Under the Refugee Relief Act, 50 U.S.C.A.Appendix, § 1971 et seq, there were only approximately 6,500 visas available for them. The number seeking asylum vastly exceeded this fig-ure. The President, therefore, on De-cember 1, 1956 directed that "emergen-cy admission should be granted to 15,000 additional Hungarians through the ex-ercise by the Attorney General of his discretionary authority under section 212 (d) (5) of the Immigration and Nation-ality Act." [1] Subsequently others were admitted making the total some 30,000.

In Austria the relator executed an ap-plication for himself and his family pur-suant to § 212(d) (5) of the Immigra-tion and Nationality Act [8 U.S.C.A. § 1182(d) (5)]. The truth or falsity of

1. Message from the President of the United States to the Congress, January 13, 1957, 103 Cong.Rec. 1355.

the relator's statements in this application are immaterial to the decision required here. Suffice it to say that they were adequate to enable him and his family to be included in the group destined for the United States. The family arrived in this country on December 24, 1956, and settled in Baltimore where Gyula obtained employment as a milkman.

Because no visas were available beyond the exhausted 6,500, the President relied upon section 212(d) (5) of the Immigration and Nationality Act. Indeed there was no other way in which even temporary admission could have been secured. This section provides in part that the Attorney General may in his discretion parole into the United States temporarily, for emergent reasons, in the public interest, "any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien, and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled." The section further provides that thereafter his case shall be "dealt with in the same manner as that of any other applicant for admission to the United States."

Thus Congress had specifically given to "the Attorney General" the power "in his discretion" to "parole into the United States" but only "temporarily" and "for emergent reasons * * * in the public interest" aliens applying for admission. However, Congress with equal clarity declared that "such parole of such alien shall not be regarded as an admission of the alien." When the purposes of the parole should have been served, again it was the Attorney General to whose opinion Congress entrusted the decision and the power to return the alien to the custody from which he was paroled.

On January 31, 1957 the President sent to the Congress a letter of the same date in which he advised Congress that on November 8, 1956 he had directed that extraordinary measures be taken to expedite the processing of 5,000 Hungarian visa applications under provisions of the Refugee Relief Act. However, by November 29 it was clear that many more persons would have to be admitted, and on December 1, the President directed that emergency admission should be granted to 15,000 additional Hungarians through the exercise by the Attorney General of his discretionary authority, and that when these numbers had been exhausted, the situation be reexamined. The President pointed out that most of the refugees had been admitted "only temporarily on an emergency basis"; that some might ultimately decide to settle abroad; and that many would wish to remain in the United States permanently. As to them he said: "Their admission to the United States as parolees, however, does not permit permanent residence or the acquisition of citizenship." To give them that opportunity he recommended that "the Congress enact legislation giving the President power to authorize the Attorney General to parole into the United States temporarily, under such conditions as he may prescribe, escapees selected by the Secretary of State who have fled or in the future flee from Communist persecution and tyranny." To avoid the mass of private immigration bills dealing with hardships in individual cases the President recommended that "the Attorney General be granted authority, subject to such safeguards as Congress may prescribe, to grant relief from exclusion and expulsion * * *."

The President's letter indicated that the problem in dealing with the Hungarian situation was one for Congressional action. In fact, the President squarely placed the problem of the status of the Hungarian refugees before Congress for action. They were physically present in the United States, and yet only "temporarily," and at least 23,500 had no visas or other necessary papers to enable them to become permanent residents or citizens. After much debate

a bill (H.R.11033) was finally enacted providing for the admission of paroled Hungarian refugees who have been in the United States for at least two years (72 Stat. 419). Both the Senate and House reports accompanying H.R.11033 and recommending its passage (H.R.Rep. No.1661 and S.Rep.No.1817, 85th Cong., 2d Sess.) singled out as best explaining "the full purport of the bill" the comments by the bill's sponsor, Representative Feighan of Ohio, made when introducing the bill. The Representative explained that the bill was designed to cover the case of a paroled Hungarian refugee and that its objective was to have him "regarded as lawfully admitted for permanent residence as of the date of his arrival in the United States." To achieve this status, inspection and, if necessary, a hearing by special inquiry officer of the Immigration and Naturalization Service, were provided for. The Representative stated that "obviously, if he is not admissible on these terms, the alien's exclusion and deportation would necessarily follow in accordance with the existing provisions of the Immigration and Nationality Act." He was clear that his bill did nothing that "affects the duties, powers and functions of the Attorney General" granted by the Act, and that the bill re-states the substance of existing law—that a parolee, when returned to the custody of the Immigration Service and found inadmissible under the existing law, has automatically lost his status as a parolee, and is required to be excluded and deported just as any other excludable alien applying for admission to the United States." Cong.Rec. Vol. 104, No. 31; Feb. 27, 1958; pp. 2676–7.

There was, of course, a major inconsistency in using § 212(d) (5) as the vehicle for emergency admission because the greater proportion by far of those admitted came in purportedly under this section and not pursuant to visas. In the case now before the Court the relators were not aliens "applying for admission to the United States." They came in pursuant to a section which by grace of the sovereign permitted them to do so without complying with any law except that which was being used to sanction their *de facto* admission, and under the specific condition that parole by the Attorney General should not be regarded as admission of the alien. By act of Congress parole was exclusively within the discretion of the Attorney General and he assigned the task of investigating and screening the person so admitted to the Immigration Service.

Commencing in February 1957, officers of the Service conducted several investigations and interrogations of the relator Gyula and came to the conclusion that he had been a volunteer member of the Communist party in Hungary and that he had withheld information of such affiliation because of a fear that such disclosure might result in a denial of his application. Thereafter, the Acting Regional Commissioner of the Service at Richmond, Virginia, entered an order on August 14, 1957 revoking his temporary parole and directing that steps be taken for relator's return to Austria. On August 26, 1957 the relator sought a writ of habeas corpus on the ground that his expulsion was without a hearing, in violation of due process. Prior to the return of the writ, the Service invoked § 235(c) of the Immigration Act [8 U.S.C.A. § 1225(c)] providing for the expulsion of an alien without a hearing where inadmissibility is based on confidential information which would be inimical to public welfare. Subsequently the Commissioner withdrew the exclusion order on this ground and agreed to grant a hearing pursuant to § 236 at which hearing the only question permitted to be litigated was whether the relators were in possession of valid unexpired entry documents. This was a futile proceeding because, of course, the relators had no valid entry documents and could not have obtained them. Had they possessed such papers they would not have had to come in by means of § 212(d) (5). An appeal to the Board of Immigration Appeals was an equally vain for-

mality. Upon its rejection of the appeal an exclusion order was entered. The relators challenged the constitutionality of these proceedings by habeas corpus, the main ground being that parole was revoked without a hearing.

Initial and instinctive reaction leads to the conclusion that this country, in waiving the entry requirements because of the Hungarian emergency, should grant to these unfortunate people all benefits and privileges to be obtained under our Constitution. However, emotional reaction should not blind us to the fact that our immigration policy has been, and still should be, declared by Congress, and enforced by such officers of government as are so designated by Congress. The Supreme Court recently, in this very field (to be sure by votes of four to three, and thrice by five to four), has had occasion to pass upon cases of even greater hardship than that now presented to us.

In United States ex rel. Knauff v. Shaughnessy, 1950, 338 U.S. 537, 70 S.Ct. 309, 94 L.Ed. 317, the majority pointed out that "Admission of aliens to the United States is a privilege granted by the sovereign United States Government. Such privilege is granted to an alien only upon such terms as the United States shall prescribe. It must be exercised in accordance with the procedure which the United States provides" (338 U.S. at page 542, 70 S.Ct. at page 312). As to the power to delegate, the court continued: "Thus the decision to admit or to exclude an alien may be lawfully placed with the President, who may in turn delegate the carrying out of this function to a responsible executive officer of the sovereign, such as the Attorney General. The action of the executive officer under such authority is final and conclusive." Even if the alien had gained entry into the United States (and § 212(d) (5) expressly negates entry) "it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien" (338 U.S. at page 543, 70 S.Ct. at page 312). In the Knauff case a German bride married to an American soldier in Germany was excluded.

In Shaughnessy v. United States ex rel. Mezei, 1953, 345 U.S. 206, 73 S.Ct. 625, 97 L.Ed. 956, the Court had to deal with the situation which frequently received comment in the public press of the Rumanian who was on Ellis Island unable to enter the United States and equally unable to return to any other country in the world. After he languished within sight of his hoped-for destination for some twenty-one months his case finally reached the Supreme Court which defined the generosity of Congress toward this alien by saying that the hardship of staying aboard the vessel "persuaded Congress to adopt a more generous course. By statute it authorized, in cases such as this, aliens' temporary removal from ship to shore. But such temporary harborage, an act of legislative grace, bestows no additional rights. Congress meticulously specified that such shelter ashore 'shall not be considered a landing' * * *. And this Court has long considered such temporary arrangements as not affecting an alien's status; he is treated as if stopped at the border" (345 U.S. at page 215, 73 S.Ct. at page 631).

As recently as June 16, 1958 the Supreme Court had occasion again to consider the status of parolees in the cases of Leng May Ma v. Barber, 357 U.S. 185, 78 S.Ct. 1072, 2 L.Ed.2d 1246, and Rogers v. Quan, 357 U.S. 193, 78 S.Ct. 1076, 2 L.Ed.2d 1252. Although the cases involved section 243(h) of the Immigration and Nationality Act dealing with the withholding of deportation of aliens who "in his opinion" (the Attorney General) would be subject to physical persecution the decisions turned upon whether "physical presence as a parolee" gave the parolee the status of being "within the United States." The Court's conclusion was "that petitioner's parole did not alter her status as an excluded alien or otherwise bring her 'within the United States' in the mean-

ing of § 243(h)" (357 U.S. at page 186, 78 S.Ct. at page 1073). Yet in that case Leng May Ma had been physically present in the United States for many years. Having failed in establishing citizenship by virtue of claiming that her father was a United States citizen, she then alleged that deportation to China would subject her to physical persecution and probable death. The Court noted the law as it was, and apparently still is. "For over a half century this Court [the Supreme Court] has held that the detention of an alien in custody pending determination of his admissibility does not legally constitute an entry *though the alien is physically within the United States* (citing cases)" (357 U.S. at page 188, 78 S.Ct. at page 1074). (Emphasis supplied.) The Court then faced the question "whether the granting of temporary parole somehow effects a change in the alien's legal status." Specifically construing the language of the very section here involved (section 212(d) (5)), the Supreme Court said "Petitioner's concept of the effect of parole certainly finds no support in this statutory language" (357 U.S. at page 188, 78 S.Ct. at page 1074).

The majority argues that the fact that the relator was paroled into this country at the behest of the executive department makes this case different or "*sui generis.*" But all parolees by definition are given that status only through the exercise of the executive department's discretion or its "invitation," to use the terminology of the majority. The parole here was granted pursuant to the same statutory authorization as in Leng May Ma, supra, and is no different in principle than the one involved in that case where the Supreme Court showed its consciousness of this situation by noting that "The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted. It was never intended to affect an alien's status, and to hold that petitioner's parole placed her legally 'within the United States' is inconsistent with the congressional mandate, the administrative concept of parole, and the decisions of this Court" (357 U.S. at page 190, 78 S.Ct. at page 1075).

In my opinion, the majority in not hesitating "to take that forward step" namely, to hold "that aliens [such as relator here] as well as citizens are entitled to the protection of procedural due process in deportation proceedings so as to include within the protected class of persons parolees who have come to the United States as have the Hungarian refugees of whom appellant is merely one of thousands * * *" has undertaken (1) to override the enactments and intent of Congress; (2) to substitute its judgment for the opinion of the Executive branch of Government; and (3) to overrule the long line of consistent decisions of the Supreme Court on this very subject. The effect of the decision is to remove such aliens from the parole of the Attorney General and without Congressional sanction to place it in the courts.

The creation and administration of international policies including the admission of citizens of other lands to our shores has been vested in the legislative and executive branches of the Government. Wisely so. Chaos would result were international policy to be set *ad hoc* by individual courts throughout the country. Even eventual decision by the Supreme Court might be in conflict with executive policies in international affairs.

In summary, the law is clear both in statute and decision. Relator, as a parolee, in law, has not as yet been admitted. The facts are equally clear. He was admitted "temporarily" and "on parole." The generous gesture of the President brought him here. However, even the Chief Executive lacks the power to annul the laws passed by Congress regulating admission to this country. Thus, for example, the President could not lawfully declare that thousands of aliens could be received as citizens without visas and without complying with the existing laws prerequisite to citizenship.

The President recognized this lack of power when he requested Congressional action to clarify or legitimize the situation of these very refugees.

The majority holds that a hearing in this case is a constitutional necessity to assure "that the discretion of the Attorney General shall be exercised against a background of facts contested in the open." But is this not merely stating that the courts are to determine how the Attorney General should exercise his discretion and to take onto themselves the power to fix the standards for such exercise, a function which is and should be vested in Congress? Thus under the new law (H.R.11033) Congress requires a Hungarian refugee to meet all the qualifications for admission listed in 8 U.S.C.A. § 1182, and renders ineligible for admission any refugee who, like Paktorovics, allegedly has been a voluntary member of the Communistic Party in 1954 (8 U.S.C.A. § 1182(a)(28)). If the existing statutory criteria have continuously applied to Paktorovics and the other Hungarian refugees and are now governing the outcome of the hearing said by the majority to be Paktorovics' constitutional right, it was unnecessary for Congress to enact the recent legislation. Moreover, any restriction of the benefits of the Act to refugees who have been in this country for two years or more under the rationale of the majority might well be unconstitutional. Furthermore, under the majority's rationale it is difficult to envisage a situation in which a hearing will not turn the proceeding even farther into the exclusive custody of the courts and away from the officer designated by Congress.

