



# Preexamination and Its Alternatives: The Provision and Experience of Discretionary Relief for Certain Unauthorized Immigrants to the U.S., 1935–1959

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Preexamination and Its Alternatives: The Provision and Experience of Discretionary Relief for  
Certain Unauthorized Immigrants to the U.S., 1935–1959

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A Thesis in the Field of History  
for the Degree of Master of Liberal Arts in Extension Studies

Harvard University

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## Abstract

After new U.S. immigration laws in 1917, 1921, and 1924 established a regime of unprecedented restriction, some advocates and migrants argued that greater administrative flexibility was needed to provide relief in hardship cases. While both liberalizers and restrictionists generally accepted the broad framework of national origins quotas, they fiercely debated what additional exceptions or amnesties should be provided, if any. These debates were often framed as competing narratives about the character of the migrants themselves. With Congressional reform proposals stalled, U.S. Immigration Commissioner Daniel W. MacCormack and Labor Secretary Frances Perkins crafted a new form of administrative relief, commonly known as “preexamination.”

Certain aliens would henceforth be preexamined inside the U.S. by the Immigration and Naturalization Service and granted permission to travel to an adjacent American consulate outside the country, usually in Canada, to request a visa. As the U.S. State Department had already performed a preliminary review, the visa would generally be granted, but consular officers retained authority to reject it. If rejected, the individual would be readmitted to the U.S. without a visa, an action of disputed legality. From 1935 to 1959, over 50,000 aliens were granted legal status through preexamination.

This thesis first presents a history of the procedure, detailing its origins, the domestic and cross-border controversies surrounding it, its evolution through the World War II and Cold War eras, and how it fit alongside other shifting forms of relief. Next, it presents eight case studies, illuminating the preexamination examination from the perspective of the diverse individuals who sought it, and those who assisted them. Then, drawing on official reports and border crossing manifest cards, it attempts to clarify how

many individuals sought preexamination, and who they were. Utilizing a dataset of 674 apparent preexamination cases, it analyzes preexaminees by gender, national origin, previous legal status, quota or non-quota status, and other characteristics. In doing so, it sheds light on debated questions such as: *How many preexaminees entered illegally during the 1920s or earlier? How many entered later, often on legal short-term visas, as refugees from Nazism? In what respects did preexamination reinforce, or undermine, the quota system's racial and national origin goals?* Finally, the thesis identifies unresolved questions and opportunities for further research.

## Dedication

To my wife, Barbara, who saved my life and has been “rewarded” by having to put up with me ever since. Barbara, I treasure your wisdom, love, courage, support, and companionship.

And to Matt and Kellie, who have blessedly found each other and are building a wonderful new life in these interesting times. Matt, Kellie, I’m so proud of you.

## Acknowledgments

My guide on this research journey has been Dr. Mark Sanchez, my thesis director. I have learned much from him. About trying to enrich one's work with deeper insight into — and compassion for — the human beings at the heart of one's narrative. About how the “macro” and human scales connect. About how to guide others gently with the right questions at the right time. About what it means in a scholarly setting to share another's enthusiasm and help them move, hopefully, just a little bit closer to excellence.

As it has for so many, my academic journey at Harvard Extension School began under the tutelage of Dr. Donald Ostrowski, who taught my first course here, and subsequently served as my research advisor. As I returned to academia after 36 years away from the classroom, Dr. Ostrowski helped me understand what Harvard graduate work and a Harvard master's thesis in history would entail. Drs. Sanchez and Ostrowski each helped show me that I could do this. I am in their debt.

After Dr. Ostrowski stepped away, Dr. Ariane Liazos and Trudi Goldberg Pires skillfully guided me to completion, improving my text and helping me navigate the dangerous shoals of the Chicago Manual of Style.

When I began this project, I expected to make multiple archival visits; then the COVID-19 pandemic arrived, and I needed to radically revise my research strategies and expectations. Some questions seemed to become harder to answer, or required alternate sources or more inference; certain other questions seemed more tractable.

