

United States, Congress, House, Committee on the Judiciary,
Subcommittee on Immigration, Refugees, and International Law.

VIRGIN ISLANDS NONIMMIGRANT ALIEN ADJUSTMENT ACT OF 1981



HEARING BEFORE THE SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

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NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

H.R. 3517

VIRGIN ISLANDS NONIMMIGRANT ALIEN ADJUSTMENT ACT OF
1981

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VIRGIN ISLANDS NONIMMIGRANT ALIEN ADJUSTMENT ACT OF 1981

THURSDAY, JUNE 18, 1981

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW, COMMITTEE ON THE JUDICIARY,

Washington, D.C.

The subcommittee met at 10:40 a.m. in room 2237 of the Rayburn House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Mazzoli, Hall, Frank, Fish, and Lungren.

Staff present: Arthur P. Endres, Jr., counsel; Peter Regis and Harris N. Miller, legislative assistants; and Peter J. Levinson, associate counsel.

Mr. MAZZOLI. Today, the subcommittee will consider H.R. 3517, a bill to authorize the granting of permanent resident status to certain nonimmigrant aliens residing in the U.S. Virgin Islands.

We wish to cordially welcome all the witnesses, especially those who have come from the Virgin Islands to testify on this legislation. Of course, on behalf of the subcommittee, I wish to accord a special welcome to Governor Juan Luis, Senators Sprauve and Laweatz, and to my good friend and colleague, the delegate from the Virgin Islands, Ron de Lugo, the author of this bill.

To obtain the most information in the limited time available to us, we have divided our witnesses today into four panels: elected officials from the Virgin Islands, officials from the executive branch, community representatives from the Virgin Islands, and legal representatives from the Virgin Islands.

In adopting this format, the subcommittee will be able to receive testimony from a cross section of persons and groups interested in arriving at a solution to a problem which has periodically occupied the attention of the Congress since 1955.

In recent years, the issue has been brought into sharp focus as the direct result of the legislative efforts of Congressman de Lugo. He has worked tirelessly and diligently to promote legislation to regularize the status of H-2 workers and their families in the Virgin Islands who have established equities while working and residing in the Islands over these many years. In sponsoring this legislation and appearing here today, he and his fellow Islanders recognize the seriousness of the problem and that it demands a prompt solution.

This legislation—and we will hear more about the details later—is premised on the belief that long-term H-2 workers have become a permanent part of the social and economic structure of the Islands and that the Federal Government has a moral obligation to resolve the uncertain status of these aliens.

I look forward to the testimony of our witnesses today on this complex problem and invite our friend Ron de Lugo and his colleagues on the first panel to step forward and take their seats.

That would be the Honorable Ron de Lugo; the Honorable Juan Luis, Governor of the Virgin Islands; Senator Gilbert Sprauve, vice president of the Virgin Islands Legislature, and Senator Bent Laweatz of the Virgin Islands Legislature.

[A copy of H.R. 3517 follows:]

97TH CONGRESS
1ST SESSION

H. R. 3517

To authorize the granting of permanent residence status to certain nonimmigrant aliens residing in the Virgin Islands of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1981

Mr. DE LUGO (for himself, Mr. DYMALLY, Mr. SUNIA, Mr. FORD of Tennessee, Mr. DELLUMS, Mr. CROCKETT, Mr. WON PAT, Mr. BROWN of California, Mr. YOUNG of Missouri, Mr. LOWERY of California, Mr. WEISS, Mr. McCLOSKEY, Mr. PHILLIP BURTON, Mr. MURPHY, Mr. CONYERS, Mr. CORRADA, Mr. CARNEY, Mr. WILLIAMS of Montana, Mr. PEYSER, Mr. BINGHAM, Mr. SEIBERLING, Mrs. COLLINS of Illinois, Mr. MITCHELL of Maryland, Mr. CLAY, Mr. KILDEE, Mr. KOGOVSEK, Mr. DIXON, Mr. SIMON, Mr. OTTINGER, Mr. JOHNSTON, and Mr. SAVAGE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To authorize the granting of permanent residence status to certain nonimmigrant aliens residing in the Virgin Islands of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 until final action is taken on the alien's application for adjust-
2 ment.

3 (b) The benefits provided by subsection (a) apply to any
4 alien who—

5 (1) was inspected and admitted to the Virgin Is-
6 lands of the United States either as a nonimmigrant
7 alien worker under section 101(a)(15)(H)(ii) of the Act
8 or as a spouse or minor child of such worker, and

9 (2) has resided continuously in the Virgin Islands
10 of the United States since June 30, 1975.

11 (c)(1) The numerical limitations described in sections
12 201(a) and 202 of the Act shall not apply to an alien's adjust-
13 ment of status under this section. Such adjustment of status
14 shall not result in any reduction in the number of aliens who
15 may acquire the status of an alien lawfully admitted to the
16 United States for permanent residence under the Act.

17 (2) In order to alleviate the possible adverse impact of
18 immigration into the Virgin Islands of the United States by
19 relatives of aliens who have had their status adjusted under
20 this section, the Secretary of State, in his discretion and after
21 consultation with the Secretary of the Interior and the Gov-
22 ernor of the Virgin Islands of the United States, may limit
23 the number of immigrant visas that may be issued in any
24 fiscal year to aliens with respect to whom second preference

1 petitions (filed by aliens who have had their status so adjust-
2 ed) are approved.

3 (3) Notwithstanding any other provision of law, no alien
4 shall be eligible to receive an immigrant visa (or to otherwise
5 acquire the status of an alien lawfully admitted to the United
6 States for permanent residence)—

7 (A) by virtue of a fourth or fifth preference peti-
8 tion filed by an individual who had his status adjusted
9 under this section unless the individual—

10 (i) at the time of filing the petition, is phys-
11 ically present and has resided continuously for at
12 least two years in the continental United States,
13 Alaska, or Hawaii, or

14 (ii) establishes to the satisfaction of the At-
15 torney General that exceptional and extremely
16 unusual hardship exists for permitting the alien to
17 receive such visa (or otherwise acquire such
18 status); or

19 (B) by virtue of a second preference petition filed
20 by an individual who was admitted to the United
21 States as an immigrant by virtue of an immediate rela-
22 tive petition filed by the son or daughter of the individ-
23 ual, if that son or daughter had his or her status
24 adjusted under this section.

1 (4) For purposes of this subsection, the terms "second
2 preference petition", "fourth preference petition", "fifth pref-
3 erence petition", and "immediate relative petition" means, in
4 the case of an alien, a petition filed under section 204(a) of
5 the Act to grant preference status to the alien by reason of
6 the relationship described in section 203(a)(2), 203(a)(4),
7 203(a)(5), or 202(b), respectively, of the Act.

8 (d) Except as otherwise specifically provided in this sec-
9 tion, the definitions contained in the Act shall apply in the
10 administration of this section. Nothing contained in this Act
11 shall be held to repeal, amend, alter, modify, effect, or re-
12 strict the powers, duties, functions, or authority of the Attor-
13 ney General in the administration and enforcement of the Act
14 or any other law relating to immigration, nationality, and
15 naturalization. The fact that an alien may be eligible to be
16 granted the status of having been lawfully admitted for per-
17 manent residence under this section shall not preclude him
18 from seeking such status under any other provision of law for
19 which he may be eligible.

20 **TERMINATION OF TEMPORARY WORKER PROGRAM IN THE**
21 **VIRGIN ISLANDS**

22 **SEC. 3.** Notwithstanding any other provision of law, on
23 and after the date of the enactment of this Act the Attorney
24 General shall not approve any petition filed under section
25 214(c) of the Act in the case of importing any alien as a

1 nonimmigrant under section 101(a)(15)(H)(ii) of such Act for
2 employment in the Virgin Islands of the United States.

3 INTERAGENCY TASK FORCE ON FEDERAL ASSISTANCE TO
4 THE VIRGIN ISLANDS TO MEET IMMIGRATION NEEDS

5 SEC. 4. (a) There is established the Interagency Task
6 Force on Virgin Islands Immigration (hereinafter in this sec-
7 tion referred to as the "task force"), to be composed of—

8 (1) the Secretaries of Health and Human Serv-
9 ices, Education, Housing and Urban Development,
10 Labor, and the Interior,

11 (2) the Attorney General, and

12 (3) the—

13 (A) Governor,

14 (B) Chief Judge of the Territorial Court, and

15 (C) President of the Legislature of the Virgin
16 Islands of the United States.

17 (b) The task force, in consultation with the heads of the
18 appropriate departments of the government of the Virgin Is-
19 lands of the United States, shall analyze and assess the
20 impact on the government of the Virgin Islands of providing
21 health, education, housing, and other social services to indi-
22 viduals whose status is adjusted under section 2 of this Act
23 and to relatives of such individuals who enter the Virgin Is-
24 lands as a result of such adjustment, and the need for any
25 additional Federal assistance to the government of the Virgin

1 Islands of the United States to assist it in meeting the needs
2 of these individuals and relatives. The task force shall, within
3 one year after this Act is enacted, report to the President and
4 the Congress on results of its analysis and assessment and on
5 any recommendations for changes in legislation which might
6 be appropriate.

7 (c) Members of the task force, while serving away from
8 their homes or regular places of business, may be allowed
9 travel expenses, including per diem in lieu of subsistence, in
10 the same manner as such expenses are authorized by section
11 5703 of title 5, United States Code, for persons in the Gov-
12 ernment service employed intermittently.

13 (d) Members of the task force shall make available such
14 staff and resources as is necessary for the task force to carry
15 out its activities under this section.

16 (e) The task force shall cease to exist sixty days after
17 the date of transmittal of the report described in subsection
18 (b).

19 (f) There is authorized to be appropriated the sum of
20 \$100,000 to carry out this section.

**TESTIMONY OF HON. JUAN LUIS, GOVERNOR, VIRGIN ISLANDS;
HON. RON DE LUGO, DELEGATE, VIRGIN ISLANDS; SENATOR
GILBERT SPRAUVE, VICE PRESIDENT, VIRGIN ISLANDS LEG-
ISLATURE; AND SENATOR BENT LAWAETZ, VIRGIN ISLANDS
LEGISLATURE**

Mr. DE LUGO. Thank you very much, Mr. Chairman.

Mr. MAZZOLI. I would entertain a motion that this subcommittee hearing be permitted to be covered by live broadcast or photography in accordance with the committee rules.

Mr. FRANK. I will be glad to so move.

Mr. MAZZOLI. Without objection, the motion is agreed to and we may proceed.

Our good friend Ron de Lugo, will please proceed.

Mr. DE LUGO. With me this morning I have the Governor, Juan Luis. He has traveled all night to be here. He left St. Croix at 5:30 yesterday afternoon. He flew most of the night. I don't know how everybody stood on airline deregulation, but I make that comment. [Laughter.]

He arrived at 1 o'clock this morning and has not had much sleep—but, he's here. We also have Senator Sprauve, the vice president of the legislature, and Senator Laweatz of the Virgin Islands Legislature. To my left is my chief legislative assistant, Margaret Martin. Next to the Governor, on his right, is his counsel, Jim Wisby.

Before I begin, Mr. Chairman, I want to thank you and all the members of this subcommittee. I had the pleasure of visiting with each member of this subcommittee to discuss this legislation and I want to thank all the members on both sides for the courtesies they extended. I particularly want to single out you, Mr. Chairman, and the ranking minority member, Ham Fish, for the courtesies both of you have extended and the time that you have given to me.

We had a bit of a fire, the day before yesterday. I thank you for your help. I went running to Ham and I found him in the Republican cloak room. There was a buzz on the Democratic side. They thought I had gone over, and they said good riddance. [Laughter.]

But, I want to thank you, Ham, very much.

Mr. MAZZOLI. Without objection, any statement you gentlemen have prepared will be made a part of the record.

Mr. DE LUGO. I will get right to it. H.R. 3517 is concerned primarily with several thousands of aliens living legally under the flag of the United States in the U.S. Virgin Islands, nearly all of them having come originally from the British, French, and Dutch islands of the Caribbean. These people have lived in the Virgin Islands for as many as 20 years without ever attaining the security of permanent resident status.

Now, after all these years as contributing participants in the life and development of the U.S. Virgin Islands, they remain in a legal limbo that could, for reasons totally beyond their control, cause their rights of domicile to be restricted or abrogated as easily as if they had just been recruited for short-term jobs as migrant farm laborers harvesting a fast-ripening crop.

No member will be besieged by constituents crying out for the adjustment of the status of these nonimmigrant aliens. However,

we should be aware that there is a very real and fundamental importance in this legislation as to how our country is perceived in the world, and especially so in the island nations that lie on our southern sea frontier and which are so important to us today. I am talking, of course, about the independent nations of the Caribbean.

We have at hand the opportunity to demonstrate our regard for the rights of those who, adhering to our rules and laws and at times in response to our open invitation, have come to live and work among us and who now choose to make this their permanent home. We also have the opportunity to take active cognizance of the significance of the interrelationships between the U.S. territories in the Caribbean and the other people of this critical region.

I would like to very briefly, in plain words, tell you what this bill is about. Before the United States bought what are now the U.S. Virgin Islands from Denmark in 1917, there had existed for centuries a mostly unrestricted flow of residents between the islands under the jurisdiction of the various European and colonial powers. This was especially true of the people of the former Danish West Indies and the nearby British Virgin Islands. There was hardly a U.S. Virgin Islander without close family relationships on other islands of the eastern Caribbean.

The U.S. Government at first paid little attention to these comings and goings between the island groups. With the beginning of World War II, military construction in the U.S. islands to help fight the battle of the Atlantic suddenly required the active recruitment of many workers from the other jurisdictions, especially after the enlistment into the U.S. Army of hundreds of U.S. Virgin Islanders for service overseas.

Some of the new workers were brought in under one or another legal device improvised by the U.S. authorities. Others came without formal legal sanction and were employed until they were no longer needed for the war effort, at which time many were rounded up and deported.

A similar situation emerged again in the years between 1950 and 1970—this is the time frame that really created the problem we are trying to correct here today, Mr. Chairman—when migration to the U.S. islands was encouraged, this time not for defense projects, but for the rapidly expanding tourist industry financed by mainland investors, and for other related economic developments.

The principal legal vehicle for this influx was a liberal administrative interpretation in 1956 of the terms "Temporary services and Labor" in the Immigration and Nationality Act of 1952. Further complications arose with the Immigration and Nationality Act amendments of 1965. These later amendments had the effect of increasing the influx of foreign temporary workers and somewhat paradoxically, at the same time preventing most of those workers from attaining permanent resident status, even 20 or more years later. That's where we find ourselves today.

Again, I stress we are talking about people that came to our country legally. For an excellent analysis of the subject that I have tried to condense, I would like to refer you to the 1975 study that was done, a special study done by this subcommittee. It makes, as you know, Mr. Chairman, very interesting reading.

Mr. MAZZOLI. I would interject at this point that I told the delegate from the Virgin Islands that on the weekend I was given that to take home with my reading material. I was advised to read maybe 10 pages of it. But I made the mistake of starting at page 1, and it is engrossing reading. So I wound up reading virtually the entire report, which as the gentleman has said, makes very interesting reading.

Mr. DE LUGO. That speaks very well for the report.

As any member will tell you, we don't look forward to reading reports, certainly not on a weekend. But, I'd like to bring to the members' attention the opening statement in the committee report.

Your committee said in the 94th Congress that:

The Virgin Islands of the United States is experiencing the most complex immigration problems facing the United States. Most of the problems are peculiar to the Virgin Islands and have stemmed from a U.S. immigration policy that has failed to recognize that the Virgin Islands are unique from the rest of the United States in terms of history, geography, economy and social structure.

It goes on to say that during the 93d Congress, the previous Congress, the delegate from the U.S. Virgin Islands focused the attention of the committee on the immigration problems of the Virgin Islands. That gives you an idea of how long we have been trying to resolve this problem.

I think we are close to a solution now, thanks to all of you. What the subcommittee said then continues to be true today. In fact, the Select Commission on Immigration and Refugee Policy this year recommended that U.S. policy permit special treatment for the Virgin Islands, as general immigration policies could not apply to this and other small insular territories. Over the years, there has been a lively dialog in the Virgin Islands about how these complexities could be untangled while protecting the interests of the citizens in the islands and the alien workers. H.R. 3517 was submitted in draft form to the Legislature of the Virgin Islands by Gov. Juan Luis as a joint proposal by the Governor and the Virgin Islands Delegate to Congress.

The Virgin Islands Legislature has responded formally, endorsing H.R. 3517 in a unanimous vote of 9 to 0, on April 29, 1981. This action followed a series of public hearings at which the witnesses on all three principal islands of the territory overwhelmingly endorsed this bill, H.R. 3517.

H.R. 3517 has also been formally endorsed by the Alien Interest Movement, the leading organization of noncitizens living in the U.S. Virgin Islands, and the advisory counsel of the alien emphasis program. The following are the principal features of the bill:

(A) Most H-2 temporary workers, their H-4 spouses and their minor children who have lived in the Virgin Islands at least since June 1975 could apply for permanent resident status during a limited 1-year period following the enactment of the legislation. While some of these persons may currently be out of status, they are not illegal aliens. H.R. 3517 does not register the few persons who enter the territory illegally. Nor does it adjust the status of criminals up for deportation, or those likely to become public charges.

(B) Those granted permanent resident status under the program could petition for the admission of their spouses and unmarried sons and daughters. To protect against any unforeseen flood of

such admissions, provision is made for the secretary of state, in consultation with the secretary of the interior, and the Governor of the Virgin Islands, to limit the number of such second-preference admissions in any fiscal year.

(C) A second wave of relatives of those admitted under the program, married sons and daughters, and brothers and sisters, would not be permitted to immigrate to the Islands under fourth- and fifth-preference status. While this provision limits the benefits which would accrue to certain relatives of aliens adjusted under the bill, it is well within Congress' broad immigration power. I know that there will be questions about this provision. I would like to say that we have researched it thoroughly.

I would like to call to the attention of the committee the analysis that was done by the Congressional Research Service and the Library of Congress.

Mr. MAZZOLI. Without objection, that will also be made a part of our record.

[The material referred to follows:]

ANALYSIS OF DENIALS OF IMMIGRATION PREFERENCE IN PROPOSED LEGISLATION SETTING FORTH OPTIONAL STATUS ADJUSTMENT PROCEDURES FOR CERTAIN NONIMMIGRANT WORKERS IN THE VIRGIN ISLANDS

EXECUTIVE SUMMARY

The following report analyzes provisions in proposed legislation which condition the granting of permanent resident status on an expedited basis to certain workers in the Virgin Islands on restricting the immigration preference petition rights of those aliens who choose to adjust their status under the bill.

The paper first examines those restrictions which grant persons who take advantage of the legislation's benefits and reside in the fifty States broader petition rights than those who take advantage of the legislation's benefits and continue to reside in the Virgin Islands. While this residency restriction resembles in part those types of durational residency requirements, found in such right to travel cases as *Shapiro v. Thompson* (394 U.S. 618 (1969)), which are permissible only when necessary to meet compelling governmental interests, the requirement at issue arguably more closely resembles those types of continuing residency requirements, found in such cases as *McCarthy v. Philadelphia Public Service Comm'n* (424 U.S. 645 (1976)), which are permissible if grounded upon a rational basis.

Furthermore, it appears that the limiting of petition rights is beyond the scope of the doctrine of unconstitutional conditions, the principle which asserts that the government may not induce consent to what would otherwise be constitutional violations by conditioning a grant of government benefits on the waiver by beneficiaries of their constitutional rights. No citizen has a constitutional right to compel the admission into the United States of their families, nor does any alien have a constitutional right to immigrate.

The report then discusses congressional power to regulate the entry of aliens. Judicial reluctance to review statutory grounds for excluding aliens has been extreme, and cases have described legislative power in the field in most expansive terms. No successful challenge has ever been made to any congressional determination of which aliens may enter the United States. This includes the recent cases of *Kleinienst v. Mandel* (408 U.S. 753 (1972)) and *Fiallo v. Bell* (430 U.S. 787 (1977)) where plaintiffs alleged that the exclusion of aliens at controversy infringed upon their constitutional rights as citizens. Indeed, examination of pertinent authority leaves some doubt as to whether the judiciary will review an exercise of the power to exclude aliens, a power emerging from the nature of sovereignty itself independent from any constitutional grant of authority, even so far as to determine that it rationally relates to the furtherance of a legitimate governmental interest.

This report discusses certain provisions of proposed legislation to permit long-term nonimmigrant alien workers in the Virgin Island to apply for permanent resident status. More particularly, the paper focuses on those restrictions in the bill which limit the immigration preference system benefits (Immigration and Nationality Act (INA), § 203; 8 U.S.C. 2153) of those persons who become permanent residents and citizens by virtue of the legislation.

The proposal at issue allows workers who helped build, and have become an integral part of, the Virgin Islands economy to attain permanent resident status independent from usual status adjustment procedures and restrictions (INA, § 245; 8 U.S.C. § 255). At the same time, the bill seeks to avert an influx into the Virgin Islands of the relatives of these workers. Toward this end, the proposal denies visa preference for siblings (5th preference; 8 U.S.C. 1153(a)(5)) and married offspring (4th preference; 8 U.S.C. 1153(a)(4)) to a citizen who first became a permanent resident via its special application procedure unless (1) at the time the citizen files a petition on behalf of his relatives he is physically present and has resided continuously for at least two years in the continental United States, Alaska, or Hawaii, or (2) he establishes to the satisfaction of the Attorney General that exceptional and unusual hardship exists. Additionally, no preference is permitted for the spouse or unmarried offspring of a permanent resident (2d preference; 8 U.S.C. 1153(a)(2)) who was admitted as a result of an immediate relative petition (INA § 201; 8 U.S.C. 1151) filed by a citizen son or daughter who first became a permanent resident under the proposal. This provision, among other ends, prevents circumvention of the restriction on fifth preference petitions: an alien who could not obtain preference through his citizen sibling cannot obtain preference through his parent who, in turn, was admitted solely due to benefits conferred by the bill. Finally, the proposal authorizes the Secretary of State, in order to alleviate the possible adverse impact of immigration into the Virgin Islands, to limit the entry of spouses and unmarried offspring (2d reference) of bill beneficiaries.

Among the many classifications drawn by the bill, the denial of fourth and fifth preference petitions divides citizens who had their status adjusted under the proposal into two classes: those who continue to reside in the Virgin Islands may not seek to reunite certain elements of their families; those who move to the continental United States, Alaska, or Hawaii may. Apparently, favorable action on second preference petitions filed by adjustees under the proposal also may depend in part on the place the permanent resident resides. Petitions by adjustees residing in Charlotte Amalie, for example, may be seen as more likely to adversely impact upon the Virgin Islands as petitions filed by adjustees residing in New York and thus may be more likely to be subjected to limits.

This conditioning of a government benefit upon place or length of residence may at first blush seem to impair the right to travel delineated by the Supreme Court in such cases as *Shapiro v. Thompson*, 394 U.S. 618 (1969). There the Supreme Court declared that a statutory prohibition of welfare benefits to residents of less than a year created a classification which denies equal protection of the laws because the interests allegedly served by the classification deterred exercise of the right of interstate travel and were not compelling. Similarly, in *Dunn v. Blumstein*, where durational residency requirements (one year in State, 90 days in county) denied the franchise to newcomers, the administrative justifications proffered were insufficiently compelling to justify the classification. 405 U.S. 330 (1972) (citing the right to both interstate and intrastate travel). See also *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974) (failing to find compelling state interests necessary to sustain a one-year residency requirement for free nonemergency medical care for indigents). (Limited durational residency requirements have now been upheld in the area of elections. *E.g.*, *Marston v. Lewis*, 410 U.S. 679 (1973), and *Kanapaux v. Ellison*, 419 U.S. 891 (1974).)

Arguably, however, right to travel issues are not germane to the proposed legislation. A durational residency requirement which discriminates against newcomers and thus discourages interstate movement is not involved here. Rather, a right incident to a government benefit voluntarily sought and available through other, though more burdensome and lengthy, means is conditioned on place of residence. In these circumstances residency requirements may be held to less exacting standards.

For example, in *McCarthy v. Philadelphia Civil Service Comm'n*, 424 U.S. 645 (1976), the Supreme Court stated, in upholding a municipal regulation requiring city employees to be city residents, that it had previously differentiated between a requirement of continuing residency and a condition of prior residency of a given duration. Indeed, the Court noted that in *Shapiro* itself it had said: "The residence requirement and the one-year waiting period requirement are distinct and independent prerequisites:"

"[We have not] questioned the validity of a condition placed upon municipal employment that a person be a resident at the time of his application. In this case appellant claims a constitutional right to be employed by the city of Philadelphia while he is living elsewhere. There is no support in our cases for such a claim." 424 U.S. at 647.

Subsequently, several circuits upheld municipal employee residency requirements, including ordinances which have required current employees to move within city limits within a specified period. *E.g.*, *Andre v. Board of Trustees of Maywood*, 561 F.2d 48 (7th Cir. 1977); *Wardwell v. Board of Educ. of City School Dist.*, 529 F. 2d 625 (6th Cir. 1976). All these decisions distinguished fact of residency from waiting period residency, and held that bona fide residency requirements are permissible if grounded on a rational basis.

In many respects, the residency requirements in the proposed legislation more closely resemble those in *McCarthy* than those in *Shapiro*. To be sure, the proposed residency requirements relative to fourth and fifth preference petitions have a durational aspect. Unlike in *Shapiro*, however, the waiting period is included to assure bona fide residency outside of, rather than within, a specific jurisdiction. Subjects of the requirement are not being denied benefits by the government of the jurisdiction of residence based on length of residency, nor are they relinquishing a benefit which may have previously been available at their former home as a cost of moving. Of course the types of interests sought to be forwarded by municipalities in imposing residency requirements are far different from those Federal interests sought to be served by the proposed legislation. Nonetheless, *McCarthy* and related holdings remain examples of subjecting a government's restriction of benefits to residents of a particular jurisdiction to minimal judicial scrutiny when challenged on equal protection or substantive due process grounds.

On the other hand, municipal employment, while a significant government benefit, may not be as significant a benefit as permitting reunification of families, and requiring relinquishment of the "right to commute" may not be as drastic a prerequisite to a benefit as requiring relinquishment of long-term residency on an island community in favor of a residence at least many hundred miles away. In reference to this consideration, it may be important to note that the proposed legislation is not the exclusive means by which an alien worker eligible for adjustment under it may become a permanent resident. Workers may always apply for adjustment through normal adjustment procedures. And it is only persons taking advantage of the extraordinary procedure under the bill who are restricted in filing for visa preference.

Furthermore, this situation seems beyond the scope of the doctrine of "unconstitutional conditions." That principle states that the government may not induce consent to what would otherwise be constitutional violations by conditioning a grant of government benefits on waiver by recipients of those benefits of their constitutional rights. Whatever liberty rights citizens may have to maintenance of family ties, no citizen has a constitutional right to compel the admission into the United States of their families, nor does any alien have a constitutional right to immigrate. See *Fiallo v. Bell, infra*. Rather any right to have relatives admitted into the United States arises from statute. Besides, apparently not all induced waivers of constitutional rights are disallowed. See, *e.g.*, *Buckley v. Valeo*, 424 U.S. 1 (1976) (campaign expenditure limits which otherwise violate first amendment rights are a permissible condition on the acceptance of presidential election matching campaign funds) and *United States Civil Service Commission v. National Assoc. of Letter Carriers*, 413 U.S. 548 (1973) (upholding the Hatch Act). In sum, while the constitutional rights of naturalized citizens are generally coextensive with those of native born citizens, *Schneider v. Rusk*, 377 U.S. 163 (1964), and while permanent residents generally enjoy due process and equal protection rights, 1 Gordon & Rosenfield, *Immigration Law and Procedure* § 1.31 (1980), the relinquishment of statutory rights required under the proposed legislation arguably are allowable even if it is not necessary to meet compelling governmental needs.

Remaining doubts about the constitutionality of the curtailment of visa preference petition rights seem resolved upon examining the nature of the governmental power asserted and the governmental interests forwarded by the proposed legislation. The United States, as a sovereign nation, has the power and responsibility to preserve the security of the country from its enemies, foreign and domestic, and to regulate the flow of aliens to its shores. The Supreme Court views the authority to control immigration as emerging from national sovereignty independent from any constitutional grant and as a broad political power whose limits are to be defined by Congress. Moreover, it has been recognized that the exercise of such sovereign powers as that to regulate immigration may at times lead to policies which trespass in otherwise protected areas and may at other times require the balancing away of rights which might otherwise be preserved inviolate.

The courts have never fully determined what limits, if any, exist on congressional power to formulate rules for the entrance, residency, and expulsion of aliens. Judicial reluctance to review statutory grounds for excluding aliens has been extreme, and cases have described congressional power in the field in most expansive

terms. Indeed, it has been suggested that it is inappropriate for the judiciary to examine legislation even for adherence to minimal substantive due process protections under the fifth amendment against arbitrary action: namely, the necessity that means employed by a statute rationally relate to a legitimate end sought to be achieved. See, e.g. *Galvan v. Press*, 347 U.S. 522, 530 (1954).