The sympathy expressed by the majority for the plight of the Hungarian refugees must be universal amongst freedom-loving peoples. This thought is well expressed in the dissent in Leng May Ma, supra. Were a law enacted that no one against his will be returned to a communist governed country, it would undoubtedly reflect national opinion. If persons presently espousing the communist philosophy not only can remain but participate without restriction in our national life and institutions, why should not those who have risked much to come here not remain? If there be spies whose presence would be dangerous, our agencies charged with prosecuting enemies of the country can deal appropriately with such cases. However, would it not be more fitting and just to give equal treatment to nationals of all nations and races? This court had no difficulty in following the laws to the extent of honoring the opinion of the Immigration Department and affirming an order directing the exclusion and the deportation to China of four young men who claimed that return meant physical persecution and probable death.[2] Yet these young men had been here and participated in our economic life much longer than the relator. When, as, and if the Supreme Court decides, as the majority here, that the Hungarian refugees are *"sui generis,"* it will not be of much comfort (if any) to Leng May Ma or the other Chinese whose deportation has been ordered.

The very reason which moves so many aliens to seek our citizenship is the success in the preservation of the various important freedoms which this nation has had under its Constitution with its division of powers between the Legislative, Executive and Judicial branches. Anomalous, indeed, would it be if, to extend to aliens these advantages, we were to violate these constitutional concepts. Furthermore, as the Supreme Court so aptly pointed out in Leng May Ma to alter by decision the "parole sta-

2. United States ex rel. Lue Chow Yee v. Shaughnessy, 2 Cir., 1957, 245 F.2d 874, affirming D.C., 146 F.Supp. 3; Dong Wing Ott v. Shaughnessy, 2 Cir., 1957, 245 F.2d 875, affirming D.C., 142 F.Supp. 379. Both of these decisions were reaffirmed in a rehearing (247 F.2d 709) in which this court explicitly rejected the decision of the District of Columbia Circuit in Quan v. Brownell, 1957, 101 U.S. App.D.C. 229, 248 F.2d 89, reversed sub nom. Rogers v. Quan, supra.

tus, would be quite likely to prompt some curtailment of current parole policy—an intention we are reluctant to impute to the Congress."

I, therefore, agree completely with the majority in their desire to enable the Hungarian refugees to remain in this country but must disagree that their opinion reflects authoritative law as declared by statute or by decision—at least at the present moment.

The trial court in an able and, in my opinion, accurate analysis of the law has concluded that there has been "no manifest abuse of discretion" by the Commissioner and that the writ of habeas corpus be dismissed. I would affirm that decision.

R. BRANNAN and Bessie Brannan, Appellants,

v.

SOHIO PETROLEUM COMPANY, a corporation, Appellee.

No. 5915.

United States Court of Appeals
Tenth Circuit.
Nov. 6, 1958.

Suit to establish and enforce right to overriding royalty interest in oil and gas leasehold. The United States District Court for the Eastern District of Oklahoma, Ross Rizley, J., 161 F.Supp. 155, rendered judgment for defendant, and plaintiffs appealed. The Court of Appeals, Bratton, Chief Judge, held that since assignors reserving overriding royalty had also been paid a cash bonus and since there had been no promise or commitment to drill any well, no such fiduciary relationship had arisen as would entitle assignors to constructive trust upon leasehold estate acquired by assignee to go into effect upon expiration of assigned lease.

Affirmed.

1. Trusts ⇐102(1)

In ordinary circumstances, mere reserving of an overriding royalty interest in assignment of oil and gas lease—alone and without more—does not create a confidential or fiduciary relationship between assignor and assignee which denies to assignee right to obtain from owner of land a top lease to take effect after expiration of assigned lease free of burden of overriding royalty, either in form of constructive trust or otherwise.

2. Trusts ⇐102(1)

Where assignors reserving overriding royalty were also paid a cash bonus and there was no promise or commitment to drill any well, no such fiduciary relationship arose as would entitle assignors to constructive trust upon leasehold estate acquired by assignee to go into effect upon expiration of assigned lease.

George N. Otey, Ardmore, Okl. (Otey, Johnson & Evans, Ardmore, Okl., was with him on the brief), for appellants.

C. Harold Thweatt, Oklahoma City, Okl. (Embry, Crowe, Tolbert, Boxley & Johnson, Oklahoma City, Okl., was with him on the brief), for appellee.

Before BRATTON, Chief Judge, and PHILLIPS and LEWIS, Circuit Judges.

BRATTON, Chief Judge.

This case was here on a former occasion, Brannan v. Sohio Petroleum Co., 10 Cir., 248 F.2d 316. As stated on the former appeal, the complaint charged that plaintiffs assigned to defendant two oil and gas leases covering lands in Oklahoma; that the leases were for the primary term of five years terminating October 25, 1954; that each assignment reserved to the assignors an overriding royalty of one-sixteenth of seven-eighths of all oil and gas produced from the

Application of Gyula PAKTOROVICS, Szeren Paktorovics, Natasha Paktorovics, Vera Paktorovics, for a Writ of Habeas Corpus.

UNITED STATES of America ex rel. Gyula PAKTOROVICS, Szeren Paktorovics, Natasha Paktorovics and Vera Paktorovics, Relators,

v.

John L. MURFF, District Director, Immigration and Naturalization Service, for the District of New York, Respondent.

United States District Court
S. D. New York.
Nov. 26, 1957.

Habeas corpus proceeding for review of the revocation of Hungarian refugees' temporary paroles, and their subsequent exclusion. The District Court for the Southern District of New York, Irving R. Kaufman, J., held that alien's temporary parole was properly revoked because of inconsistent statements and withholding of information, and he was properly excluded for lack of entry documents, but revocation of paroles of his wife and children, and their subsequent exclusion, were improper.

Judgment in accordance with opinion.

1. Aliens ⇐53

Unrest and chaos in Austria resulting from Hungarian insurrection of 1956 warranted temporary parole of deserving bona fide Hungarian refugees, pursuant to statute, pending such appropriate legislation as Congress might enact to clarify their status. Immigration and Nationality Act, § 212(d) (5), 8 U.S.C.A. § 1182(d) (5).

2. Constitutional Law ⇐252

A resident alien physically present in United States is within full protection of due process clause, but alien regarded in contemplation of law as outside the country is outside the full reach of the Fifth Amendment. U.S.C.A.Const. Amend. 5.

3. Aliens ⇐39

Alien outside the country seeking admission does not do so under claim of right, but as a privilege granted by the sovereign only upon such terms as Congress prescribes.

4. Constitutional Law ⇐318

Where alien is treated as being physically outside the country, due process required in exclusion proceedings is coextensive with the procedure authorized by Congress. U.S.C.A.Const. Amend. 5.

5. Aliens ⇐3

An arriving alien's temporary harborage ashore pending determination of his admissibility is an act of grace and bestows no additional rights. Immigration and Nationality Act, § 212(d) (5), 8 U.S.C.A. § 1182(d) (5).

6. Aliens ⇐3
Constitutional Law ⇐252

Alien who has been granted temporary parole under statute has no rights derived from Constitution, but solely those rights and privileges which Congress sought to confer. Immigration and Nationality Act, § 212(d) (5), 8 U.S.C.A. § 1182(d) (5); U.S.C.A.Const. Amend. 5.

7. Aliens ⇐54(10)

The silence of statutory provisions for temporary parole of alien and of applicable regulations thereunder manifested intent to withhold a hearing as of right in determination of alien's admissibility. Immigration and Nationality Act, § 212(d) (5), 8 U.S.C.A. § 1182 (d) (5).

8. Constitutional Law ⇐318
Habeas Corpus ⇐85.4(4)

Evidence in habeas corpus proceeding established that alien was given sufficient opportunity to explain inconsistency of statements upon which he obtained temporary parole and hence was accorded due process in proceeding for revocation of parole. Immigration and Nationality Act, § 212(d) (5), 8 U.S.C.A. § 1182(d) (5).

9. Aliens ⇐54(10)

In proceeding for exclusion of alien, officers properly refused to inquire into validity of revocation of alien's temporary parole. Immigration and Nationality Act, § 212(a) (20), (d) (5), 8 U.S.C.A. § 1182(a) (20), (d) (5).

10. Aliens ⇐53

The statute under which Hungarian refugees were granted permanent parole should be construed in light of policy of providing permanent resettlement for victims of Communist aggression, not as making them mere temporary transients. Immigration and Nationality Act, § 212(d) (5), 8 U.S.C.A. § 1182(d) (5).

11. Aliens ⇐53

The circumstances under which Hungarian refugees were brought into United States did not indicate intention to waive the requirements of valid entry documents, and hence aliens could be excluded after revocation of their temporary parole, for lack of such documents. Immigration and Nationality Act, § 212 (d) (5), 235(a, b), 236, 242(b), 8 U.S. C.A. §§ 1182(d) (5), 1225(a, b), 1226, 1252(b).

12. Aliens ⇐53, 54(10)

The fact that Hungarian refugee's temporary parole was revoked because of inconsistent statements and withholding of information did not warrant revocation of paroles of his wife and children, and hence exclusion of wife and children for lack of documents was invalid. Immigration and Nationality Act, § 212(d) (5), 8 U.S.C.A. § 1182(d) (5).

13. Aliens ⇐53, 54(10)

Upon revocation of alien's temporary parole, determination that interests of alien and his wife and children required preservation of the family unit should be made by wife and children themselves, and not by Immigration Service, in revoking their paroles and excluding them also. Immigration and Nationality Act, § 212(d) (5), 8 U.S. C.A. § 1182(d) (5).

Ralph Goldstein, New York City, for relators. Edward J. Ennis, New York City, of counsel.

Paul W. Williams, U. S. Atty., S. D., New York, New York City, for respondent. Roy Babitt, Sp. Asst. U. S. Atty., New York City, of counsel.

IRVING R. KAUFMAN, District Judge.

Relators, Gyula Paktorovics, his wife, Szeren Paktorovics, and their two minor daughters are purported fugitives from the terrorism and persecution imposed upon the Hungarian people by Russia's brutal suppression of the insurrection that swept Hungary in the fall of 1956. Fleeing to Austria the relators were there interviewed by American Immigration Officers for possible admission into the United States. Upon request of American officials Gyula Paktorovics executed a written application in the English and Hungarian language for parole into the United States for himself and his family pursuant to Section 212(d) (5) of the Immigration and Nationality Act (8 U.S.C.A. § 1182(d) (5)). This application was approved and the Paktorovics family was paroled into the United States. They arrived here December 24, 1956 and settled in Baltimore where the husband obtained employment as a milkman.

Beginning in February 1957, the husband was interrogated on several occasions by the officers of the Immigration and Naturalization Service. At one of these meetings he admitted membership in the Communist Party from 1954 until the day he left Hungary for Austria. When confronted with his application for parole, executed in Austria, in which he acknowledged membership in the Party only up to 1949, the male relator conceded the inconsistency and stated he withheld information of his subsequent Communist affiliation in fear that such a revelation would result in a denial of his application. As a result of the information gleaned from this interview the Acting Regional Commissioner for the South Eastern Region of the Immi-

gration and Naturalization Service of Richmond, Virginia, entered an order on August 14, 1957, revoking his temporary parole upon the ground that he had misrepresented material facts to the American authorities in Austria bearing upon his application for admission to the United States and ordered that the necessary steps be taken to insure his return to Austria. In the interest of maintaining the family unit, the Commissioner further decreed the revocation of the parole of the wife and two children so that they could accompany the husband and father back to Austria.

Relators were subsequently taken into custody in Baltimore and transferred to the immigration detention station in New York to await return to Austria.

On August 26, 1957, the husband petitioned for a writ of habeas corpus on the ground that his expulsion from the United States without a hearing was a violation of due process of law. Thereupon and prior to the return of the writ the Immigration Service invoked Section 235(c) of the Act (8 U.S.C.A. § 1225(c)), providing for expulsion of an alien without a hearing where inadmissibility is based on confidential information which would be inimical to public welfare and the Acting Regional Commissioner found the relators excludable under Section 212(a) (28) of the Act. 8 U.S.C.A. § 1182(a) (28) (for past membership in the Communist Party). Subsequently upon reexamination the Acting Commissioner determined that there was sufficient basis for the exclusion of relators apart from the confidential information and withdrew the exclusion order without a hearing agreeing to grant such a hearing pursuant to Section 236 (8 U.S.C.A. § 1226).[1] Thereafter, by stipulation the writ of habeas corpus seeking a hearing was dismissed.

At the 236 hearing at which the relators were represented by counsel, the inquiry was confined, over the strong protestations of counsel, to the question of whether the immigrants were in possession of valid unexpired entry documents. This question being determined in the negative, relators were found inadmissible under Section 212(a) (20) (8 U.S.C.A. § 1182(a) (20)). An appeal from this order was dismissed by the Board of Immigration Appeals and the relators have been taken into custody for the execution of the exclusion order.

By the instant petition for habeas corpus relators challenge the constitutionality of the above proceedings on grounds that: (1) Revocation of parole without a hearing is a denial of due process of law; (2) An exclusion hearing limited only to the question of possession of entry documents is denial of due process of law, and (3) Revocation of temporary parole and attempted exclusion of the wife and daughters because of their relationship to the husband without asserting any case against them is arbitrary and capricious and denial of due process of law.

I shall consider these contentions seriatim.

I.

The relators were paroled into the United States under Section 212(d) (5) of the Immigration and Nationality Act, 8 U.S.C.A. § 1182(d) (5). That section provides as follows:

> "The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be re-

1. Thereafter and throughout the subsequent proceedings the Immigration Service has abandoned the use of confidential information as a ground for revocation and exclusion and has relied exclusively on the alleged misrepresentations and lack of entry documents.

turned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States."

[1] The unrest and chaos in Austria which came about as a result of the insurrection of the Hungarian people in the fall of 1956, constituted a sufficient emergent reason for the parole of deserving bona fide Hungarian refugees, pending such appropriate legislation as Congress might enact to clarify their status. The initial screening process in Austria, designed to select only those deserving of refuge in the United States, was conducted under a setting which called for urgency in relocating the great sea of refugees that had inundated Austria. Consequently, this initial screening process was by necessity incomplete at best and it was expected that further screening would be continued in this country. It is relators' contention that revocation of the parole provisionally granted in Austria, cannot consistent with due process be accomplished without a full-fledged hearing.