While most archives were closed, I was extremely fortunate to be permitted to spend two full days at one key archive: the Center for Migration Studies of New York, a member of the Scalabrini International Migration Network (SIMN). CMS NY hosts

records from the Italian Welfare League, the National Catholic Welfare Conference, and other key organizations. There, archivist Mary Brown offered a warm welcome, extensive assistance and advice, a comfortable and socially distanced workspace, and expert help in leaving the building after 5 pm, when all the doors were locked. Much of this thesis would have been impossible without her assistance.

Sarah Doeppner Snow and Jason Snow graciously permitted me to draw on their remarkable work documenting the wartime experience of her grandfather, Thomas W. Doeppner, at [tomandmarjorie.com](http://tomandmarjorie.com). The Snows shared documents covering portions of the story that they have not yet narrated online, and helped ensure that I understood key nuances of Mr. Doeppner's life and family.

Many others have also been generous with help and support. David Favaloro at The Lower East Side Tenement Museum in New York City provided published and unpublished documents related to the Museum's research on Rosaria Baldizzi, an Italian migrant who arrived with fraudulent papers in 1925 and was granted preexamination twenty years later. Years before the pandemic, I had the pleasure of visiting the Tenement Museum as an ordinary traveler. When it fully reopens after the pandemic, I encourage anyone interested in migration to explore this remarkable place.

Deborah Kloiber, College Archivist/Librarian for Special Collections at The Linda Lear Center for Special Collections and Archives, Connecticut College, provided drafts of speeches by Immigration Commissioner D.W. MacCormack, held in its Frances Perkins Collection. Jan Raska, Interim Historian at the Canadian Museum of Immigration at Pier 21, shared expert advice on exploring Canadian authorities' views of



preexamination. Dr. Danielle Battisti, Associate Professor of History at the University of Nebraska – Omaha offered valuable insights and encouragement.

I received helpful advice from Catherine Gaggioli, Reference Archivist for the State of Massachusetts; Harvard Extension School Librarian Mary Frances Angelini; Sarah Wharton and Deanna Barmakian at the Harvard Law School library; Maura Coonan, Assistant Archivist at the University of Minnesota's Immigration History Research Center; and Zack Wilske, Senior Historian at United States Citizenship and Immigration Services. Bill Creech, Archivist at the National Archives and Records Administration, gave me invaluable early advice as I began framing my topic.

I now understand, more viscerally than ever before, why scholars conclude their acknowledgments by saying something like: *All errors, oversights, or misinterpretations are mine*. They sure are.

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## Introduction

In February 1935, U.S. Labor Secretary Frances Perkins and Commissioner of Immigration and Naturalization Daniel MacCormack introduced a new form of discretionary relief for aliens who sought to establish legal permanent residence. Often, these aliens were at imminent or potential risk of deportation because they resided within the U.S. without authorization.<sup>1</sup> Perkins's and MacCormack's procedure, "preexamination," enabled individuals to gain legal status by first requesting a U.S. Immigration and Naturalization Service (INS) review within the U.S. If INS agents granted discretionary relief, and a preliminary document review by a U.S. consulate in an adjacent country (typically Canada) uncovered no obstacles, the immigrant would be invited to visit that U.S. consulate. If the consul granted a visa (as typically occurred), the immigrant could return, stay legally, and pursue citizenship if he or she chose. Even if a visa was denied, the U.S. promised Canada it would allow the (still-unauthorized) immigrant to be "paroled" back into the United States and re-enter.<sup>2</sup>

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<sup>1</sup> I have utilized the term "alien" wherever clarity suggests following the terminology used at the time by INS, Congress, and the press in reference to non-citizens entering or residing in the United States. I refer to "illegal" or "unauthorized" status but not "illegal aliens." Where "immigrant" or "migrant" is equally clear and accurate, I use those terms. "Undocumented" is not always accurate in discussions of preexamination because some individuals who requested preexamination had overstayed legitimate visas or were in possession of forged or fraudulent documents. Of course, no human beings are truly "alien" or inherently "illegal."