One leading commentator describes congressional power to control the entry of aliens as follows:

" . . . Through the years, the Supreme Court consistently has said that the power of Congress to determine what classes of aliens may be permitted to enter the United States is plenary and unqualified. . . .

" . . . Unless they are returning to a residence in this country, aliens seeking to enter do not have a firm stake in this country. Therefore there is scant basis on which they can contest the exercise by Congress of its right to exclude. Congress has the power of decision. It can exclude all or some, and it may discriminate against some classes and races, as it once did against the Chinese and other Asians. Indeed, every limitation in the immigration laws is to some extent discriminatory. But the authorities tell us that no affected alien can question the reasonableness or fairness of such discriminatory measures.

"In any event no successful challenge ever has been made to any exercise of legislative power in this field. Therefore, it is correct to assert that so far as we now know there are no limits to the power of Congress to determine the classes of aliens permitted to enter the United States. . . ." (Footnotes omitted.) 1 Gordon & Rosenfield, *Immigration Law and Procedure*, 2-16, 2-17, 2-18 (1980).

Perhaps aliens outside the United States have no claim to any benefit or protection under American constitutional or statutory law. What, however, if the exclusion of an alien infringes upon rights of citizens? This issue was raised in *Kleindienst v. Mandel*, 408 U.S. 753 (1972). There an action was brought to compel the Attorney General to grant a temporary nonimmigrant visa to a Belgian journalist and Marxian theoretician whom the American plaintiffs had invited to participate in an academic conference. The Belgian was found ineligible for admission under appropriate Immigration and Nationality Act standards, and the Attorney General declined to waive ineligibility. Plaintiffs claimed that their first amendment right to receive information was thereby denied:

"The Government also suggests that the First Amendment is inapplicable because appellees have free access to Mandel's ideas through his books and speeches, and because "technological developments," such as tapes or telephone hook-ups, readily supplant his physical presence. This argument overlooks what may be particular qualities inherent in sustained, face-to-face debate, discussion and questioning. While alternative means of access to Mandel's ideas might be a relevant factor were we called upon to balance First Amendment rights against governmental regulatory interests—a balance we find unnecessary here in light of the discussion that follows in Part V—we are loath to hold on this record that existence of other alternatives extinguishes altogether any constitutional interests on the part of the appellees in this particular form of access.

"Recognition that First Amendment rights are implicated, however, is not dispositive of our inquiry here. In accord with ancient principles of the international law of nation-states, the Court in *The Chinese Exclusion Case*, 130 U.S. 581, 609 (1889), and in *Fong Yue Ting v. United States*, 149 U.S. 698 (1893), held broadly, as the Government describes it, Brief for Appellants 20, that the power to exclude aliens is 'inherent in sovereignty, necessary for maintaining normal international relations and defending the country against foreign encroachments and dangers—a power to be exercised exclusively by the political branches of government' Since that time, the Court's general reaffirmations of this principle have been legion. The Court without exception has sustained Congress' 'plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden.' *Boutilier v. Immigration and Naturalization Service*, 387 U.S. 118, 123 (1967). '[O]ver no conceivable subject is the legislative power of Congress more complete than it is over' the admission of aliens. *Oceanic Navigation Co. v. Stranahan*, 214 U.S. 320, 339 (1909). In *Lem Moom Sing v. United States*, 158 U.S. 538, 547 (1895), the first Mr. Justice Harlan said:

"The power of Congress to exclude aliens altogether from the United States, or to prescribe the terms and conditions upon which they may come to this country, and to have its declared policy in that regard enforced exclusively through executive officers, without judicial intervention, is settled by our previous adjudications."

"Mr. Justice Frankfurter ably articulated this history in *Galvan v. Press*, 347 U.S. 522 (1954), a deportation case and we can do no better. After suggesting, at 530, that 'much could be said for the view' that due process places some limitations on congressional power in this area 'were we writing on a clean slate,' he continued:

"But the slate is not clean. As to the extent of the power of Congress under review, there is not merely 'a page of history' . . . but a whole volume. Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government. In the enforcement of the policies, the Executive Branch of the Government must respect the procedural safeguards of due process. . . . But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government. . . .

"We are not prepared to deem ourselves wiser or more sensitive to human rights than our predecessors, especially those who have been most zealous in protecting civil liberties under the Constitution, and must therefore under our constitutional system recognize congressional power in dealing with aliens. . . .'
Id., at 531-532.

"We are not inclined in the present context to reconsider this line of cases." 408 U.S. 765-767.

Five years after *Kleindienst* the Supreme Court faced another challenge by U.S. citizens of congressional power to exclude aliens. At issue in that case, *Fiallo v. Bell*, 430 U.S. 787 (1977), were sections 101(b)(1)(D) and 101(b)(2) of the Immigration and Nationality Act of 1952 (8 U.S.C. §§ 101(b)(D), (101(b)(2)), which have the effect of excluding the relationship between an illegitimate child and his natural father (unlike the relationship between an illegitimate child and his natural mother) from the special preference immigration status accorded by the Act to the "child" or "parent" of a citizen or lawful permanent resident. Again upholding the power of the political branches of government, the Court stated in part:

"At the outset, it is important to underscore the limited scope of judicial inquiry into immigration legislation. This Court has repeatedly emphasized that "over no conceivable subject is the legislative power of Congress more complete than it is over" the admission of aliens. *Oceanic Navigation Co. v. Stranahan*, 214 U.S. 320, 339 (1909); accord, *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Our cases "have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Shaughnessy v. Mezei*, 345 U.S. 206, 210 (1953); see, e.g., *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952); *Lem Moon Sing v. United States*, 158 U.S. 538 (1895); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893); *The Chinese Exclusion Case*, 130 U.S. 581 (1889). Our recent decisions have not departed from this long-established rule. Just last Term, for example, the Court had occasion to note that "the power over aliens is of a political character and therefore subject only to narrow judicial review." *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n. 21 (1976), citing *Fong Yue Ting v. United States*, *supra*, at 713; accord, *Mathews v. Diaz*, 426 U.S. 67, 81-82 (1976). And we observed recently that in the exercise of its broad power over immigration and naturalization, "Congress regularly makes rules that would be unacceptable if applied to citizens." *Id.*, at 80.

"Appellants apparently do not challenge the need for special judicial deference to congressional policy choices in the immigration context, but instead suggest that a 'unique coalescing of factors' makes the instant case sufficiently unlike prior immigration cases to warrant more searching judicial scrutiny. They argue that none of the prior immigration cases of this Court involved 'double-barreled' discrimination based on sex and illegitimacy, infringed upon the due process rights of citizens and legal permanent residents, or implicated 'the fundamental constitutional interests of United States citizens and permanent residents in a familial relationship.' Brief for Appellants 53-54; see *id.*, at 16-18. But this Court has resolved similar challenges to immigration legislation based on other constitutional rights of citizens, and has rejected the suggestion that more searching judicial scrutiny is required. *Kleindienst v. Mandel*, *supra*, for example, United States citizens challenged the power of the attorney General to deny a visa to an alien who, as a proponent of 'the economic, international, and governmental doctrines of World communism,' was ineligible to receive a visa under 8 U.S.C. § 1182(a)(28)(D) absent a waiver by the Attorney General.

"The Court held that 'when the Executive exercises this [delegated] power negatively on the basis of a facially legitimate and bona fide reason, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant.' 408 U.S., at 770. We can see no reason to review the broad congressional policy choice at issue here under a more exacting standard than was applied in *Kleindienst v. Mandel*, a First Amendment case.

"Finally, appellants characterize our prior immigration cases as involving foreign policy matters and congressional choices to exclude or expel groups of aliens that were 'specifically and clearly perceived to pose a grave threat to the national

security,' citing *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952), 'or to the general welfare of this country,' citing *Boutilier v. INS*, 387 U.S. 118 (1967). Brief for Appellants 54. We find no indication in our prior cases that the scope of judicial review is a function of the nature of the policy choice at issue. To the contrary, '[s]ince decisions in these matters may implicate our relations with foreign powers, and since a wide variety of classifications must be defined in the light of changing political and economic circumstances, such decisions are frequently of a character more appropriate to either the Legislature or the Executive than to the Judiciary,' and '[t]he reasons that preclude judicial review of political questions also dictate a narrow standard of review of decisions made by the Congress or the President in the area of immigration and naturalization.' *Mathews v. Diaz*, 426 U.S., at 81-82. See *Harisiades v. Shaughnessy*, *supra*, at 588-589. As Mr. Justice Frankfurter observed in his concurrence in *Harisiades v. Shaughnessy*:

"The conditions of entry for every alien, the particular classes of aliens that shall be denied entry altogether, the basis for determining such classification, the right to terminate hospitality to aliens, the grounds on which such determination shall be based, have been recognized as matters solely for the responsibility of the Congress and wholly outside the power of this Court to control.'" 342 U.S., at 596-597. 430 U.S. at 792-796.

In his dissent, Justice Marshall (joined by Justice Brennan in the opinion and Justice White in the result and substantially in the reasoning) characterized what he perceived to be the implications of the majority's opinion as follows:

"Until today I thought it clear that when Congress grants benefits to some citizens, but not to others, it is our duty to insure that the decision comports with Fifth Amendment principles of due process and equal protection. Today, however, the Court appears to hold that discrimination among citizens, however invidious and irrational, must be tolerated if it occurs in the context of the immigration laws."

Justice Marshall stated that he had "no quarrel with the principle that the essentially political judgments by Congress as to which foreigners may enter and which may not deserve deference from the Judiciary:"

"My disagreement with the Court arises from its application of the principle in this case. The review the majority purports to require turns out to be completely 'toothless.' Cf. *Trimble v. Gordon*, *ante*, at 767. After observing the effects of the denial of preferential status to appellants, the majority concludes: '[B]ut the decision nonetheless remains one "solely for the responsibility of the Congress and wholly outside the power of this Court to control."'" *Ante*, at 799. Such 'review' reflects more than due deference; it is abdication.

"This case, unlike most immigration cases that come before the Court, directly involves the rights of citizens, not aliens. '[C]oncerned with the problem of keeping families of United States citizens and immigrants united.' H.R. Rep. No. 1199, 85th Cong., 1st Sess., 7 (1957). Congress extended to American citizens the right to choose to be reunited in the United States with their immediate families. The focus was on citizens and their need for relief from the hardships occasioned by the immigration laws. The right to seek such relief was given only to the citizen, not the alien. 8 U.S.C. § 1154. If the citizen does not petition the Attorney General for the special 'immediate relative' status for his parent or child, the alien, despite his relationship, can receive no preference. 8 U.S.C. § 1153(d). It is irrelevant that aliens have no constitutional right to immigrate and that Americans have no constitutional right to compel the admission of their families. The essential fact here is that Congress did choose to extend such privileges to American citizens but then denied them to a small class of citizens. When Congress draws such lines among citizens, the Constitution requires that the decision comport with Fifth Amendment principles of equal protection and due process. The simple fact that the discrimination is set in immigration legislation cannot insulate from scrutiny the invidious abridgment of citizens' fundamental interests.

"The majority responds that in *Kleindienst v. Mandel*, *supra*, the Court recognized that First Amendment rights of citizens were 'implicated,' but refused to engage in the close scrutiny usually required in First Amendment cases. Therefore, it argues, no more exacting standard is required here. Rejecting the Government's contention that it had 'unfettered discretion, and any reason or no reason [for denying a waiver] may be given,' the Court upheld the denial only after finding that it was based on a 'legitimate and bona fide' reason—Mandel's abuses of visa privileges on a prior visit. 408 U.S., at 769. At the same time, however, the Court chose not to scrutinize more closely and accepted the reason without weighing against it the claimed First Amendment interest.

"Whatever the merits of the Court's fears in *Mandel*, *cf. id.*, at 774 (MARSHALL, J., dissenting), the present case is clearly distinguishable in two essential respects.

First, in *Mandel*, Congress had not focused on citizens and their need for relief. Rather, the governmental action was concerned with keeping out "undesirables." The impact on the citizens' right to hear was an incidental and unavoidable consequence of that political judgment. The present case presents a qualitatively different situation. Here, the purpose of the legislation is to accord rights, not to aliens, but to United States citizens. In so doing, Congress deliberately chose, for reasons unrelated to foreign policy concerns or threats to national security, to deny those rights to a class of citizens traditionally subject to discrimination. Second, in *Mandel*, unlike the present case, appellees conceded the ability of Congress to enact legislation broadly prohibiting the entry of all aliens with *Mandel's* beliefs. Their concern was directed instead to the exercise of the discretion granted the Attorney General to waive the prohibition. In the present case, by contrast, we are asked to engage in the traditional task of reviewing the validity of a general Act of Congress challenged as unconstitutional on its face. Totally absent therefore is the specter of involving the courts in second-guessing countless individual determinations by the Attorney General as to the merits of a particular alien's entrance.

"But it is not simply the invidious classifications that make the statute so vulnerable to constitutional attack. In addition the statute interferes with the fundamental 'freedom of personal choice in matters of marriage and family life.'

"Once it is established that this discrimination among citizens cannot escape traditional constitutional scrutiny simply because it occurs in the context of immigration legislation, the result is virtually foreordained. One can hardly imagine a more vulnerable statute.

"The class of citizens denied the special privilege of reunification in this country is defined on the basis of two traditionally disfavored classifications—gender and legitimacy.

"In view of the legislation's denial of this right to these classes, it is clear that, whatever the verbal formula, the Government bears a substantial burden to justify the statute."

Justice Marshall concluded that avoidance of the administrative difficulties of having to assess closeness or determine paternity on a case-by-case basis was not sufficient to meet this burden.

The majority, rebutting the reasoning of the dissent, emphasized that, whatever the rights granted to citizens and permanent residents under the preference system may be, they were merely incidental and subservient to the greater power involved: the sole authority of the sovereign to admit or exclude aliens in accordance with what it deems to be its best interests.

"The thoughtful dissenting opinion of our Brother Marshall would be persuasive if its basic premise were accepted. The dissent is grounded on the assumption that the relevant portions of the Act grant a 'fundamental right' to American citizens, a right 'given only to the citizen' and not to the putative immigrant. *Post*, at 806, 808, 816. The assumption is facially plausible in that the families of putative immigrants certainly have an interest in their admission. But the fallacy of the assumption is rooted deeply in fundamental principles of sovereignty.

"We are dealing here with an exercise of the Nation's sovereign power to admit or exclude foreigners in accordance with perceived national interests. Although few, if any, countries have been as generous as the United States in extending the privilege to immigrate, or in providing sanctuary to the oppressed, limits and classifications as to who shall be admitted are traditional and necessary elements of legislation in this area. It is true that the legislative history of the provision at issue here establishes that congressional concern was directed at 'the problem of keeping families of United States citizens and immigrants united.' H.R. Rep. No. 1199, 85th Cong., 1st Sess., 7 (1957). See also H.R. Rep. No. 1365, 82d Cong., 2d Sess., 29 (1952) (statute implements 'the underlying intention of our immigration laws regarding the preservation of the family unit'). To accommodate this goal, Congress has accorded a special 'preference status' to certain aliens who share relationships with citizens or permanent resident aliens. But there are widely varying relationships and degrees of kinship, and it is appropriate for Congress to consider not only the nature of these relationships but also problems of identification, administration and the potential for fraud. In the inevitable process of 'line drawing,' Congress has determined that certain classes of aliens are more likely than others to satisfy national objectives without undue cost, and it has granted preferential status only to those classes.

"As Mr. Justice Frankfurter wrote years ago, the formulation of these '[p]olicies pertaining to the entry of aliens . . . is entrusted exclusively to Congress.' *Galvan v. Press*, 347 U.S., at 531. This is not to say, as we make clear in n. 5, *supra*, that Government's power in this area is never subject to judicial review. But our cases do make clear that despite the impact of these classifications on the interests of those

already within our borders, congressional determinations such as this one are subject only to limited judicial review." 430 U.S. at 795, n. 6.

The scope of this limited review is unclear. Significantly, footnote six appears to retreat from the oft-quoted (e.g., *Kleindeinst v. Mandel*, *supra*) position of Justice Frankfurter in *Galvan v. Press* that congressional determinations of which aliens may enter are not subject to any limitations. 347 U.S. 522 (1954). At the same time, the majority in *Fiallo* adamantly refused to examine the underlying rationale of the provision at issue. With regard to appellants' contention that no legitimate government interests were served by a blanket denial of immediate relative status to fathers and their illegitimate offspring, the Court stated that "the decision remains one solely for the responsibility of Congress and wholly outside the power of this Court to control. . . . [I]t is not the judicial role in cases of this sort to probe and test the justification for the legislative decision." 430 U.S. at 799. Thus, it remains uncertain whether the government would even have to show that the denials of preference in the proposed legislation are rationally based and not arbitrary.

Mr. DE LUGO. It is very strong.

Mr. MAZZOLI. Please summarize it.

Mr. DE LUGO. The CRS says that it appears that the limiting of the petition rights is beyond the scope of the doctrine of unconstitutionality conditions, the principle which asserts that the government may not induce consent to what would otherwise be a constitutional violation by conditioning a grant of Government benefits on a waiver by beneficiaries of their constitutional rights.

Also, no alien has a constitutional right to immigrate. There are other statements in there.

Mr. MAZZOLI. Thank you.

Mr. DE LUGO. (D) The present H-2 "temporary" worker program would be terminated. This provision addresses the fear that as new economic development is courted by the Virgin Islands, the temporary worker program would again be used to supply cheap labor, despite promises such as those that we have received in the past.

(E) An interagency task force on Virgin Islands immigration would be established. Its members would include the Governor of the Virgin Islands, the chief judge of the territorial court, the president of the legislature, the secretary of health and human services, the secretary of education, the secretary of housing and urban development, the secretary of labor, the secretary of the interior and the attorney general.

The task force would assess the needs created in the islands by this program in the areas of health, education, housing and other social services in order to determine what Federal assistance might be needed to cope with these impacts. I have been assured that this impact will not be very large. The Governor is going to address himself to that.

Estimates are that not more than 2,670 children of adjusted aliens may enter the territory. The effect of this, at least for the 5-year period before these persons become U.S. citizens, will be controlled, as I mentioned, by the secretary of state in consultation with the secretary of the interior and the Governor.

As you can see, this is not a loosely drawn bill providing make-shift aid to our pervasive immigration problem. I have worked for many years to correct this situation. The solutions are carefully weighed.

I feel very deeply that H.R. 3517 represents the wishes of a majority of the people of the U.S. Virgin Islands. After much review and consultation, I believe sincerely that this bill takes into

account and affords the necessary protections for the interests of the present residents of the U.S. Virgin Islands.

What I have proposed is right, it is humane, and it is honorable. This program is cautious and it is sound. I ask for your support. [The complete statement follows:]

STATEMENT OF HON. RON DE LUGO

Mr. Chairman, members of the Subcommittee, today I ask you to lend support to a piece of legislation which is long overdue: H.R. 3517, titled "The Nonimmigrant Alien Act of 1981". The problems addressed in this legislation have been the subject of a long series of studies, hearings, administrative rulings, statutes and judicial determinations. By all these means, the federal government has tried over decades to resolve frustrating questions of immigration policy specifically affecting the United States Virgin Islands.

H.R. 3517 is concerned primarily with several thousands of aliens living legally under the flag of the United States, in the U.S. Virgin Islands, nearly all of them having come originally from the British, French and Dutch Islands of the Caribbean. These people have lived in the Virgin Islands for as many as twenty years without ever attaining the security of permanent resident status. Now after all these years as contributing participants in the life and development of the U.S. Virgin Islands, they remain in a legal limbo that could, for reasons totally beyond their control cause their rights of domicile to be restricted or abrogated as easily as if they had just been recruited for short-term jobs as migrant farm laborers harvesting a fast-ripening crop. No member will be besieged by constituents crying out for the adjustment of the status of these nonimmigrant aliens. However, we should be aware that there is a very real and fundamental importance in this legislation as to how our country is perceived in the world, and especially so in the island nations that lie on our southern sea frontier.

We have at hand the opportunity to demonstrate our regard for the rights of those who, adhering to our rules and laws and, at times, in response to our open invitation, have come to live and work among us and who now choose to make this their permanent home. We also have the opportunity to take active cognizance of the significance of the interrelationships between the U.S. Territories in the Caribbean and the other people of this critical region.

H.R. 3517 expresses its objectives in the required language of immigration law, referring to such necessary verbal abstractions as "the nonimmigrant alien worker under section 101(A)(15)(H)(ii)" and a "fourth or fifth preference petition". Permit me, instead to tell you briefly in plain words what this bill is about.

Before the United States bought what are now the U.S. Virgin Islands from Denmark in 1917, there had existed for centuries a mostly unrestricted flow of residents between the Islands under the jurisdiction of the various European colonial powers. This was especially true of the people of the former Danish West Indies and the nearby British Virgin Islands. There was hardly a U.S. Virgin Islander without close family relations on other islands of the Eastern Caribbean.

The U.S. Government at first paid little attention to these comings and goings between the island groups. With the beginning of World War II, military construction in the U.S. Islands to help fight the Battle of the Atlantic suddenly required the active recruitment of many workers from the other jurisdictions, especially after the enlistment into the United States Army of hundreds of U.S. Virgin Islanders for service overseas. Some of the new workers were brought in under one or another legal device improvised by the U.S. authorities. Others came without formal legal sanction and were employed—until they were no longer needed for the war effort, at which time many were rounded up and deported.

A similar situation emerged again in the years between 1950 and 1970, when migration to the U.S. islands was encouraged, this time not for Defense projects but for the rapidly expanding tourist industry financed by mainland investors and for other related economic developments. The principal legal vehicle for this influx was a liberal administrative interpretation in 1956 of the terms "temporary services and labor" in the Immigration and Nationality Act of 1952. Further complications arose with the Immigration and Nationality Act Amendments of 1965. These latter amendments had the effect of increasing the influx of foreign "temporary" workers and somewhat paradoxically, at the same time preventing most of those workers from attaining permanent resident status, even twenty or more years later.

And that is where we find ourselves today.

Admittedly, what I have offered is an oversimplification. For an excellent analysis of the subject I have tried to condense, I refer you to a 1975 study of the Subcommit-

tee on Immigration, Citizenship, and International Law of the House Committee on the Judiciary.

The Subcommittee's opening words are still valid: "The Virgin Islands of the United States is experiencing the most complex immigration problems facing the United States. Most of the problems are peculiar to the Virgin Islands and have stemmed from a U.S. immigration policy that has failed to recognize that the Virgin Islands are unique from the rest of the United States in terms of history, geography, economy and social structure". What the Subcommittee said then continues to be true today. In fact, the Select Commission on Immigration and Refugee Policy this year recommended that U.S. policy permit special treatment for the Virgin Islands, as general immigration policies could not apply to this and other small insular territories.

Over the years there has been a lively dialogue in the Virgin Islands about how these complexities could be untangled while protecting the interests of the citizens in the Islands and the Alien workers.

H.R. 3517 was submitted in draft form to the Legislature of the Virgin Islands by Governor Juan Luis as a joint proposal by the Governor and the Virgin Islands Delegate to Congress. The Virgin Islands Legislature has responded formally endorsing H.R. 3517 in an unanimous vote of 9 to 0, on April 29, 1981. This action followed a series of public hearings at which the witnesses on all three principal islands of the Territory overwhelmingly endorsed this bill. H.R. 3517 has also been formally endorsed by the Alien Interest Movement, the leading organization of noncitizens living in the U.S. Virgin Islands and the Advisory Council of the Alien Emphasis Program.

The following are the principal features of this bill H.R. 3517:

A. Most H-2 (temporary) workers, their H-4 spouses and their minor children who have lived in the Virgin Islands at least since June 1975 could apply for permanent resident status during a limited one-year period following the enactment of the legislation.

While some of these persons may currently be out of status, they are not illegal aliens. H.R. 3517 does not reach the few persons who enter the Territory illegally. Nor does it adjust the status of criminals up for deportation or those likely to become public charges.

B. Those granted permanent resident status under the program could petition for the admission of their spouses and unmarried sons and daughters. To protect against any unforeseen flood of such admissions, provision is made for the Secretary of State, in consultation with the Secretary of the Interior and the Governor of the Virgin Islands, to limit the number of such second preference admissions in any fiscal year.

C. A second wave of relatives of those admitted under the program, married sons and daughters and brothers and sisters would not be permitted to immigrate to the Islands under fourth and fifth preference status. While this provision limits the benefits which would accrue to certain relatives of aliens adjusted under the bill, it is well within Congress' broad immigration power. (Attached is a detailed analysis of this issue.)

D. The present H-2 "temporary" worker program would be terminated. This provision addresses the fear that as new economic development is courted by the Virgin Islands, the temporary worker program would again be used to supply cheap labor, despite promises such as those that we have received in the past.

E. An interagency Task Force on Virgin Islands Immigration would be established. Its members would include the Governor of the Virgin Islands, the Chief Judge of the Territorial Court, the President of the Legislature, the Secretary of Health and Human Services, the Secretary of Education, the Secretary of Housing and Urban Development, the Secretary of Labor, the Secretary of the Interior and the Attorney General. The Task Force would assess the needs created in the Islands by this program in the areas of health, education, housing and other social services in order to determine what federal assistance might be needed to cope with these impacts.

I have been assured that this impact will not be very large. Statistics developed by INS and the Government of the Virgin Islands show that most of the persons to be affected by this Act are in the Virgin Islands today. Their joint estimates are that no more than 2,670 children of adjusted aliens may enter the Territory. The effect of this, at least for the five-year period before these persons become U.S. citizens, will be controlled, as I mentioned, by the Secretary of State in consultation with the Secretary of the Interior and the Governor.

As you can see, this is not a loosely drawn bill providing makeshift aid to our pervasive immigration problem. I have worked for many years to correct this situation. The solutions are carefully weighed.

I feel very deeply that H.R. 3517 represents the wishes of a majority of the people of the U.S. Virgin Islands. After much review and consultation, I believe sincerely that this bill takes into account and affords the necessary protections for the interests of the present residents of the U.S. Virgin Islands. What I have proposed is right, it is humane, and it is honorable. This program is cautious and it is sound. I ask for your support.

Mr. MAZZOLI. That's a very fine statement, and it reflects the amount of work you have been doing on this legislation.

Our friendship goes back a number of years, and we have always had in mind finding a solution to this problem. We thank you for your help.

Next, we have Governor Luis. We welcome you. I am sure you must feel befuddled with this plane ride you have taken. So, if you have jet lag, go ahead and take a nap and we will call on some others. [Laughter.]

Governor LUIS. Thank you, Mr. Chairman, members of this distinguished subcommittee. I am pleased to have this opportunity to appear before you to present the position of my administration regarding H.R. 3517, the Nonimmigrant Alien Adjustment Act of 1981.

I am here to endorse H.R. 3517 and ask that you support its passage and enactment into law. This measure represents a concerted effort between my office and that of Congressman Ron de Lugo to resolve a longstanding and frustrating immigration problem in the U.S. Virgin Islands.

H.R. 3517 is intended, among other things, to end a nightmare for the thousands of nonimmigrant workers and their families who were initially attracted to the Virgin Islands through the Virgin Islands temporary worker program, seeking better employment opportunities, and who have since resided in these islands continuously for periods of 20 or more years with little hope of obtaining permanent resident status, let alone U.S. citizenship, because of restrictive U.S. immigration quotas applied to the islands of their origin.

It is primarily toward an acceptable and humane solution of the limbo status of these nonimmigrants, most of whom in fact immigrated to the Virgin Islands many years ago, that H.R. 3517 is directed.

The temporary worker program initially became a grave problem for the Immigration and Naturalization Service which, in the latter part of the 1950's, acquiesced in permitting the year-round employment and residence of nonimmigrants in the Virgin Islands when the Immigration and Nationality Act obviously contemplated only seasonal employment of nonimmigrants and their subsequent departure from the territory.

This program has been a nightmare for politicians, both territorial and Federal, who have been asked repeatedly to resolve an immigration problem with so many facets that no solution, however well intentioned and conceived, could achieve unanimous acceptance. The effort must nevertheless be made.

In attempting to resolve these problems, H.R. 3517 would permit the U.S. Attorney General to admit to immediate permanent resident status in the Virgin Islands the approximately 7,360 nonimmigrants who already permanently reside there.

These nonimmigrants are either H-2 workers and their H-4 spouses and children or applicants for suspension of deportation or permanent residence and their spouses and children.

The number estimate has itself basis statistics provided to my office by the INS on March 12, 1981. See exhibits A and B, attached.

The fact that the primary beneficiaries of this bill already permanently reside in the Virgin Islands is significant in that adjustment of their status to that of permanent residence will not increase the demand for government services.