[2–4] In considering the scope of the due process clause in this context, it is necessary to carefully distinguish a resident alien physically present in the United States who is within the full protection of the constitution and the alien regarded in contemplation of law as outside the country who stands outside the full reach of the Fifth Amendment. Compare Shaughnessy v. United States ex rel. Mezei, 1953, 345 U.S. 206, 73 S.Ct. 625, 97 L.Ed. 956; United States ex rel. Knauff v. Shaughnessy, 1950, 338 U.S. 537, 70 S.Ct. 309, 94 L.Ed. 317 with Kwong Hai Chew v. Colding, 1953, 344 U.S. 590, 73 S.Ct. 472, 97 L.Ed. 576. The alien outside the country seeking admission does not do so under any claim of right. Admission to the United States is a privilege granted by the sovereign United States Government only upon such terms as Congress shall prescribe. Consequently, where an alien is treated as being physically outside the country, any due process required in exclusion proceedings is co-extensive with the procedure authorized by Congress. Brownell v. Tom We Shung, 1956, 352 U.S. 180, 182, note 1, 77 S.Ct. 252, 1 L.Ed.2d 225; United States ex rel. Knauff v. Shaughnessy, supra, 338 U.S. at pages 543–544, 70 S.Ct. 309, 94 L.Ed. 317; Nishimura Ekiu v. United States, 1892, 142 U.S. 651, 12 S.Ct. 336, 35 L.Ed. 1146; Ludecke v. Watkins, 1948, 335 U.S. 160, 68 S.Ct. 1429, 92 L.Ed. 881.

[5, 6] An arriving alien's temporary harborage ashore pending determination of his admissibility is an act of grace and bestows no additional rights. Where Congress has prescribed that an alien's shelter ashore "shall not be considered a landing" the courts have "long considered such temporary arrangements as not affecting an alien's status; he is treated as if stopped at the border." Shaughnessy v. United States ex rel. Mezei, 1953, 345 U.S. 206, 215, 73 S.Ct. 625, 631, 97 L.Ed. 956. Since § 212(d)(5) explicitly directs that parole is not to be regarded as an admission into the United States, it must be treated as simply an enlargement of the bounds of such shelter ashore. The paroled alien remains "still in theory of law at the boundary line" and has "gained no foothold in the United States" until lawfully admitted.[2] It follows that any rights a

2. Kaplan v. Tod, 1925, 267 U.S. 228, 45 S.Ct. 257, 69 L.Ed. 585; United States ex rel. Lue Chow Yee v. Shaughnessy, D.C.S.D.N.Y.1956, 146 F.Supp. 3, affirmed, 2 Cir., 1957, 245 F.2d 874; Dong Wing Ott v. Shaughnessy, D.C.S.D.N.Y. 1956, 142 F.Supp. 379, affirmed, 2 Cir., 245 F.2d 875, rehearing granted and reaffirmed, 2 Cir., 1957, 247 F.2d 769; Leng May Ma v. Barber, 9 Cir., 1957, 241 F.2d 85, certiorari granted, 1957, 353 U.S. 981, 77 S.Ct. 1283, 1 L.Ed.2d 141. Those District of Columbia cases Ng Lin Chong v. McGrath, 1952, 91 U.S.App.D.C. 131, 202 F.2d 316 and Quan v. Brownell, D.C.Cir., 1957, 248 F.2d 89 to the contrary have been disapproved by the Second Circuit. See Dong Wing Ott v. Shaughnessy, on rehearing, supra.

parolee may have are not derived from the Constitution but are limited solely to those rights and privileges which Congress in its wisdom sought to confer.

[7] I must therefore examine the statutory design of § 212(d) (5) to ascertain whether Congress contemplated a hearing in these situations. If the statutory procedure is followed the relators will have been accorded all the due process required. It is significant in this respect that in the Immigration and Nationality Act, Congress elsewhere provided for a hearing procedure in determining alien admissibility or excludability (Sections 235(a) (b), 236, 242(b) of the Immigration and Nationality Act, 8 U.S.C.A. §§ 1225(a) (b), 1226, 1252 (b)) without making reference to the temporary parole provisions. The fact that both the parole provisions and the applicable regulations thereunder are conspicuously silent on this point is certainly evidence of both a Congressional and Executive intent to withhold a hearing as of right. See Jay v. Boyd, 1956, 351 U.S. 345, 76 S.Ct. 919, 100 L.Ed. 1242. Absent this Congressional intent, the relators cannot insist upon a hearing.[3] To argue as do relators that a right to a hearing should be read into the statute as the only course consistent with the tradition and principles of free government is to flout the meaning we have ascribed to Congressional intent. Jay v. Boyd, supra, 351 U.S. at page 357, 76 S.Ct. 919, 100 L.Ed. 1242.

However, in this case, I need not rest my decision on the absence of Congressional intent to provide an inquiry procedure to determine the verity of the allegations advanced by the Immigration Service. Here the male relator prior to revocation was confronted with the evidence against him. He was afforded an opportunity to explain the inconsistency between the statement in his application for parole that he left the Party in 1949 and his present admission that he reentered the Party in 1954 and maintained such membership until his departure in 1956.[4]

3. Shaughnessy v. United States ex rel. Mezei, 1953, 345 U.S. 206, 73 S.Ct. 625, 97 L.Ed. 956; Nishimura Ekui v. United States, supra; Ludecke v. Watkins, supra, cf. Williams v. New York, 1949, 337 U.S. 241, 69 S.Ct. 1079, 93 L.Ed. 1337. Those cases which find a hearing required by due process are distinguishable on the ground that either Congress or the Attorney General has prescribed some procedures for a hearing or inquiry. Cf. United States ex rel. Giacalone v. Miller, D.C.S.D.N.Y.1949, 86 F.Supp. 655; United States ex rel. D'Istria v. Day, 2 Cir., 1927, 20 F.2d 302.

4. The pertinent exchange of questions and answers on July 11, 1957 between relator and inspector for the Immigration Service is reported as follows:

"Q. Question #13 on this application for parole relates to 'Political Organizations' and I notice that the following is written on that application, in answer to question #13: 'Involuntary member of MKP (MDP) 1947–49. Expelled (49) and interned (1949–53).' According to the information that you have voluntarily given in your interviews, would the answers to question #13 be absolutely correct, or is there some information that should be on there that is not on there? A. Yes, the answers are correct.

"Q. Didn't you say that you rejoined the MDP, which is the Hungarian Communist Party, in 1954, and that you were still a member of that organization when you left Hungary and went to Austria? A. Yes, I did say that.

"Q. Then why didn't you state on this questionnaire, in answer to question #13, that you had rejoined the Hungarian Communist Party, and that you were at the time of your escape from Hungary still an active member of the Hungarian Communist Party? A. I did not put that on the application because prior to completing this application, a group of us Hungarians had been talking and we all decided that it was best to deny being a Communist or that we were members of the Communist Party, because we would not get to America.

"Q. Do you admit that this information should have been written on your application for parole into the United States? A. Yes, because I knew that if I did not put that in the application I would not have any trouble.

"Q. Do you admit that you wilfully and knowingly concealed this information from the officials of the United States Goverment? A. Yes, but I did tell a Hungarian man in the Consul's office."

[8] Though he was not afforded the opportunity of a full-fledged hearing with the benefit of counsel, I find that he was given an opportunity to explain the inconsistency and that the procedure employed was more than required by the statute and, therefore, consistent with due process. Furthermore, the reasons given by the Commissioner for revocation of parole, to wit: that the male relator intentionally withheld information, are reasons which Congress intended to make relevant to this type of procedure.[5] While recognizing that circumstances might arise warranting an independent inquiry by the courts into the sufficiency of the reasons given for revocation, such circumstances are not present in the instant proceeding. See United States ex rel. Kaloudis v. Shaughnessy, 2 Cir., 1950, 180 F.2d 489. The grounds advanced for revocation are sufficient on their face to justify the action taken. There was no manifest abuse of discretion and I am without authority to conduct an independent inquiry into the merits.

II.

Relators' parole having been revoked, the validity of the subsequent exclusion hearings remains to be determined.

[9] As noted before, § 212(d) (5) provides that upon revocation of parole the alien shall forthwith be returned to the custody in which he was paroled and shall continue to be dealt with as any other applicant for admission to the United States. If by "application for admission" is meant application for permanent admission, the non-possession of immigration visas or other entry documents is sufficient in itself for exclusion purposes. Section 212(a) (20), 8 U.S. C.A. § 1182(a) (20). The validity of the parole revocation order, therefore, was properly held outside the scope of the exclusion hearings before the Special Inquiry Officer of the Board of Immigration Appeals. Support for this proposition can be found in the fact that Congress in providing for an inquiry procedure in exclusion cases made no mention of revocation of parole. To be sure, the regulations explicitly commit authority to revoke parole to the Regional Commissioner and not the Board of Immigration Appeals. 8 C.F.R. § 9.5(a) (g) (Supp.1957). Under such circumstances, relator's argument that the Special Inquiry Officer and the Board of Immigration Appeals should have inquired into the reasons for revocation is untenable.

[10] Relators next contend that the statutory grounds for exclusion, i. e. lack of entry documents are not applicable to them, inasmuch as they are not upon revocation of parole applicants for permanent immigration, but are to be treated as temporary visitors, who have overstayed their visit and who are now entitled to the broad inquiry provided in deportation hearings.

While the parole provisions in directing that a parolee shall be treated as "an applicant for admission to the United States" upon termination of parole do not refer to the type of admission for which he is to be considered it is clear that the purpose of the statute looked toward the permanent resettling of these immigrants in the United States. See Message from the President of the United States on Immigration and Naturalization, dated January 31, 1957, 103 Cong.Rec. 1214–16. To treat these victims of Communist aggression as mere temporary transients to be shunted from country to country at will is to contradict the explicit promises and representations which we held out to the Hungarian refugees and to the world at large. It was clearly this country's purpose made pursuant to a broad humanitarian policy to provide a place of permanent asylum for these homeless refugees. I prefer to construe the terms of the Act in the light of this policy.

[11] The further contention of relators to the effect that the facts and circumstances under which they were

5. The sufficiency of the reasons given for revocation of the parole of the wife and two children is considered elsewhere in this opinion.

brought to this country indicate an intention to waive the documentary requirements is entirely without merit and not borne out by the statute. The case cited by counsel in support of this proposition (United States ex rel. Bradley v. Watkins, 2 Cir., 1947, 163 F.2d 328) holds no more than that the exclusion provisions of the Immigration and Nationality Act are not applicable to a person entering this country against his will. The relators, not claiming an involuntary entry into the United States, cannot prevail on this authority.

Relators were provided with a complete and impartial hearing to determine their excludability in strict conformity with the statute. The ensuing exelusion order was based on the statutory grounds that relators were not in possession of entry documents. Congress having seen fit to treat such non-possession as sufficient reason for exclusion relators were not permitted to have other extraneous matter considered by the Board.

III.

[12, 13] I now reach the problem posed by the wife and two children. I am of the opinion that the reasons set forth in the order revoking their parole are totally insufficient on their face and as to these relators the order should be set aside. Though the scope of judicial review of an act of discretion committed to the Attorney General is minimal, where the reasons provided are on their face capricious and arbitrary and do not involve considerations Congress intended to make relevant, the intervention of the courts is justified.[6] In this case I cannot ascribe to Congress an intent to revoke the parole of a family merely because the husband has been found to be persona non grata and ordered excluded. True a fatherless family may not have been chosen initially for parole into the United States. Nevertheless, Congress must have considered the possibility that a family chosen for expatriation might subsequently lose the services of the head of the household through disability or death. To find a legislative intent to return a family from whence it came on the basis of such a circumstance is to impute to Congress a most inhumane disregard for the individuals concerned. Such is the situation at hand. No substantial charge has been lodged against the wife and two children. The contention that the interests of all the relators require the preservation of the family unit is a determination that should be made by the relators themselves and not by the Immigration Service. The wife and two children should certainly be afforded the opportunity of choosing for themselves whether to voluntarily accompany the husband and father back to Austria or whether they desire to remain here. Finding that their parole was improperly revoked they were not subject to exclusion for lack of documents and as to them the exclusion proceeding is voided.

The writ of habeas corpus of Gyula Paktorovics is dismissed. The parole revocation order and exclusion order insofar as they refer to the remaining relators are improper and must be set aside. As to these relators the determination of their parole status is remanded to the Acting Regional Director for the South Eastern Region for further proceedings consistent with this opinion. Settle order.

6. See United States ex rel. Kaloudis v. Shaughnessy, supra; United States ex rel. Partheniades v. Shaughnessy, D.C. S.D.N.Y.1956, 146 F.Supp. 772; Note Federal Habeas Corpus, 56 Colum.L.Rev. 551, 560 (1956). I need not consider the scope of review if the Acting Regional Commissioner had omitted to give any reason for the revocation of parole of the wife and two children. It may well be, however, that inasmuch as the actions of an administrator are presumed to be executed pursuant to lawful authority the court is powerless in this situation to inquire into the real reasons behind the Commissioner's decision. In the instant case the presumption of lawfulness is rebutted by the patently invalid reasons provided.

Secret

THE ATTORNEY GENERAL

April 15, 1975

Mr. Philip Buchen,

Immigration says there are
categories —

SECRET

EMERGENCY PROGRAM FOR PAROLE OF REFUGEES FROM VIETNAM

At the President's news conference of April 3, 1975 he stated that the Attorney General's authority, 1/ which had been used several times since World War II to permit victims of war and persecution to come to the United States, would be considered for Vietnamese refugees.

In light of past experience with refugee programs generated by varying conditions in foreign countries the following considerations and recommendations are offered.

1. Time element. The period of time available for moving refugees out of Vietnam could be severely limited. It is not unlikely that within a matter of weeks the military situation will prevent any movement of refugees out of that country. Alternatively, some orderly movements may be possible.