<sup>2</sup> Other U.S. immigration procedures have sometimes been called "preexamination." These included inspections performed in the Caribbean to vet migrant workers seeking the right to work temporarily in the U.S.; vetting of displaced persons in Europe seeking admission after World War II; and inspections of airline passengers bound for U.S. destinations. None of these are the subject of this thesis. Note, also, that in the early years, "preexamination" was often hyphenated as "pre-examination"; this is less common in later sources, which represent the majority of sources. I have standardized on avoiding the hyphen, except in quotations that utilize it. The procedure I am writing about was sometimes called "Canadian preexamination," although this is a misnomer. In the cases I am writing about, the actual preexamination occurred *within* the United States; "Canadian" refers to the border that aliens crossed to receive their visa after being preexamined there.

The officials who created preexamination expected it would be a short-term expedient to solve problems faced by a very limited number of “hardship cases.” However, demand for preexamination continued for decades. By 1958, well over 50,000 immigrants had resolved their immigration status this way (see estimates, p. 211).

During this period, the procedure evolved. So did the available alternatives. For instance, more individuals also became eligible to officially register older entrances to the U.S. as “legal,” even if those entrances had been unauthorized, and therefore not legal. A new “suspension of deportation” option was introduced in 1940, and preexamination was briefly replaced by Section 245 of the McCarran-Walter Act during the early 1950s. Accordingly, preexamination’s role shifted over time. Sometimes it was the best option for a given migrant, other times not. Preexamination was also shaped by the broader political environment, including the post-war anti-Communist Red Scare. Occasionally — as in the case of Nazi scientists granted preexamination to legitimize their residence in the United States while working on military projects — it became an instrument of geopolitical policy, not just a relief valve for offering mercy within the context of a rigid immigration regime.

While preexamination existed, however, two elements remained constant. First, it existed in the context of restrictive quotas, and was inaccessible to those who could not become permanent residents or naturalized citizens due to their national or racial origins. Second, it was controversial. Its use was sometimes connected to the “Seventh Proviso” of the Immigration Act of 1917, originally enacted to permit the re-entry of a handful of immigrants who were temporarily abroad when that more restrictive law took effect. The authors of that proviso could have had no expectation that a future Secretary of Labor



would use it as Perkins did. Restrictionists also alleged that preexamination protected “undesirables”: criminals, subversives, or individuals likely to become “public charges.”

### Questions Addressed by This Thesis

This thesis seeks to understand how preexamination operated and evolved, and answer several questions about it, including:

- What led Labor Secretary Perkins and her immigration commissioner, Daniel W. MacCormack, to establish preexamination (and others to oppose it)?
- Who was helped, who wasn’t, and why?
- What were the roles of outside advocates and stakeholders?
- Where did preexamination fit as other forms of relief emerged or disappeared?
- What was preexamination’s role in international relations?
- How did immigrants and those around them experience preexamination?
- What were the limits of preexamination? What did it actually accomplish, and how did it affect the overall regime of restriction?

### How This Thesis is Organized

To answer these questions, this thesis is organized as follows:

Chapter 1 begins by establishing the context for preexamination. I review how restrictionist immigration policies took effect in the late 1910s and throughout the 1920s,

culminating with the Johnson-Reed Act and the quotas arising from it. I consider the sources, causes, and scope of the migration that made administrative relief seem necessary to some policymakers. I discuss their first approach — retroactive registration of alien entries as legal — via the Registry Act of 1929. I next explain how the new administration of Franklin D. Roosevelt — together with some immigrant advocates — sought a legislative solution that accepted the quota regime while offering wider scope for individual relief and family reunification. I explore the domestic political dynamics that led them to fail, and how they used existing law to craft an administrative solution that did much of what Congress had refused to do. I then review the beginnings of preexamination from 1935 until 1940, as aliens began undergoing the procedure. During these years, preexamination's rules were defined and clarified, and U.S. officials negotiated permission with Canada for aliens to visit U.S. consulates there. I also describe the response of restrictionists inside and outside Congress, who aimed to jealously guard the strict quota regime they had finally established.