Opponents of H.R. 3517 claim that if immediate status adjustment to permanent residence is permitted to occur, the floodgates will be opened to further immigration to the Virgin Islands by the immediate dependents of those whose status has just been adjusted.

This concern is understandable. It was certainly mine when I first considered advocacy of immediate status adjustment of H-2 workers and it motivated the whole detailed inquiry I am aware of into the question of how many children our H-2 workers and former H-2 workers had left behind them when they moved to the Virgin Islands.

An immigration task force created by me in 1978 was granted access to information obtained from 123 suspension of deportation applications from the INS district office in Puerto Rico, in which Virgin Islands applicants were asked, under penalty of perjury, the current location of their children.

My task force also designed a questionnaire for responses by the nonimmigrant community to, among other questions, how many dependent children they had left behind.

Sixty-five questionnaire responses were obtained. A professional demographer who served on the task force analyzed the combined total of 188 applications and questionnaires and reported that only 159 children were not living then with their parents in the Virgin Islands, or an average of less than 1 nonresident child per H-2 worker in February of 1980.

In view of the foregoing, it would appear that the rapid adjustment of status to permanent residency of qualifying nonimmigrants in the Virgin Islands will not precipitate a flood of immigrant offspring.

If I am not correct in this conclusion, however, section 2(c)(2) of the bill would permit the Secretary of State, in consultation with the Governor of the Virgin Islands, to limit the number of immigrant visas issued in any fiscal year.

More recent comparisons between the number of H-2 workers in the Virgin Islands and the number of H-4 spouses and children indicates that a substantial number of H-4's who are not—were not here in 1980 are here now.

A brief analysis, concluding that the maximum number of dependent children of nonimmigrants not now residing in the Virgin Islands is approximately 2,700 was made, and this you can find in exhibit C.

Considerable concern has also been expressed regarding the magnitude of a secondary adverse population impact which might occur 5 years after the permanent residency is granted.

This might occur when those who choose to become U.S. citizens begin to file petitions to obtain admission of parents, married sons and daughters, and brothers and sisters.

H.R. 3517 correspondingly provides that married sons and daughters, fourth preference; and brothers and sisters, fifth preference, may not enter the Virgin Islands pursuant to the petition of a naturalized citizen who opted for permanent residency under its provisions.

Parents would be permitted to enter, but not spouses or unmarried sons or daughters of parents.

I am concerned that the members of a nonimmigrant's immediate family be given the opportunity to be reunited. However, because our resources are already strained nearly to the breaking point, H.R. 3517 would not permit entry of all the relatives, in descending order of kinship, permitted under the Immigration and Nationality Act.

Due to the unique and fragile infrastructure of the Virgin Islands, lines must be drawn and this bill would draw those lines. Choices must be made by those who would benefit from its provisions and this bill would provide those choices.

H.R. 3517 would strike a delicate balance, providing a specially carved exception to the restrictive immigration quotas of the Immigration and Nationality Act to accommodate the genuine needs of thousands of nonimmigrants whose hearts, and therefore rightful homes, are now in the Virgin Islands, while at the same time guarding against the potential for uncontrolled population growth.

H.R. 3517 would also make provision that the nightmare, once ended, would not again be repeated in the Virgin Islands. The temporary worker program, as applied in the Virgin Islands, would be terminated by section 3 of this bill.

My administration has determined that the labor needs of the Virgin Islands can be filled from within. We are determined to learn from the mistakes of the past.

I take this opportunity to thank Congressman de Lugo for introducing H.R. 3517, a bill which incorporates major portions of the proposal developed by my administration and submitted to the delegate and the Virgin Islands legislature for their input and support.

I close with the sincere hope that the members of this subcommittee will act favorably on H.R. 3517.

Thank you very much.

Mr. MAZZOLI. Thank you, Governor.

[The complete statement follows:]

STATEMENT OF JUAN LUIS, GOVERNOR, VIRGIN ISLANDS

Mr. Chairman, members of this distinguished subcommittee, I am pleased to have this opportunity to appear before you to present the position of my administration regarding H.R. 3517, the "Nonimmigrant Alien Adjustment Act of 1981".

I am here to endorse H.R. 3517 and ask that you support its passage and enactment into law. This measure represents a concerted effort between my office and that of Congressman Ron deLugo to resolve a long standing and frustrating immigration problem in the United States Virgin Islands.

H.R. 3517 is intended, among other things, to end a nightmare for the thousands of nonimmigrant workers and their families who were initially attracted to the Virgin Islands, through the Virgin Islands Temporary Worker Program, seeking better employment opportunities, and who have since resided in these islands continuously for periods of twenty or more years with little hope of obtaining perma-

nent resident status, let alone United States citizenship, because of restrictive U.S. immigration quotas applied to the islands of their origin. It is primarily toward an acceptable and humane solution of the limbo status of these "nonimmigrants", most of whom in fact immigrated to the Virgin Islands many years ago, that H.R. 3517 is directed.

The Temporary Worker Program initially became a grave problem for the Immigration and Naturalization Service which, in the latter part of the 1950's, acquiesced in permitting the year-round employment and residence of nonimmigrants in the Virgin Islands when the Immigration and Nationality Act obviously contemplated only seasonal employment of nonimmigrants and their subsequent departure from the Territory.

This Program has been a nightmare for politicians, both territorial and Federal, who have been asked repeatedly to resolve an immigration problem with so many facets that no solution, however well intentioned and conceived, could achieve unanimous acceptance. The effort must nevertheless be made.

In attempting to resolve these problems, H.R. 3517 would permit the U.S. Attorney General to admit to immediate permanent resident status in the Virgin Islands the approximately 7360 "nonimmigrants" who already permanently reside there. These nonimmigrants are either H-2 workers and their H-4 spouses and children, or applicants for suspension of deportation or permanent residence and their spouses and children. The number estimate has its basis in statistics provided to my office by the INS on March 12, 1981. See Exhibit A and B attached.

The fact that the primary beneficiaries of this Bill already permanently reside in the Virgin Islands is significant in that adjustment of their status to that of permanent residence will not increase the demand for Government services.

Opponents of H.R. 3517 claim that if immediate status adjustment to permanent residence is permitted to occur the floodgates will be opened to further immigration to the Virgin Islands by the immediate dependents of those whose status has just been adjusted. This concern is understandable. It was certainly mine when I first considered advocacy of immediate status adjustment of H-2 workers, and it motivated the only detailed inquiry I am aware of into the question of how many children our H-2 workers and former H-2 workers had left behind when they moved to the Virgin Islands.

An immigration task force created by me in 1978 was granted access to information obtained from 123 Suspension of Deportation applications from the INS District Office in Puerto Rico, in which Virgin Islands applicants were asked, under penalty of perjury, the current location of their children. My task force also designed a questionnaire for responses by the nonimmigrant community to, among other questions, how many dependent children they had left behind. Sixty-five questionnaire responses were obtained. A professional demographer who served on the task force analyzed the combined total of 188 applications and questionnaires and reported that only 159 children were not then living with their parents in the Virgin Islands, or an average of less than one nonresident child per H-2 worker in February of 1980.

In view of the foregoing, it would appear that the rapid adjustment of status to permanent residency of qualifying nonimmigrants in the Virgin Islands will *not* precipitate a flood of immigrant offspring. If I am not correct in this conclusion, however, Section 2(c)(2) of the Bill would permit the Secretary of State, in consultation with the Governor of the Virgin Islands, to limit the number of immigrant visas issued in any fiscal year.

More recent comparisons between the number of H-2 workers in the Virgin Islands and the number of H-4 spouses and children indicates that a substantial number of H-4's who were *not* here in 1980 *are* here now. A brief analysis, concluding that the maximum number of dependent children of nonimmigrants not now residing in the Virgin Islands is approximately 2700. This, you can find in Exhibit C.

Considerable concern has also been expressed regarding the magnitude of a secondary adverse population impact which might occur 5 years after permanent residency is granted. This might occur when those who choose to become U.S. citizens begin to file petitions to obtain admission of parents, married sons and daughters, and brothers and sisters.

H.R. 3517 accordingly provides that married sons and daughters (fourth preference) and brothers and sisters (fifth preference) may not enter the Virgin Islands pursuant to the petition of a naturalized citizen who opted for permanent residency under its provisions. Parents would be permitted to enter, but not spouses or unmarried sons or daughters of parents. I am concerned that the members of a nonimmigrant's immediate family be given the opportunity to be reunited. However, because our resources are already strained nearly to the breaking point. H.R.

3517 would not permit entry of all the relatives, in descending order of kinship, permitted under the Immigration and Nationality Act.

Due to the unique and fragile infrastructure of the Virgin Islands, lines must be drawn and this Bill would draw those lines. Choices must be made by those who would benefit from its provisions and this Bill would provide those choices.

H.R. 3517 would strike a delicate balance, providing a specially carved exception to the restrictive immigration quotas of the Immigration and Nationality Act to accommodate the genuine needs of thousands of nonimmigrants whose hearts, and therefore rightful homes, are now in the Virgin Islands, while at the same time guarding against the potential for uncontrolled population growth.

H.R. 3517 would also make provision that the nightmare, once ended, would not again be repeated in the Virgin Islands. The Temporary Worker Program, as applied in the Virgin Islands, would be terminated by Section 3 of this Bill. My administration has determined that the labor needs of the Virgin Islands can be filled from within. We are determined to learn from the mistakes of the past.

I take this opportunity to thank Congressman de Lugo for introducing H.R. 3517, a bill which incorporates major portions of a proposal developed by my administration and submitted to the Delegate and the Virgin Islands Legislature for their input and support.

I close with the sincere hope that the members of this Subcommittee will act favorably on H.R. 3517.

Thank you very much.

Mr. MAZZOLI. Governor, you referred to exhibits a couple of times. I wonder if your counsel would file the exhibits with us?

Mr. WISBY. Certainly.

[Subsequent to the hearing, Governor Luis submitted the following exhibits:]

(EXHIBIT A)

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Charlotte Amalie, St. Thomas, V.I., March 16, 1981.

Mr. JAMES WISBY,
*Counselor, Governor's Office,
Charlotte Amalie, St. Thomas, V.I.*

DEAR MR. WISBY: In reference to our telephone conversation of this date, please be advised that to the writer's knowledge, the only new H-2 visa petitions approved by this office after July 1975, were those which the petitioner had established that the job to be done was temporary in nature.

Sincerely,

KENNETH B. WALKER,
Officer in Charge.

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Charlotte Amalie, St. Thomas, V.I., March 12, 1981.

JAMES S. WISBY,
*Counsel to the Governor,
St. Thomas, V.I.*

DEAR MR. WISBY: As per your request of March 9, 1981, the following is forwarded for your information:

1. Total number of H-2 workers currently residing in the V.I.

| | |
|-----------------|-------|
| St. Thomas..... | 999 |
| St. Croix | 845 |
| Total | 1,844 |

2. Total number of H-4 spouses and dependent children currently residing in the V.I.

| | |
|----------------|-------|
| St. Thomas: | |
| Spouse..... | 360 |
| Children | 723 |
| Total | 1,083 |

| | |
|--|-------|
| St. Croix: | |
| Spouse..... | 394 |
| Children..... | 592 |
| Total..... | 986 |
| 3. Total number of outstanding applications for suspension of deportation. | |
| St. Thomas..... | 28 |
| St. Croix..... | 1,022 |
| Total..... | 1,050 |
| 4. Total number of outstanding applications for permanent residence by former E-2's residing in the V.I. | |
| St. Thomas..... | 250 |
| St. Croix..... | 326 |
| Total..... | 576 |
| Grand total..... | 5,539 |

KENNETH B. WALKER,
Officer in Charge.

(EXHIBIT B)

PROJECTION OF MAXIMUM NUMBER OF QUALIFYING NONIMMIGRANTS IN VIRGIN ISLANDS

The maximum number of nonimmigrants currently residing in the Virgin Islands who would qualify for the option of applying for accelerated adjustment of status to permanent residency under H.R. 3517 is projected, as of March 12, 1981, at 7360 persons. This projection was derived as follows:

1. INS provided these territorywide figures:

| | |
|---|-------|
| H-2's..... | 1,844 |
| H-4's..... | 2,069 |
| Suspension of deportation applicants..... | 1,050 |
| Permanent residency applicants..... | 576 |
| Subtotal..... | 5,539 |

2. Since the ratio of H-4s to H-2s is 1.12 to 1 (2069 divided by 1844, which equals 1.12), and the applicants for suspension of deportation or permanent residency were formerly H-2s and their spouses and children were formerly H-4s the same ratio of 1.12 to 1 may be applied to their total number (1626×1.12) to yield a projected spouse and children figure of 1821 persons.

3. 5,539 (from item 1) plus 1,821 (from item 2) equals 7,360.

(EXHIBIT C)

PROJECTION OF MAXIMUM NUMBER OF DEPENDENT CHILDREN NOT LIVING WITH NONIMMIGRANT PARENTS IN VIRGIN ISLANDS

The maximum number of dependent children not residing with their nonimmigrant parents in the Virgin Islands is projected at 2672 children. This projection was derived as follows:

1. Demographic analysis of 188 suspension of deportation applications and Governor's task force questionnaires revealed that from this sampling there were 0.85 nonresident children for each H-2 worker in February of 1980.

2. Since the ratio of H-4s to H-2s was 0.97 to 1 in February of 1980 and was 1.12 to 1 as of March of 1981, it follows that there has been some reduction in the number of children who still reside outside the Virgin Islands. If half of the percentage decrease ($1.12 - 0.97 = 0.15$) can be attributed to dependent children in the H-4 category, then the 0.85 to 1 ratio explained in item 1 can be reduced by 0.08 to 0.77 to 1. Multiplying this percentage by the total number of H-2s and former H-2s ($1844 + 1050 + 576 = 3470$) the number of dependent children of these individuals not residing with them in the Virgin Islands is approximately 2672 ($3470 \times 0.77 = 2672$).

Mr. MAZZOLI. I yield to our friend from Massachusetts.

Mr. FRANK. I wanted to apologize to the distinguished panel of people that have come. The Legal Services bill is on the floor. Amendments have dragged on longer than we thought they would.

I'm going to have to leave, because I'm on the subcommittee. I wanted to tell you that I mean no discourtesy. I did want to acknowledge your coming and I will be reading the statements and I appreciate the efforts you have made.

I have been buttonholed by the delegate from the Virgin Islands and I am very much interested in this legislation.

Mr. MAZZOLI. I just want to say that I think the delegate from the Virgin Islands has buttonholed 435 of us, and perhaps even the nonvoting delegates. [Laughter.]

Mr. FRANK. I wanted to note that I was pleased about one thing. If I read the panel of witnesses correctly, in the last panel of witnesses, there are two Legal Services attorneys before the committee today.

I hope we haven't made it illegal for them to come back. [Laughter.]

I'm certainly glad they got in under the wire.

Mr. MAZZOLI. The gentleman from California?

Mr. LUNGREN. I was going to make the point that I didn't know any member hadn't been buttonholed.

Mr. MAZZOLI. All right. Senator Sprauve?

Senator SPRAUVE. Good morning. Thank you, Chairman Mazzoli, ranking minority member Mr. Fish, and other distinguished members of this committee, Congressman de Lugo and Governor Juan Luis.

I would like to apologize for a couple of typographicals on here, which I will correct before this is submitted.

Mr. MAZZOLI. It's all right.

Senator SPRAUVE. I would like to explain very briefly why I support H.R. 3517. I have five reasons and I will go straight into them.

First, it dares to address one of the most delicate and explosive issues in the Virgin Islands. The issue of the bonded aliens and families is delicate from a political standpoint and potentially explosive as a sociological phenomenon.

While the vast majority of the Virgin Islanders are unable to delve beyond the immediate family before turning up a direct relative who is from another Caribbean island, Virgin Islanders as a people cannot be said to possess a monopoly on the tolerance for strangers.

Hence, Virgin Islanders tend to be ambivalent in their opinions of West Indian noncitizens. Politicians are made to walk a tight-rope stretched to its breaking point almost by nationalistic and sentimental Virgin Islanders on the one side, and the community of new citizens and noncitizens on the other.

Under the circumstances, and since only numbers are said to count in politics, the political leadership of the Virgin Islands have found it prudent to ignore the status question.

In the meantime,—and this is what is potentially explosive about the status stalemate—a very large segment of the Virgin Islands' populace, taxpaying and law-abiding as they may be, are subjected

daily to the terrifying fear of mass deportations and the specter of a fate rivaling that of the boat people in and around Miami.

The people of the Virgin Islands—even the sentimentalists—feel that it is high time we put an end to this anguish and the attendant exploitation. H.R. 3517 is a bold step in the right direction.

My second reason for support: It presents a humanistic and sensible solution. The contributions of noncitizen West Indians to the culture and the well-being are firmly established and manifold.

Not only have there been many intermarriages and interminglings which, to put it bluntly, have recharged and fortified our human stock, but our religious, educational, and cultural institutions have enjoyed an enormous rebirth as a result of their presence among us.

Legislation to adjust their status problems is only just—though overdue—reward for the sweat and tears of the noncitizen in service of the Virgin Islands that they love and appreciate and forgive as needs be.

Such legislation is sensible also in that in its humanitarian aspects, it ought to cement the very valuable friendships of some of America's strongest allies in the region, namely St. Kitts and Antigua, whose nationals would otherwise be ignored or be subject to continued exploitation through neglect.

The third reason I support it: It's comprehensive in nature. Any attempt to resolve the status problem of noncitizen West Indians must take into consideration both the demands for fair treatment of the strangers and the concern of the locals that the entry door be closable at some clearly defined interval.

This proposal is comprehensive in that it addresses both issues.

A ceiling is assured by the qualifications for eligibility of section 2, subsection (c). Section 2 is particularly reassuring in that it sets limits on immigrant visas. The section on termination of the temporary worker programs also will help all parties to project realistic parameters of the larger Virgin Islands' society of the future.

Such projections, I believe, are the only antidotes to the identity crisis now manifest among residents from all sections.

The fourth reason: It is compact and is very straightforward, and represents a good condensation of the issues. H.R. 3517 is really very straightforward. During the course of the public hearings on the proposal, we found that participants had little difficulty understanding the language, the intent, and indeed the subtleties of the proposed legislation.

Finally, I support it because it has the support and/or acceptance of a very significant and very wide cross-section of the Virgin Islands community. I have the pleasure and the responsibility of representing what I perceive to be the will of the clear majority of our people on the status question.

As a body, the 14th legislature felt that public hearings were in order before we could deliberate on a resolution supporting this legislation.

Those hearings were held on all three islands. The level of participation was high. While there were one or two areas where reservations or improvements were suggested, the overall consensus was for support of this proposal.

Congressman de Lugo has already told you what the results were of those hearings.

In conclusion, the larger contexts of the status question are drawn by recent happenings in the Caribbean. On the one hand, we are made to understand that the Reagan administration has placed high priority on winning the friendship of the people of the Caribbean.

On the other, we in the Virgin Islands are disturbed by recent conflicts among neighboring peoples in our area where Dominican workers have been hounded down on their neighboring Guadeloupe, and Barbadian refinery workers were recently chased off St. Lucia.

Such incidents occur when artificial boundaries are exploited to pit one group against another. Resolution of the status problem in the Virgin Islands will remove one such hinderance to harmony and permit all to walk with dignity, pride, and legitimacy.

Thank you very much.

Mr. MAZZOLI. Thank you very much for your fine statement. [The complete statement follows:]

STATEMENT OF SENATOR GILBERT A. SPRAUVE, VICE PRESIDENT, VIRGIN ISLANDS LEGISLATURE

A. Addressing a most delicate and potentially explosive issue. The issue of the bonded aliens and families is delicate from a political standpoint and potentially explosive as a sociological phenomenon. While the vast majority of Virgin Islanders are unable to delve beyond the immediate family before turning up a direct relative who is from another Caribbean island, Virgin Islanders as a people cannot be said to possess a monopoly on the tolerance for strangers. Hence, Virgin Islanders tend to be ambivalent in their opinions of West Indian non-citizens. Politicians are made to walk a tightrope stretched to its breaking point almost by nationalistic and sentimental Virgin Islanders on the one side and the community of new citizens and non-citizens, on the other. Under the circumstances—and since only numbers are said to count in politics—the political leadership of the Virgin Islands have found it prudent to ignore the status question.

In the meantime—and this is what is potentially explosive about the status stalemate—a very large segment of the Virgin Islands populace, taxpaying and law abiding as they may be are subjected daily to the terrifying fear of mass deportations and the spectre of a fate rivalling that of the “boat people” in and around Miami.

The people of the Virgin Islands—even the sentimentalists—feel that it is high time we put an end to this anguish and the attendant exploitation.

H.R. 3517 is a bold step in the right direction.

B. Presenting a humanistic and sensible solution. The contributions of non-citizen West Indians to the culture and the well-being are firmly established and manifold. Not only have there been many intermarriages and inter-minglings which, to put it bluntly have recharged and fortified our human stock, but our religious, educational and cultural institutions have enjoyed an enormous rebirth as a result of their presence among us.

Legislation to adjust their status problems is only just—though overdue—reward for the sweat and tears of the non-citizen in service of the Virgin Islands that they love and appreciate and forgive as needs be.

Such legislation is sensible also in that in its humanitarian aspects it ought to cement the very valuable friendships of some of America's strongest allies in the region, namely St. Kitts and Antigua whose nationals would otherwise be ignored or be subject to continued exploitation through neglect.

C. Comprehensive nature of the proposed legislation. Any attempt to resolve the status problem of non-citizen West Indians must take into consideration both the demands for fair treatment of the strangers and the concern of the locals that the entry door be closeable at some clearly defined interval. This proposal is comprehensive in that it addresses both issues. A ceiling is assured by the qualifications for eligibility of Section 2, Subsection (c), Section (2) is particularly reassuring in that it sets limits on immigrant visas. The section on termination of the temporary worker program also will help all parties to project realistic parameters of the Larger

Virgin Islands society of the future. Such projections, I believe, are the only antidotes to the identity crisis now manifest among residents from all segments.

D. *Compact nature of the proposal.* H.R. 3517 is really very straight-forward and represents a good condensation of the issues. During the course of the public hearings on the proposal we found that participants had little difficulty understanding the language, the intent and indeed the subtleties of the proposed legislation.

E. *Support and/or acceptance of the Virgin Islands Community.* Finally, I have the pleasure—and the responsibility—of representing what I perceive to be the will of the clear majority of our people on the status question. As a body the 14th Legislature felt that public hearings were in order before we could deliberate on a resolution support this legislation. Those hearings were held on all three islands. The level of participation was high. While there were one or two areas where reservations or improvements were suggested, the overall consensus was for support of this proposal. The residents of the Virgin Islands—citizens and non-citizens are saying: "Enough is enough!"

In conclusion, the larger contexts of the status question are drawn by recent happenings in the Caribbean. On the one hand we are made to understand that the Reagan administration has placed high priority on winning the friendship of the people of the Caribbean. On the other, we in the Virgin Islands are disturbed by recent conflicts among neighboring peoples in our area where Dominican workers have been hounded down on their neighboring Guadeloupe and Barbadian refinery workers were recently chased off St. Lucia.

Such incidents occur when artificial boundaries are exploited to put one group against another.

Resolution of the status problem in the Virgin Islands will remove one such hindrance to harmony and permit all to walk with dignity, pride, and legitimacy.

H.R. 3517 has as its stated purpose: "To authorize the granting of permanent residence status to certain nonimmigrant aliens residing in the Virgin Islands of the United States, and for other purposes." Specifically, it attempts to resolve certain ongoing status problems of bonded workers and their families in the Virgin Islands within a framework acceptable to the larger V. I. community.

WHY I SUPPORT H.R. 3517

A. It dares to address one of the most delicate and explosive issues in the Virgin Islands.

B. It presents a humanistic and sensible solution.

C. It is comprehensive in that it takes into account all the important issues and ramifications of the problem.

D. It is compact and straightforward and is easily understood by all, but particularly by those who will be affected by its passage.

E. It has the support and/or acceptance of a very significant and very wide cross-section of the Virgin Islands Community.

Mr. MAZZOLI. With a name like Mazzoli, I am careful of how to pronounce names. I was told it was Lowitz [phonetic]. Is that correct?

Mr. LAWÆTZ. Lawaetz. My family was from the Danish West Indies and in Danish, the W is pronounced like a V.

Thank you very much, Mr. Chairman and members of the subcommittee. Thank you for having us here today.

The U.S. Virgin Islands has long been held as a model of American democracy in the West Indies. When the people of the West Indies form their opinions of the United States and its Government, those opinions are formed to a large extent on their experiences and observations of what is happening in the U.S. Virgin Islands. We are that part of the United States with which they are most familiar.

It is difficult for West Indians to believe that the United States has a sincere commitment to human rights and to the welfare of the people in the region when they see the hardships and the denial of rights experienced by so many of their own in the U.S. Virgin Islands under the old H-2 program that was originally established for temporary workers but which has evolved into a status

for permanent workers. The Government could legitimately demand that these temporary workers be repatriated, but the circumstances which prevail would make such an act highly unjust and would give the U.S. Government a very bad image in the West Indies. To permit the present conditions to continue must also be interpreted as an injustice perpetrated upon large numbers of West Indians.

The proposed bill is the best way out of this dilemma, and I urge your support for it. It is rare in the politics of the Virgin Islands that our delegate to Congress, our Governor, and all 15 senators in the Virgin Islands Legislature will unanimously support a piece of legislation, but that is the case in this instance, and I call your attention to it.

Our major fear in dealing with the immigration problem has been the possibility of another large influx of migrants into the Virgin Islands. The infrastructure of our government is already strained because of the rapid growth which we have experienced in our population. It is our opinion that the proposed bill reasonably reduces that possibility.

In closing, I would like to call to your attention the hardship which we are currently experiencing in the Virgin Islands as the result of past immigration laws and policies. I hope that the Government of the United States will help us to overcome those difficulties in order that we may continue to be a worthy model of American democracy in the West Indies. Thank you very much.

Mr. MAZZOLI. Thank you very much, Senator. We appreciate your attendance and your statement.

[The complete statement follows:]

STATEMENT OF SENATOR BENT LAWAEZ, VIRGIN ISLANDS LEGISLATURE

Mr. Chairman, ladies and gentlemen of the committee, the United States Virgin Islands have long been held as a model of American democracy and freedom in the West Indies. When the people of the West Indies form their opinions of the United States and its Government, those opinions are formed to a large extent on their experiences and observations of what is happening in the United States Virgin Islands. We are that part of the United States with which they are most familiar.

It is difficult for West Indians to believe that the United States has a sincere commitment to human rights and to the welfare of the people in the region when they see the hardships and denial of rights experienced by so many of their own, in the United States Virgin Islands under the old H-2 program that was originally established for temporary workers, but which has evolved into a status for permanent workers.

The Government could legitimately demand that these "temporary" workers be repatriated; but the circumstances which prevail would make such an act highly unjust and would give the United States Government a very bad image in the West Indies.

To permit the present conditions to continue must also be interpreted as an injustice perpetrated on large numbers of West Indians.

Mr. MAZZOLI. I will now yield myself 5 minutes to begin the questioning. I start with our friend, Ron de Lugo. I commend you for your presentation and for having spearheaded these hearings today.

Ron, the Governor addressed himself to the numbers, but let me also ask you about the numbers; 7,360 people, that is the number of H-2's and H-4's who will be regularized if this bill is passed and will become resident aliens for the purposes of eventually seeking citizenship. Are those the figures?

Mr. DE LUGO. They are the best figures we have been able to come up with.

Mr. MAZZOLI. This was from INS on March 12 of this year?

Mr. DE LUGO. Right.

Mr. MAZZOLI. Further, this 7,360 includes children that are identified as dependents. Is that correct?

Mr. DE LUGO. The children who are resident in the Virgin Islands or in the territory.

Mr. MAZZOLI. Of course, other children could be available outside the Virgin Islands at this point who would be able to be petitioned for?

Mr. DE LUGO. Right. The best estimates of those children who would be coming in a result of the passage of this legislation is 2,672.

Mr. MAZZOLI. So, we may be talking roughly around 10,000 people?

Mr. DE LUGO. That is the maximum projection.

Mr. MAZZOLI. If I understand correctly, your bill provides for monitoring.

Mr. DE LUGO. Monitoring, yes.

Mr. MAZZOLI. Monitoring and gaging of the flow. The 7,360 are residents in the islands at this point. The 2,672 potential visas could be controlled and gaged as to their impact on the national resources. Is that correct?

Mr. DE LUGO. Such as the impact on the services and school system and anything else. If at any time it was seen that the impact was more than it had been estimated, the Federal Government, in consultation with the Governor of the Virgin Islands, could suspend the program.

Mr. MAZZOLI. I believe the 7,360 people includes out-of-status people. They are in that 60-day period still looking for jobs and not deportable. But, are they considered as part of the permanent population?

Mr. DE LUGO. They are considered part of the permanent population and they all came legally.