2. Potential number of refugees. STATE Department estimates of potential Vietnamese refugees could run as high as 1,707,000, composed of:

- Vietnamese employees of U.S. and their dependents ____ 164,000
- SENior Vietnamese officials and their dependents and others closely identified with U.S. _____ 600,000
- Close relatives of U.S. citizens and permanent residents _____ 93,000
- FORmer Vietnamese employees of U.S. and their dependents _____ 850,000

SECRET

3. RElatives of U.S. citizens and permanent residents. These relatives now in Vietnam are entitled to enter the United States under present law, if they so wish, and if proper petitions or applications are submitted on their behalf provided they are otherwise admissible under the law. Arrangements are now being made to process and move these people at the earliest possible date. The parole authority is and should be used to speed this process.

4. Bona fide refugees. Included in this category would be all of those considered by the State Department to be in the high risk category, and their dependents. The number could be large.

(a) In the 1950's we paroled some 40,000 Hungarian refugees into the United States. In the 1960's we paroled in some 675,000 Cubans into the United States. In the early 1970's we paroled 3500 Ugandans. In the case of the Hungarians and the Ugandans other countries in the world took a share of the total refugees. In the case of the Cubans the President stated publicly that the United States would accept all the Cuban refugees who could get here; a few went in addition to other countries in the world. This unqualified offer to accept Cuban refugees enabled CAStro to rid

himself of several hundred thousand of his undesirables, including large numbers of dissidents as well as many who were infirm or aged.

(b) At this time it is the opinion of the Justice Department that the United States should be called upon to accept only a limited and finite number of refugees. This statement is made in the light of the impact that would be felt on our economy and our social structure by the ingress of very large numbers.

(c) Consequently the United States should decide to accept only a limited number and through all channels and the United Nations other countries should be urged to accept a fair share of however many refugees there may turn out to be.

5. Implementation. The handling of large numbers of refugees will require:

a. TRANSportation.

b. Screening for health, security, and immigration criteria.

c. Staging area in a third country to include representatives of other countries who will accept refugees.

d. Reception centers in the United States.

e. Housing, food, clothing, jobs - voluntary agencies, HEW, and Labor to play the major roles.

f. Funding for all the above.

6. Recommendations.

a. Immediate parole decisions should be made.

b. Immediate relatives of United States citizens and permanent residents (who are now entitled to enter the United States under present law) be paroled to expedite the process. This matter is being handled now by State and Justice in cooperation with the White House and appropriate Congressional Committees.

c. A maximum of 50,000 bona fide refugees or 40% of the total, whichever is less, be paroled into the United States. All others to be absorbed by other countries under the auspices of U.N. and international agencies.

d. To become permanent residents of the U.S. all in b. and c. above must meet the full requirements of the Immigration and Nationality Act.

e. At the proper time, a public announcement of the foregoing be made to prevent a mass exodus based on false hopes.

f. If the foregoing, or some modification, are approved, the several governmental departments be directed to commence planning accordingly.

April 1975?

Office of the Attorney General
Washington, D. C. 20530

The Honorable James O. Eastland
Chairman
Senate Committee on the Judiciary
Washington, D. C.

Dear Senator Eastland:

I am writing to confirm our conversation of last evening regarding the exercise of the parole authority vested in me to permit the entry into the United States of certain South Vietnamese and Cambodians. I am grateful for your co-operation and concurrence in this matter.

As we discussed, I received late yesterday afternoon from Henry A. Kissinger, as Special Assistant to the President for National Security Affairs, an urgent request for the immediate parole of:

1. Up to 50,000 "high risk" Vietnamese refugees, and their families. These would include past and present U. S. government employees, Vietnamese officials whose co-operation is necessary for the evacuation of American citizens, individuals with knowledge of sensitive U. S. government intelligence operations, vulnerable political or intellectual figures and former Communist defectors;

2. Vietnamese nationals who are immediate relatives of American citizens or permanent resident aliens, estimated to number between 10,000 and 75,000;

3. Vietnamese already at Clark Air Force base provided they qualify as high risk individuals;

4. Approximately 1,000 Cambodians now in Thailand who had been evacuated from Cambodia by the U. S.; and

5. Approximately 5,000 Cambodian diplomats in third countries facing forcible return or expulsion.

The President agreed that parole is desirable for the foregoing classes. The Senate Committee on the Judiciary was advised in writing on April 18, 1975 of the proposal to parole those listed in categories 2 through 5, although at that time the request regarding Clark Air Force base was limited to 100.

We were advised that it was deemed essential to begin at once to assist the departure from Vietnam of appropriate individuals if such an effort were to be orderly and successful. However, there was reluctance to initiate such a program without the assurance that those so assisted could, if necessary, be admitted to the United States.

The foregoing was discussed with you and Senator Hruska and, as indicated, the Departments of State and Defense were prepared to assist in providing you with an immediate briefing on the developments which generated this request for parole. We greatly appreciate your concurrence on behalf of the Committee regarding the parole of the classes described above. Your counterparts in the House of Representatives also concurred in this proposal and I have exercised the parole power to authorize the entry of those classes.

We are advised, however, that every effort will be made to obtain international assistance for all Vietnamese and Cambodian refugees and to arrange their resettlement in third countries.

I regret that events have been such that it was necessary to take up these matters with you in this manner last evening. I greatly appreciate your assistance.

Sincerely,

Edward H. Levi
Attorney General

[April 1975]
Refugees

Office of the Attorney General
Washington, D. C. 20530

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Chairman
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Sincerely,

Edward H. Levi
Attorney General

LAW OFFICES
LANE AND EDSON, P. C.
SUITE 707
1025 CONNECTICUT AVENUE
WASHINGTON, D. C. 20036

TELEPHONE (202) 452-9350
CABLE ADDRESS "LISPA"
TELEX 64448

BRUCE B. LANE
CHARLES L. EDSON
EDWARD C. BERKOWITZ
HERBERT M. FRANKLIN
DAVID FALK
FRANK H. PEARL
ARTHUR R. HESSEL
JOHN H. BETZ
RICHARD N. TAGER
ALAN G. ROSENBERG
SUSAN J. LUTZKER

OF COUNSEL
STEPHEN C. GLASSMAN

Evacuees

April 2, 1975

HAND DELIVERY

Philip W. Buchen, Esquire
Counsel to the President
The White House
Washington, D. C.

Dear Mr. Buchen:

I am writing at your suggestion, made in your telephone conversation yesterday with my partner, Bruce Lane, and myself. The deterioration of the military situation has progressed so rapidly in South Viet Nam that since our conversation, Camranh City, the home of the little girl of whom we spoke, has in fact been captured by the North Viet Namese and clearly any evacuation of the girl is most likely impossible at this time.

For your information, I thought I would explain in more detail the circumstances that prompted our telephone call. My brother-in-law, Anton Anderegg of Boring, Oregon, served as a para-medic in Viet Nam in the years 1970 and 1971. During that time he was stationed at Camranh Bay and made the acquaintnace of the young girl named Vuong Le Thu who lived in the Camranh Bay Christian Orphanage. In the course of his tour of duty there he undertook to help the young girl both personally and financially and continues today to pay her support in the orphanage. About a year ago, Mr. Anderegg began corresponding with Mr. Ha, the director of the orphanage, in an attempt to adopt the little girl and have her brought to the United States to live with his family. For a variety of reasons he was unable to make any progress toward this goal.

We had hoped, when we spoke to you, that some steps might be taken to expedite her transfer to the United States and the adoption by the Andereggs. We, of course, understood that many Americans and other South Viet Namese who were in imminent danger had to be evacuated from South Viet Nam on a priority basis, and we did not expect that Vuong would preempt any air accommodations.

Unfortunately, the problem seems to have become moot, due to the capture of Camranh Bay by the North Viet Namese this morning.

The Andereggs join Bruce Lane and me in thanking you for the consideration you have shown in this matter.

Very truly yours,

Frank H. Pearl

April 3, '75

Im. & Nat

Spouses & children in S.V. of res. aliens 10,000 - 75,000

Potential # of refugees

State 1,707,000

- V. employees of U.S. aden 164,000
- S.V. officials & families 600,000
- Close relatives of U.S. citizens 93,000
- former U.S. employees 850,000

1,634 orphan entries undo

5:00 p.m. Friday, April 4, 1975

Dr. Marrs called to let you know that Cong. Eilberg will attempt to hold hearings on the policies of the U. S. Government in regard to evacuation of people from South East Asia, with the State Department and the Immigration and Naturalization Service on Tuesday, April 8.

Also, he advises that a PanAm 547 with 500 passengers aboard is expected at 11:00 p.m. Saturday night in Seattle. 400 of the passengers are children; 100 documented adults.

Excuse

Friday 4/4/75

12:40 Yul Brynner called to thank you very much for your help with the airlift.

THE WHITE HOUSE
WASHINGTON

4/2/75

Wm J. Buchen
talked to Mr Rowell
at State 632-0751

Talked to Ted Marrs,
who will call
Yul Brynner

4/2/75

4:30 Yul Brynner called from his dressing room (617) 426-9291
and would appreciate a call back.

He is with an organization called "Friends for
All Children" ADRR Dept. of State

Said they had a donation from AID for $100,000 ??
for ophans of Vietnam. The situation is desperate
for Saigaon. They have 500 kids already adopted
waiting for the legalization of papers. Supplies
are at the minimum.

He said you and he talked about this at lunch at the
Swedish Embassy?? and you said if there was ever
anything ~~he/she~~ you could do to help to let him know.

He said what they really need is an airlift by a 747 from
Saigon to the United States -- to Oakland or Denver --
with even temporary visas for the kids who are to be
adopted by Americans, Europeans, Canadians, etc.
They're looking for places for the kids.

He would appreciate a call.

DEPARTMENT OF STATE
WASHINGTON

~~SECRET~~

Dear Mr. Attorney General:

Communist overrunning of Cambodia and South Vietnam will make refugees out of many Cambodians and South Vietnamese associated with the present governments of those countries and with the United States. These people will face death or persecution from the communist elements if they remain in Cambodia or South Vietnam or if they are presently outside of those countries and return.

There are three categories of such refugees: (1) South Vietnamese and Cambodians in the United States who have well-founded fear of persecution if they return to their countries of nationality. These are likely to request asylum from the Immigration Service which we presume will be granted. (2) South Vietnamese and Cambodians in third countries who are unable to remain in these countries or who may face the threat of forcible return to their countries of nationality. (3) South Vietnamese and Cambodians who face death or persecution by communist elements because of their association with the United States Government or their own governments and must leave their countries of nationality. We estimate there are conservatively 200,000 to whom the United States Government has an obligation and the number may run to many times that number. We hope that many will be able to resettle in third countries but this may not be possible.

The Honorable
Edward H. Levi,
Attorney General.

Because of our deep involvement in Vietnam and Cambodia, these people will look to the United States for resettlement and I believe we have an obligation to receive them. Because of the time involved, I do not believe it will be possible to obtain special legislation from the Congress in time to permit their entry into the United States, although such legislation may well be forthcoming. Therefore, parole under Section 212 (d) (5) of the Immigration and Nationality Act appears to be the only alternative. Such parole clearly meets the emergent reasons and public interest provisions of the Immigration and Nationality Act.

Therefore, I request that you exercise your parole authority under Section 212 (d) (5) of the Immigration and Nationality Act to permit the entry of the above categories of refugees.

If you agree with this proposal, officers of the Department will be in touch with your designees to discuss its implementation should that become necessary.

Sincerely,

Robert S. Ingersoll

Robert S. Ingersoll
Acting Secretary

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

CO 212.28-P

~~SECRET~~

TO : Edward H. Levi
Attorney General
Department of Justice

DATE: APR 7 1975

FROM : L. F. Chapman, Jr., Commissioner
Immigration and Naturalization

SUBJECT: Refugees from South Vietnam and Cambodia

Attached is a letter dated April 5, 1975 from the Acting Secretary of State, Robert S. Ingersoll, concerning the plight of South Vietnamese and Cambodian refugees. Although the letter is addressed to you, it was delivered to me this past weekend because of the urgency of the matter. In view of the need for expeditious consideration, I am furnishing my comments herewith.

With regard to South Vietnamese and Cambodian citizens in the United States who potentially have a well-founded fear of persecution if they return to their countries of nationality, the Service has issued instructions that no action shall be taken to require the departure of such persons. It is estimated that there are about 13,000 in the United States.

In the cases of South Vietnamese and Cambodians in third countries who are unable to remain in those countries or who may face the threat of forcible return to their countries of nationality, of relevance is Article 33 of the United Nations Convention relating to the Status of Refugees (TIAS 6577), to which the United States is a signatory. All signatory countries should be urged through diplomatic channels and through the United Nations to fulfill their obligations under the Convention in a spirit of generosity and compassion.

The most sensitive and urgent aspect relates to the South Vietnamese and Cambodians who remain in their countries and face death or persecution by the Communists because of their association with the United States Government or their own governments unless they can leave. The estimated number of such persons is large. Under section 203(a)(7) of the Immigration and Nationality Act, 8 U.S.C. 1153(a)(7), a refugee is defined as a person who has fled from a Communist or Communist-dominated country or area, who must make his application for entry to the United States in a non-Communist country or area. This statute provides a limited and leisurely procedure which is not practical during an emergency. Moreover, it authorizes the entry of only 10,200 refugees annually. If these refugees are to be saved the rescue must be accomplished before the non-Communist areas of those countries are overrun. Therefore, the only solution to the problem is under the Attorney General's parole authority, section 212(d)(5) of the Act, 8 U.S.C. 1182(d)(5).

The parole authority has been exercised for over 30,000 refugees from the Hungarian Revolution of 1956 and for over half a million Cuban refugees pursuant to Presidential directives. In view of the large numbers of potential South Vietnamese and Cambodian refugees, it is urged that the use of the parole authorization for them be considered at the highest level of Government and in consultation with the appropriate Committees of both Houses of Congress.