Governor LUIS. I would like to add that many of them own their own homes in the Virgin Islands.

Mr. MAZZOLI. That was what I was going to ask. We are talking about people who have developed equities. That general term means ties to the community. They have become part of the church, part of the social scene. They have become business people. It is your judgment, Governor, that these 7,360, even though they may include some people technically out of status, are those that have equities in your islands?

Governor LUIS. Not all of them, but many of them do. The point we are trying to make here is that those who are—the minority who is against this bill is presenting a situation to the effect that we would be bringing in more people than what our figures show. But no one has been able to bring figures to contradict the ones we have.

Mr. MAZZOLI. Yours are certainly authoritative.

Mr. DE LUGO. Mr. Chairman, you were talking about those that are out of status. The Governor pointed out that many of those are out of status simply because they are between jobs and subject to

deportation if the law was enforced, but they own property in the Virgin Islands and have been there a long time. In fact, there are those who have children who are U.S. citizens. They were born in the territory. They would be subject to deportation and the children would remain in the U.S. Virgin Islands.

Mr. MAZZOLI. A comparable situation would be in a sense, a U.S. citizen who is between jobs. You believe these people to be so connected in most cases to the community that they have solid equities.

Mr. DE LUGO. They are de facto Virgin Islanders.

Mr. MAZZOLI. Your cutoff date is June 30, 1975. What is the purpose of that date? How did you select that date?

Mr. DE LUGO. We selected that date because during the period that the bill was being drafted, it was determined that the number of persons that might have come in after that particular date are minimal.

Mr. MAZZOLI. The gentleman from New York indicated a good followup question. Let me steal his thunder by saying if you picked June 30, 1975, as a logical or appropriate cutoff date, do you do so in part because there is very little that occurred after June 30, 1975?

Mr. DE LUGO. That's right.

Mr. MAZZOLI. Is that because there was some policy that was changed or some law that was changed?

Mr. DE LUGO. It was a policy that was changed.

Mr. MAZZOLI. So, we are talking about a body of people, most of whom were in the islands prior to June 30, 1975.

Mr. DE LUGO. Very nearly all of these people were there prior to this date.

Governor LUIS. May I add something?

Mr. MAZZOLI. Please do.

Governor LUIS. All our experience has shown that once they receive permanent resident status, there is a very strong tendency for them to live in the Virgin Islands. So, that will allay that fear, also. A considerable amount would live there, once they get their green card, their permanent resident status.

Mr. DE LUGO. There is an interesting point, too, about those children that I was mentioning: the children of the aliens who are out of status. I want to tell you that these people we are talking about came as part of our labor force. They are working people and have helped to build our community. Now, they are between jobs. They are subject to deportation. They are aliens and their children are U.S. citizens. They have to go back home. The children cannot follow.

Mr. MAZZOLI. My time has expired. The gentleman from New York?

Mr. FISH. Mr. Chairman, at the outset, I think we should let the witnesses know that you and I both might have to absent ourselves at some point during these hearings today, because of the legislation on the floor.

Mr. MAZZOLI. We had the legal services bill which came out of our committee. We had not expected that it would take 3 days. We may have to vote, but it is my intention to forge on with the hearings regardless.

Mr. FISH. Will there be an opportunity to submit questions in writing to the panel if we don't have a full discussion of these issues?

Mr. MAZZOLI. Yes.

Mr. FISH. This is a case where we are going to have to make a very full and complete record because of the controversial issues that are involved here. Governor, it is nice to see you again. We had occasion to meet when I was in the Virgin Islands about a year ago. The next time I go there, I hope to do something else besides meet the Governor in the morning, have lunch with the Senators, spend the afternoon with the League of Women Voters, and get back to my hotel just as the sun sets over the waters. [Laughter.]

Governor LUIS. We would love to have you back.

Mr. MAZZOLI. I think maybe we ought to talk to the Delegate from the Virgin Islands, because the Governor has made his very kind offer. Maybe we can have some hearings there. [Laughter.]

Mr. DE LUGO. I suggest, and I'm sure the Governor would concur in this, that you pass the legislation and then come on down and have some oversight hearings. Next January would be a good time to see how it is all working out. [Laughter.]

Mr. FISH. In support of your figures, 7,360 and the 2,700, you referred to exhibits A, B, and C. Do you happen to have those exhibits with you?

Governor LUIS. We did leave them with your main office this morning, so you will be getting them. But, we will provide you with copies.

Mr. MAZZOLI. Because of the confusion, I am sure they are with us somewhere. We don't have them today. Perhaps your counsel can assure that they are filed.

Mr. FISH. If I understand you correctly, based on the Immigration Service statistics, this bill would apply to 7,360 individuals presently in the Virgin Islands. Your best estimate of dependents who might be eligible to enter from other islands would be an additional 2,700.

Governor LUIS. That is correct, sir.

Mr. FISH. And the bill provides, with certain exceptions that married sons and daughters and brothers and sisters may not benefit from petition. And parents could be petitioned for, but not spouses or unmarried sons or daughters of parents. Now, an unmarried son or daughter of a parent is the same thing as your brother and sister. Is that not correct?

Mr. DE LUGO. Yes.

Mr. FISH. I will jump right into the constitutional issue. Although we have other questions that we want to cover. Should I address Constitution questions to you, Mr. de Lugo?

Mr. DE LUGO. I wish you wouldn't. [Laughter.]

Go right ahead.

Mr. FISH. Section 2(c)(3) of H.R. 3517 denies fourth- and fifth-preference visas to relatives of U.S. citizens who earlier obtained adjustment of status under this legislation. These are visas set aside for married sons and daughters of U.S. citizens and brothers and sisters for U.S. citizens. Why should persons who obtain adjustment of status under H.R. 3517 and years later obtain U.S. citizen-

ship be denied some of the petition rights enjoyed by all other U.S. citizens?

Mr. DE LUGO. Because of the fact that we are dealing here with a limited land area. As was pointed out by Senator Lawaetz, the most striking thing this morning is that you have before you unanimous support from the Governor, the Delegate of the Virgin Islands, and the Legislature of the Virgin Islands. Six months ago if anybody had told any one of us or told any Virgin Islander that this could happen, they would have said you are crazy. We have never been able to resolve this problem because of the fear that, by adjusting the status of those who are in the territory, we will be subjected to an additional flood later on.

The Congressional Research Service has supplied us with a legal opinion, 15 pages long, which comes down strongly on the side that what we are doing here is clearly within the constitutional power of the Congress of the United States.

No citizen has a constitutional right to compel the admission into the United States of his family. Nor does any alien have a constitutional right to immigrate. I would like to point out that I believe that, at the present time, INS is giving consideration to dropping the fifth preference from INA. There is a lot of talk about general amnesty, and this administration, I understand, is talking a great deal about general amnesty. The previous administration also spoke about general amnesty.

I think that you gentlemen and all of us better hope that I am correct in my position on fourth and fifth preference, because it will give you one way to solve the problem of general amnesty. We are talking here about 7,000 people in the U.S. Virgin Islands and when you talk about general amnesty on the national level, you are talking about millions. Nobody, not even the person who has been at INS for the longest time, can come before this committee and tell you accurately what the impact will be of the second wave of relatives coming after amnesty is given.

This is a way to protect us from that impact. It is addressed to those who are outside of the United States. It is saying that, even though your distant relative was adjusted and became a U.S. citizen, this does not give you a priority to come into the United States.

Mr. MAZZOLI. The gentleman's time has expired.

Governor LUIS. I would like to add to that.

Mr. MAZZOLI. Certainly.

Governor LUIS. While the bill closes the door, the procedure under the Immigration Act permits it. But it is a slower process. So that really, the spouses or married sons of these parents could still come in under the slower process. So, it will not be denied. The bill does that.

Mr. MAZZOLI. I thank you very much. The gentleman from Texas, Mr. Hall?

Mr. HALL. If the relief that you are seeking through this bill is granted, what is your estimate as to the number of people who might move to the mainland United States?

Governor LUIS. I estimate—I have no estimate on that.

Mr. HALL. Or anyone at the table who might answer that.

Mr. DE LUGO. I'd like to address myself to that. I think very few would move to the mainland because these are not persons who have just arrived in the territory. These are persons who have homes in the Virgin Islands, who have jobs in the Virgin Islands, and who have children in the Virgin Islands.

The children are in our school system. Their home is in the Virgin Islands. Therefore that migration to the mainland would be minimal.

Mr. HALL. What is the per capita income of the Virgin Islands?

Mr. DE LUGO. It's the highest in the Caribbean. It's presently between \$6,000 and \$7,000.

Mr. HALL. I yield back the balance of my time.

Mr. MAZZOLI. I thank the gentleman. The gentleman from California?

Mr. LUNGREN. Can you tell me what percentage of the people we are talking about own homes in the Virgin Islands? Do you know that?

Mr. DE LUGO. Well, I'd have to guess on that one. I would say most of them do.

Mr. LUNGREN. It would be very helpful to have some sort of figure, because home ownership has been cited a couple of times as an indication that these people are in fact a permanent part of the Virgin Islands community.

Mr. DE LUGO. Let me say that the census for the Virgin Islands has not been completed, or at least we don't have it. That might provide us with this information. We can provide it to the committee when we receive it.

[Subsequent to the hearing, Congressman de Lugo submitted the following data:]

OFFICIAL PRESS RELEASE FROM U.S. BUREAU OF THE CENSUS

Preliminary 1980 Census population counts in the U.S. Virgin Islands total 95,214, the U.S. Bureau of the Census reports.

Preliminary population totals from the 1980 Census of the U.S. Virgin Islands were reported today, August 8, 1980, by the Bureau of the Census, U.S. Department of Commerce. It should be noted they are preliminary counts only and subject to review and possible later revisions.

The 1980 preliminary population for the U.S. Virgin Islands was 95,214, a 52 percent increase since the 1979 census.

The Bureau also reported a total of 33,587 housing units counted in the U.S. Virgin Islands in 1980.

Preliminary counts for the main islands in the U.S. Virgin Islands for 1980 were as follows:

| Island | 1980 | | Percent Population change since 1970 |
|------------------|---------------|------------------|---|
| | Housing count | Population count | |
| St. Croix | 16,931 | 48,916 | + 54 |
| St. John | 1,115 | 2,470 | + 43 |
| St. Thomas | 15,541 | 43,828 | + 51 |
| Total | 33,587 | 95,214 | + 52 |

The preliminary totals were reviewed by local officials and released as the U.S. Virgin Islands census offices concluded their tabulation of the census forms. Final official totals for the U.S. Virgin Islands are expected to be released early in 1981 and will supersede the population totals announced today.

VIRGIN ISLANDS: PRELIMINARY POPULATION AND HOUSING UNIT COUNTS

This report is based on preliminary counts of population and housing units as compiled in the 1980 census district offices. The series consists of 56 reports—number 1 for the United States; numbers 2 through 52 for the States and the District of Columbia in alphabetical order rather than in order of publication; and numbers 53 through 56 for Puerto Rico, Guam, Virgin Islands, and American Samoa. Preliminary counts for the Northern Mariana Islands and the remainder of the Trust Territory of the Pacific Islands are not part of this series of reports. These counts will be made available in a separate press release issued for each area.

As of April 1, 1980, the population of the Virgin Islands was 95,591, according to a preliminary count of the returns of the 1980 census. This figure represents an increase of 33,123, or 53.0 percent, from the 62,468 inhabitants enumerated in the 1970 census.

The preliminary count of housing units in the Virgin Islands as of April 1, 1980, was 33,415. This figure, which includes both occupied and vacant housing units, represents an increase of 12,601, or 60.5 percent, from the 20,814 units enumerated in the 1970 census.

This report presents preliminary 1980 census population and housing unit counts for the Virgin Islands as a whole, individual islands, census subdistricts, and towns.

These preliminary figures will be superseded by the final counts to be shown in Advance Reports, series PHC80-V, which will be issued within the next few months. The final counts are subject to further processing and review and may differ from the preliminary figures.

An outline of the publication and computer tape program for the 1980 Census of Population and Housing can be obtained free of charge from the Data User Services Division, Bureau of the Census, Washington, D.C. 20233.

TABLE 1. POPULATION AND HOUSING UNIT COUNTS FOR THE VIRGIN ISLANDS BY ISLANDS AND CENSUS SUBDISTRICT: 1980 AND 1970

[Counts relate to areas as delineated at each census]

| | Population | | Housing units | |
|--------------------------------------|-----------------------|------------------|-----------------------|------------------|
| | 1980 (preliminary) | 1970 | 1980 (preliminary) | 1970 |
| Virgin Islands | 95,591 | 62,468 | 33,415 | 20,814 |
| St. Croix Island..... | 49,013 | 31,779 | 16,796 | 10,299 |
| Anna's Hope Village subdistrict..... | 3,222 | (¹) | 1,143 | (¹) |
| Christiansted town (pt.)..... | 10 | (¹) | 2 | (¹) |
| Christiansted subdistrict..... | 3,359 | (¹) | 1,489 | (¹) |
| Christiansted town (pt.)..... | 2,846 | (²) | 1,244 | (²) |
| East End subdistrict..... | 1,644 | (¹) | 984 | (¹) |
| Frederiksted subdistrict..... | 3,636 | (¹) | 1,347 | (¹) |
| Frederiksted town..... | 1,054 | 1,531 | 564 | (²) |
| Northcentral subdistrict..... | 5,763 | (¹) | 1,795 | (¹) |
| Northwest subdistrict..... | 5,745 | (¹) | 1,750 | (¹) |
| Sion Farm subdistrict..... | 12,538 | (¹) | 4,276 | (¹) |
| Christiansted town (pt.)..... | 0 | (²) | 0 | (²) |
| Southcentral subdistrict..... | 6,090 | (¹) | 1,903 | (¹) |
| Southwest subdistrict..... | 7,016 | (¹) | 2,109 | (¹) |
| St. John Island..... | 2,360 | 1,729 | 1,070 | 680 |
| Central subdistrict..... | 246 | (¹) | 157 | (¹) |
| Coral Bay subdistrict..... | 252 | (¹) | 125 | (¹) |
| Cruz Bay subdistrict..... | 1,820 | (¹) | 764 | (¹) |
| East End subdistrict..... | 42 | (¹) | 24 | (¹) |
| St. Thomas Island..... | 44,218 | 28,960 | 15,549 | 9,835 |
| Charlotte Amalie subdistrict..... | 19,207 | (¹) | 6,710 | (¹) |
| Charlotte Amalie town (pt.)..... | 11,585 | (NA) | 4,274 | (²) |
| East End subdistrict..... | 4,661 | (¹) | 2,217 | (¹) |
| Northside subdistrict..... | 5,724 | (¹) | 2,415 | (¹) |
| Charlotte Amalie town (pt.)..... | 171 | (²) | 52 | (²) |
| Southside subdistrict..... | 4,450 | (¹) | 1,481 | (¹) |

TABLE 1. POPULATION AND HOUSING UNIT COUNTS FOR THE VIRGIN ISLANDS BY ISLANDS AND CENSUS SUBDISTRICT: 1980 AND 1970—Continued

[Counts relate to areas as delineated at each census]

| | Population | | Housing units | |
|-------------------------------|-----------------------|------------------|-----------------------|------------------|
| | 1980 (preliminary) | 1970 | 1980 (preliminary) | 1970 |
| Tutu subdistrict..... | 8,952 | (¹) | 2,239 | (¹) |
| Water Island subdistrict..... | 151 | (¹) | 133 | (¹) |
| West End subdistrict..... | 1,073 | (¹) | 354 | (¹) |

¹ Not applicable.

² Not available.

TABLE 2. POPULATION AND HOUSING UNIT COUNTS FOR PLACES: 1980 AND 1970

[Counts relate to places as delineated at each census]

| Places | Islands | Population | | Housing units | |
|----------------------------|-----------------|-----------------------|--------|-----------------------|------------------|
| | | 1980 (preliminary) | 1970 | 1980 (preliminary) | 1970 |
| Charlotte Amalie town..... | St. Thomas..... | 11,756 | 12,220 | 4,326 | 3,976 |
| Christiansted town..... | St. Croix..... | 2,856 | 3,020 | 1,246 | 1,008 |
| Frederiksted town..... | St. Croix..... | 1,054 | 1,531 | 564 | (¹) |

¹ Not available.

Note.—Census designated places (CDP's) are excluded from this tabulation. They will be shown in the PHC80-V and appropriate final reports.

Mr. MAZZOLI. Certainly anything that the gentlemen at the table can provide will be appreciated.

Governor LUIS. I would like to add that some permanent residents might migrate to the United States, but the great majority already had roots in the Virgin Islands.

The migration would be minimal.

Mr. LUNGREN. Could you tell me what is the population of the Virgin Islands? I know the census hasn't been completed, but approximately?

Governor LUIS. The latest census shows 100,000.

Mr. LUNGREN. So we are talking about a 10-percent impact in terms of this legislation?

Governor LUIS. That is correct.

Mr. LUNGREN. The legislation—

Governor LUIS. Of which most are already there.

Mr. MAZZOLI. Would they have been counted already?

Governor LUIS. Yes; they are counted in the figures.

Mr. LUNGREN. So, we are talking about one-tenth of the population?

Governor LUIS. It's about 2,700 in addition to the 100,000. That would be the impact, the immediate impact.

Mr. DE LUGO. I think when the Governor refers to the 2,672, those are the children outside that would come in.

Mr. LUNGREN. Let me ask you this. We have an opinion from the Congressional Research Service on the constitutionality of the restrictions on the fourth and fifth preferences.

We all know how difficult it is to take bets on what the Supreme Court will do these days. If we accept the fact that the Supreme Court may strike down such a restriction placed on just one part of

our citizenry, with regard to the fourth and fifth preferences, will there still be this unanimous support for this bill?

In other words, if you eliminate that part of the bill that restricts the availability of visas for fourth and fifth preference relatives of individuals directly affected by the bill—

Mr. DE LUGO. I understand. The fourth and fifth preference section is the heart and guts of this bill. You take that section out of this bill, and the whole thing comes apart.

That was what gave the security to those who are resident of the Virgin Islands that there will not be a second wave or a massive influx.

Mr. LUNGREN. I take it you are suggesting that we ought to really focus on the constitutionality of this if we were to proceed along with consideration of this bill so that we could make a reasoned judgment, in fact, as to the constitutionality?

Mr. DE LUGO. Well, let me read to you, if I may, from the analysis to that point. The report discusses congressional power to regulate the entry of aliens.

Judicial reluctance to review statutory grounds for excluding aliens has been extreme, and cases have described legislative power in the field in most expansive terms. No successful challenge has ever been made to any congressional determination of which aliens may enter the United States.

The findings of this study go on to state:

Indeed, examination of pertinent authority leaves some doubt as to whether the Judiciary will review an exercise of the power to exclude aliens, a power emerging from the nature of sovereignty itself, independent from any constitutional grant of authority.

So, I think you can't get much stronger than that. Again, I will come back to say that if we are correct, this is very good news, I believe, for your committee on account of the larger problems you will be handling.

Mr. LUNGREN. My initial reaction is I feel that the Government of the United States has that power, but I don't want to dismiss the constitutional question because I think it's something we have to focus on here. That's why I am interested in your belief that the provisions restriction visa's for fourth and fifth preference relatives is the crux of the bill.

Mr. MAZZOLI. The gentleman's time has expired. We may have time for a second round of questions for 2 minutes each. I would like to take advantage of that.

I believe the vote in the legislature was 9 to 0. I believe there are 15 members of the legislature. Is there some reason why the 6 members didn't vote?

Senator SPRAUVE. I don't recall the circumstances. I think it was an unusual meeting when a number of people were off island. It wasn't a question of abstention or anything like that.

Mr. MAZZOLI. You anticipated my next question.

Senator SPRAUVE. Can I just say something?

Mr. MAZZOLI. Certainly.

Senator SPRAUVE. I understand the importance of the question of fourth and fifth preference and the question of whether this committee would want to engage in an act of futility if there are going to be constitutional problems.

But I do feel that the mood of the people of the Virgin Islands is such that if it became a question of having to do without the protection of that fourth and fifth preference, elimination of those rights, I have a feeling that politically, we could deal with it.

You understand what I'm saying, sir? I am married to somebody from other than the Virgin Islands. If you went down to that same vicinity of which I am a member, I doubt that you would find half of us who are not in some way so interrelated with people from the other islands that we would not be ready to stretch our resources in terms of dealing with the lack of that type of protection.

So I would not want this committee to decide, well, because of a legal interpretation on the constitutionality and so on and so forth, there is no point in going ahead with this bill.

If it comes to that, I would hope we could have more conferences and we can keep moving forward. But I think the people are really tired and they want to see a humanitarian effort extended.

I would hope you will keep that in mind.

Mr. MAZZOLI. That's a very important statement that you made. We will keep that in mind. This committee is certainly disposed to deal with the issue. I think it's a very important problem.

For the remainder of my time, I would like to ask Senator Lawaetz a question.

You made a statement which I think was earlier alluded to by your colleague that the other islands of the Caribbean look to the U.S. Virgin Islands to exhibit the kind of human rights and civil rights positions for which the United States stands.

If they don't see those stands in the U.S. Virgin Islands, then they say, "Well, perhaps we misunderstood the attitude of the United States." Then we lose some of the moral persuasion on some of the governments and people in the Caribbean.

May I ask you to address that general topic? If the committee wanted to move forward, do you think this would help President Reagan in trying to do something which we understand needs to be done in this entire region?

Senator LAWÆTZ. There are two aspects I would like to emphasize.

One, the population of the Virgin Islands is highly interrelated with the population of the neighboring islands. Therefore, you have a very open and close communication and, in fact, travel of relatives, and visits, and so on, between the Virgin Islands and the neighboring West Indian Islands.

Now, you appreciate, then, that the West Indians, large numbers of them, are familiar with the Virgin Islands. They either have relatives living there, communicating there, or visiting there.

That is why I made the statement that when they think of the United States, they think first of that part of the United States with which they are familiar, and that is the Virgin Islands.

Now, Someone has a cousin who is an H-2, in the Virgin Islands and has been an H-2 for 20 years, and he hears of the problems that the cousin is having. What is going to be his conclusion?

The other thing that I wish to state, in spite of these relationships and so on, and as Delegate de Lugo pointed out, the reason why this got support was the general feeling that the proposed bill does restrict another large influx of migrants.

Many of our schools are still in double session and our children are getting an inferior education because of the strains we have from past migrations. And it is important to us that we do not open the gate to another large wave, when we are having so much trouble providing the services to those who have come in.

Mr. MAZZOLI. My time has expired for the second round.

The gentleman from New York, you may have 2 minutes for any further questions.

Mr. FISH. Thank you, Mr. Chairman.

My colleague from California asked about the disposition of your panel towards this legislation in the event the Supreme Court invalidates the provisions restricting visas for certain relatives.

What would be the disposition of the panel if this committee were to delete these provisions?

Governor LUIS. I would hate to leave without recommending a solution to the problem. Of course, a solution will have to be checked out.

My point earlier was that the Immigration and Nationality Act provides that the spouses or married sons or daughters of parents could come into the Virgin Islands. There is a procedure. This bill restricts that.

If that becomes a problem, and—it could be possible that the provisions under the Immigration and Nationality Act could sort of be phased in, taking into consideration the unique position of the Virgin Islands.

Then I don't think you would have a problem. Of course, this has to be researched by the legal minds. But this is something I am proposing as an alternative because I would hate to see that after all these years, this effort to resolve this problem would go down the drain just because of a constitutional question.

Mr. FISH. I understand that, Governor. How many persons do you anticipate would qualify for immigrant visas if the barrier contained in section 2(c)(3) were deleted?

Mr. DE LUGO. No, Ham, there is no way of telling that. That's exactly why we have not been able to solve this problem up to this date. I don't believe there is anyone who in good conscience could come before this committee and give you an accurate assessment.

The mere fact that we don't know generates great fear in the Virgin Islands. I would say that in recent years there has been a general feeling that we have got to help those who are in the territory.

That has existed in recent years. But nothing has been done because of the fear of what will happen by helping those who are here. No one can tell this committee how large the impact could be without those barriers.

Mr. MAZZOLI. I'm sorry. The gentleman's time has expired.

The gentleman from Texas has 2 minutes.

Mr. HALL. Yes. I have a speech outline here that has not been presented yet, but I would like to ask about this family that has been brought up in the testimony of Mabel King, which has not been presented.

But it speaks of the Joseph family as a typical case.

Mr. MAZZOLI. This is the statement to be given by our last panel.

Mr. HALL. Like most of these, there are citizen children and noncitizen children. It says Mr. Joseph has been bonded by the Governor since 1961, has lived in the Virgin Islands with his wife and four noncitizen children and one citizen son, plus two citizen grandchildren.

All of the noncitizen members of the family filed for adjustment through preference in March 1978. In March of this same year, 1978, Mr. Joseph's mother died and he and his eldest daughter, Janet, went to Antigua for the funeral.

When they returned to the Virgin Islands, 1 week later, they were paroled in to wait for the final adjudication of the petition they had filed the previous month.

Time passed. In the meantime, the girl who had gone to her grandmother's funeral turned 21. Two weeks after her birthday, she received a letter from the Immigration Service informing that she could no longer adjust on the same petition with the rest of her family due to the fact that she had become 21 years of age.

And, because she had attended the funeral in March, she was now excludable from the United States. Now, I don't understand that. How will this bill affect that situation? That's No. 1.

No. 2, if a person is bonded into the Virgin Islands, under the present situation, the present setup, and say they are bonded in there from this place where the grandmother died, are they precluded from going back there even on a visit?

Senator SPRAUVE. One of the members of the team that came up here from the Alien Interest Group shared with me today something from the U.S. News and World Report dated June 22. It's a report called "The Great American Immigration Nightmare."

If I may read one paragraph on page 28:

Los Angeles office. Linda Chan told a reporter that she had spent 25 hours, 5 hours a day for 5 days, trying to get a single document approved so that she could visit her native Taiwan.

Without a form, she probably would not be readmitted to the United States where she had lived for 16 of her 21 years.

This is precisely what happens. People are afraid to leave, although they have served the U.S. Government, to go to a funeral.

Mr. HALL. If this bill is passed, how would the Joseph family be affected?

Senator SPRAUVE. How would that person be affected? The individual?

Mr. HALL. Yes.

Senator SPRAUVE. The person would become a permanent citizen, which moves her up one rung and she has that protection.

Mr. HALL. Would that person be allowed to visit the place where her grandmother died?

Senator SPRAUVE. Yes, sir.

Mr. HALL. But they can't do it now?

Senator SPRAUVE. They can do it, but they run the risk of not being readmitted.

Mr. MAZZOLI. The gentleman's time has expired. If they become permanent residents, they can come and go in the islands.

The gentleman from California?

Mr. LUNGREN. I notice the bill requires that someone have continuous residence in the Virgin Islands since 1975. The types of breaks in continuous residency could be subject to interpretation.

Mr. DE LUGO. If they are H-2s or H-4s, it means that legally, they are considered to have had continuous residence even though they may have returned to their original island. That's the sort of complex case that happens every day. It's the human tragedy that these people are living under.

I am sure that Legal Services could quote hundreds of those cases that they are talking about. Just in listening to your recitation of that, it would appear that the poor girl went home, turned 21, and so was no longer eligible to be H-4, which is a dependent.

She couldn't get back in the United States because she went to the funeral of her grandmother.

Mr. MAZZOLI. I thank the panel very much, and we thank you for your time.

The next panel would be the Government panel: Hon. Diego Asencio, the Assistant Secretary for Consular Affairs from the State Department; Mr. Andrew Carmichael, Associate Commissioner for Examinations at the Justice Department; accompanied by Paul Schmidt, the Deputy General Counsel at the Department of Justice.

Also, we have David Williams, the Administrator of the U.S. Employment Services, Department of Labor; and Billy Lee Hart, the Acting Deputy Assistant Secretary for Territories and International Affairs, Department of the Interior.

Gentlemen, arrange yourselves, and we will be right back.

[Recess.]

Mr. MAZZOLI. The subcommittee will come to order.

We welcome our panel headed by Hon. Diego Asencio. Gentlemen, you know the constraints on our time. All of your prepared statements will be made a part of the record.

TESTIMONY OF DIEGO C. ASENSIO, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, DEPARTMENT OF STATE; ANDREW CARMICHAEL, ASSOCIATE COMMISSIONER, EXAMINATIONS, IMMIGRATION AND NATURALIZATION SERVICE, ACCOMPANIED BY PAUL SCHMIDT, DEPUTY GENERAL COUNSEL, IMMIGRATION AND NATURALIZATION SERVICE; DAVID O. WILLIAMS, ADMINISTRATOR, U.S. EMPLOYMENT SERVICE, DEPARTMENT OF LABOR; BILLY LEE HART, ACTING DEPUTY ASSISTANT SECRETARY (OPERATIONS), FOR TERRITORIAL AND INTERNATIONAL AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. ASENSIO. I was going to present my statement for the record and just hit some highlights.

It's the Department of State's view that in general, the provisions of the bill supply the best solution to this knotty problem which has long been a source of concern to the people of the Virgin Islands and the Government of the United States.

The Department of State has some concern with sections 2(c) (2) and (3) because they would at the very least result in increased litigation in connection with the discretionary authority in connection with alleged discrimination.

Our concerns are set forth in more detail in our statement. However, we are very much opposed to section 2(c)(3) because it would create a second-class citizenship.

One final thought on these definitions. If Congress retains the intention to enact denial, action should be taken at the time of the petitioning, not at the time of the visa issuance.

Section 3 is a blanket provision prohibiting the Attorney General from approving any petition filed in the case of the importation of any temporary worker. The Department of State defers to the Departments of Justice and Labor on this provision. This is under section 101(a)(15)(h)(2).

Section 4 establishes an interagency task force on Virgin Islands immigration. Although believing there may be a less expensive solution to the problem posed therein, the Department of State defers in its views to those of the Departments named in that section.

I appreciate this opportunity.

Mr. MAZZOLI. Thank you. I appreciate your brevity.

[The complete statement follows:]

STATEMENT OF AMBASSADOR DIEGO C. ASENCIO, ASSISTANT SECRETARY FOR
CONSULAR AFFAIRS, DEPARTMENT OF STATE

Mr. Chairman, member of the subcommittee, thank you for the opportunity to appear before you today to present the Department's comments on H.R. 3517, and on the situation in the United States Virgin Islands.

The Department of State has been involved in this situation over the years only on a collateral basis, since the so-called "off-island" workers, who have been admitted to the Virgin Islands, have been exempt from the visa requirement. Thus, the process of documenting these workers and of processing their applications for admission and stay in the islands has been handled by the Departments of Justice and Labor without the operational participation of the Department of State. However, the Department has had an interest in the situation because the ability of these workers to continue their employment in the United States Virgin Islands has been of fundamental economic importance for the British, French, and independent islands whence they came. Therefore, any action which would alter the existing state of affairs has implications for these other islands and, thus, implications which concerns us.

These off-island workers have lived and worked in the United States Virgin Islands for years. They have developed enduring economic, social and family ties there, yet under existing immigration law they have no real chance of obtaining legal resident status. It is the Department of State's view that, in general, the provisions of this Bill, H.R. 3527, supply the best solution for this knotty problem which has long been a source of concern for the people and Government of the Virgin Islands and the Government of the United States.

Section 2(a) of the bill provides for the adjustment of status of any alien described in subsection 2(b) of the Bill to that of lawful permanent resident alien if application therefor is made within one year of the bill's enactment, and is otherwise eligible to receive an immigrant visa and (with certain exceptions) is otherwise admissible to the United States for permanent residence, and is physically present in the Virgin Islands of the United States at the time the application is filed.

Section 2(b) applies the benefits noted in Sec. 2(a) to any alien who was inspected and admitted to the Islands as a nonimmigrant alien worker under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (INA) or the spouse or minor child of such worker, and has resided continuously in the Islands since June 30, 1975.

Section 2(c)(1) excludes adjustments under this Bill from the numerical limitations of Section 201(a) and 202 of the INA and forecloses any reduction in the number of aliens who may acquire lawful permanent residence status under the INA by reason of this Bill.

The Department supports these provisions.

Section 2(c)(2) provides the Secretary of State with discretionary authority (after consultation with the Secretary of the Interior and the Governor of the Virgin Islands) to limit the number of immigrant visas that may be issued in any fiscal year to aliens who are beneficiaries of petitions filed by persons who have adjusted status under this bill. Discretionary authority such as this could result in frivolous, but extensive litigation against the Secretary for exercising this discretion in an

allegedly discriminatory manner. The Department therefore cannot support this provision.

Section 2(c)(3) denies (with certain exceptions) an immigrant visa (or adjustment of status to lawful permanent resident) to any alien by virtue of a fourth or fifth preference petition filed by an individual who had his status adjusted under this section. Similar benefits are denied an alien for whom a second preference petition is filed by an individual admitted to the United States as an immigrant on the basis of an immediate relative petition filed by the individual's son or daughter. Who, in turn, had his or her status adjusted under this section. Once again this provision may open the gateway to litigation, particularly by citizens who file fourth or fifth preference petitions, to claim discrimination and a denial of due process under the 14th Amendment to the Constitution. The Department cannot support this provision, which, in its effect, would establish a second-class citizenship.

It should be noted that the provisions of section 2(c)(3) could not become operative for three to five years after the acquisition of lawful permanent resident status.

One final thought on these provisions. If the Congress retains its intention to enact them denial action should be taken at the time of petitioning, not at the time of visa issuance.

Section 2(c)(4) is a technical section relating descriptive terms to specific sections of the INA.

Section 2(D) is a general savings clause.

Section 3 is a blanket provision prohibiting the Attorney General from approving any petition filed in the case of the importation of any temporary worker under section 101(A)(15)(H)(II) of the INA for employment in the U.S. Virgin Islands. The Department of State defers to the Departments of Justice and Labor on this provision.

Section 4 of the Bill establishes an Interagency Task Force on Virgin Islands Immigration. Although believing there may be a less expensive solution to the problem posed therein, the Department of State defers in its views to those of the Departments named in that Section.

Once again, may I express my appreciation for the opportunity, extended to us by the Subcommittee, to present the views of the Department of State.

Thank you, Mr. Chairman and members of the subcommittee.

Mr. MAZZOLI. Those are two bells that rang, which means we have a vote on the floor. Do you think we could in the next 4 or 5 minutes finish with the general statements and then we can come back to the questions?

Mr. Williams?

Mr. WILLIAMS. Thank you very much, Mr. Chairman. Let me limit my comments to the position on the bill, if I might.

Mr. MAZZOLI. Yes.

Mr. WILLIAMS. Turning to the provisions of the bill affecting the Department of Labor, section 2 would authorize the granting of permanent resident alien status to aliens admitted as H-2's or as an H-2 spouse or minor children if they have resided continuously in the Virgin Islands since June 30, 1975.

We believe such an adjustment of status would obviate the need for indefinite special H-2 certification. We further believe that this provision is a fair and equitable solution to this problem of aliens whose status, which as you know and this committee knows, has been in limbo for many years because of the unavailability of preference numbers.

These aliens have established roots in the Virgin Islands and have contributed to its social and economic development. With regard to section 3 on page 5 of the bill, which would terminate the H-2 program for the Virgin Islands, it may be useful to point out that under such an exemption as contemplated by section 3, only aliens with distinguished merit and ability, H-1's and industrial trainees, H-3's, would be available.

Aliens not qualifying as H-1's or H-2's are now admissible, for temporary services or work such as entertainers, if unemployed

persons capable of performing such services cannot be found H-2's, would no longer be admitted to the U.S. Virgin Islands.

The Department takes the position that the resulting effect of this provision would be premature. The Immigration and Nationality Act incorporates territories as States for coverage purposes through the provisions of section 101(a)(36) and (38). As such, the H-2 program is operable in various territories. While we recognize historically the Virgin Islands has had a particular labor force consideration, we do not believe that a special immigration policy as provided by section 3 of the bill should be enacted absent the full consideration of the broader policy question on how territories should be treated under the act.

Section 4 of the bill would establish an interagency task force to analyze the impact on the Government of the Virgin Islands of this legislation. In our view, the purpose of this provision could be accomplished by increased interagency cooperation.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you very much, Mr. Williams.

[The complete statement follows:]

STATEMENT OF DAVID O. WILLIAMS, ADMINISTRATOR, U.S. EMPLOYMENT SERVICE,
U.S. DEPARTMENT OF LABOR

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today to discuss H.R. 3517, the Virgin Islands Nonimmigrant Alien Adjustment Act of 1981. The Department of Labor defers to the other Federal agencies with respect to those provisions of H.R. 3517 that affect their jurisdiction and responsibilities. I shall therefore restrict my comments to those provisions in this bill that relate to the Department of Labor's responsibility for labor certifications of nonimmigrant aliens for temporary services or labor (H-2's) in the U.S. Virgin Islands.

As the Subcommittee is aware, the current H-2 situation in the U.S. Virgin Islands is the result of sui generis conditions that go back many years. Briefly stated, a long history of inter-island travel and labor migration prior to the application and enforcement of U.S. immigration laws, severe labor shortages during World War II, and a postwar U.S. Virgin Islands policy of rapid economic growth, in a time of very low unemployment, combined with a series of changes in U.S. immigration laws to produce a large influx of aliens and an unusual H-2 situation. By 1970, the population of the Virgin Islands (62,468) had almost doubled since 1960, the alien population had more than quadrupled (rising from 3,826 in 1960 to 18,928 by 1970), and foreign workers constituted almost half of the Virgin Islands labor force. Many of these nonimmigrant workers had been employed in the Virgin Islands for a number of years.

In order to ameliorate a situation of deteriorating labor conditions and inadvertent economic dependency on foreign labor, the Department sought to integrate these nonimmigrant workers into the Islands' permanent labor force. During the late 1960s, when changes in the Immigration and Nationality Act increased the number of available immigrant visas, this Department issued permanent labor certifications to H-2 workers employed at prevailing wage rates in permanent jobs in the Virgin Islands economy. A total of 13,466 permanent labor certifications were issued by the end of fiscal year 1969.

The current H-2 situation reflects special procedures set down by the Department in May 1970 to deal with the large number of H-2s for whom permanent labor certifications were granted but immigrant visas were not yet available. To enable these H-2s to remain employed in the Virgin Islands, the Department also issued them indefinite certifications for employment in the Virgin Islands as nonimmigrants. These nonimmigrant workers have also been free to change employers, provided that the new jobs meet prevailing wage rates, and that no more than 60 days have lapsed between Departmental-approved jobs.

During the past decade, the number of nonimmigrant workers in the Virgin Islands has progressively declined, as immigrant visas became available or job opportunities declined. Most labor certification activity has consisted of renewals of nonimmigrant labor certifications of the kind I have previously mentioned—that is, most certifications have been approvals of job changes. For example, by 1977, the

Department's Alien Certification Office in St. Thomas estimated that there were only 6,200 H-2 workers in the Virgin Islands, and an additional 5,600 H-4 spouses and children.

In fiscal year 1980, the Department issued 2,302 labor certifications for employment in the Virgin Islands. Approximately 95 percent were renewals. The remainder were permanent certifications for permanent resident visas or temporary certifications for H-2s admitted for temporary jobs, such as entertainers, with certifications generally issued for 60 days.

Nonimmigrant labor certifications of the group of alien workers who were granted permanent labor certification before 1970 are renewed only if the alien seeks a new job. Because the Virgin Islands program has been a part of our computerized data system for only about two years, cumulative data on labor certifications are available only through a manual check of files. Data from the 1978 INS Annual Report, however, suggest that relatively few aliens remain in nonimmigrant status. Of the 22,449 aliens who reported under the alien address system, 13,353 were immigrants. We understand that about half of the remaining 9,096 are H-2s and H-4s.

Our New York Regional Office estimates that only about 100 certifications have been issued for newly arriving aliens since June 30, 1975. We believe, therefore, that virtually all the H-2s and the H-4s currently residing in the Virgin Islands would be eligible for the benefits provided by the section 2 of H.R. 3517.

I would like to turn to certain provisions of the bill affecting the Department of Labor. Section 2 of H.R. 3517 would authorize the granting of permanent resident alien status to aliens admitted as H-2s or as an H-2 spouse or minor child, if they have resided continuously in the U.S. Virgin Islands since June 30, 1975. Such an adjustment of status would obviate the need for indefinite special H-2 certifications. We believe that this provision is a fair and equitable solution to the problem of aliens whose status has been in limbo for many years because of the unavailability of preference numbers. These aliens have established roots in the Virgin Islands and have contributed to its social and economic development.

Section 3 of the bill would terminate the H-2 program for the Virgin Islands. It may be useful to point out that, under such an exemption as contemplated by section 3, only aliens of distinguished merit and ability (H-1s) and industrial trainees (H-3s) would be admissible for temporary employment in the Virgin Islands. Aliens not qualifying as H-1s or H-3s now admissible for temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found (H-2s), would no longer be admitted in the U.S. Virgin Islands. The Department of Labor believes the resulting effect of this provision would be premature. The Immigration and Nationality Act incorporates territories as "States" for coverage purposes through the provisions of sections 101(a) (36) and (38). As such, the H-2 program is operable in the various territories. While we recognize that historically the Virgin Islands has had particular labor force considerations, we do not believe that a special immigration policy, as provided by section 3 of the bill, should be enacted absent full consideration of the broader policy question of how territories should be treated under the Act.

Section 4 of the bill would establish an Interagency Task Force on Virgin Islands Immigration to analyze the impact on the government of the Virgin Islands of this legislation. In our view, the purposes of this provision could be accomplished by increased interagency cooperation. The Department of Labor would be pleased to provide whatever assistance may be needed which is within its expertise.

This concludes my prepared statement. I would be pleased to answer any questions you may have.

Mr. MAZZOLI. Mr. Hart?

Mr. HART. Thank you very much, Mr. Chairman.

I will dispense with the rest of the niceties of the day. I will give the Department of the Interior's recommendations, if I might.

The Department recommends enactment of section 2 of the bill. This section represents a viable solution to the immigration problem that has long plagued the Virgin Islands. It has an objective mechanism for adjusting the status of the Virgin Islands nonimmigrant workers and their families to permanent resident of the United States.

The Department of the Interior does not recommend enactment of section 3 at this time. We note that the permanent worker program is not needed in the Virgin Islands at this time.

If a shortage of labor should develop in the Virgin Islands, a problem could be met by the importation of the U.S. citizens from Puerto Rico and/or the United States.

Termination of the H-2 program may not be necessary. Notwithstanding the fact that the H-2 program is not being used in the Virgin Islands at present, and the further fact that the Virgin Islands labor needs in the future could probably be met by U.S. resources, we nevertheless recommend that access to the program by the Virgin Islands not be foreclosed.

The program should be kept as a standby alternative should the U.S. labor supply prove insufficient to meet Virgin Islands needs.

While it may be desirable to modify the program, we agree with the Department of Labor that we should not legislate a special policy for the Virgin Islands until consideration of the broader policy question of the treatment of the territories under immigration law is resolved.

As to section 4, the provision for a task force that would assess the impact of this bill on the government of the Virgin Islands, we believe that the government of the Virgin Islands itself is capable of, and should be responsible for, assessing any impact.

We see no need to establish a new task force and spend an additional \$100,000 for this purpose. We recommend, therefore, that section 4 of H.R. 3517 be deleted.

A quick conclusion: We support section 2 of the bill, H.R. 3517, the heart of the bill, because it is the best solution to this persistent immigration problem that we have seen.

Thank you very much.

Mr. MAZZOLI. Thank you very much.

[The complete statement follows:]

STATEMENT OF BILLY LEE HART, ACTING DEPUTY ASSISTANT SECRETARY (OPERATIONS), TERRITORIAL AND INTERNATIONAL AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I am pleased to be here today to express the views of the Department of the Interior on H.R. 3517, a bill that would adjust the status of a number of alien workers who have been long-term residents of the United States Virgin Islands.

THE PROBLEM

In the 1950s and 1960s, a large number of alien workers were imported into the United States Virgin Islands to relieve an acute labor shortage. At that time there was insufficient local labor to fill the jobs created by that era's economic boom. These alien workers entered the Virgin Islands under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act, which allows entry into the United States of nonimmigrant aliens for temporary periods of time to work at temporary jobs. The spouses and minor children of many of these workers entered the Virgin Islands under the so-called H-4 provision. The temporary jobs soon evolved into permanent jobs and the Virgin Islands became the permanent home for these workers and their families.

The alien worker problem in the Virgin Islands did not become acute until the end of the 1960s when the economic boom lost its momentum and periods of recession were experienced. Job competition among alien laborers and with United States citizens intensified. Despite strong ties with the Virgin Islands, many were forced to return to their countries of origin due to lack of work. The insecurity caused by this tenuous status has reputedly made these nonimmigrants, with strong ties in the Virgin Islands, ripe for exploitation.

THE BILL

H.R. 3517 presents a viable solution to this long-standing immigration problem in the Virgin Islands. We recommend enactment of H.R. 3517 with the amendments I will outline shortly.

Section 2 of H.R. 3517 would establish a mechanism whereby the Attorney General may adjust the status of a qualified nonimmigrant alien in the Virgin Islands to that of an alien lawfully admitted for permanent residence in the United States. Section 2 also contains provisions for the potential limitation on the granting of immigrant visas to relatives of an individual who has his status adjusted under H.R. 3517.

Section 3 of H.R. 3517 would repeal applicability of the temporary alien worker program in the Virgin Islands under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act.

Section 4 would establish a task force with an authorization of \$100,000 to examine the impact on the Government of the Virgin Islands of providing health, education, housing, and other social services to individuals who have their status adjusted under section 2 of the bill.

THE INTERIOR RECOMMENDATIONS

The Department of the Interior recommends enactment of section 2. That section with its objective mechanism for adjusting the status of Virgin Islands nonimmigrant alien workers and their families to that of permanent residents of the United States presents a viable solution to the immigration problem that has long plagued the Virgin Islands.

The Department of the Interior does not recommend enactment of section 3 at this time. We note that the temporary worker program is not needed in the Virgin Islands at this time. If, in the future, a shortage of labor should develop in the Virgin Islands, the problem could probably be met by the importation of United States citizens from Puerto Rico or the 50 States. Therefore, assuming the United States labor supply is sufficient, reactivation of the (H)(ii) program for the Virgin Islands may not be necessary.

Notwithstanding the fact that the (H)(ii) program is not being used in the Virgin Islands at present, and the further fact that the Virgin Islands labor needs in the future could probably be met by United States resources, we nevertheless recommend that access to the program by the Virgin Islands not be foreclosed. The program should be kept as a stand-by alternative should the United States labor supply prove insufficient to meet Virgin Islands needs. While it may be desirable to modify the program, we agree with the Department of Labor that we should not legislate a special policy for the Virgin Islands until consideration of the broader policy question of the treatment of the territories under immigration law is resolved.

As to the section 4 provision for a task force that would assess the impact of this bill on the Government of the Virgin Islands, we believe that the Government of the Virgin Islands itself is capable of, and should be responsible for, assessing any impact. We see no need to establish a new task force and spend an additional \$100,000 for this purpose. We recommend, therefore, that section 4 of H.R. 3517 be deleted.

CONCLUSION

We support section 2 of H.R. 3517—the heart of the bill—because it is the best solution to this persistent immigration problem that we have seen. We appreciate the opportunity to present our views on the bill.

Mr. MAZZOLI. Mr. Carmichael?

Mr. CARMICHAEL. Let me ask that our statement be introduced into the record, and summarize by simply saying I share the concerns of Ambassador Asencio in connection with section 2.

Those are outlined in our statement.

Mr. MAZZOLI. Thank you very much.

[The complete statement follows:]

STATEMENT OF ANDREW CARMICHAEL, ASSOCIATE COMMISSIONER, EXAMINATIONS,
IMMIGRATION AND NATURALIZATION SERVICE

Mr. Chairman, members of the committee, I am pleased to be here today to testify on H.R. 3517, a bill to provide for the adjustment of status of certain alien workers who have for some years lived and worked in the United States Virgin Islands.

H.R. 3517 addresses a problem that has its roots in the acute labor shortage in the U.S. Virgin Islands in the 1950's. An economic boom on the islands created thousands of tourist-related and industrial jobs which could not be filled by the local labor market. In 1956, therefore, a temporary worker program was instituted. Initially, only British subjects who resided in the British Virgin Islands could enter under the program, and they could perform only certain kinds of labor. In 1959, the program was expanded to include workers from the British, French, and Netherlands West Indies. By the early 1960's, the program's original geographical and occupational restrictions had been abandoned. By the late 1960's, over 13,000 temporary workers had entered the U.S. Virgin Islands under the program. Nonimmigrants were then estimated to constitute 45 percent of the labor market, and to hold up to 90 percent of the construction jobs and 60 percent of the so-called "service" jobs.

Although these workers entered as nonimmigrants, under a "temporary" worker program, it soon became obvious that they in fact were permanent workers, or at least that their stays in the United States would be of indefinite duration. The Department of Labor recognized this reality in 1970, when it issued a policy statement authorizing these aliens to be indefinitely certified for employment in the U.S. Virgin Islands. However, they continued to be admitted as nonimmigrants.

In the 1970's, the situation in the Virgin Islands began to change. Economic conditions worsened, and for the first time since the institution of the temporary worker program, unemployment became a problem. In response, the Department of Labor in 1973 announced that it would issue no more "H-2" temporary work certifications to persons who had not been previously certified. As a result of this policy, the number of temporary workers in the U.S. Virgin Islands now hovers around 2000.

The problem addressed by H.R. 3517 is how to now handle the temporary workers still in the Virgin Islands. Although, as indicated above, these aliens were technically admitted as temporary workers, in fact their work was usually of a permanent nature, and many of the aliens who would be affected by the bill have now lived in the U.S. Virgin Islands for many years. They have raised their families there, and many have had United States citizen children. They entered to perform labor no one else then on the islands could, or would, perform. Yet their status has always been tenuous; despite their strong ties to the islands, they have had no permanent right to remain there. H.R. 3517 would give some of these workers, and their immediate families, that right.

H.R. 3517 would allow an alien who was admitted to the U.S. Virgin Islands as a temporary worker, and who has resided in those islands continuously since June 30, 1975, to have his status adjusted to that of a lawful permanent resident of the United States, subject to certain conditions. His spouse and minor children could also adjust under the proposed law. The Department views this bill as an appropriate method of regularizing the status of aliens who have made their homes in the United States, and who have over the years made valuable contributions to the economy of the U.S. Virgin Islands.

The burden on the government in processing these adjustments would be manageable. It is estimated that less than 5600 persons would be adjusted under the proposed law, including workers presently in status and their spouses and children, applicants for suspension of deportation, and aliens who have been awaiting visa numbers to adjust their status. Approximately 1850 of those adjusted would be "H-2" workers currently in status, 2000 would be the spouses and children of these workers, 1050 would be former "H-2" workers with pending suspension of deportation applications, and 600 would be former "H-2" workers eligible for adjustment under section 245 of the Act, but awaiting visa numbers.

Processing the adjustment applications would take an additional 10 employees, four CS-11 examiners and six GS-4 clerk-typists. Present INS employees could be detailed to the Virgin Islands for this project. The total cost of the program would be approximately \$100,000, and it would take approximately nine weeks.

As the people who would adjust under the bill have already been living in the U.S. Virgin Islands for some years, the immediate impact on social services provided by the Virgin Islands government should not be great. If these people begin to bring in other relatives, however, the burden on social services may grow.

At the same time H.R. 3517 responds to the needs of persons who previously entered as temporary workers, it also puts an end to a program that is no longer

necessary. Given the present economic climate in the U.S. Virgin Islands, and the continuing presence of individuals willing and able to perform any required labor, we think that statutory termination of the so-called temporary worker program is appropriate.

However, we are concerned that section 3 of the bill goes too far. This section is entitled "Termination of Temporary Worker Program in the Virgin Islands," which would indicate that the section's intent is simply to put an end to the special worker program in the Virgin Islands, through which, in practical effect, aliens coming to work permanently entered on nonimmigrant "H-2" visas. The actual language of the section, however, is so broad that no "H-2" worker could, after enactment, enter the Virgin Islands for employment, even of a truly temporary nature. If this is in fact what is intended by the bill, we think it is ill-advised, as there may be times when bona fide temporary workers legitimately could be needed on the islands. We recommend that section 3 of the bill be changed so that "H-2" workers are not actually banned in the islands, but rather are admitted only in strict accordance with section 101(a) (15) (H) (ii) of the Act—that is, that they be admitted only for work that really is temporary.

We are somewhat concerned about sections 2(b)(2) and 2(b)(3) of H.R. 3517. These provisions of the bill seek to avert an influx into the Virgin Islands of the relatives of those adjusted under the bill. The reasoning behind these provisions is clear. It is feared that if the status of thousands of aliens is adjusted under the proposed law, many thousands more will eventually enter as the relatives of those adjusted. These concerns are especially acute in the U.S. Virgin Islands because of the very small size of the islands (a combined land area of approximately 130 square miles, and an estimated population of less than 100,000), and because schools, hospitals, and other social services are already heavily overburdened.

Despite the rationale for these sections of the bill, the possible constitutional questions raised by it should be considered. These will be discussed in more detail in a formal bill report. I wish to point out to the Committee today, however, that we know of no statutory precedent for conditioning the ability of citizens to bring in relatives upon the place where the citizens live, or the method by which they originally became lawful permanent residents. Moreover, enacting such a law now could set a bad precedent.

We also question the need for these provisions. Many of the persons who would be adjusted under the proposed law come not from independent nations, but from colonies or dependant areas of foreign states, such as the British Virgin Islands. Immigration from any one colony, component or dependent area of a foreign state is strictly limited by the immigration laws to 600 persons a year. Thus, unless this small statutory quota is raised, or the colonies gain their independence, we do not anticipate huge numbers of aliens entering the United States as the relatives of persons adjusted under the bill.

The impact of this bill will also be lessened because most of those adjusted under it will not be eligible for citizenship until five years after adjustment. Some will choose not to seek naturalization after they become eligible. Thus, visa petitions under the fourth and fifth preferences, which can only be filed by citizens, will not begin to be filed until years after enactment of this bill, and even then, their numbers will probably be limited.

In view of the likely judicial challenge to the provisions, and our belief that elimination of the provisions would not have a huge impact on immigration in the U.S. Virgin Islands, we recommend that these provisions be deleted.

Except for the reservations I have expressed regarding certain portions of H.R. 3517, we support the bill, and respectfully urge the distinguished members of the Committee to adopt it. We consider the bill, overall, to be a fair one, and to be a reasoned response to a difficult problem which has long been of great concern to both citizens and aliens in the U.S. Virgin Islands.

Thank you very much for giving me the opportunity to address you on this important matter.

Mr. MAZZOLI. I appreciate your forbearance. We will now vote and will be back momentarily.

Thank you.

[Voting recess.]

Mr. MAZZOLI. With some kind of luck we might be able to get finished with part of our work before another vote, which is pending. We will try to get this out of the way.

My recollection of what the panel said was that there is some concern in the Justice Department with regard to the limit on petitioning rights.

Is that correct?

Mr. CARMICHAEL. Some concern, yes, sir.

Mr. MAZZOLI. Yes. Has there been anything done in the Justice Department with respect to the constitutionality or lack thereof regarding this kind of petition?

Furthermore, is there any precedent for this kind of limitation?

Mr. CARMICHAEL. I'm aware of no precedent, Mr. Chairman, but if you allow, me, I will ask Paul Schmidt to answer the question as to the views of the Office of the General Counsel.

Mr. SCHMIDT. We don't know of any precedent for this particular type of limitation. As was pointed out earlier, there is an argument that can be made based on Congress's broad power to regulate immigration. Congress can do virtually anything.

On the other hand, this is really a situation where we are talking about giving groups of citizens different rights depending upon where in the United States they live, which really has never been something that was done under the immigration law.

Mr. MAZZOLI. Is there any precedent for permitting petitioning rights, but to do so under certain kinds of limited conditions or in certain sorts of monitored or triggered arrangements?

Mr. SCHMIDT. There is certainly precedent for limiting petition rights, but never based on where somebody lives. It's usually based on something that would be common to the whole category of citizens sharing that attribute.

Mr. MAZZOLI. Do you have an example?

Mr. SCHMIDT. For instance, right now Congress has decided that fathers, citizen fathers of illegitimate children can petition for their illegitimate children if they have been legitimated but not if they are illegitimate.

That's been decided. They have decided that there is a distinction between legitimates and illegitimates.

On the other hand, you are saying here that if you live—I suppose an analogy would be if you live in Kentucky, you could file certain petitions, but if you moved to Indiana or Ohio, you can't, which I think is a little bit different issue, and one I think is more difficult.

Mr. MAZZOLI. Maybe you might follow up with written information concerning the Marianas and some of the Trust Territories as to whether or not there is any limitation on what they can do with regard to petitions?

Mr. SCHMIDT. We can give you something on that. (See p. 57.)

Mr. MAZZOLI. That would be very helpful if you could.

Mr. CARMICHAEL. We believe, Mr. Chairman, that Congress could if it wished, strike the fourth or fifth preference from the INA Act anytime, but it would have to be uniform.

But as long as it remains in the act, we strongly believe that—

Mr. MAZZOLI. Just out of curiosity, what are the present visa numbers available for the West Indies?

Is it possible to get numbers? Are there some kinds of limits now?

Mr. CARMICHAEL. There is a limitation, of course. We could furnish that for the record, Mr. Chairman.