The political and military situations in Phnom Penh and Saigon are essentially different. Lon Nol has left Cambodia, the fighting in that country is reduced to an area comprising the capital city and its airport, and it is nearly every man for himself.

Although South Vietnam has suffered staggering losses of territory, General Thieu remains at the helm of the government, there is still room for maneuvers and there is the possibility that the war there may continue for a much longer time than in Cambodia. Under these circumstances the United States Government may find itself at cross purposes with the government of South Vietnam if it seeks, at an earlier date than one agreed to by General Thieu, to remove large number of persons who have been supporters of the Thieu government.

Recommendations:

(1) Those in the United States: The Service has the matter under control and no further action by you is required.

(2) Those in third countries: Appropriate representations should be made by the State Department to the host countries and to the United Nations.

(3) Those in South Vietnam and Cambodia: The problem should be brought to the attention of the President and any formal decision which involves movement into the United States en masse should be discussed with leaders of both Houses of Congress.

Attachment

~~SECRET~~

THE WHITE HOUSE

WASHINGTON

April 7, 1975

Dear Mr. Attorney General:

After reviewing the recent Ingersoll letter to you and the Memorandum of April 7 to you from L. F. Chapman, Jr., I believe the Ingersoll letter overlooks the Congressional intent concerning the use of Section 212(d)5 of the Immigration and Nationality Act and that the Chapman Memo does not fully reflect the problems.

Recently, I had occasion to ask the Office of the Commissioner of Immigration and Naturalization Service to prepare a suggested reply for me to send to a group concerning the application of that section, and I enclose a copy of that letter which went out over my signature to Dr. Joseph R. Julia. Particularly of note is the excerpt from the Report of the House Committee on the Judiciary which is contained in the enclosed letter.

I also inquired into the situation of the treatment of Hungarian refugees in 1956 and enclose a copy of President Eisenhower's Message to the Congress and the Act which was passed as a result of this Message. However, the action reported in the Eisenhower Message was taken before the 1965 amendments and before the expressions of Congressional intent contained in the House Report on the 1965 amendments.

Sincerely,

Philip W. Buchen
Counsel to the President

The Honorable Edward H. Levi
Attorney General
Department of Justice
Washington, D. C. 20530

Enclosures

~~SECRET~~

to do so in that vague area designated as the general area of the Middle East.

While the resolution strips Congress of its authority, it places the actions of the President under the authority of the United Nations, and the Security Council of the United Nations, in which body Russia may exercise the veto power any time it sees fit to do so.

In his message to the joint session of Congress the President asked that he be given unrestricted power to spend $400 million in this vague, undefined area. If the resolution passes, I expect he will spend many times that sum before the spending is stopped. Our Constitution and our form of government contemplates that Congress shall hold the purse strings of the Nation. It is to the best interest of the taxpayers and to the American people that Congress keep control over the funds spent by our Government. It is a complete abdication of responsibility for Congress to vote away this power over the purse. It does not belong to me as Representative from my district to give away this power. It is not mine to give away. This power belongs to the people I represent. No matter how much I may admire the President, that admiration does not justify my voting away my constituents' voice in this Government insofar as spending of money is concerned.

The Constitution provides that Congress has the power to declare war. Under that provision of the Constitution every congressional district in this country has a voice, through its Representative in the House, in deciding the serious question as to whether war will be declared or not. Each State, through its two Senators, has a voice in determining whether war will be declared. The people have that vested right to participate through their Representatives and Senators in deciding the question whether this country will go to war or not. If I should vote for this resolution, and place the decision of that vital question in the hands of the President alone, it would be an abdication of my responsibility as a Congressman.

Little by little Congress has voted away its powers and responsibilities. Time after time by its votes Congress has frittered away constitutional rights of the people and made itself a rubberstamp of the Executive. Some of its powers have been usurped both by the executive and judicial departments. With the passage of time, our Congress may become as much a rubberstamp as Hitler's Reichstag. In my judgment a vote for this resolution is another step in that direction.

Mr. Chairman, I think that if I should vote for this resolution, it would be a vote to evade my responsibility as a Member of this body; a vote to evade my responsibility for the spending of taxpayers' money, and a vote to evade my responsibility for a war which would, of course, involve the lives and limbs of American soldiers.

No facts have been made known to me why I should vote to abdicate my responsibility as a Representative to place the functions of the Congress in the hands of the President, and to vote blindly to give him unrestricted power to spend these huge sums of money and to send our soldiers into war when he decides to do so.

These are some of the reasons why I shall oppose this rule and the resolution.

Mr. LOSER. Mr. Chairman, under leave granted Members of the House to extend their remarks in the RECORD relative to the joint resolution to authorize the President to undertake economic and military cooperation with nations in the general area of the Middle East, I desire to make these observations on the questions involved.

I am convinced that the primary purpose of the United States in its relations with the Middle East countries is to develop and sustain a just and enduring peace within the framework of the United Nations Organization. I am further convinced that the peace of the world and the security of the United States are endangered by international communism.

I shall therefore support the resolution reported on favorably by the House Committee on Foreign Affairs.

It is obvious that the authority sought by the President is in the general interest of the United States. It is not a partisanship matter. The general interest of the United States transcends every other interest of our national life.

This resolution represents affirmative action on the part of our leaders in the overall interest of peace. While it is a calculated risk, it is a calculated risk likewise to remain inactive.

Located within the area encompassed by the resolution is the cradle of civilization. To permit or to stand idly by while the hordes of communism and atheism trample upon the soil made holy by Him who came to save the world would be well-nigh intolerable.

Of course, it is with great reluctance that I think about supporting a move that might result in a world conflagration. However, the resolution has the support of the President of the United States, the Secretary of State, the leadership of the House of Representatives, both the majority and the minority, and the military authorities of the Nation.

It is the consensus by all who should know these matters that the security of the United States and of the free world would be seriously endangered if the Middle East should fall under the domination of international communism.

During the past decade, our people have made vast sacrifices for the recovery of Europe, both economic and military. Should the Middle East fall under the control of international communism, our efforts over the years would be nullified.

For these reasons, I shall support the resolution.

Mr. DONOHUE. Mr. Chairman, it appears that there has been no piece of legislation before the Congress in recent years that has caused the Members as much patriotic and conscientious reflection as this resolution requested by the President.

The resolution, as proposed by the administration, does not contain any factual plan or detailed program designed to solve the grave problems underlying the tension existing in the Middle East.

We are granted no information by the executive department as to the manner in which this resolution, or the implementation of it, might help to solve such basic diplomatic challenges as the Arab-Israel controversy, the resettlement of refugees, the reopening of the Suez Canal with adequate guaranties for the interest of its users. We are told that the primary reason for the withholding of such advice is "security," and the secondary reasons are to avoid embarrassment to ourselves and to our allies.

Under ordinary circumstances, most of us would be constrained, indeed, we would look upon it as our duty to suspend legislative judgment until full and complete revelation of evidence upon which to base an intelligent and justifiable legislative action had been made.

However, the President himself has assured us that the circumstances prompting his request of this resolution are not normal, and I think that most of us, as well as a great majority of the people of this country, are impelled, therefore, to fully rely on the President's experience, knowledge, and judgment, most particularly in military matters.

Furthermore, the endorsement of the Chief Executive to employ the Armed Forces of the United States as he deems necessary is, in the judgments of the best qualified experts, only congressional emphasis upon a power the President already possesses.

Blanket authorization for the Chief Executive to cooperate with any Middle East nation in the development of their economic strength, when they desire such cooperation, seems somewhat contradictory to the administration's virtual challenge to cut the budget wherever the Congress feels it can be done without hurting any essential interest or service.

In effect, this part of the resolution requests us to remove previously accepted restrictions on the spending of some $200 million that has already been appropriated. Certainly it is questionable as to whether any legislative body could sensibly recommend budget reductions if they are not provided with information as to how and for what specific purposes the taxpayer's money is to be spent.

However, on this phase of the matter, I understand that the Secretary of State has very recently agreed, before the Joint Senate Foreign Relations and Armed Services Committees current hearings, to accept a provision stipulating that none of the economic authorization could be actually used until 15 days after congressional committees have been informed of "the object of proposed expenditure and the country in which it is proposed to use such authority."

There is no doubt, of course, that the closest and most effective cooperation between this body and the executive department should be promoted in our common patriotic purpose of containing the spread of international communism and particularly in the Middle East area. Any unnecessary display of great difference or serious controversy on this matter between our two departments of government could very probably be most

effectively used by the devilish propaganda machines of the Kremlin.

Although some of us must conscientiously retain real doubts, in the absence of precise and detailed information, on the absolute necessity for this resolution, the Chief Executive implies by his request that the administration officials assume full and complete responsibility for their proposals.

Inasmuch as the substance of the resolution is an expression of trust and confidence in the Presidential judgment, and to avoid the danger of any vicious Communist distortion of disagreement, I feel that the resolution should be supported, and I earnestly hope the Chief Executive and administration officials will reveal their full justification of it at the earliest opportunity for the understanding of the American people.

Mr. DOLLINGER. Mr. Chairman, I am certain that many of my colleagues feel, as I do, that this is one of the gravest moments of history in our lives. We are called upon to act upon the President's request for authority to defend the Middle East against Soviet aggression. We are called upon to negate the mumblings, fumblings, and stumblings of our administration, and more particularly, those of our Secretary of State in the vital field of foreign relations during the past 4 years. The world may little know or long remember what we do or say here in this time or crisis, because unless we abandon our present course of wishful thinking and our blindness to the real issues, there may be no world.

The President's plan has been termed many things—among them "a beginning" to end the difficulties in the Middle East. Now, to my mind, a beginning signifies a foundation, a strong basis upon which to rest future hopes and accomplishments. In view of existent facts, to me the President's proposal represents only a parchment canopy—with golden inscriptions of promises—with no true foundation or props to keep it earthbound or stable.

There can be no real peace in the world until the differences between Egypt and Israel are settled; until such problems as recognition of Israel by Egypt as a free state, resettlement of Arab refugees, reopening of the Suez Canal with the establishment of adequate safeguards for the interests of the users, are solved. The President's plan would leave these vital problems entirely up to the United Nations. Yet, at this point, there is a new deadlock between Egypt and Israel. The General Assembly, in disregard of Egypt's prior guerrilla and blockade war against Israel, waged in defiance of the armistice agreements, of international law, and of the United Nations' own decisions, calls on Israel for a complete and unconditional withdrawal of its forces to the armistice lines, without bringing Egypt to terms as well, or assuring Israel's national safety. In view of the fact that arms poured into Egypt from all sides and we denied Israel any arms assistance at all, and she was left defenseless and at the mercy of enemies who had sworn to destroy her, Israel refuses to accede to the demands until she receives firm assurance that its withdrawal from the stategic points in question will not place her in the same vulnerable position as before and permit Egypt to resume its warlike acts against her. Egypt's persistent harassing of Israel went unnoticed by the United Nations; Egypt has been emboldened by the unconditional support it has found in the General Assembly and rejects all the proposals for peace and for assurances of Israel's security. The United Nations tells Israel what to do, but it finds it impossible to negotiate with Nasser. So far, United Nations efforts have been ineffectual and have failed to better conditions in the explosive Middle East situation, the strife has continued for far too long.

It is evident that the United Nations must be prevailed upon by the United States to play a greater and more productive role than it has in the past. So far, the United Nations has been powerless to prevent the raids and acts of aggression against Israel, who has begged for peace; it has stood helpless when Egypt forbade transit through the Suez Canal to Israeli ships; it has made no headway with Nasser, who remains aggressive and uncompromising in his demands. Therefore, we must realize that when we say we stand behind the United Nations we are evading our responsibility, for the United Nations is only as strong as we make it. It is our duty to call upon our President and Secretary of State to pursue to the utmost and with all their powers, a definite and firm policy in the United Nations, to the end that that body will take immediate measures to bring about peace in the Middle East.

The resolution before us does not begin to touch or solve the real problems of the Middle East; it offers no help as to how we shall deal with Nasser or the pouring of Communist arms into the Middle East.

I wish to make it clear that I do not consider it necessary for the President to come to us for permission to exercise authority which is vested in him by the Constitution and which is already his.

It is apparent that the administration actually has no definite plan of action in the Middle East; that we do not know the geographical area in which it proposes to use the powers requested. So far, it has refused to specify the means, military or economic, which it proposes to use. Also, it is evident that the administration's request is not based upon specific appeals to our Government from the nations threatened, or from our Atlantic allies, for the kind of operations proposed in the resolution. This is, therefore, a different proposal from any with which we have ever been confronted. The vagueness which shrouds the proposal before us must be dispelled, its inferences clarified, and possible results studied and weighed.

It is maintained that the proposed resolution is primarily designed to deal with the possibility of overt Communist aggression. As former President Truman states, it does not face up to the other vital problems of the Middle East, such as Cyprus, Israel-Arab tensions, and the Suez Canal. Yet, these problems because of our own laxity in the past, led to warfare, jeopardized the western alliance and dealt Europe a deathblow in diplomatic and economic fields. The United Nations has neither the means nor power to solve these problems.

Our national policy is indefinite and incomplete. I have no wish to act as a rubber stamp on a blank check. Congress is being asked to give blanket authority to spend $400 million within 2 years for economic aid. I think it is imperative that we demand complete and detailed information as to just how, when, and where this money is to be spent. We must be assured that our money will go to the nations truly in need and will be used to the best advantage; we must make certain that huge sums will not find their way to the treasuries of nations who do not need or truly want our help and where no permanent good can be hoped for. We must not be scared into parting with $400 million when Dulles says that we either pay or lose the entire area, he admits complete failure as Secretary of State as well as having been derelict in his duties in the past when he should have safeguarded our interests and prevented the debacle we now witness. The payment of mere money now cannot perform the miracle he hopes for.

We have no assurance that Israel, pauperized by the constant threat of Egyptian military aggression, would receive any of our bounty. In order to defend the Middle East against Communist aggression it will take more than money. It means our taking the lead in solving the problems which invite Communist penetration and aggression. So far our score in this regard is zero.

The House Foreign Affairs Committee has recommended that positive and comprehensive measures for dealing with the fundamental problems of the Middle East should be prepared and presented by the Executive to the United Nations and to the Congress. The suggestion has also been made that we should go to the United Nations and encourage the formation of an adequate security force to handle overt aggression anywhere in the world, and specifically Communist aggression in the Middle East. I agree that a congressional expression of opinion would be of tremendous value in promoting such a force.

I repeat, it is the duty of this Congress to face its responsibility and to make recommendations governing our policies and actions in the Middle East. Most important is the necessity of ending the conflict between the Arab States and Israel, and this means preserving Israel's rights, her integrity as a free nation, her right to her own ports free of blockade and equal rights to use the canal with other nations.

In days past, nations went to war, thousands or millions of lives were lost, parent and loved ones bereaved, and finally those in power gathered about a peace table and came to terms. In this atomic age, this procedure cannot be risked. We must talk and achieve peace before the shooting begins in earnest. Recently, I suggested to the President that he request Nasser and Ben-Gurion to come to Washington to try to work

out a solution to their differences so that peace might be achieved and the threat of world conflagration dispelled. I was informed by the State Department that the moment was not propitious. In view of the ever mounting tensions, Soviet overtures and victories in the cold war, just when do the President and Secretary of State intend to act? When the Middle East is completely under Soviet domination? When Russia has brought off her greatest coup of all—when our economic life, at least, has been destroyed?

I call attention to suggestions made by Truman in his statement to the House Committee on Foreign Affairs, which I think are excellent and which I trust will have the earnest consideration of this body:

That we take into account the following factors: one, the adequacy of our military forces to act in the Middle East in such a way as to repel aggression without bringing about atomic war; two, the importance of acting in the Middle East not only through the United Nations but also in concert with our principal allies; three, the necessity of bringing about an increase in the productive economic power of free nations over a long period of time not only in the Middle East but elsewhere, in order to balance the mounting economic power of the Communist bloc; four, the desirability of bringing to an end the shipment of arms into the Middle East particularly by Russia, and eventually by all nations; five, the desirability of expending and strengthening the United Nations forces in the Middle East for the purpose of stopping the chronic state of guerrilla war on the borders of Israel and making the Suez Canal a guaranteed international waterway, open to all.

It is also necessary for the United States to let it be known that Israel is here to stay. No one here can doubt that Israel wants peace. She should be helped—not hindered—in her efforts to be allowed to exist as a free nation. Ever since she became a state she has been frustrated in all her attempts to achieve peace; she has been attacked, pushed to extremes of fear and anxiety over survival; aggression and constant fear of aggression have been her sad lot. She has been made to stand alone in her trials and tribulations. The time has come when we must see to it that justice and respect are given her. Unless we help preserve Israel's dignity as a free nation—we lose our own.

Before we can vote intelligently on a resolution such as this, Congress should demand to know the specific program and field of action anticipated by the President and Secretary of State. We should formulate and announce to the world such a clear and forthright foreign policy that our enemies will be estopped from questioning our motives and spreading false propaganda as to our real intentions, and so that all the nations of the world may know what our true aims are and that we wish to preserve freedom and peace. We should use our power in the United Nations to achieve practicable and effective results.

It is important that we face up to the dictators and the Communists and let them know that we will not be cowed by or tolerant of any future aggressive or vicious acts against defenseless and peace-loving nations; that we take stock of our terrible losses during the past 4 years in the field of foreign relations and diplomacy; that we take action to improve our status and to assure ourselves of a few victories in the cold war instead of being hoodwinked into complacency and then shocked by the inevitable loss.

Let us have intelligent and affirmative action and less mystery and deception. Let us resolve to win our battles in foreign relations not with money, but with astuteness, honor, and vision—strong in our belief that right must prevail.

Mr. SHELLEY. Mr. Chairman, here I stand today as one who has always voted for foreign aid, mutual security, and general international cooperation with our friends. Today I voted against the motion for the previous question on the rule for discussion of the President's proposal for a Middle East program. Here we have one of the major issues of our time and it comes to us under a "gag rule," which limits and shortens debate and prohibits any Member offering an amendment.

Mr. Chairman, I have in my hand an amendment I was prepared to offer. All I can do now is submit it for the record and hope it may generate some thinking by our people as to where we are going and the extent to which we are resorting to expediency.

Here is the amendment I wished to offer:

Amendment offered by Mr. SHELLEY: On page 4, line 3, after "1957" strike out the period and insert "*Provided further*, That, no part of the money so available shall be used for the benefit of any nation or group of nations which permit human slavery, slave labor, peonage, or involuntary servitude within their borders."

Mr. Chairman, we are being asked by the administration to authorize economic and military assistance under this joint resolution not to exceed $200 million. It is extremely significant that we are also at the same time greeting a ruler from one of the most despotic and backward nations of the world. He arrives complete with retainers and retinue numbering 70 people. As a representative of one of the vital nations covered by this resolution, King Saud is in a position to gain aid and assistance from the United States.

The possibility that Saudi Arabia might receive economic aid disturbs me greatly and reminds me that there exists in that country a festering sore which should have been exterminated years ago. I refer to the practice of slavery and slave labor.

It is well known that slavery is openly practiced in Arabia and some reports indicate over 500,000 men, women, and children are in bondage at the present time. Now it seems to me that a nation that allows such inhuman and cruel practices to continue should not be eligible for economic aid from such a freedom-loving country as ours.

On top of the practice of slavery in Arabia, I would like to point out a few other facts about this nation. Although slave labor is legally recognized in Arabia, strikes and union organizations are not. In fact, according to a report from the International Confederation of Free Trade Unions, striking Arabian workers in the Aramco plant were subjected to horrible tortures and over 500 of these workers were imprisoned for daring to strike. These workers were imprisoned under a decree issued by Saud's government in June of 1956.

We also find that in this country our troops in the armed services are forbidden to attend Roman Catholic services in any form and Jewish members of the Armed Forces are not sent to Saudi Arabia because of possible embarrassment to the Government.

In the face of such conditions in Saudi Arabia and similar conditions existing in many other countries of the Middle East, are we now going to extend millions of dollars in economic aid and possibly send troops into these countries to fight when these countries still live in the Middle Ages and publicly proclaim their lack of faith in democracy and individual freedom? It is my plea that the administration look with searching examination into each of the many applications for funds they are about to receive and hold back money from any country that practices slavery, slave labor or any other form of involuntary servitude. Unless these funds are used among the people themselves and not by the rulers, the propaganda of international communism cannot be beaten.

Mr. Chairman, I have expressed myself on one phase of this resolution. It is my sincere hope that the other body will give it the open debate which it requires and add to it such corrections as are vitally necessary. To facilitate this result, I am voting for the resolution even though I did not have the opportunity to amend it on the floor of the House.

Mr. DOYLE. Mr. Chairman, under our form of constitutional government, the President of the United States is responsible for the practical application of our foreign policy. In fact, he is charged with initiating and carrying same into effect, as well as he is charged with being commander in chief of our Armed Forces. Most of us on this floor today are not members of our House Foreign Affairs Committee; but it seems to me from reading the report of our Committee on Foreign Affairs, which was this day furnished us, that said report clearly shows that distinguished committee has conscientiously and pretty thoroughly considered the presently all important subject matter constituted in the text of the resolution as submitted to Congress by the President.

The committee report of some 23 pages, in the hands of each of us, was approved by a vote of 24 to 2, which in my estimation is very worthy of being a clear finding that I should regard with utmost scrutiny and probable approval that committee's findings. I have also considered as much the text of the hearings before this important committee on the same resolution, House Joint Resolution 117.

While I recognize that there are a few factors involved in the content of this

before set forth whenever in their judgment such action is necessary to prevent frauds or evasions."

SEC. 3. Section 23 (e) of the District of Columbia Alcoholic Beverage Control Act, as amended (48 Stat. 332; sec. 25–124 (e), D. C. Code), is amended by striking out the words "beverage" and "beverages" wherever they appear and substituting in lieu thereof the words "spirits or alcohol". 48 Stat. 655.

SEC. 4. Section 23 (i) of the District of Columbia Alcoholic Beverage Control Act, as amended (48 Stat. 332; sec. 25–124 (i), D. C. Code), is amended by striking out the words "beverage" and "beverages" wherever they appear and substituting in lieu thereof the words "spirits or alcohol". 48 Stat. 655.

SEC. 5. The last sentence of section 23 (k) of the District of Columbia Alcoholic Beverage Control Act, as amended (48 Stat. 332; sec. 25–124 (k), D. C. Code), is amended to read as follows: "Each holder of such a license shall, on or before the tenth day of each month, forward to the Board on a form to be prescribed by the Commissioners, a statement under oath, showing the quantity of each kind of beverage, except beer and wine (wine containing 14 per centum or less of alcoholic content, wine containing more than 14 per centum of alcoholic content, champagne, sparkling wine and any wine artificially carbonated) sold under such license in the District of Columbia during the preceding calendar month, to which said statement shall be attached stamps denoting the payment of the tax imposed under this Act upon the spirits or alcohol set forth in said report and such statement shall be accompanied by payment of any tax imposed under this Act upon any such wines as set forth in said report." Statement. 49 Stat. 901.

SEC. 6. Nothing in this Act shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan. D.C. Code Title 1 app.

SEC. 7. This Act shall take effect on the first day of the calendar month beginning not less than sixty days after the date of approval of this Act. Effective date.

Approved July 25, 1958.

Public Law 85-559

AN ACT

To authorize the creation of record of admission for permanent residence in the case of certain Hungarian refugees.

July 25, 1958
[H. R. 11033]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any alien who was paroled into the United States as a refugee from the Hungarian revolution under section 212 (d) (5) of the Immigration and Nationality Act subsequent to October 23, 1956, who has been in the United States for at least two years, and who has not acquired permanent residence, shall forthwith return or be returned to the custody of the Immigration and Naturalization Service, and shall thereupon be inspected and examined for admission into the United States, and his case dealt with, in accordance with the provisions of sections 235, 236 and 237 of that Act. Hungarian refugees. Relief. 66 Stat. 182. 8 USC 1182. 8 USC 1225, 1226, 1227.

SEC. 2. Any such alien who, pursuant to section 1 of this Act, is found, upon inspection by an immigration officer or after hearing before a special inquiry officer, to have been and to be admissible as

an immigrant at the time of his arrival in the United States and at the time of his inspection and examination, except for the fact that he was not and is not in possession of the documents required by section 212 (a) (20) of the Immigration and Nationality Act, shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival.

8 USC 1182.

SEC. 3. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization.

Approved July 25, 1958.

Public Law 85-560

AN ACT

July 25, 1958
[H.R. 10320]

To provide for additional charges to reflect certain costs in the acceptance of business reply cards, letters in business reply envelopes, and other matter under business reply labels for transmission in the mails without prepayment of postage, and for other purposes.

Postal service.
Business reply mail.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Act of May 29, 1928 (45 Stat. 940; 39 U. S. C. 303), is amended to read as follows:

"ADDITIONAL CHARGES FOR TRANSMISSION OF CERTAIN MAIL MATTERS WITHOUT PREPAYMENT OF POSTAGE

"SEC. 2. Under such regulations and conditions as the Postmaster General may prescribe, it shall be lawful to accept for transmission in the mails, without prepayment of postage, business reply cards, letters in business reply envelopes, and any other matter under business reply labels. Postage thereon at the regular first-class rate, and an additional charge thereon of 2 cents for each piece weighing two ounces or less and 5 cents for each piece weighing more than two ounces, shall be collected on delivery."

Effective date.

SEC. 2. The amendment made by the first section of this Act shall become effective on August 1, 1958.

Franking privilege.
48 Stat. 1018.

SEC. 3. (a) Section 85 of the Act of January 12, 1895 (39 U. S. C. 326), is amended by inserting after the words "Secretary of the Senate," wherever they appear the words "Sergeant at Arms of the Senate,".

33 Stat. 441.

(b) (1) Section 7 of the Act of April 28, 1904 (39 U. S. C. 327), is amended by inserting after the word "Congress," the following: "and the Secretary of the Senate and the Sergeant at Arms of the Senate".

(2) Such section is further amended by adding at the end thereof the following: "In the event of a vacancy in the office of Secretary of the Senate or Sergeant at Arms of the Senate, such privilege may be exercised in such officer's name during the period of such vacancy by any authorized person."

(c) Section 2 of the Act entitled "An Act to reimburse the Post Office Department for the transmission of official Government-mail matter", approved August 15, 1953 (67 Stat. 614; 39 U. S. C. 321o), is amended by inserting after the words "Secretary of the Senate," the words "the Sergeant at Arms of the Senate,".

Approved July 25, 1958.

against its adoption. It must have been the debate or something of like nature. Perhaps the more intelligent saw the error of their ways.

I am not criticizing any of the 60—I was the 61st.

It may be that some day after the President has tried out the New Deal, the Democratic theories were not subscribed to by all Democrats, Mr. Speaker, this idea of deficit spending, we may some day get back to where a President can go along with the conservatives and every man will be required to earn at least part of what he receives from the Federal Government.

COMMITTEE ON AGRICULTURE

Mr. POAGE. Mr. Speaker, I ask unanimous consent that the Committee on Agriculture may have until midnight tonight to file a report on the bill H. R. 2367.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

IMMIGRATION AND NATURALIZATION—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 85)

The SPEAKER laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, referred to the Committee on the Judiciary and ordered to be printed:

To the Congress of the United States:

The eyes of the free world have been fixed on Hungary over the past 2½ months. Thousands of men, women, and children have fled their homes to escape Communist oppression. They seek asylum in countries that are free. Their opposition to Communist tyranny is evidence of a growing resistance throughout the world. Our position of world leadership demands that, in partnership with the other nations of the free world, we be in a position to grant that asylum.