[Subsequent to the hearing, the State Department submitted the following data:]

CUT-OFF DATES FOR IMMIGRANT NUMBERS APPLICABLE IN OCTOBER 1981

| Country ¹ | 1 | 2 | 3 | 4 | 5 | 6 | Nonpreference |
|---|--------|--------------------|--------|--------|------------------|--------------------|---------------|
| Barbados (20,000). | C..... | C..... | C..... | C..... | Nov. 1, 1979... | Jan. 1, 1980.... | U. |
| Dominica (20,000). | C..... | C..... | C..... | C..... | do..... | do..... | U. |
| Grenada (20,000). | C..... | C..... | C..... | C..... | do..... | do..... | U. |
| St. Lucia (20,000). | C..... | C..... | C..... | C..... | do..... | do..... | U. |
| St. Vincent and The Grenadines (20,000). | C..... | C..... | C..... | C..... | do..... | do..... | U. |
| Trinidad and Tobago (20,000). | C..... | C..... | C..... | C..... | do..... | do..... | U. |
| Anguilla (600). | C..... | C..... | C..... | C..... | do..... | do..... | U. |
| Antigua (600) ² . | C..... | June 23, 1980. | C..... | C..... | Aug. 9, 1976... | July 17, 1967.. | U. |
| Br. Virgin Is. (600). | C..... | C..... | C..... | C..... | Nov. 1, 1979... | Jan. 1, 1980.... | U. |
| Montserrat (600). | C..... | C..... | C..... | C..... | do..... | do..... | U. |
| St. Christo- pher-Nevis (600) ³ . | C..... | April 21, 1980. | C..... | C..... | April 5, 1976... | June 7, 1967... U. | |

¹ Selected English speaking independent States/dependent areas in the West Indies region (country limitation indicated in parentheses).

² Limitation for Antigua will change to 20,000 on Nov. 1, 1981 when Antigua becomes independent. Area will then no longer be oversubscribed.

³ Oversubscribed dependent area.

Mr. MAZZOLI. The British Virgin Islands would be a source of many of these people who might get visas. Is that correct?

Mr. CARMICHAEL. Yes; that is correct.

Mr. MAZZOLI. With regard to that, are there visa numbers issued for those islands?

Mr. CARMICHAEL. There are, but to be specific, I could not give you the condition of those numbers now, unless I could defer to someone else.

Mr. MAZZOLI. Several of you talked about the H-2 program, and you suggested that the H-2 program ought not to be abolished, but kept as a fallback. I believe Mr. Hart said something about that, and Mr. Williams, too.

Maybe you all could address that point. Is that a fair statement that you think it ought to be kept, even though it's not been used, since 1975?

Mr. WILLIAMS. Mr. Chairman, first of all, let me indicate that since 1975, we looked back in our records at the New York regional office and found only about 100 new certifications. H-2 certifications since 1975.

Mr. MAZZOLI. That's why Congressman de Lugo selected the date, because it substantially was the end of the use of the program.

Mr. WILLIAMS. Yes, sir. The certifications for 1980 fiscal year, I think approximately 95 percent were simply renewals to assist those who are now in the very situation we are dealing with.

There have really been very few. We have taken a position we would like to look at this in terms of our other territories and what the policy should be.

But the numbers themselves have been very, very small. We would like to keep the H-2 option at this time.

Mr. MAZZOLI. You didn't address this point, did you?

Mr. ASECIO. No; I deferred to the Department.

Mr. MAZZOLI. Mr. Hart?

Mr. HART. The Department of Interior agrees with what the gentleman from the Department of Labor stated.

Mr. MAZZOLI. You talked about the task force proposed in the bill, and you said you felt that the task force was unnecessary—that the government of the Virgin Islands could be used. Is that correct?

Mr. HART. Yes.

Mr. MAZZOLI. Would't there be some advantage to having a high-level task force on the whole immigration question?

That gives a stature to it that may not exist currently.

Are you satisfied, though, that with certain strengthening, and with more emphasis the current structure is good enough to do the job?

Mr. HART. I think the Virgin Islands government is competent and has, I think, the resources and the expertise to examine the situation.

Mr. MAZZOLI. Mr. Carmichael, maybe your counsel can address this. I would appreciate something in writing that might address the CRS memo, and your own research on all of the constitutional and legal points raised by the preference limitation.

Mr. SCHMIDT. Certainly.

[Subsequent to the hearing, the Justice Department submitted the following:]

DEPARTMENT OF JUSTICE,
Washington, D.C., July 24, 1981.

THEODORE B. OLSON,
Assistant Attorney General,
Office of Legal Counsel
(Attention of Herman Marcuse).

This is to request a formal legal opinion on the constitutionality of H.R. 3517, a bill "To authorize the granting of permanent resident status to certain nonimmigrant aliens residing in the Virgin Islands of the United States, and for other purposes." Specifically, the constitutionality of sections 2(c)(2) and 2(c)(3) has been called into question. Chairman Mazzoli of the House Subcommittee on Immigration, Refugees, and International Law requested a legal opinion during a hearing held on the bill on June 28, 1981.

It is our view that if H.R. 3517 is enacted as now written, sections 2(c)(2) and 2(c)(3) will be judicially challenged on constitutional grounds. For this and other reasons, we recommended in testimony before Chairman Mazzoli's Subcommittee that these provisions be deleted from the bill. We believe, however, that the provisions would be upheld by the courts.

The sections in question are those which seek to prevent an influx into the U.S. Virgin Islands of relatives of persons adjusted under the proposed law. We know of no similar law which conditions a citizen's ability to bring in alien relatives upon the place where the citizen lives, nor of any law which the limits the ability of

citizens and permanent residents to bring in relatives due to their method of gaining lawful permanent resident status.¹

There has been some attempt to analogize these provisions of the bill to the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America." No provision is made in the Covenant for the admission of relatives as preference immigrants, though "immediate relatives" can be admitted under the Covenant. We do not consider this a precedent for barring the beneficiaries of H.R. 3517 from later bringing in their relatives. The Covenant gives the NMI control over immigration to those islands. The Covenant specifically makes all but a few provisions (including the admission of immediate relatives) of the Immigration and Nationality Act inapplicable to the NMI. H.R. 3517 gives no such control over immigration to the local Virgin Islands government. There, the Immigration and Nationality Act is in full effect. As the U.S. Virgin Islands, unlike the Northern Marianas, is included within the definition of "United States" contained in section 101(a)(38) of the Act, as well as within the definition of "state" contained in 101(a)(36), and as the immigration laws generally do not apply to the NMI under the Covenant, we do not consider the covenant as precedent for what is being attempted by H.R. 3517.

In assessing the constitutional problems with H.R. 3517, the method by which alien relatives enter the United States should be considered. Some people have labored under the misconception that an alien has the right to enter this country as a lawful permanent resident, as long as he establishes that he has certain family ties here. This is not the case. Such an alien has no right whatsoever to enter the United States. The immigration laws provide only that the United States citizen or lawful permanent resident relative may file a visa petition on behalf of an alien relative. Section 204 of the Immigration and Nationality Act, 8 U.S.C. 1154. Moreover, the filing of a visa petition is only the first step in an alien relative's admission to the country. Even if the visa petition is granted, the alien still has no right to have an immigrant visa issued, or to enter the country as an immigrant. See e.g. section 204(f) of the Act. Thus, it is only the citizen or permanent resident relatives who have the ability to bring in the alien relatives, and their ability in this regard is strictly limited by the dictates of Congress. There is no right even for citizens and residents to bring in relatives; they have only the statutory privilege of doing so, as Congress sees fit to grant it. See e.g. *Fiallo v. Bell*, 430 U.S. 787 (1977).

With these considerations in mind, we turn to the arguments which we expect to be made against these sections of H.R. 3517. It may be argued, for example, that the bill discriminates against citizens who initially gained their resident status through the bill by limiting or denying their ability to bring in their alien relatives. Except for the fact that a naturalized citizen cannot become President (see Article II, section 1 of the Constitution), the rights of native born citizens are coextensive with those of naturalized citizens, and Congress may not abridge those rights. See *Schneider v. Rusk*, 377 U.S. 163 (1964). It follows that the rights of all naturalized citizens are coextensive, regardless of how they initially gained their lawful permanent residence. This argument could be rebutted by returning to the idea that their is no constitutional right, of citizens or anyone else, to have one's family brought to the United States.

Citizens² do, however, a constitutional right to travel within the United States (see e.g. *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Agee v. Vance*, — U.S. —, No. 80-83 (June 29, 1981)), and it might be said that sections 2(c)(2) and 2(c)(3) of this bill abridge that right. Section 2(c)(3)(A)(i) presents the most obvious question in this area, since it specifically conditions the availability of an immigration benefit on a citizen's moving out of the U.S. Virgin Islands. Insofar as all of sections 2(c)(2) and 2(c)(3) of the bill in effect punish a person for living in the Virgin Islands and obtaining permanent residence through special legislation relating to the islands, all of those sections could be said to violate the right to travel.

The right to travel is closely tied to the right of persons to abide in any state, a right which has long been recognized by the Supreme Court. See *Takahashi v. Fish*

¹ The only provision we are aware of which limits the ability of a class of lawful permanent residents to bring in relatives is contained in a regulation. 8 C.F.R. 211.5(c) States that alien commuters (who are lawful permanent residents) may not qualify for immigration benefits on behalf of relatives until they take up residence in the United States. See also *Matter of Diaz*, 15 I&N Dec. 483 (BIA 1975). Analogy to this regulation is not really helpful, however, as the lawful residents (and citizens) affected by this bill's restrictions live in the United States (see section 101(a)(??) of the act, 8 U.S.C. 1101(a)(38)), not in a foreign country, as ????? do.

² Although some cases speak of the right of citizens to travel, the Supreme Court has in fact reserved the question of whether the right to travel also applies to aliens. See *Mathews v. Diaz*, 426 U.S. 67 (1976); *Graham v. Richardson*, 403 U.S. 365 (1971). This question is not crucial to analysis of H.R. 3517, since the bill's restrictions on relative petitions apply to citizen petitioners as well as to lawful permanent resident petitioners.

and Game Commission, 334 U.S. 410 (1948); *Truax v. Raich*, 239 U.S. 33 (1915). This bill could be said to have the effect of abrogating both the rights, since persons living in the Virgin Islands do not enjoy the same ability to bring their relatives into the country that they would have if they lived elsewhere. This line of thinking, however, eventually leads back also to the idea that there is no constitutional right to immigration benefits.

It is worth noting that the Supreme Court has upheld a federal law which imposes residency requirements on aliens. Specifically, the statute mandated that an alien could not become eligible for a federal medical insurance program unless he had five years continuous residence in the United States, and had been admitted as a lawful permanent resident. *Mathews v. Diaz*, 462 U.S. 67 (1976). The case stands for the proposition that federal laws may, in effect, discriminate among aliens, allowing benefits to some and not to others, depending on the duration and character of their residence in this country. *Mathews v. Diaz* could be cited as support for sections 2(c)(2) and 2(c)(3) of this bill. However, the case is clearly distinguishable in that the law at issue in *Mathews v. Diaz* made no distinctions among aliens based on the state (or U.S. territory) where they resided. Given the right to travel and to live in any state, the discrimination based on place of residence within the United States which is contained in H.R. 3517 may be harder to defend than the discrimination allowed in *Mathews v. Diaz*.

Nevertheless, any possible constitutional attack on the proposed legislation must be viewed in light of Congress' plenary power to control the admission of aliens into the United States. No successful challenge to this legislative power has ever been made. See 1 Gordon & Rosenfield, *Immigration Law and Procedure*, 2-16, 2-17, 2-18 (1980). If there are any limits at all on Congress' power to legislate in this area, no court has yet defined them. Laws affecting immigration have withstood court challenge even where, as with this bill, they adversely affected United States citizens. See *Fiallo v. Bell*, supra; *Kleindienst v. Mandel*, 408 U.S. 753 (1972). As stated by the Supreme Court on more than one occasion, "over no conceivable subject is the legislative power more complete than it is over the admission of aliens." *Fiallo v. Bell*, supra, at 792, and cases cited therein. It is our view that, in light of these precedents, this legislation could withstand constitutional challenge.

We hope that these comments will be of help to you in preparing your opinion on the constitutionality of H.R. 3517.

[Memorandum]

DEPARTMENT OF JUSTICE,
Washington, D.C., August 24, 1981.

To: David Crosland, General Counsel, Immigration and Naturalization Service.

From: Larry L. Simms, Deputy Assistant Attorney General, Office of Legal Counsel.

Subject: Constitutionality of H.R. 3517, 97th Cong. 1st Sess., To authorize the granting of permanent residence status to certain nonimmigrant aliens residing in the Virgin Islands of the United States, and for other purposes.

This responds to Mr. Schmidt's request of July 24, 1981, for our opinion regarding the constitutionality of H.R. 3517, particularly §§ 2(c) (2) & (3). H.R. 3517 would provide generally that certain persons who have been admitted to the Virgin Islands as nonimmigrant alien workers under § 101(a)(15)(H)(ii) of the Immigration and Nationality Act (Act) (H-2 workers), may have their status adjusted to that of aliens lawfully admitted for permanent residence. The bill, would, as will be explained, infra, restrict the ability of its beneficiaries to facilitate the immigration of some of their relatives under the preference provisions of § 203 of the Act. Your inquiry is addressed to the constitutionality of those restrictions. It is our conclusion that the courts would uphold the constitutionality of §§ 2(c) (2) & (3).

I.

The background of the bill, as explained in the testimony of INS Associate Commissioner Carmichael before the House Judiciary Committee, is as follows: in the 1950's and 1960's during an acute labor shortage in the Virgin Islands, over 13,000 alien workers entered the Virgin Islands under the H-2 program. Most of those workers left the Virgin Islands during the 1970's, but about 2000 of them and their dependents remain there. Although they were admitted as temporary workers, their work has been of a permanent nature and over the years they have made valuable contributions to the economy of the Virgin Islands. Moreover, having lived in the United States for long periods, they have raised families there and those of their children who were born on United States soil are American citizens. The bill would permit the adjustment of the status of those H-2 workers who have resided

continuously in the Virgin Islands for the past six years and of their spouses and foreign born children to that of aliens lawfully admitted for permanent residence.

It is estimated that the enactment of the bill would result in the adjustment of the status of less than 5600 persons who have resided in the Virgin Islands for considerable periods of time. Hence, the change of their status from nonimmigrant to lawfully admitted for permanent residence, as such, is not likely to create any appreciable ethnic or social dislocation, even in a small island community such as the Virgin Islands, which has slightly less than 100,000 inhabitants.

In the past, legislation such as H.R. 3517 has apparently been impeded by the prospect that after the status of the H-2 workers has been adjusted to that of aliens lawfully admitted for permanent residence, their frequently large families living abroad could enter the United States under the immediate relative provisions of § 201¹ or under the preference provisions of § 203 of the Act,² and settle in the same area in which their sponsors live. Moreover, once a relative is lawfully admitted for permanent residence, he in turn may file second preference petitions for his spouse and unmarried sons and daughters. This secondary, and potentially snowballing, effect of the regularization of the status of H-2 workers could result in the influx of a substantial number of aliens into the Virgin Islands—possibly greater than the number of those whose status would be adjusted under the bill, and in contrast to the adjustment of status of the long time resident H-2 workers and their families, is likely to create serious ethnic, social, and financial problems.³

According to the opening clause of § 2(c)(2), the bill would seek "to alleviate the possible adverse impact of immigration into the Virgin Islands of the United States by relatives of aliens who have had their status adjusted" under the legislation by curtailing the availability of the preference provisions of § 203 to the relatives of those who had their status adjusted under the provisions of the bill.

Section 2(c)(2) would authorize the Secretary of State to curtail the number of visas available to those for whom second preference petitions⁴ are filed by an alien whose status has been adjusted pursuant to the provisions of the bill. Section 2(c)(3)(A) would provide that no alien may receive an immigrant visa by virtue of a fourth or fifth preference petition⁵ filed by a citizen of the United States who had his status adjusted under the bill, unless the citizen is physically present and has resided continuously for at least two years in a State, or unless the Attorney General makes a finding of exceptional and extremely unusual hardship. Finally, the complex language of § 2(c)(3)(B) provides in effect that if a person whose status was adjusted under the bill secures after his naturalization the admission of a parent as an immediate relative under § 201, that parent cannot file a second preference petition for an unmarried son or daughter.⁶

In evaluating the constitutionality of these restrictions on the preference provisions of § 203, we begin with two propositions: first, no alien has the constitutional right to enter the United States, *Kleindienst v. Mandel*, 408 U.S. 753, 762, (1972), and second, no citizen has the constitutional right to have his relatives admitted to the United States. *Fiallo v. Bell*, 430 U.S. 787 (1977).

While the ability to facilitate the immigration of close relatives is not a constitutional right, it constitutes a valuable statutory benefit.⁷ This raises the question whether the ability of citizens to file fourth and fifth preference petitions, generally available to all citizens, may be denied to some citizens because their status has been adjusted under the provisions of this bill,⁸ and whether the ability to file

¹ Immediate relatives, i.e., minor unmarried children, parents, and spouses of citizens of the United States may be admitted to the United States without being counted against the numerical limitations.

² The preference provisions pertinent to this memorandum are second preference: the spouse and unmarried sons and daughters of aliens lawfully admitted for permanent residence; fourth preference: married sons and daughters of citizens of the United States; and fifth preference: brothers and sisters of citizens of the United States.

³ This problem is one which has prevented the adjustment of the status of H-2 workers on Guam, and resulted in the postponement of the extension of the Act to the Northern Mariana Islands. See, *Covenant with the Northern Mariana Islands* § 503(a), 48 U.S.C. § 1681, note.

⁴ I.e., spouses and unmarried sons and daughters of aliens lawfully admitted for permanent residence.

⁵ I.e., married sons and daughters and brothers and sisters of citizens of the United States.

⁶ The apparent reason for this provision is that unmarried sons or daughters would be the brothers or sisters of the citizen who, under § 2(c)(3)(A), cannot be admitted under a fourth or fifth preference petition unless the citizen has resided in a State for at least 2 years.

⁷ The distinction between rights and privileges has been rejected by the Court. See *Graham v. Richardson* 403 U.S. 365, 374 (1971); *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

⁸ The bill does not deprive a citizen absolutely of his ability to file fourth and fifth preferences petitions, but conditions it on his giving up his residence in the Virgin Islands. The right to maintain the residence of his choice appears to be the logical correlative of the basic constitutional freedom to travel. *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 254 (1974).

second preference petitions, generally available to all aliens lawfully admitted for permanent residence, may be curtailed to some aliens because they or their sponsors had their status adjusted under the provisions of the bill. While the Fifth Amendment to the Constitution does not contain an express Equal Protection Clause, it does forbid discrimination which amounts to a denial of due process. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

The application of the equal protection principle to aliens, even those lawfully admitted for permanent residence, is subject to the special powers of Congress over immigration and naturalization. The Court observed in *Mathews v. Diaz*, 426 U.S. 67, 80 (1976), that under those powers "Congress regularly makes rules that would be unacceptable if applied to citizens" and upheld legislation which discriminated against aliens and among different classes of aliens lawfully admitted for permanent residence. *Ibid.* The Court also expressed its "special reluctance" to question the exercise of congressional judgment in this field. *Id.* at 84. We believe that § 2(c)(2) and § 2(c)(3)(B), relating to second preference petitions filed by aliens lawfully admitted for permanent residence, would be held constitutional under the Court's analysis because Congress' attempt to deal with this particular situation in the manner contemplated is surely reasonable.

Section 2(c)(3)(A), which relates to fourth and fifth preference petitions filed by citizens of the United States, raises constitutional issues of a different nature. *Schneider v. Rusk*, 377 U.S. 163, 165-66 (1964), reaffirmed the basic rule, going back to *Osborn v. Bank of the United States*, 9 Wheat (22 U.S.) 738, 827 (1824), and embodied in the Fourteenth Amendment, that, with the exception to the qualification for the Presidency, the rights of naturalized citizens are of the same dignity and coextensive with those of native born citizens. Basically, every naturalized citizen has the same stature under our Constitution as every other citizen, whether native born or naturalized.

Equal protection claims, however, are subject to the power of Congress to make differentiations for justifiable reasons, to further important governmental objectives, or to advance legitimate state interests. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Schneider v. Rusk*, *supra*, at 168; *Craig v. Boren*, 429 U.S. 190, 197 (1976); *Califano v. Webster*, 430 U.S. 313, 316-17 (1977); *Duke Power Co. v. Carolina Env. Study Group*, 438 U.S. 59, 84-94 (1979); *Vance v. Bradley*, 440 U.S. 93, 97 (1979). The purpose of the discriminatory provision of § 2(c)(3)(A) is, as explained above, to prevent a substantial surge of immigration into the Virgin Islands some five to seven years after the enactment of the bill when the H-2 workers, whose status would be adjusted under the bill, will have become naturalized citizens and will be able to file fourth and fifth preference petitions. In view of the general reluctance of the courts to reexamine congressional policies in the field immigration, *Galvan v. Press*, 347 U.S. 522, 531-32 (1954); *Fiallo v. Bell*, 430 U.S. 787, 792-796 (1977), we believe the courts should and would recognize the Congressional determination that § 2(c)(3)(A) serves an important governmental purpose,⁹ and, on that basis, reject any constitutional challenge to that provision.

In addition, even constitutional rights of citizens must yield where they clash with the paramount power of Congress over the admission and exclusion of aliens. *Kleindienst v. Mandel*, *supra* at 762, held that the power of Congress to deny admission to what it considers to be undesirable aliens prevails over a citizen's First Amendment right to "receive information and ideas". *Fiallo v. Bell*, *supra* comes even closer to the issue here involved. In that case fathers of illegitimate children claimed that the provisions of the Act pursuant to which they were precluded from obtaining the entry of their illegitimate children as immediate relatives under § 201(a) of the Act, while mothers were permitted to do so, constituted an unjustifiable discrimination based on the sex of the citizen parent. The Court held, in effect, that this argument was irrelevant as against the plenary powers of Congress to define the classes of aliens who may be admitted. 430 U.S. at 792, 794, 795 & n.6.

Based on the foregoing analysis, we are satisfied that the courts will uphold the constitutionality of § 2(c)(3)(A).

Mr. MAZZOLI. Mr. Ambassador, you did address the petition limitation a bit.

⁹ It should be noted that in contrast to § 2(c)(2), § 2(c)(3)(A) does not contain a recital of the purpose it is designed to accomplish. Nor are we aware of any congressional finding to the effect that the filing of fourth and fifth preference petitions by citizens whose status has been adjusted by the bill is more likely to have an adverse impact on the Virgin Islands than the filing of like petitions by other citizens of the United States. We strongly recommend the inclusion of such findings in the legislation or its legislative history in order to lessen the prospect that judicial inquiry into the legitimacy of the governmental purpose served by the bill would lead to a finding of unconstitutionality.

Mr. ASECIO. I think I deferred to Justice and Labor on that.

Mr. MAZZOLI. You mentioned in your prepared statement the power of the Secretary of State to limit second preference visas. So the issue does address your department to the extent that it addresses the Secretary of State?

Mr. ASECIO. Yes.

Mr. MAZZOLI. Would you have any thought on how long a person would have to live in the United States in order that the second preference limitation would not apply to him? Are you aware of any precedent for this idea where you are limited if you live in the Virgin Islands, but if you came to the mainland, which it would be your right to do as a resident alien, at that point you would no longer have this limitation?

Mr. ASECIO. There is no precedent to our knowledge, Mr. Chairman.

Mr. MAZZOLI. I apologize for the helter-skelter nature of this hearing because of the floor votes.

Counsel?

Mr. LEVINSON. Ambassador Asencio, I believe you indicated in your written testimony that you could not support the limitations on the availability of visas to beneficiaries of fourth and fifth preference petitions and you referred to this provision as creating a second-class citizenship?

Mr. ASECIO. That is correct.

Mr. LEVINSON. Would you expand on that and would you also indicate what your view would be on what effect, if any, this provision might have on our foreign relations, particularly in the Caribbean area?

Mr. ASECIO. Certainly. There is no question in my mind that the constitutional issue is probably moot as to whether the provision would stand or not because of the obvious reluctance of the Court to decide on immigration issues.

But it would seem to me that even under these circumstances, to have a body of citizens who do not have the same privilege as all other citizens have, by definition is a second-class status.

And from a foreign policy standpoint also there would be no question that the British Virgin Islanders could consider this discriminatory against them.

Mr. LEVINSON. Thank you. I have one more question. I think historically, residents of American territories have been subject to a whole series of disabilities that have not been imposed on American citizens living in the States.

In fact, merely by the act of moving to a State, a lot of these disabilities could be removed. The disabilities may relate to the right to vote or to exercise other rights that have been regarded at least by residents of States—as very fundamental.

In view of the disabilities that American citizens residing in territories historically have experienced might an argument not be fashioned that this statute—by according or denying the benefits of fourth and fifth preference petition based on the distinction between American citizens residing in a territory and Americans citizens residing in a State—meets constitutional standards; that you don't have to treat citizens in the territories the way you treat citizens who are living in the States?

Mr. ASENCIO. I think a distinction has to be made there. I believe what you are referring to is those special situations where you are dealing with nationals who are not necessarily citizens, and who therefore have a different status, that is, people from former trust territories and that sort of thing.

I don't think there is a precedent that I'm aware of for someone who does have citizenship status per se to have a different status than any other citizen.

Mr. LEVINSON. Just by way of example, I grew up in what was the territory of Hawaii. Although my parents were citizens of the United States and had been citizens since birth, they could not vote for President.

American citizens in the territory of Hawaii couldn't even vote for Governor. Our judges were appointed by the President of the United States.

Mr. ASENCIO. I see what you mean.

Mr. LEVINSON. If you can impose these kinds of disabilities on residents of territories, how is this bill's limitation on fourth and fifth preference benefits distinguishable from a constitutional standpoint?

Mr. ASENCIO. As I said, I think the constitutional issue is moot. I think the delegation from the Virgin Islands is probably correct in the sense that it was not necessarily to be challenged on constitutional issues.

So, I think if the committee decides to go that particular route, I'm not sure that would be a principal concern.

My view would be whether establishing a different level of privilege is right.

Mr. LEVINSON. Thank you very much.

Mr. MAZZOLI. Thank you. I thank you very much.

I believe that the State senators who testified earlier suggested that would establish in the Caribbean nations an awakening on our part.

There would be a positive foreign policy factor that would result then from the bill that is before us. Obviously, there might be some negatives, but there are also positives that witnesses have outlined in their prior statements that would result from a bill like this.

I think that answers all the questions that I would have at this point. Again, the bill that is on the floor of the House right now is from our committee. That is why my colleagues have been detained. They have amendments that they have to be there for.

So they may themselves have questions which they will submit in writing. But we do thank you for your time and trouble, and look forward to seeing you, Mr. Ambassador, next week.

Thank you.

I understand that a former Governor of the Virgin Islands, Gov. Ralph Paiewonsky, is here. Please stand.

We welcome you. [Applause.]

Mr. MAZZOLI. Thank you for attending today.

I would now like to call forward the community representatives panel and to thank Mr. George Goodwin, who is the president of the Caribbean Development Coalition; Father David Henry, president of the Concerned West Indians and president also of the St. Croix Christian Council and Governor of the St. Croix Clergy Meet-

ing, Mr. Wilmoth Nicholls, chairman of the Alien Emphasis Advisory Council; and Rev. Dr. Peter J. Stephen, Alien Emphasis Advisory Council. Congressman delay will make formal introductions.

Mr. DE LUGO. Thank you very much, Mr. Chairman. As I indicated earlier, the delegation of leaders from the Alien community requested that I introduce them to the committee. I would like to introduce them at this time. I will go from my right.

Immediately next to me is the Reverend Dr. Peter J. Stephen of St. Croix, a member of the Alien Emphasis Advisory Council. Next to Dr. Stephen is Wilmoth Nicholls. Mr. Nicholls is from St. Thomas, and is chairman of the Alien Emphasis Advisory Council.

Next to Mr. Nicholls is Father Henry, Rev. David N. Henry of St. Croix. Father Henry is the president of the St. Croix Christian Council and he is president of the Concerned West Indians. Next to Father Henry is George Goodwin. Mr. Goodwin is from St. Thomas and he is the president of the Caribbean Development Coalition. And also in the audience accompanying the delegation here today to witness the hearings are Mr. Leslie Richardson and Mr. Kenneth Hobson. Mr. Richardson is from the St. Kitts Mutual Benevolent Society and resides in St. Thomas. Kenneth Hobson is the president of the Northeast Business Benevolent Society of St. Thomas. All of the witnesses have prepared statements, but we would like to just submit their statements as prepared as a part of the record because I felt that it would be extremely beneficial to all of us if we heard of their own experiences.

All of them originally came to the Virgin Islands as aliens. The Virgin Islands is now their home. I think that they can really educate us and help us in finding a solution to this problem.