Moreover, in the 4½ years that have elapsed since the enactment of the Immigration and Nationality Act, the practical application of that law has demonstrated certain provisions which operate inequitably and others which are outmoded in the world of today.

Prompt action by the Congress is needed looking toward the revision and improvement of that law.

EMERGENCY LEGISLATION

Last October the people of Hungary, spontaneously and against tremendous odds, rose in revolt against Communist domination. When it became apparent that they would be faced with ruthless deportation or extinction, a mass exodus into Austria began. Fleeing for their lives, tens of thousands crossed the border into Austria seeking asylum. Austria, despite its own substantial economic problems, unselfishly and without hesitation received these destitute refugees. More than 20 nations have expressed their willingness to accept large numbers of them.

On November 8, I directed that extraordinary measures be taken to expedite the processing of 5,000 Hungarian visa applications under the provisions of the Refugee Relief Act. On November 19, the first of this group departed from Vienna for the United States. By November 29, it had become clear that the flight of Hungarian men, women, and children to gain freedom was assuming major proportions.

On December 1, I directed that above and beyond the available visas under the Refugee Relief Act—approximately 6,500 in all—emergency admission should be granted to 15,000 additional Hungarians through the exercise by the Attorney General of his discretionary authority under section 212 (d) (5) of the Immigration and Nationality Act; and that when these numbers had been exhausted, the situation be reexamined.

On December 12, I requested the Vice President to go to Austria so that he might inspect, firsthand, the tragic situation which faced the refugees. I also appointed a President's Committee for Hungarian Refugee Relief to assure full coordination of the work of the voluntary agencies with each other and with the various Government agencies involved.

On January 1, 1957, following his return to the United States, the Vice President made a personal inspection of our reception center at Camp Kilmer and then reported to me his findings and recommendations. He reported that the people who had fled from Hungary were largely those who had been in the forefront of the fight for freedom. He concluded that "the countries which accept these refugees will find that, rather than having assumed a liability, they have acquired a valuable national asset."

Most of the refugees who have come to the United States have been admitted only temporarily on an emergency basis. Some may ultimately decide that they should settle abroad. But many will wish to remain in the United States permanently. Their admission to the United States as parolees, however, does not permit permanent residence or the acquisition of citizenship. I believe they should be given that opportunity under a law which deals both with the current escapee problem and with any other like emergency which may hereafter face the free world.

First, I recommend that the Congress enact legislation giving the President power to authorize the Attorney General to parole into the United States temporarily under such conditions as he may prescribe, escapees selected by the Secretary of State, who have fled or in the future flee from Communist persecution and tyranny. The number to whom such parole may be granted should not exceed in any one year the average number of aliens who over the past 8 years have been permitted to enter the United States by special acts of Congress outside the basic immigration system.

Second, I urge the Congress promptly to enact legislation giving the necessary discretionary power to the Attorney General to permit aliens paroled into the United States who intend to stay here to remain as permanent residents. Consistent with existing procedures, provision should be made for submission of the cases to Congress so that no alien will become a permanent resident if it appears to the Congress that permanent residence in his case is inappropriate. Legislation of this type would effectively solve the problem of the Hungarian escapees who have already arrived and, furthermore, would provide a means for coping with the cases of certain Korean orphans, adopted children, and other aliens who have been granted emergency admission to this country and now remain here in an indefinite status. This should be permanent legislation so that administrative authorities are in a position to act promptly and with assurance in facing emergencies which may arise in the future.

QUOTA SYSTEM

The Immigration and Nationality Act of 1952, essentially a codification of the existing law, retained the national-origins quota system established in 1924. In the more than a quarter of a century since that time experience has demonstrated a need to reexamine the method laid down in the law for the admission of aliens. I know that Congress will continue to make its own study of the problems presented, taking into consideration the needs and responsibilities of the United States. There are, however, certain interim measures which should be immediately taken to remove obvious defects in the present quota system.

First, the quota should be based on the 1950 census of population in place of the 1920 census. An annual maximum of 154,857 quota immigrants is now provided, using the 1920 census. I believe that the economic growth over the past 30 years and present economic conditions justify an increase of approximately 65,000 in quota numbers.

Second, an equitable distribution of the additional quota numbers should be made. Under the present system, a number of countries have large unused quota numbers while other countries have quotas regularly oversubscribed. I recommend that the additional quota numbers be distributed among the various countries in proportion to the actual immigration into the United States since the establishment of the quota system in 1924 and up to July 1, 1955.

Third, quota numbers unused in 1 year should be available for use in the following year. Under existing law, if a quota number is not used during the year, it becomes void. In my view, Congress should pool the unused quota numbers for Europe, Africa, Asia, and the Pacific Oceanic area. Those numbers should be distributed during a 12-month period on a first-come, first-served basis without regard to country of birth within the area. However, I recommend that these unused quota numbers be available only to aliens who qualify for preference status under existing law—persons having needed skills or close relatives in the United States.

Fourth, the so-called mortgage on quotas resulting from the issuance of visas under the Displaced Persons Act and other special acts should be eliminated. Visas issued under these acts were required to be charged against the regular immigration quota with the result that quotas in some instances are mortgaged far into the future. I recommend that the mortgages so created be eliminated, consistent with the action of Congress when it enacted the Refugee Relief Act of 1953, which provided for special nonquota visas.

Fifth, the Congress should make provisions in our basic immigration laws for the annual admission of orphans adopted or to be adopted by American citizens. Experience has demonstrated that orphans admitted under earlier special legislation have been successfully adjusted to American family life. It also has revealed that there are many Americans eager to adopt children from abroad.

ADMINISTRATIVE RELIEF FOR HARDSHIP CASES

The large and ever-increasing mass of immigration bills for the relief of aliens continues to place an unnecessary burden upon the Congress and the President. Private immigration laws in recent years have accounted for more than one-third of all enactments, both public and private. Like any other enactment, each case must be separately examined and studied as to its merits by the Congress and the President. The problem presented is usually a determination whether hardships and other factors in the particular case justify an exception from the ordinary provisions of the immigration laws. These determinations could be effected without resort to legislation if the necessary administrative authority is provided. I recommend that the Attorney General be granted authority, subject to such safeguards as Congress may prescribe, to grant relief from exclusion and expulsion to aliens having close relatives in this country, to veterans, and to functionaries of religious organizations. Generally these are the classes of cases which have been favorably regarded by Congress because of the hardship involved.

TECHNICAL AMENDMENTS

In addition to the quota revisions, experience under existing immigration law has made it clear that a number of changes should be made in the Immigration and Nationality Act of 1952. Some provisions create unnecessary restrictions and limitations upon travel to the United States while others inflict harships upon aliens affected. I have made a number of proposals for amendments; with some minor modifications, I renew those recommendations and call attention here to certain of them.

One of the obstacles to travel, and a hindrance to the free exchange of ideas and commerce, is the requirement in the present law that every alien who applies for a visa or who comes to the United States without a visa but remains for as much as 30 days be fingerprinted. In some foreign countries fingerprinting is regarded with disfavor. Lacking any significant contribution to our national safety and security, the law should be amended to eliminate the requirement of fingerprinting for aliens coming to the United States for temporary periods.

I further recommend an amendment to the law to permit aliens traveling from one foreign country to another, passing merely in transit through the United States, to go through this country without undergoing inspection and examination, and without complying with all the standards for admission. This would eliminate hardships to the traveler, loss of good will, and much expense to the transportation companies.

The law should be amended to eliminate the necessity for immigration officers to inspect and apply all grounds of exclusion to aliens seeking admission to the mainland of the United States from Alaska and Hawaii. These Territories are part of the United States and aliens who have entered or are present in them are subject to all the provisions of the law. If any were deportable before arriving on the mainland their deportable status continues.

I recommend the repeal of that provision in the law which requires aliens to specify their race and ethnic classification in visa applications.

A large number of refugees, possibly thousands, misrepresented their identities when obtaining visas some years ago in order to avoid forcible repatriation behind the Iron Curtain. Such falsification is a mandatory ground for deportation, and in respect to these unfortunate people, some relief should be granted by the Congress.

Inequitable provisions relating to the status under the immigration laws of Asian spouses, and of adopted and other children should be rectified.

Alien members and veterans of our Armed Forces who have completed at least 3 years of service are unable to apply for naturalization without proof of admission for permanent residence. I recommend that this requirement be eliminated in such cases, and that the naturalization law applicable to such persons be completely overhauled.

While the present law permits adjustment of status to permanent residence in the cases of certain alien, it is unnecessarily restrictive as to aliens married to United States citizens. Adjustment is forbidden if the alien has been in the United States less than 1 year prior to his marriage. This results in the disruption of the family and causes unnecessary expense to the alien who is forced to go abroad to obtain a nonquota visa. It is my recommendation that the requirement of 1 year's presence in the United States before marriage be repealed.

JUDICIAL REVIEW

I have previously called the attention of the Congress to the necessity for a strengthening of our laws in respect to the aliens who resort to repeated judicial reviews and appeals for the sole purpose of delaying their justified expulsion from this country. Whatever the ground for deportation, any alien has the right to challenge the Government's findings of deportability through judicial process. This is as it should be. But the growing frequency of such cases brought for purposes of delay, particularly those involving aliens found to be criminals and traffickers in narcotics and subversion, makes imperative the need for legislation limiting and carefully defining the judicial process.

I have asked the Attorney General to submit to the Congress legislative proposals which will carry into effect these recommendations.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *January 31, 1957*.

INCREASE IN SMALL BUSINESS ADMINISTRATION LOAN AUTHORITY

Mr. COLMER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 137 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 3109) to amend the Small Business Act of 1953 to increase the amount available thereunder for business loans. After general debate, which shall be confined to the bill, and shall continue not to exceed 2 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Banking and Currency, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. COLMER. Mr. Speaker, I yield 30 minutes to the gentleman from Pennsylvania [Mr. SCOTT] and, pending that, I yield myself such time as I may require.

Mr. Speaker, this is an open rule on the bill (H. R. 3109) to amend the Small Business Act of 1953 to increase the amount available thereunder for business loans.

The Small Business Administration was originally set up in 1953 and has functioned since that time. In the judgment of this supporter of that legislation it has served a good purpose.

There has been considerable criticism of the Small Business Administration, largely, I think, stemming from the fact that all the loans have not been approved. Of course, it must be borne in mind that this is a banking institution and it is not a charitable institution. Therefore, there must be some ground, some substance for making these loans. I think they are made upon a more generous basis than possibly private banking loans. Generally speaking, also, it is the policy of the Small Business Administration to only make those loans which cannot be obtained from local banking institutions. In other words, where private capital is available, it is not the purpose of the Small Business Administration to make these loans.

March 18, 1975

Dear Dr. Julius

Thank you for your letterof January 23, 1975, concerning the International Green Cross Crusade.

Section 212(d)(5) of the Immigration and Nationality Act provides that the Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States. This discretionary authority ordinarily is used in behalf of applicants at ports of entry who are technically inadmissible for reasons which may be overcome within a reasonably short period of time. It is also used in emergent situations particularly where an alien requires immediate medical treatment. It is not used to overcome the normal visa issuing procedures provided by the Act.

Exercise of the parole authority has been the subject of consideration by the House Committee on the Judiciary. In a report to accompany H.R. 981, (Report No. 93-461, 93rd Congress, 1st Session) it was stated:

> The present parole authority granted the Attorney General is simultaneously ambiguous and far to broad. While the term "refugee" is not specifically mentioned in Section 212(d)(5), the Attorney General is given blanket authority in his discretion to parole "for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States." This has been broadly interpreted to include groups of refugees, with and without consultation with the Congress, and at times in contravention of the following statement of Congressional intent contained in the House Report on the 1965 amendments:

> * * * Inasmuch as definite provision has now been made for refugees, it is the express intent of the committee that the parole provisions of the Immigration and Nationality Act, which remain unchanged by this bill, be administered in accordance with the original intention of the drafters of that legislation. The parole provisions were designed to authorize the Attorney General to act only in emergent, individual, and isolated situations, such as the case of an alien who requires immediate medical attention, and not for the immigration of classes or groups outside of the limit of the law.

While I can appreciate the high motivation of The International Green Cross Crusade, it would be inappropriate for the Attorney General to exercise the parole authority in the manner proposed by you.

The Immigration and Nationality Act provides for the conditional entry of certain refugees into the United States. However, that program is limited to political refugees from communist or communist-dominated countries in the Eastern Hemisphere and from countries in a defined area in the middle east. Legislation to expand the refugee program to the Western Hemisphere has been introduced in the Congress but failed passage to date.

It is true that Cubans have been paroled into the United States but these people are political refugees and the Congress took cognizance of their problem by enacting legislation in their behalf in the form of The Act of November 2, 1966 (P. L. 89-732, 80 Stat. 1161).

To achieve your objectives, I believe that the Congress would have to consider legislation to amend the Immigration and Nationality Act or introduce special legislation. Accordingly, I suggest that you communicate with the appropriate Judiciary Committees of the Congress to make your views known. At the same time you may

wish to make your views know with respect to the illegal aliens in this country.

Sincerely,

Philip W. Buchen
Counsel to the President

Dr. Joseph R. Julia
President
Committee for Hemispheric
War on Crusade
507 Fifth Avenue
New York, New York 10017

PWB:JTF:ets

April 7, 1975

QUESTION: How long will you continue the present policy on the evacuation of orphans?

ANSWER: We will continue to rely upon the experience and good judgment of the South Vietnam Ministry of Social Welfare and the U.S. authorized private and Voluntary Agencies to make the determination of whether legal adoption in the U.S. is in the best interests of the child. If conditions should change that will require a re-examination of this policy and a change in the criteria, we will reassess this position on the basis of the facts as they then exist. We are continually monitoring the situation in order to assure that these criteria are applied. We will take steps to insure that children are not needlessly moved to the United States.

DTBliss, ES: 4/7/5

Before MEDINA, WATERMAN and MOORE, Circuit Judges.

MEDINA, Circuit Judge.

This is an appeal from the dismissal of a writ of habeas corpus obtained by appellant, a refugee who fled from Hungary at the time of the Soviet suppression of the revolution which swept his country in the fall of 1956. The writ was sustained as to appellant's wife and two children, but the Government's cross-appeal from that determination was voluntarily dismissed.

On November 26, 1956, appellant and his family left Budapest for Austria. In Salzburg, Austria, at the request of American Immigration Officers who had interviewed the escapees, appellant executed a written application for himself and his family for parole into the United States pursuant to Section 212(d) (5) of the Immigration and Nationality Act, 8 U.S.C.A. § 1182(d) (5). This application was approved and appellant, his wife and two daughters were paroled into the United States. They arrived at Camp Kilmer, New Jersey, on December 24, 1956 and thereafter settled in Baltimore, where appellant obtained employment as a milkman.

On February 21, 1957, and on three separate occasions thereafter appellant was interrogated concerning his activities in Hungary, and the circumstances attendant upon his making application for parole into the United States. Three of these interviews were conducted by an investigator for the Immigration and Naturalization Service, and the last one was conducted by an Immigrant Inspector. Each of these interviews was of the question and answer type, with appellant speaking through an interpreter, and at none of them was appellant represented by counsel.

As a result of the interrogation in February, 1957 and of those held on March 5, 1957, and July 11, 1957, the immigration officials learned that appellant had been a member of the Communist Party after his release from a concentration camp in 1953. In fact, appellant readily acknowledged this, although the only Party membership noted on his application for parole was during the period from 1947 through 1949. At several times during these interrogations appellant explained that this discrepancy arose because the official in the Consul's office to whom he told the whole story felt it was sufficient if only the first period of his Party membership were listed. This official then filled in the part of appellant's application for parole, entitled "Political Organizations." While it is clear to us from an examination of this application that the information regarding Communist Party membership was written by someone other than appellant, the truthfulness of appellant's explanation remains an open question, especially in view of the statement made by appellant at one point in the questioning on July 11, 1957, that he did not mention his Party membership subsequent to his release from the concentration camp on his parole application "because I knew that if I did not put that in the application I would not have any trouble."

On August 14, 1957, the Acting Regional Commissioner for the Southeast Region revoked appellant's parole on the basis of the alleged concealment and misrepresentation regarding Communist Party membership brought to light by the immigration official's interrogation, and also ordered that "the necessary steps be taken looking to (appellant's and his family's) return to Austria * * *." Thereafter appellant was taken into custody by immigration officials, but on August 26, 1957, a writ of habeas corpus seeking a hearing for appellant was allowed by the District Court. On August 27, 1957, appellant appeared before an Immigrant Inspector, who questioned him along the same lines as had the immigration investigator on the three previous occasions. Appellant again stated that he had told officials in Austria of his two periods of membership in the Communist Party and said he had not on July 11, 1957 told the investigator that he had wilfully concealed

April 7, 1975

QUESTION: What is the USG policy on the evacuation of orphans?

ANSWER: The President directed that we help to expedite the final processing and transportation to the U.S. of those orphans who have prospective parents in the U.S. and who are in the legal custody of U.S. Voluntary Agencies authorized by the GVN for intercountry adoption. These children were already on the way to adoption, ~~and~~ An important consideration in our decision was we accelerated ~~the process in order~~ to free up facilities to cope with the expanded refugee problem.

~~Beyond this week~~ We will consider carefully any further adoptions and our policy will be based upon two primary criteria: 1) our major and overriding concern will be the welfare of the children in South Vietnam, both those who are legally adoptable and those who are not. 2) consistent with U.S. and GVN law and custom, we will work to assure that no bureaucratic obstacles will prevent taking action, ~~which is considered by the~~ Every consideration will be given to the views of Vietnamese and the private voluntary organizations ~~to be in~~ as to the best interests of ~~that~~ each child.

DTBliss, ES:4/7/75

April 7, 1975

QUESTION: Why did the President direct the expediting of the evacuation of Vietnam orphans from Saigon?

ANSWER: The President directed that the U.S. Embassy assist the Government of South Vietnam in the final processing and transportation of orphans who were in the legal custody of the U.S. Voluntary Agencies authorized by the GVN for intercountry adoption and awaited by adopting parents in the U.S. We undertook the expediting of work already in process in order to free up the facilities and staff of these Volags to help with the serious new refugee problem now arising in South Vietnam. These dedicated Volags have some of the finest health care facilities available, and by accelerating the process already underway, we are helping them deal more effectively with the humanitarian assistance requirements of the new refugees.

DTBliss,ES:4/7/75

April 7, 1975

QUESTION: How long will AID continue to finance the transportation of orphans out of Vietnam?

ANSWER: We will continue ~~during this week~~ for the present to provide transportation for those orphans in South Vietnam who are in the legal custody of Voluntary Agencies authorized by the GVN for intercountry adoption. We will continue transportation ~~beyond that time if~~ as long as it is needed, if other commercial transportation is not available and if the conditions ~~so~~ require it.

DTBliss, ES:4/7/75

Evacuees

April 7, 1975

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DTBliss,ES:4/7/75

Office of the Attorney General
Washington, D. C. 20530

April 7, 1975

The Honorable Philip Buchen
Counsel to the President
The White House
Washington, D. C.

Dear Phil:

I am transmitting herewith the letter from Robert S. Ingersoll, Acting Secretary of State, and memorandum from L. F. Chapman, Jr., Commissioner of the Immigration and Naturalization Service, which the Attorney General discussed with you this morning.

With best wishes,

Sincerely,

Mark L. Wolf

~~EYES ONLY~~

THE WHITE HOUSE

WASHINGTON

April 8, 1975

MEMORANDUM FOR: DONALD RUMSFELD

FROM: PHILIP BUCHEN

I believe you should be alerted to the enclosed secret communication from Bob Ingersoll to the Attorney General which is undated but which was drafted on April 5. It came to me on April 7 from the Attorney General and I have responded to him to call attention to the recent Report from the Judiciary Committee dealing with the proposed Immigration and Nationality Act Amendments of 1973. In this Report the Committee questions whether the parole authority under Section 212(d)5 should be used to bring in large classes of refugees inasmuch as there is another section of the Act which has been in effect since 1965 that allows for the entry of a maximum of 10,200 refugees annually.

The Judiciary Committee was recommending that action on a broad scale to bring in refugees should only be taken after appropriate consultation with Congress.

The Attorney General agrees that he should take no action under his parole authority unless it is first considered and approved by the President, and I would assume the President would certainly want to consult with Congress before making any decision in this regard.

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~~EYES ONLY~~

~~EYES ONLY~~

THE WHITE HOUSE

WASHINGTON

April 9, 1975

MEMORANDUM FOR: DON RUMSFELD

FROM: PHILIP BUCHEN P.W.B.

Supplementing my memo to you of April 8 covering the subject of admission of refugees to this country, I enclose a copy received today from the Attorney General of a refugee status report done by the Acting Commissioner of the Immigration and Naturalization Service.

Enclosure

~~EYES ONLY~~

VIET NAM-CAMBODIA REFUGEE STATUS REPORT - #1

1. During the testimony before the Subcommittee on Immigration, Citizenship and International Law, Mr. Dan Parker, Administrator of AID, Mr. Leonard F. Walentynowicz, Administrator, Bureau of Security and Consular Affairs, General Chapman, Commissioner of Immigration and Naturalization were all asked what the Administration is planning to do with regard to orphans, immediate relatives, Vietnamese and Cambodians (including higher government officials and military officers) who may have assisted this government. Each indicated the matter was under study at the highest level of government. The Committee Chairman and members emphasized time and time again that there should be consultation with that Committee if there is any plan to enlarge the program by the use of immigration parole.

   Mr. Dan Parker had advised the Committee that he was designated by the President to coordinate the Administration's Vietnamese-Cambodian refugee program and that he had set up an interagency committee to carry this out.

2. On April 8 the Office of Refugee and Migration Affairs requested that we authorize the parole of 15 Cambodians identified as the Charge d' Affairs and his staff who have been stationed in New Delhi, India representing the Cambodian government and who have been ordered by the Indian government to depart because that government now recognizes the government of Prince Shinouk. These aliens clearly fall within Category 2 mentioned in the letter of the Acting Secretary of State dated April 5 which was transmitted to you under date of April 7.

3. To date 1298 Vietnamese orphans have been paroled into the United States under the orphan program.

James F. Greene
Acting Commissioner

THE ATTORNEY GENERAL

April 10, 1975

Philip Buchen,

DEPARTMENT OF STATE
WASHINGTON

~~SECRET~~

Dear Mr. Attorney General:

Communist overrunning of Cambodia and South Vietnam will make refugees out of many Cambodians and South Vietnamese associated with the present governments of those countries and with the United States. These people will face death or persecution from the communist elements if they remain in Cambodia or South Vietnam or if they are presently outside of those countries and return.

There are three categories of such refugees: (1) South Vietnamese and Cambodians in the United States who have well-founded fear of persecution if they return to their countries of nationality. These are likely to request asylum from the Immigration Service which we presume will be granted. (2) South Vietnamese and Cambodians in third countries who are unable to remain in these countries or who may face the threat of forcible return to their countries of nationality. (3) South Vietnamese and Cambodians who face death or persecution by communist elements because of their association with the United States Government or their own governments and must leave their countries of nationality. We estimate there are conservatively 200,000 to whom the United States Government has an obligation and the number may run to many times that number. We hope that many will be able to resettle in third countries but this may not be possible.

The Honorable
Edward H. Levi,
Attorney General.

Because of our deep involvement in Vietnam and Cambodia, these people will look to the United States for resettlement and I believe we have an obligation to receive them. Because of the time involved, I do not believe it will be possible to obtain special legislation from the Congress in time to permit their entry into the United States, although such legislation may well be forthcoming. Therefore, parole under Section 212 (d) (5) of the Immigration and Nationality Act appears to be the only alternative. Such parole clearly meets the emergent reasons and public interest provisions of the Immigration and Nationality Act.

Therefore, I request that you exercise your parole authority under Section 212 (d) (5) of the Immigration and Nationality Act to permit the entry of the above categories of refugees.

If you agree with this proposal, officers of the Department will be in touch with your designees to discuss its implementation should that become necessary.

Sincerely,

Robert S. Ingersoll

Robert S. Ingersoll
Acting Secretary

UNITED STATES GOVERNMENT

Memorandum

CO 212.28-P

~~SECRET~~

TO : Edward H. Levi
Attorney General
Department of Justice

DATE: APR 7 1975

FROM : L. F. Chapman, Jr., Commissioner
Immigration and Naturalization

SUBJECT: Refugees from South Vietnam and Cambodia

Attached is a letter dated April 5, 1975 from the Acting Secretary of State, Robert S. Ingersoll, concerning the plight of South Vietnamese and Cambodian refugees. Although the letter is addressed to you, it was delivered to me this past weekend because of the urgency of the matter. In view of the need for expeditious consideration, I am furnishing my comments herewith.

With regard to South Vietnamese and Cambodian citizens in the United States who potentially have a well-founded fear of persecution if they return to their countries of nationality, the Service has issued instructions that no action shall be taken to require the departure of such persons. It is estimated that there are about 13,000 in the United States.

In the cases of South Vietnamese and Cambodians in third countries who are unable to remain in those countries or who may face the threat of forcible return to their countries of nationality, of relevance is Article 33 of the United Nations Convention relating to the Status of Refugees (TIAS 6577), to which the United States is a signatory. All signatory countries should be urged through diplomatic channels and through the United Nations to fulfill their obligations under the Convention in a spirit of generosity and compassion.

The most sensitive and urgent aspect relates to the South Vietnamese and Cambodians who remain in their countries and face death or persecution by the Communists because of their association with the United States Government or their own governments unless they can leave. The estimated number of such persons is large. Under section 203(a)(7) of the Immigration and Nationality Act, 8 U.S.C. 1153(a)(7), a refugee is defined as a person who has fled from a Communist or Communist-dominated country or area, who must make his application for entry to the United States in a non-Communist country or area. This statute provides a limited and leisurely procedure which is not practical during an emergency. Moreover, it authorizes the entry of only 10,200 refugees annually. If these refugees are to be saved the rescue must be accomplished before the non-Communist areas of those countries are overrun. Therefore, the only solution to the problem is under the Attorney General's parole authority, section 212(d)(5) of the Act, 8 U.S.C. 1182(d)(5).

~~SECRET~~

The parole authority has been exercised for over 30,000 refugees from the Hungarian Revolution of 1956 and for over half a million Cuban refugees pursuant to Presidential directives. In view of the large numbers of potential South Vietnamese and Cambodian refugees, it is urged that the use of the parole authorization for them be considered at the highest level of Government and in consultation with the appropriate Committees of both Houses of Congress.

The political and military situations in Phnom Penh and Saigon are essentially different. Lon Nol has left Cambodia, the fighting in that country is reduced to an area comprising the capital city and its airport, and it is nearly every man for himself.

Although South Vietnam has suffered staggering losses of territory, General Thieu remains at the helm of the government, there is still room for maneuvers and there is the possibility that the war there may continue for a much longer time than in Cambodia. Under these circumstances the United States Government may find itself at cross purposes with the government of South Vietnam if it seeks, at an earlier date than one agreed to by General Thieu, to remove large number of persons who have been supporters of the Thieu government.

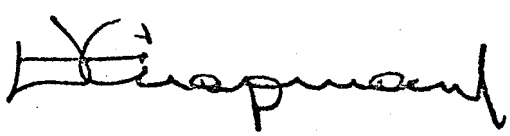
Recommendations:

(1) Those in the United States: The Service has the matter under control and no further action by you is required.

(2) Those in third countries: Appropriate representations should be made by the State Department to the host countries and to the United Nations.

(3) Those in South Vietnam and Cambodia: The problem should be brought to the attention of the President and any formal decision which involves movement into the United States en masse should be discussed with leaders of both Houses of Congress.

Attachment



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Acting Secretary

UNITED STATES GOVERNMENT

Memorandum

CO 212.28-P

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DATE: APR 7 1975

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