Mr. MAZZOLI. That's an interesting suggestion, Mr. de Lugo. Without objection, the gentlemen's and the reverends' statements will made a part of the record.

We would certainly entertain any comments they would have which deal with personal experiences. I think in the words of State Senator Sprauve, who was before us earlier today, the persons who have come to the three principal islands have enriched them by their own backgrounds and by their own talents and initiative.

I am sure the gentlemen with you today and the gentlemen in the audience have enriched the Virgin Islands by their presence. We thank them and welcome.

[The complete statements follow:]

STATEMENT OF GEORGE E. GOODWIN, PRESIDENT, CARIBBEAN DEVELOPMENT COALITION

Honorable Chairman Mr. Mazzoli and other honorable members of the House Judiciary Subcommittee on Immigration, Refugees and International Law. We, the members of the various organizations in the United States Virgin Islands namely, (1) The Nevis Benevolent Society, (2) The St. Kitts-Nevis Mutual Improvement Society, (3) The Dominicans for Progress Association and (4) The Caribbean Development Coalition (formerly known as the Alien Interest Movement) are bona fide organizations of bonded workers, permanent residence aliens, and Naturalized Citizens, residing in the United States Virgin Islands. Our organizations represent the said groups and their families in many areas of concern, not the least of which has been pertaining to Immigration and Naturalization. Many of our members stand to be affected by the outcome of your deliberations, so we therefore humbly submit our position for your consideration.

We the members of the Organizations do strongly declare our support for Bill HR#3517 "The Nonimmigration Alien Adjustment Act of 1981." We congratulate Governor Juan Luis, Our Washington Representative Ron de Lugo, and the mem-

bers of the Fourteenth Legislature of the Virgin Islands on their sponsorship and endorsement of the Bill, and express our sincere gratitude for their efforts on our behalf.

Bill HR#3517 addresses itself to the adjustment of status of all H-2 workers, and H-4 spouses and children of those workers currently residing in the United States Virgin Islands, and it further specifies that, the benefits provided, apply to any alien, who was inspected and admitted to the Virgin Islands of the United States either as a nonimmigrant alien worker, or as a spouse or minor child of such worker, and has resided continuously in the Virgin Islands of the United States since June 30, 1975.

Passage of this Bill will assist greatly in eradicating the social stigma, it will remove the shackles of bondage that presently afflicts us, it will remove the wall that divides the people of the Virgin Islands, it will provide a humane solution, and will bring an end to the plight and discriminatory acts on our people.

Opponents of previous efforts to adjust the status of H-2 workers and their families in the Virgin Islands always complained that future immigrants will flock to the Virgin Islands. They predicted that within a decade a wave of new immigrants would arrive when the adjusted alien become citizens and could then petition for their relatives. This Bill HR#3517 accommodates that concern. Clearly the vast majority of the people who will be affected, are already in the Virgin Islands. The Governor has pegged that total at 8,429. The following is a breakdown of the classification and number of Alien presently residing in the Virgin Islands as per information of March 12, 1981, given by Kenneth B. Walker, officer in charge of INS.

STATEMENT OF FATHER DAVID W. HENRY, PRESIDENT, ST. CROIX CHRISTIAN
COUNCIL

I am Father David Winston Henry, a Priest of the Episcopal Church in the Diocese of the Virgin Islands and a Secondary School Teacher in Social Studies in the Department of Education, St. Croix.

I address this hearing on Bill H.R. 3517—Virgin Islands Non-Immigrant Alien Adjustment Act of 1981. I represent myself and several bodies in which I hold top positions—Chairman of the Episcopal Diocese of the Virgin Islands, Committee on Concerned Bonded Workers in the Virgin Islands, President of the Wrenford Henry Foundation for the Lawful and Humane Treatment of Caribbean Immigrants in the United States Virgin Islands, Inc., President of the Concerned West Indian Movement, Inc., President of the St. Croix Christian Council, and Convenor of the St. Croix Clergy Meetings.

Because of the serious inequities and at times down right inhumane treatment over the years meted out to Caribbean H-2 and their H-4 spouses and children in the Virgin Islands, we have from time to time discussed, heard from Federal and local government officials, offered suggestions to bring out a just and adequate solution to the problem, brought about by immigration policies specifically affecting the Virgin Islands.

We addressed more directly the policy which placed some immigrants in the position of being physically present from six (6) to thirty (30) years, have contributed in every way to the progress and development of the Virgin Islands, have been of good character, and moreover, the system provides for other migrants of lesser years be granted permanent residence and ultimately citizenship. This has caused serious frustration to the people of the Virgin Islands.

We need not to go back to the years when these same people were denied even the basic social services of education for their children, health, and housing, among others. My first experience of the alien situation dates back to 1965 when as a seminarian I did my summer work on St. Croix. The conditions under which the bonded workers worked and lived were so horrible that I prayed to God not to return me to work, but to do ministry on St. Croix. I ran away from the area just as the Biblical character Jonah resisted going to Nineveh. . . . But just as God brought Jonah again to Nineveh so He returned me to St. Croix to do ministry in 1968. Since then I have been working untiringly to bring relief.

The Episcopal Diocese of the Virgin Islands through its former Bishop, Cedric E. Mills and its annual convention has negotiated for changes that will give relief to the bonded workers. But more recently the Convention of 1980 passed a resolution—"Whereas, we recognize the injustices to alien workers who have contributed to the improvement of these islands, and who have not been granted permanent resident status, some for over 30 years, we the members of this Diocesan Convention petition the Diocese to make an evaluation of the problems involved and petition for the proper legislation or procedure to grant the right of permanent resident status, and then report to the standing committee within three months. . . ." "The Diocese

strongly support Bill H.R. 3517 which will grant permanent resident status to the aliens of long concern to the Diocese.

St. Croix Christian Council and the Clergy of St. Croix have demonstrated deep concern for the aliens whom this Bill H.R. 3517 addresses. The Christian Council letter of December 5, 1979 to V.I. Congressman Melvin H. Evans, V.I. Governor, Juan Luis, Washington Coordinator, Julio Brady, and V.I. President of the Legislature Elmo Roebuck called on these officials to do everything in their power to bring about permanent resident status for the aliens this Bill H.R. 3517 addresses. It states in part, "Many of these, our Christian brothers and sisters have been physically in the U.S. Virgin Islands for periods of from five (5) to twenty-two (22) years; but their status, under present U.S. Immigration and Naturalization Laws and regulations, remains uncertain." I suggested that "if (the problem) is explored in the light of the fact that this U.S. Caribbean Territory has provided the same hope, the realization of economic dreams and aspirations for the people of this region, as Continental United States has traditionally provided for "the huddled masses yearning to be free" from the entire world, some remedy might be obtained." Both the Christian Council and the Clergy of St. Croix in separate documents at the V.I. Legislature Public Hearing on Bill H.R. 3517 supported the Bill. Some seventeen (17) clergymen signed the document saying, "We, the undersigned pastors of St. Croix, USVI support the full effects of the Virgin Islands Nonimmigrant Alien Adjustment Act of 1981 and desire to see it passed in its entirety with the full support of the Legislature of the Virgin Islands."

The Concerned West Indian Movement, Inc., another civic body, has been providing services to bonded workers for many years. These include advocacy in close relation to Legal Services, assistance to completing numerous and difficult questionnaires and other immigration forms, and of counseling and advice. This body advocates and promotes conditions for providing a solution to the bonded worker problem in every way. We, therefore, strongly advocate and support the Bill H.R. 3517—Virgin Islands Nonimmigrant Alien Adjustment Act of 1981."

The Wrenford Henry Foundation for the Lawful and Humane Treatment of Caribbean Immigrants in the United States Virgin Islands, Inc. was founded in the early 70's because of the inhumane treatment that most bonded workers met at the hands of employer and government officials.

We, therefore, strongly urged the passing of Bill H.R. 3517. In supporting Bill H.R. 3517 we know that we express not only the hope of our organizations but the aliens in question and the majority of the people of the Virgin Islands.

STATEMENT OF WILMOTH B. NICHOLLS, CHAIRMAN, ALIEN EMPHASIS ADVISORY COUNCIL

I appreciate this opportunity to appear before this august body—the House Judiciary Subcommittee on Immigration, Refugees and International Law.

Instead of dealing with the ideological approach, or the philosophical debates which could be developed as to why testimony should be given in favor of bill H.R.-3517, I have chosen to present my case basically on facts. These basic facts would be covered under four (4) sub-heads viz.

1. My personal experience from the nonimmigrant status to that of citizen.
2. The alien emphasis program—its development and service.
3. A brief review of Alexander Hamilton's biography.
4. The need for a closer relationship between the United States and Caribbean people.

It is important that I take this approach because, as Chairman of the Advisory Council of the Alien Emphasis Program I have encountered many situations involving the coexistence of native Virgin Islanders and nonimmigrant.

Another reason for this approach is the well known principle of the process of lawmaking—that people who are elected to serve in any legislative capacity must relate the laws that they make to real life whether those laws affect a small municipality, a territory, a State, or a Nation.

Very often if the facts are clearly stated, or if they are well known, the task of providing adequate legislation becomes less arduous, and can be handled with dispatch.

There is an urgency for a quick analysis of the plight of the nonimmigrants who live in the Virgin Islands—an analysis which determines United States policy in the Caribbean, and analysis which, when concluded, should expose the United States policy on human rights. If the passage of Bill H.R. 3517 is stalled in any way, the consequence could be that the enemies of the principle of human rights would have a lot to goggle about.

Perhaps some of you honorable members of this body have helped to draft previous legislation that sought to give aliens permanent status in the Virgin Islands. On the other hand, it is possible that many of you are not yet fully aware of the difficult circumstances under which human beings like yourselves have survived, but nevertheless survived honorably. To give you a more vivid picture of the point I want to make, I deal now with:

1. A BRIEF REVIEW OF MY EXPERIENCE AS A RESIDENT OF THE VIRGIN ISLANDS

My first visit to the United States brought me to St. Thomas, enroute to New York. While landing at the Harry S. Truman Airport I became fascinated with the beauty of the island's unique topography. I wanted to stay on the island from that moment. Unfortunately, however, I was in transit. But I had enough time to gaze at the hills, and to vow that one day I would return.

The opportunity to return came in 1963 while visiting on vacation. On arrival I presented my passport which was issued as "Official" because of the fact that it was issued while I was an elected member of the Legislature of St. Kitts-Nevis and Anguilla, and it had not yet expired.

The Immigration and Naturalization officer looked at the passport and then asked me, "how much time are you seeking?" My reply was "six months, sir." The officer then took another look at me and wrote in a period of three months without any explanation.

Having been a lawmaker I simply returned the look of concern and said, thank you. After one month, I had become familiar with certain procedures. One day, while visiting some stores, I was approached by a businessman who said he had heard of my visit and that he wanted me to stay in the country—if I so desired, and work for him.

I reminded the gentleman that it was unlawful to work if one was just a visitor. He then explained the process of "bonding" and convinced me that it would be quite legal. By following instructions, I became a "bonded" alien and started to work. The job description was explained. To earn this "status" I had to give up my right to remain as a visitor, leave the island of St. Thomas temporarily, and return to receive my "bond"—(a bond is a temporary permit to work).

As my knowledge and my background were discovered, I was asked to assist in the management of the business; but whenever I asked for an increase in wages it was denied on the grounds that I can only earn what the "bond" stipulates. Finally, my pride could not permit me to tolerate this and I resigned. This meant that I had to report immediately to the Immigration Office. They heard my case and advised me how to proceed. I left the island but was allowed to return again as a visitor.

Another employer learned that I had some skills and requested a meeting. Again I was bonded. The prospects for earning more was made available after I explained my plight with the first employer. However, it was not long after that I learned that a citizen who was doing the same job as I was doing, was earning twice as much as I was. Although the humiliation was almost unbearable I held out until I received my permanent status. Immediately after that the same employer made me an offer equivalent to what the citizen was receiving, but my duties remained the same.

This personal drama has been simplified to give this body a view of what a nonimmigrant must endure in order to remain in the United States Virgin Islands. Those nonimmigrants who had little or no knowledge of what their rights were, have been subjected to much meaner treatment. Yet through perseverance, and hope, they have continued to hold on.

2. THE ALIEN EMPHASIS PROGRAM—ITS DEVELOPMENT AND PERFORMANCE

Because of the injustice, and the exploitation which many nonimmigrant experienced, several leaders emerged in an effort to organize and to defend their rights. The organizations did what they could, but the future became dimmer—

1. Advocating and following up with adjustment of status for non-citizens residing in the Virgin Islands.
2. Assessing social, economic, and cultural needs of the community, while providing the guidelines and assistance needed.

The total number of participants served was 15,000. This means that one person may have received some sort of service more than once during the program year.

It is quite evident that nonimmigrants respond to organizations which operate in the interest of the community. There are several nonimmigrants who are sufficiently affluent to refuse the service of the program. Those are the ones who through the years have invested their savings and have become an economic force to reckon with in the Virgin Islands. Yet, as law abiding citizens and big taxpayers, they are kept constantly in a state of limbo because of their nonimmigrant status.

The table below shows the age range of participants in the program and their relative earnings.

AGE DISTRIBUTION

| Range | Total | Male | Amount | Female | Amount |
|------------------|-------|-------|---------|--------|---------|
| 5 to 15..... | 450 | 213 | | 237 | |
| 16 to 20..... | 425 | 135 | \$5,350 | 290 | \$3,930 |
| 21 to 25..... | 520 | 316 | 5,350 | 204 | 3,930 |
| 26 to 30..... | 1,245 | 500 | 5,850 | 745 | 3,930 |
| 31 to 35..... | 2,050 | 930 | 7,770 | 1,120 | 3,390 |
| 36 to 40..... | 2,220 | 1,490 | 7,770 | 730 | 5,350 |
| 41 to 45..... | 3,125 | 2,086 | 7,770 | 1,039 | 5,350 |
| 46 to 50..... | 2,215 | 1,279 | 9,360 | 936 | 7,770 |
| 51 to 55..... | 2,120 | 1,190 | 9,360 | 930 | 7,770 |
| 56 to 60..... | 390 | 218 | 7,770 | 172 | 3,930 |
| 61 to 65..... | 341 | 170 | 7,770 | 171 | 5,350 |
| 66 to 70..... | 192 | 93 | 7,770 | 99 | 5,850 |
| 71 and over..... | 198 | 105 | 7,770 | 93 | 5,850 |

¹ Relative earnings and over.

The report also shows the number of "Inhouse" and "Outhouse" referrals made.

3. A BRIEF REVIEW OF THE GREAT AMERICAN STATESMAN ALEXANDER HAMILTON

West Indians have always spoken with pride of Alexander Hamilton because as a West Indian himself, born in the British Island of Nevis, he gave America a legacy in the fiscal system which has helped to preserve the greatness of the greatest nation on earth.

Alexander Hamilton was connected to the Virgin Islands in that he grew up on St. Croix, worked for Mr. Nicholas Cruger—an owner of a store. He then left St. Croix and went to the United States and studied law. He became the first Secretary of the Treasury and gave to the United States the most practical and effective national system of finance. He assisted in preparing the Constitution of the United States which all loyal Americans think is one of the greatest instruments of justice—when practiced.

If there is one other good reason why Bill H.R. to 3517 should be passed quickly, that reason would be to show the people of the West Indies that America really appreciated that great West Indian.

4. THE NEED FOR A CLOSER RELATIONSHIP BETWEEN THE UNITED STATES AND THE CARIBBEAN

Proponents of Bill H.R.-3517 see no problem in the passage of the Bill, simply because West Indians are now learning to live together, especially since the threat of Communism in the Caribbean has opened our eyes to the good things about America.

Never before has there been more harmony in the Virgin Islands between natives and nonimmigrants. Never before has there been complete agreement between the Congressman, the Governor, and the Legislature on any issue. It is as though we have all become of age overnight.

Recent developments in St. Lucia, Grenada, and until recently Jamaica, indicate the Caribbean needs to be protected. Our only sure protection comes from the United States.

But the United States policy in the Caribbean must start in its own backyard. How can any of the developing nations have faith in the U.S. if you gentlemen and ladies would say to us today: "We are willing to help you but we do not want your citizens living in our territories."

The people whom Bill H.R.-3517 seek to help are already living in the Virgin Islands—some of them as many as 28 years. They are law abiding, hardworking, and in many cases more loyal to the United States than many citizens. I implore you gentlemen to have this Bill passed expeditiously. By doing so you would be saying to Caribbean leaders: "America is ready and willing to stand by you." That is what most leaders in the Caribbean want to know.

That is why Congressman de Lugo, Governor Juan Luis, and members of the 14th Legislature have put their full support behind this effort. That is why some alien

groups in the Virgin Islands, and even some national Alien groups are here today to show their support for the Bill. The rest is now left to you gentleman and ladies.

I thank you.

STATEMENT OF REV. DR. PETER J. STEPHEN, MEMBER, ALIEN EMPHASIS ADVISORY COUNCIL

Mr. Chairman, ladies and gentlemen of the subcommittee. I count this a great privilege to appear before you to speak on behalf of approximately 8,500 men, women, and children now living in the Virgin Islands whose status at this point in time is inflexible and whose future lies in your hands. My first association with these people began in 1970. Two years earlier, my family and I arrived on the island of St. Croix to take up permanent residence having being transferred from my native country Guyana, to the pastoral charge of the African Methodist Episcopal Church in Christiansted, St. Croix, United States Virgin Islands.

I was sitting very comfortably in the Church office one day when a small group of people approached me, requesting that I head up an organization known at that time as the United Alien Association. The group explained their plight, the frustrations and gross inequities encountered through the bonding system. They further explained how some employers were exploiting them, paying wages far below the minimum required by law.

In short, their desire was to have this organization look into these illegal practices, share information and educate them with regards to the proper adjustments, of their status and to a community that they have adopted.

For the next few years constant contact with these people increased. I became the liaison between the alien community and the local Immigration and Naturalization Service. Added to this, many aliens are members of my church, and as as their pastor, they would often seek my advice in immigration matters. With this background I stand before you this morning being duly qualified to speak on their behalf.

Mr. Chairman, as a christian minister, I consider bonding a form of slavery. When people's movements become restricted, it is time for us as a Nation to ask serious questions about the laws we have made which prohibits freedom of movement. Mr. Chairman, many of these people resided on the islands for as long as 25 years, and by virtue of their residency in the Virgin Islands, they have now become alien to their country of origin. The complexity of the problem of the alien in the Virgin Islands are different to those aliens from Haiti, Cuba, or elsewhere.

SOCIAL STATUS

During the years 1972-73, I was employed with the Department of Housing and Urban Development in the capacity of Housing Code Inspector on the island of St. Croix. Part of my duties involved the inspection of housing and to see that occupants adhere to the housing code.

Very often, persons who were renting houses will come to the office and lodge complaints about their landlords not repairing or improving the houses in which they live and that they had to pay high rents.

On visiting the site to investigate the complaints as well as to inspect the premises of the tenants, I often found many of the buildings in a state of disrepair, and the tenants for the most part were aliens. The point I am trying to make here, Mr. Chairman, is the fact that many aliens were subjected to poor housing, low social conditions through no fault of their own. The alien status subjected him to these conditions because he/she could not qualify for better housing and even when the law was revised a few years ago granting aliens the right to apply for housing in the government housing projects, he was seemingly discriminated against.

In other words the laws are on the books but his status is the greatest stumbling block between himself and humane social conditions.

ECONOMIC DEVELOPMENT

Contrary to any argument which may indicate additional financial burdens to the economy of the Virgin Islands, these people have contributed to the economic development of our American paradise. When visitors come to the Virgin Islands, they are often impressed by the beautiful homes, shopping centers, churches, and other buildings of importance. These are the finished products of skillful hands but cheap labor, the sweat and toil of the men and women who are now seeking to be part of the legal family of the Virgin Islands.

In conclusion, Mr. Chairman, to quote from the book which has guided this nation down through the centuries, the Bible. Philipians 4-8. Finally, brethren, whatso-

ever things are true, whatsoever things are honest, whatsoever things are just, whatsoever things are pure, whatsoever things are lovely, whatsoever things are of good report; if there be any virtue, and if there be any praise, think on these things.

I now call upon this august body of dedicated and learned men and women to look sympathetically with me in making the future of 8,500 human beings more tolerable. Their sons and daughters born on American soil will be our nation's most valued assets. Let us remove the shackles of slavery from our democracy. Finally, Mr. Chairman, here are five points for your observation and consideration:

1. The aliens were invited to the V.I. to strengthen the skilled labor force.
2. Their length of residency in the V.I. makes them alien to their country of origin.
3. Their contribution to the economic development by means of taxes, etc.
4. It is inhuman and unchristian to restrict freedom of movement
5. Their presence does not add to the social or economic ills of the Virgin Islands.

TESTIMONY OF GEORGE GOODWIN, PRESIDENT, CARIBBEAN DEVELOPMENT COALITION; FATHER DAVID N. HENRY, PRESIDENT, CONCERNED WEST INDIANS, PRESIDENT, ST. CROIX INDIAN COUNCIL; CHAIRMAN, ALIEN COMMISSION OF THE EPISCOPAL DIOCESE OF THE VIRGIN ISLANDS; CONVENOR OF THE ST. CROIX CLERGY MEETING; WILMOTH NICHOLLS, CHAIRMAN, ALIEN EMPHASIS ADVISORY COUNCIL; AND THE REVEREND PETER J. STEPHEN, ALIEN EMPHASIS ADVISORY COUNCIL

Mr. NICHOLLS. Mr. Chairman, honorable gentlemen, it is indeed a pleasure to be here today to testify before this honorable body. In addition to my written statement, I have been requested by the St. Nevis Mutual Improvement Society of St. Thomas, whose president is here today, and the Pioneer Benevolent Association of St. John, and also the Nevis National Council of the United States, who has one of their executive members here, I have been asked by these associations, and organizations to say that they are in full support of bill H.R. 3517.

Mr. MAZZOLI. The record will so reflect their support. Thank you.

Mr. NICHOLLS. I have developed a format for my presentation and I chose four subjects. The first one is my experience from nonimmigrant status to that of citizen. Two, the alien emphasis program, its development and its services, a brief review of the biography of Alexander Hamilton, and need for a closer relationship between the United States and the Caribbean people.

Going into my personal experience, I would like to state that when I came to the Virgin Islands, it was on a visit. I was finally sought and bonded as a nonimmigrant. In order to become a bonded worker in the Virgin Islands, I had to relinquish my visitor status.

I found that the bonding system provided a means of making a livelihood in the Virgin Islands which, of course, in those days was considered a privilege, because of the economic status of the British islands. But I did find that the system offered some measure of discrimination, discrimination in that the full capacity of one's capabilities was taken advantage of.

I came to the Virgin Islands with a background as a legislator, having served 5 years in the legislative council of St. Kitts. Because of this background there were certain jobs I could not get. I had to take jobs that were available within the bonding system.

I found also that in order to get the job, I had to accept a wage which was offered, in order to be bonded. During those years as a

bonded alien, I was used in different capacities because of my capabilities. But I found that my capabilities were not paid for simply because the bond stated that my salary was x amount of dollars. On one occasion when I found that I was given more responsibilities than my bond said, I asked for increase in wages and I was told that it could not be done, because the system of bonding did not permit me to be so compensated.

This sort of thing went on until at one stage I resigned from my then job and I went—I had to leave the island because I had given up my bond. I had to go to Immigration and Naturalization in order to adjust my status and then I had to leave the island and come again.

When I came again I was again offered another position. The position was more attractive. I took it. During that time I found out that people who are permanent residents and who are citizens were doing the same type of work that I was doing, but yet they were making much more money than I was making. There was no way I could argue about it, because the bonding system kept me bound in that.

Mr. MAZZOLI. When did you come to the Virgin Islands, Mr. Nicholls.

Mr. NICHOLLS. In 1963.

Mr. MAZZOLI. And then you left and came back a second time?

Mr. NICHOLLS. I left in 1963, came back in, in a matter of days, went back out, got my bond and so forth.

Mr. MAZZOLI. And then came back in?

Mr. NICHOLLS. And then came back in. And that is a bird's eye picture of what a nonimmigrant must endure. Now, I consider myself capable of fighting my own case. It was under these circumstances that I began to wonder what is happening to the guy who is not capable of representing himself? We found out down the line that there there were some "advantage" being taken of those people.

Mr. MAZZOLI. Is that what the Alien Emphasis Advisory Council was formed to represent, people who cannot represent themselves?

Mr. NICHOLLS. The council came into being because of knowledge of people from alien background that there needed to be some kind of organization to help speak out for our people and so forth. In the sixties, Governor Paiewonsky became very much aware of the situation and he moved during his administration to have this status changed. He was successful in getting some people who were there to just move away from the American Virgin Islands, go over to the British Virgin Islands and return and have their status adjusted. He did quite a lot for the aliens.

Then, there are other alien organizations, who through the years attempted to get legislation of this nature. Then, during Governor King's administration, he invented what we call now the alien emphasis program, which was to give a sort of community status to the alien where they would be sort of included in the community under the community action agency, which is an agency that is federally funded. Under those situations, the alien was looked after under an organized body which had a representative, and their papers, their documents, were all prepared under that organization

without having to pay out of their pockets. It is a great relief and the organization—alien emphasis program still exists.

Mr. MAZZOLI. It still exists today?

Mr. NICHOLLS. Yes. West Indians on the board like to associate themselves with Alexander Hamilton. Most people know that Alexander Hamilton was a West Indian. He was born on the island of Nevis. As we all know, he came to the United States after being in the Virgin Islands for some period working in a store there. He got his education, or part of his education here in the United States and he offered the United States one of the best fiscal systems which make the United States one of the greatest nations in the world. We feel that this bill if it is passed, would be attributable to Alexander Hamilton. We so request that it be passed in honor of Alexander Hamilton.

There is a need, a very great need, for close relationship between the United States and the Caribbean. Many of us have knowledge of the different social systems of governments springing up in the Caribbean. Many of you know that it is a threat to the Caribbean. The Virgin Islands is very cosmopolitan. It has people from nearly all the other islands. We feel that once this bill is passed, that it is going to bring the United States very much closer to the other islands of the Caribbean and help to stabilize the government of those islands. We also feel that if it is not passed, that it would be a bad reflection on the U.S. policy in the Caribbean. It would also threaten the U.S. policy on human rights. We honestly feel that you gentlemen should take a serious look at this bill, whether or not it has shortcomings, but have it pass and have it pass expeditiously.

Mr. MAZZOLI. Thank you very much, Mr. Nicholls, for a very full statement. Those two bells that just rang signify another vote for which I will have to leave. Let me turn to Dr. Stephens to make any statements that might amplify Mr. Nicholls', because you both represent the alien emphasis program. I will have to vote, and then I will come back.

Reverend STEPHEN. As Mr. Nicholls already stated, giving a bird's-eye view of the whole situation with regard to the alien in the U.S. Virgin Islands. Mr. Chairman, my association with the aliens in the U.S. Virgin Islands began in 1970.

Two years earlier than that, my family and I arrived in the Virgin Islands, to take up the pastoral charge of the Bethel A.M.E. church. In that capacity, I worked very closely with people who have suffered through the bonding system; then a few years ago, I became involved in the alien emphasis program, as a member of the advisory council. There my help was needed and I gave my attention and assistance to people who were suffering. This suffering is still going on today. I believe that this bill, H.R. 3517 is humane. I believe that this bill addresses the problem. I further believe that this bill answers the many complex problems that have been posed.

It is my conviction and it is the conviction of my colleagues that with your cooperation, and the cooperation of members of this committee should this bill be passed, it will mean removing the shackles which I consider bonding is, the shackles of slavery from the people. Through our democracy and through our present

system it will give these people freedom of movement, liberty and the opportunity to move. I'm not going to take up much more time but if there are any questions you care to address to me on this particular issue, I will be happy to answer that.

Mr. MAZZOLI. Thank you very much. I appreciate your being brief because of our time constraints. Perhaps Father Henry and Mr. Goodwin can use together 5 to 7 minutes. That would still give me a chance to get over for my vote, and we could come back to ask questions. Father?

Father HENRY. I am president of the Wrenford Henry Foundation for the Humane Treatment of Immigrants in the U.S. Virgin Islands. I would like to bring this out for the very name of the foundation will tell you that we saw in the Virgin Islands the very horrible and disgusting treatment of bonded workers that we moved to form such an association so as to give help and aid and counsel to persons so treated.

I came across a situation of bonded workers in the Virgin Islands in 1965 and when I was taken around to see the conditions, and having heard from persons of the life that these people live, and not because they want to live such a life.

For example, an AME minister took me around and he told me, "Father, I asked these people how they live, 12 people to a house, husbands and wives, how they have kind of a sexual relationship and they told me when one begins, all go along." I thought that was a horrible situation. Their housing was terrible; boxes, drums, and everything. When it rains, the rain comes in. When the sun shines, everything like that comes in. I pray God not to bring me to the Virgin Islands to work. But it so happened that He carried me back in 1968. From that time, I have been working to better the conditions.

I have seen in this bill that this bill will eradicate the treatment, inhumane treatment and so better the condition of these bonded workers. I strongly in the name of myself and all these ones that I represent that this bill should be passed.

Mr. MAZZOLI. Thank you very much. That's a very eloquent statement. Mr. Goodwin, if you could proceed, and then I will come back.

Mr. GOODWIN. Gentlemen, from what transpired here today you have seen unanimous support from the entire Virgin Islands, the governor, the delegate, the senators. If this position was left to the people of the Virgin Islands, it would have already been passed. Unfortunately, it cannot be done in the Virgin Islands. So we are here today as a group to publicly support the bill and ask for your help in doing so. We as an organization which was formed back in 1968, due to the plight of the alien situation in the Virgin Islands, have worked diligently over the years trying to get legislation for just this problem. Unfortunately, to date, there has been nothing and the problem gets worse everyday. We are here pleading with you and other members of the Congress to pass this legislation. We are willing to make the compromises that are in the bill and we are ready to move now.

Mr. MAZZOLI. One of which would be probably the preference limitation, which is the biggest compromise of all.

Mr. GOODWIN. Right.

Mr. MAZZOLI. Well, let me thank you very much. I will now go and vote, then come back and ask a few questions. If you will be patient, I will be back very soon. Thank you.

[Voting recess.]

Mr. MAZZOLI. Thank you very much, gentlemen. I appreciate your statements. I would like to ask a couple of questions.

I think that your statements earlier were very influential and very eloquent, speaking to the problems which aliens experience, particularly in the case of the bonding experience. It does harken back, as the Reverend said, to slavery of sorts and involuntary servitude.

I am not that familiar with the Caribbean, but I would assume that each island has unique characteristics which distinguish them from each other.

Is there any kind of discrimination which clearly exists as a result of where you are from, rather than the fact that you are under the H-2 program, and therefore, could persist even after this bill is enacted granting resident status?

Mr. NICHOLLS. Most nonimmigrants in the Virgin Islands are identified as nonimmigrants.

People do not necessarily refer to you as an Antiguan, or a Kittian. Of course, there are different organizations, associations organized under the name of the particular island. But for the purpose of nonimmigrant status, we are referred to as nonimmigrants.

Mr. MAZZOLI. This is as a policy?

Mr. NICHOLLS. We don't identify the Jamaican, Trinidadian. They look at us as nonimmigrants.

Mr. MAZZOLI. Is it a fair statement, Father, that if a person—despite the fact that he or she has been in the islands for 20 years, may own a home, is a member of the church, is a taxpayer and the children are U.S. citizens—were to become a resident, and, therefore, have a status which he or she does not now have, that would increase the opportunity to improve his or her own condition? Also, would it give them a sense of self esteem, a sense of value that they perhaps don't now possess, which would enable them to face the future much more securely?

Father HENRY. Yes, Mr. Chairman. I believe that even though these people have homes, vehicles, have equity, substantially, that if they are given permanent resident status, they will even invest more. For example, I cannot go in the pulpit to preach on Sundays knowing that the people I'm talking to and telling them God loves them when immigration can come and move them out and I go to my home resting in my bed.

If these people are given permanent residency, they will do more because they know this is their home.

Mr. MAZZOLI. They will have a sense of the future.

Father HENRY. A sense of the future.

Mr. MAZZOLI. Where they do not now have it?

Father HENRY. This is true. Not knowing today or tomorrow they will be pushed out, without that, they will have something to build on.

Mr. MAZZOLI. Do you agree with what the Senators said today that the people in the Caribbean do look at the United States

through the Virgin Islands? They establish a sense of the U.S. priorities from the way the activities develop in the Virgin Islands? And therefore, if the situation were to improve in the Virgin Islands because of passage of the bill before us, they would have a better sense of where the United States is going in with general activities in the entire area?

Mr. GOODWIN. Yes, sir. I totally agree with the Senators on that. I can go back to 1970-71 when the U.S. Immigration Service started their deportation situation, which you are quite well aware of and the damage that it caused in the entire Caribbean. From that point of view, organizations of Caribbean nationality in the Virgin Islands were forced to go back to the islands and try to make amends. I think at one point in time, we took groups in at different times, different festive times to show that the unity, the bond was still there. Another thing that we have to know, because of the close ties, if something happens in the Virgin Islands, it doesn't take hours to get to the other islands. Telephone is very quick and easy. I think the U.S. foreign policy for the Caribbean can be formulated right through the Virgin Islands. I think it is the best point that the U.S. Government has to work through, the Virgin Islands, because of the closeness and family ties.

Mr. MAZZOLI. Thank you. One of the earlier speakers said that there were certain compromises that had to be made to get community support for the bill. Indeed, the most important is the preference limitations.

May I ask the panel perhaps to address for a few moments this limitation? Do you, for instance, Dr. Stephen, support that as a mechanism here?

Reverend STEPHEN. Yes, Mr. Chairman. I believe that there ought to be, and there would be, some measure of compromise. I see this as the stepping stone to the future well-being of the people. And, it is with this in mind that we ought to have this bill passed quickly.

Mr. MAZZOLI. Mr. Nicholls, please?

Mr. NICHOLLS. During the past year, Mr. Chairman, when attempts were made to adjust the alien status in the Virgin Islands, there have been some opposing factors. Their main concern was how many people will come into the island. We recognize it as a legitimate question because of this consideration. However, because of the way this bill—the compromises that have been offered, these people no longer question the bill. They feel that it is a fair bill and that they are willing to go along with the bill, because of this provision.

Mr. MAZZOLI. Father?

Father HENRY. We agree to this compromise, because we saw that it will help the bill. In fact, in speaking at the hearing of the legislature I, in my statement, said, half a loaf is better than none at all. This is the approach. It is such a long problem and so serious a problem that anything that can be done to give the people who are there a status, then I am prepared for a compromise. If limitation can be out, it is better still.

There is a fear, I will call it the psychological fear of certain Virgin Islanders of a flood of immigrants if these people are given permanent status. And so, the limitation is placed there to solve

this fear, to see that we are taking care of the Virgin Islands, our schools will not be overcrowded and our health services will not be overloaded and things like that.

Mr. MAZZOLI. I am sure I speak for Dr. Stephens, who would have to agree that the world is not perfect. If the world is not perfect, then a piece of legislation is necessarily important. I guess we are dealing with that situation.

Mr. Goodwin?

Mr. GOODWIN. Our first priority is to settle the problem of the people who are presently in the Virgin Islands, and this bill offers that solution. We look at the entire fear of the opponents of the bill and look back at what took place in prior years and look at what is presently happening, we drank from the cup of compromise and we are willing to go along with the stipulation.

Mr. MAZZOLI. I have one last question that has been dealt with already in passing, but I will ask it directly in order that the record is clear.

Once an individual gets a permanent resident alien status, there would be nothing to keep his or her from coming to the mainland.

Because of the equities which have developed for these people, the ties with the community, as you all have mentioned, do you believe that the bulk of these people, would remain in the U.S. Virgin Islands? Mr. Goodwin?

Mr. GOODWIN. We honestly believe that the people will remain. We are prime examples of people who have remained because of the equities in the community and because we have made the Virgin Islands our home. The people who are presently requesting adjustment of status are people who have lived in the Virgin Islands for years and who will continue to live there, as long as they live.

Mr. MAZZOLI. Father?

Father HENRY. I would simply say that less than 5 percent of the people, that the great majority of people will remain because of the equity and long standing in the Virgin Islands.

Mr. MAZZOLI. Mr. Nicholls?

Mr. NICHOLLS. Mr. Chairman, I support the expression of the gentlemen. I feel very strongly that people who have lived in the Virgin Islands for a number of years, have grown to love the Virgin Islands, they have grown to love Virgin Islands people and they have become part of the community and I feel that we can live together very happily.

Mr. MAZZOLI. Thank you. Dr. Stephen.

Reverend STEPHEN. Mr. Chairman, I have to support the three experts. It is a fact that people do move. But I am sure, using a general example that if I built my house as I have done in the Virgin Islands, if I have a job and if during those years when I had no job I was forced because of my status to remain and to work, now that I have my status, now that I have a home built, now that I have all these equities, the question is why would I want to move? I feel that most of the aliens will remain.

Mr. MAZZOLI. That's a question that I think answered itself. Thank you very much, gentlemen.

It has been a pleasure to visit with you. We are certainly much the better for your personal statements, and your formal statements.

As one who has had the pleasure of visiting the Virgin Islands, I can say it is a beautiful land and has many beautiful people. I believe that the subcommittee is going to do its very best to come to grips with this issue finally, after far too many years have elapsed, and try to come up with a bill which will serve the interests of the people in the U.S. Virgin Islands. We thank you very much, and hope you have a nice and pleasant trip home.

We now call our final panel. We appreciate their patience through this helter-skelter day. Ms. Mabel King, a paralegal with the St. Croix Legal Service Program and Mr. David Iverson of the St. Thomas Legal Services Program. Mr. Iverson and Ms. King, you are welcome to come forward.

TESTIMONY OF MABEL KING, PARALEGAL, ST. CROIX LEGAL SERVICES; AND DAVID IVERSON, ST. THOMAS LEGAL SERVICES

Mr. MAZZOLI. As I said to the earlier panels, your statements will be made a part of the record. Any way you wish to proceed will be fine. Ms. King, do you wish to proceed?

Ms. KING. The reason why I limited the name of the countries to just three, Antigua, St. Kitt, and Nevis, is because a majority of the other countries in the Caribbean are independent and they get the advantage of the 20,000 numbers per year. Antigua is slated to go independent sometime this year, but we don't have any idea—the idea that the same thing would happen for St. Kitts and Nevis.

Mr. MAZZOLI. Only when they are independent nations do they get the 20,000 numbers which they have as the maximum number of immigrant visas in any 1 year?

Ms. KING. Right.

Mr. MAZZOLI. Do you basically support the legislation before us?

Ms. KING. I do. I support it because there are citizen children involved in many of the families and that person eventually can take care of a lot of the inequities. In addition to that, there are intermarriages and that works out well, too.

Mr. MAZZOLI. I am sure. Are you a Virgin Islander yourself?

Ms. KING. Yes. I was born and raised on St. Croix.

Mr. MAZZOLI. So you know the situation very closely. Is it your belief that the 7,360 people estimated to be regularized under this bill are people who have equities and who are de facto residents of the Virgin Islands?

Ms. KING. Well, the Virgin Islands is unique in the sense that it is ~~not~~ a faceless society. Our boundaries are limited and within 2 or 3 months you get to know every person on the island.

Mr. MAZZOLI. That is part of the beauty of the Islands. You get to be very familiar even in a couple of visits down there.

Ms. KING. I am now a grandmother and people—

Mr. MAZZOLI. You are a youthful-looking grandmother I must say.

Ms. KING [continuing]. But people I have known since I was a child in school when the first group of aliens came are now coming

to me for help and I am surprised that they are not citizens. I am surprised.

Mr. MAZZOLI. All this time has elapsed and then they are still where they were before?

May I move to Mr. Iverson? I am going to have to vote. May I ask you, do you appear in support of the bill that is before us?

Mr. IVERSON. I do, Mr. Chairman.

Mr. MAZZOLI. We recognize the problems with limiting petition rights. Would you address that for a few moments before we adjourn?

Mr. IVERSON. Yes, Mr. Chairman, Legal Services, of course, represents the client community and the client community has expressed itself eloquently before.

I don't think anyone is terrifically happy with those restrictions, but we are willing to live with them for the purpose of passing the bill.

Furthermore, I have to agree with Representative de Lugo that the constitutionality appears reasonably sound.

Mr. MAZZOLI. I think Ambassador Asencio said the same thing. [The complete statement follows:]

STATEMENT OF DAVID IVERSON, ATTORNEY, ST. THOMAS LEGAL SERVICES

To the honorable Members of the House of Representatives, Subcommittee on Immigration, Refugees and International Affairs, Legal Services of the Virgin Islands supports the passage of H.R. 3517 not only because humanitariansim and justice demand resolution of the dilemma in which local "H-2" and "H-4" alien workers find themselves, but for the following reasons as well:

I. THE CURRENT METHODS OF ATTEMPTING TO RESOLVE THIS PROBLEM ARE NOT COST-EFFECTIVE

At present, the typical solution employed to grant "H-2" or "H-4" non-immigrant aliens in the Virgin Islands permanent resident status is through application for Suspension of Deportation, Title 8 United States Code, § 1254. (It should be noted, however, that this relief does not reach all dependents of H-2 workers, as not all such children have resided in the Virgin Islands for over 7 years).

The resources expended for this process are in part as follows:

1. 2½ attorney positions, and 1½ paralegal positions in Legal Services of the Virgin Islands are devoted to Suspension of Deportation cases.

2. Visiting Immigration Judges are on occasion brought to the Virgin Islands to hear the vast number of backlogged "Suspension" cases. Air fare and per diem alone for these judges is \$1,000 per week.

3. The "resident" Immigration Judge and the Immigration Service Trial Attorney must travel from Puerto Rico to the Virgin Islands to hold hearings at a cost of \$60. per day per person in air fare alone.

4. Cost of transcription of a "Suspension" hearing is unknown, but it is relevant to note that such transcription occurs in Burlington, Vermont, a site far removed from the hearings, and that hearing transcripts commonly exceed 20 pages in length.

5. The "character investigation", which is unique to the "Suspension" process in that police records, fingerprint checks, etc. are not deemed sufficient to determine the quality of an alien's character, costs \$250 plus, per alien, if the Immigration Service Investigator is experienced. Note that according to the Immigration Service, over 1,000 "Suspension" cases are pending on the island of St. Croix alone. Note also that only 5 percent of these investigations contain any negative allegations.

Over 90 percent of the "Suspension" cases are won at the hearing level. Ninety percent of these cases denied at the hearing level are won on administrative appeal.

II. THE LEGAL DISABILITIES SUFFERED BY THE PROPOSED BENEFICIARIES OF H.R. 3517
COMPEL PASSAGE OF SUCH BILL

In spite of the fact that H-2 workers pay taxes like any other worker, they are denied virtually all government benefits, from food stamps and unemployment benefits to Medicare. In fact, it is only through unrelenting pressure by Legal Services that the children of one-time H-2 workers are permitted to attend public school.

Also, the H-4 son or daughter of an H-2 worker cannot accept employment without violating his or her immigration status. Consequently, there are many H-4 visa holders who are currently forced into a state of idleness after graduation from high school.

However, when an H-4 dependent achieves the age of 21, he or she automatically loses H-4 status and must apply for Suspension of Deportation, if eligible, or face expulsion from the Virgin Islands. The inherent family dismemberment in this situation is obvious.

Furthermore, H-4 dependents are subject not only to the caprices of the labor market (in that they lose their status if the H-2 breadwinner loses his or her status), but to the caprices of their H-2 spouse or parent as well. An H-2 worker tired of a spouse or troublesome child, or step-child, need only take such person "off his time", i.e., fail to submit pertinent paperwork, and the H-4 dependent is deportable.

One-time H-2's or H-4's who have applied for Suspension of Deportation are prisoners in the Virgin Islands for 3-4 years after such process is initiated. They may not leave the islands for any reason without their application being revoked as "abandoned." (For dire consequences, permission to leave and re-enter may be granted). This leads to separation of families, impossibility of pursuing an education on the mainland, and inability to travel to seek employment elsewhere.

III. THE GENESIS OF THIS SITUATION OCCURRED THROUGH VIOLATION OF PERTINENT
LAW AND REGULATION BY GOVERNMENT AGENCIES

Time does not permit a detailed exposition of the history of the "H-2" program in the Virgin Islands. Such history is well described in previous House Reports and in other sources. See, "Non-Immigrant Labor Program of the Virgin Islands of the United States", 94th Congress, 1st Session, 1975, and the paper entitled "Foreign Workers in the Virgin Islands: Lessons for the United States", by Mark Miller and William Boyer, University of Delaware.

Suffice it is to say at this juncture that the Department of Labor and the Immigration and Naturalization Service, among others bear a large portion of the responsibility for creating the problems which H.R. 3517 is designed to rectify.

Thank you.

Mr. IVERSON. One thing I would like to add, Mr. Chairman, I was not aware until yesterday that a statement, a written statement was required today. I did one yesterday afternoon. I would like permission to submit a more substantial paper in the next 2 weeks. (See appendix.)

Mr. MAZZOLI. Certainly. We appreciate your effort, and it will be made a part of the record.

I think I asked you about the exclusion, Ms. King, the limiting preference. Is that acceptable to you as an effort to satisfy the needs of the people who are actually there in the islands, even though we have interest in those who are not?

Ms. KING. As I said before, I am a grandmother and these are people I knew since I was a child.

Mr. MAZZOLI. They are still in that never-never land, without permanent resident status?

Ms. KING. It is embarrassing when they come to me and say I need help with my immigration affairs. I say, aren't you a citizen? You have been here so long.

Mr. MAZZOLI. Let me thank you very much.

I am sorry that this is so hasty. You know the Legal Services bill is on the floor right now. If it were a bill from some other commit-

tee, my colleagues would be here with me. I think Congressman de Lugo knows that very well. It is not any reflection on the bill that is before us or of the seriousness of the bill before us that all of my colleagues are not here. It is simply the fact that until the good Reverend and Dr. Stephens might get us the gift of bilocation—if you could work with him and give us the ability to appear in two places at one time—believe me we cannot be here and on the House floor.

Mr. DE LUGO. Mr. Chairman, I am sure I speak for all of us who appeared before your committee this morning. I heard you apologize. I want to tell you, you have nothing to apologize for. This has been one of the finest hearings that I have ever attended in the more than a decade of attending hearings in Congress.

You as chairman, you have given us the opportunity to make a record here and to state a case in human terms that we needed to state.

Mr. MAZZOLI. Thank you. It is a very strong case that you make. I wish to commend the Delegate for having been very patient, and having strong support from many groups that were represented today.

Inevitably, there has to be one person who assembles all these disparate pieces. From them emerges a clear picture. It is the Congressman from the Virgin Islands who has been that spearhead, and has been able to assemble all these pieces.

I think we have before us the makings of a bill. This has been an interesting experience.

As I said before, it has been my privilege to visit the Virgin Islands over the years. I have been very impressed by the beauty of the land and by the beauty of the people.

If this bill, or something like it, would help them and those places to move more easily and more securely and with more self-esteem into the future, then I think that this committee will certainly move in that direction.

I thank you for your attendance. With that, our subcommittee stands adjourned.

[Whereupon, at 1 p.m., the hearing was adjourned.]

A P P E N D I X

SUPPLEMENTAL STATEMENT OF DAVID IVERSON, ATTORNEY, LEGAL SERVICES OF THE VIRGIN ISLANDS

1. The bill is meritorious on humanitarian grounds.

A. H-2 and H-4 aliens ("temporary workers and their dependents") have contributed significantly to building up the local economy. These aliens were brought to the Virgin Islands at the vigorous behest of local businessmen in the 1960's and early 1970's. In the following years these aliens developed deep ties to the local community, and quite often have had one or more children born here.

1. In spite of their contribution and in spite of being taxpayers, H-2 and H-4 aliens are denied access to social services such as "general assistance" welfare, food stamps, and reportedly, unemployment benefits.

B. H-4 children (and H-4 spouses) are prohibited from working under any circumstance. Thus, H-4 children are often forced into a state of idleness after graduation from high school.

1. However, when an H-4 child reaches the age of 21, he or she automatically loses immigration status and is faced with leaving his family and returning to his country of origin, or applying for Suspension of Deportation, a process whereby an alien may achieve permanent resident status. (The process takes 3 or more years to complete).

a. A Suspension applicant is a virtual prisoner in the Virgin Islands while the application is pending, as the application is automatically canceled if the alien leaves, unless a dire emergency exists and advance permission to leave and re-enter is given by INS. (H-4's and H-2's in status are also generally unable to go to the mainland U.S.).

C. An H-2 can lose status and become deportable for reasons not of his or her own making. Examples:

1. The failure of an employer to timely submit necessary paperwork to maintain an alien's status (failure can occur through negligence, or fraud, i.e. an employer may be unable to give a "bond", although he promises the alien to do so).

2. Bankruptcy by employer or lay-off and inability to find "bonded" employment within 60 days, results in loss of status.

3. Deliberate termination of a bond by an employer who fails to notify alien until 60 days have already passed.

D. An H-4 can lose status and become deportable for reasons not of his or her making.

a. Divorce—spouse loses bond, but bonded children keep theirs. Result: family separation.

b. Parent-child disputes: A parent can terminate a child's or step-child's bond; the child may or may not have relatives in his native country that will care for him.

1. As H-4's are completely dependent on the H-2 to maintain status, abuse of H-4's by H-2's can and does occur on occasion.

II. Bill is meritorious as it is cost effective and otherwise financially beneficial to the Virgin Islands.

A. A great majority of H-2 and H-4 aliens who lose non-immigrant status eventually achieve permanent resident status anyway, through immigration or Suspension of Deportation at greater cost and suffering than the method contained in the bill.

a. Resources which Legal Services of the Virgin Islands and support organizations now expend on Suspension or Immigration cases could be directed elsewhere in the community.

b. Employers would no longer be burdened by certification paperwork for bonded employees.

B. Freeing H-2 workers from bonded status would allow them to:

1. Negotiate for better wages and working conditions, which in turn would be beneficial for all of the Virgin Islands work force.

2. Travel to the mainland to seek employment. This would greatly reduce or even nullify any population increase which might result from passage of the bill.

C. Any anticipated increased costs to government are likely to occur in any event, as restrictions on access to services by H-4, H-2, or out-of-status aliens are very likely illegal regulations in violation of federal statute, etc.

a. More Virgin Islands resources would be expended on litigation over these matters.

D. It is conceivable that H-2, H-4, and ex-H-4's can and will be granted permanent resident status if a suit is brought against the Department of Labor and INS, due to past illegal actions by these agencies.

STATEMENT OF SENATOR HUGO DENNIS, LEGISLATURE OF THE VIRGIN ISLANDS

Although I am sorry not to have been able to travel to Washington for the recent hearings, I would very much like to register my opinion concerning the pending bill H.R. 3517, the Non-Immigrant Adjustment Act of 1981. Having worked in St. Thomas for many years, and having represented workers through years of union activities, I can categorically support our Governor's and Congressman's initiative to at last resolve the longstanding injustice perpetrated upon the H-2 non-citizens residing in the Virgin Islands.

These citizens of tomorrow have helped to build the Virgin Islands of today; their contribution to our islands' prosperity and culture has been substantial. Their children learn alongside our children in our public schools. They have been and are already Virgin Islanders in spirit.

Surely, after years of neglect, humiliation, and second citizen status, the time has come to provide that "just humane solution" mentioned by our Governor Juan Luis during his recent testimony.

The only reservation I can enter here is the question of further non-citizen influx as these new legal residents bring into the Virgin Islands their further dependents. I believe, however, that because so many of these people have resided in the Virgin Islands for so many years, most of their relatives have already arrived in the territory. Hence, we need not fear an avalanche of new immigrants. Further, I believe the designers of H.R. 3517 have taken all prudent precautions to safeguard against an unmanageable number of immediate relations trying to take advantage of the new legislation. I would hope that the courts would uphold the reality of our territory's particular uniqueness and its resource limitations. Failing sympathetic legal interpretation of the extent of H.R. 3517, I would hope our local leadership in co-operation with the Secretary of State, will have the courage to limit further extension of the new program's benefits should the estimated immigration numbers prove to be far too low.

Also, I want to go on record as supporting the elimination of the H-2/H-4 status program. I believe along with the sponsors of H.R. 3517 that there are currently residing in the Virgin Islands sufficient manpower and talent to further our economic development.

As long as the projected non-citizen arrivals remain at the estimated ceiling of 10,000, we should be able to house, educate, and provide employment for this number. I would, however, hope that the oversight task force mentioned by Rep. de Lugo would monitor all the impacts of H.R. 3517 most closely, especially the bill's effect on our already overcrowded schools.

Last, I agree that the United States Congress has an opportunity in H.R. 3517 to send a message to the entire Caribbean area: That the United States intends to honor its commitments to those immigrants who were legally invited to our shores; that the time has come to assimilate these persons fully into the political life of the Virgin Islands as they have already assimilated into the cultural and financial life of these islands. I further congratulate the United States Congress along with our worthy Governor and Congressman de Lugo for its forthright and humanitarian concern for those people affected by the passage of H.R. 3517.

STATEMENT OF VIRGIN ISLANDERS FOR ACTION, INC.

On behalf of concerned Virgin Islanders for Action, Inc., a nonpartisan organization dedicated to the preservation of the culture of native Virgin Islanders and protection of their rights, we undersigned urge respectfully that subcommittee members exercise caution in consideration of this bill and urgently petition that hearings be held in the Virgin Islands.

We believe this bill will profoundly impact on the Virgin Islands, a small territory with limited resources and land mass and a society with a fragile culture presently experiencing extreme stress and strain because of rapid growth and overpopulation.

Alien leaders and their political patrons will tell you that the people who are subjects of this bill are already in the Virgin Islands but we do not accept statements by the Governor and the Delegate that the secondary impact of their dependents will be limited and challenge their validity.

Attorney Edith Bornn, former president, Virgin Islands League of Women Voters, testifying before President Carter's Select Commission on Immigration and Refugee Policy during its visit to St. Thomas last year, charged that some territorial politicians, more interested in currying favor with future naturalized citizen voters than in serving their constituents, are pushing this solution even though it is based on two questionable premises. They are that secondary impact will be negligible and that the Federal Government would compensate the Virgin Islands Government for the impact.

She also said the primary concern of the Virgin Islands politicians should be the maintenance and improvement of the quality of life for citizens and residents.

(Congressman Hamilton Fish Jr. of New York, a member of the subcommittee, traveled to the territory with Senator Dennis De Concini of Arizona. Both were members of the select commission.)

We support status adjustment of the bonded aliens in the Virgin Islands and want the permanent elimination of the H-2 program, but we believe the solution offered by this bill is politically motivated and will create more problems than it will solve.

We are greatly concerned that certain alien leaders have stated publicly in the territory that the bill is constitutionally deficit and discriminatory, that they consider it only a temporary compromise and that they will eventually challenge it in order after enactment.

The predicament of the bonded alien is only part of a much larger immigration problem in the Virgin Islands which former Subcommittee Chairman Joshua Eilberg described in 1975 as one of the most serious facing the United States. We feel the grave situation, combined with continued migration of continental Americans to the territory, threatens the social and political stability of the Virgin Islands and has clear national security implications for the United States.

We are also greatly concerned over the increasingly unstable political conditions in neighboring Caribbean Islands and their impact in the Virgin Islands. There is fear that the authoritarianism and Marxism which is rampant in them will spread to and increase in the Virgin Islands because of the presence of large numbers of aliens who form the majority of the population. Some have repeatedly expressed hostility to the United States and our democratic form of government.

Fear has also been expressed by some Virgin Islanders that the ultimate political destiny of the territory and its future relationship to the United States could be determined by outsiders in clear violation of our great Nation's commitment to self-determination. There is also increasing agitation by aliens for integration of the Virgin Islands into an as yet undefined Caribbean community or federation which could only result in separation from the United States and an erosion of the American identity of these islands.

All of the private citizens and noncitizens testifying before you June 18, 1981 are aliens or former aliens who naturally support this bill. But we think you should know that there have been reports that some of them, who are former Government employees, have traveled at Government expense and are on administrative leave granted by certain politicians currying their favor.

We invite you to visit the Virgin Islands to become more familiar with this complex problem which we firmly believe is deserving of your concern. It has been 5 years since former Chairman Eilberg was here. Please do not be stampeded into an unwise decision by territorial politicians more interested in votes than the future survival of Virgin Islanders as a people.

We recognize the contributions of aliens in the building of America as well as the Virgin Islands. However, please realize that the same formula devised for a gigantic nation on the vast continent of North America cannot and should not be imposed on a small territory like the Virgin Islands with only 132 square miles and an estimated population of 100,000 not including illegal aliens (approximately 1,500 per square mile.)

Our schools are overcrowded and on double sessions, thousands of citizens and resident aliens are without housing, we are plagued with inadequate water and power and crime and juvenile delinquency are exploding, and yet some politicians have the audacity to tell us to make room for more people.

Gentleman, we say enough is enough and implore you not to be party to a short-term politically expedient solution which we sincerely and strongly believe will back fire and create a long-term nightmare that will haunt the Virgin Islands and the United States of America for the rest of this century.

For concerned Virgin Islanders for Action, Inc.: Flavius Ottley, President; Elma Davis Smith, a delegate to the third constitutional convention; John P. Collins, delegate-at-large to the fourth constitutional convention; Geraldo Hodge, St. Thomas political activist; and Geraldo Guirty, delegate to the third and fourth constitutional conventions and vice-chairman of the joints boards of elections.