Chapter 2 continues preexamination's history, beginning with Roosevelt's 1940 decision to move the INS out of Frances Perkins's Labor Department and into the Justice Department, in the interests of national security. I cover congressional passage of the Alien Registration Act and the establishment of another form of relief, suspension of deportation. Next, I follow preexamination through World War II, as it intersected with controversies surrounding European refugees, many of them Jews attempting to stay out of Hitler's grasp. I show how the mechanism of preexamination offered a workable solution for the federal government to resolve the cases of 1,000 European refugees brought without visas to Oswego, New York; and then to import ex-Nazi scientists and

technicians into the growing American military research establishment. I describe how the emerging Cold War affected preexamination, as rising anti-communism led to 1952's McCarran-Walter Act, which resulted in the procedure's temporary halt. I show how the continuing need for discretionary relief led to a glut in private bills that overburdened Congress, leading it to informally approve a restart of preexamination in 1955. Finally, I show how the politics of preexamination shifted once more, and Congress finally provided a workable "permanent" alternative that allowed for the final abolition of preexamination in 1959. Throughout Chapter 2, I show how aid organizations helped migrants navigate the system's nuances and continual changes as they advocated for wider discretion, both in Congress and within INS.

Chapter 3 presents the cases of eight individuals who pursued preexamination. To do so, I draw on diverse primary sources, including official immigration files, letters, contemporaneous press reports, files maintained by immigrant welfare organizations, and oral histories. These case studies are intended to be as representative as possible. Four of those profiled came to the U.S. many years before World War II; the other four were displaced by the war. They include individuals of eastern European, southern European, and German origin; Jews and non-Jews. One case study represents the 900+ refugees at Fort Ontario who were granted preexamination; another represents the cohort of Nazis who were given a modified form of preexamination and received their visas primarily at U.S. consulates in Mexico. Some individuals profiled here were clearly in the U.S. illegally and subject to immediate deportation; others aimed to resolve a more ambiguous or shifting legal status. One case represents many who pursued preexamination but ultimately found another path to permanent legal residence. Another individual was

apparently a “bird of passage”: he sojourned in the U.S. for decades, used preexamination to protect his right to stay, but ultimately returned to Italy rather than pursuing U.S. citizenship. Collectively, these cases highlight the contingencies that allowed some people to access preexamination while others couldn’t. They show how some migrants were able to use their resourcefulness and contacts to succeed — thereby leaving traces in the historical record that made them easier to profile. Others who could not do so were deported or never arrived, and are missing from these profiles.

Chapter 4 seeks to quantify preexamination’s impact. I first compile the incomplete official reports on how many preexamination cases were processed, and attempt to extrapolate numbers that appear to be missing. Next, drawing on contemporaneous border crossing manifest cards, I identify 674 apparent cases through 1952, and analyze this dataset to understand more about who was granted the privilege. I assess my sample by gender, gender role, age, marital status, occupation, national origin, date of arrival, quota status, and other characteristics. I identify several patterns, including a disproportionately male population, an unexpectedly large number of former seamen, and two separate peaks of original entry to the U.S. This chapter concludes by discussing what the dataset suggests about how and where preexamination operated within INS.

Finally, a Conclusion section summarizes key findings and lessons, including how preexamination protected certain unauthorized immigrants (but not others). I discuss how preexamination seemed to reflect broader dynamics in how U.S. immigration policy is made, applied, and revised. For instance, it exemplified the recurring phenomenon that when some restrictionists decide to compromise, others often pick up the baton of

opposition. So, too, preexamination's history shows how liberalizers sometimes use ambiguity in the status of some migrants to elide the immigration lawbreaking of others. I then review limitations in my research, and propose directions for further exploration.

#### Notes on the Historiography and Relevance of Preexamination

No comprehensive history of preexamination appears to exist. A deeper exploration may be valuable for at least three reasons. First, preexamination has been a matter of some academic controversy. After its abolition in 1959, it received relatively little academic attention until Mae M. Ngai's four-page discussion in *Impossible Subjects* (2004). Ngai's book helped reignite interest in American immigration history between the imposition of national origins quotas in 1924 and their abolition in 1965. Ngai viewed preexamination as one of the key ways Europeans who had arrived illegally moved towards legalization, acceptance, and family reunification, using methods deliberately made unavailable to nonwhites.<sup>3</sup> She wrote, in part:

In 1945 the INS explicitly restricted pre-examination to 'other than a citizen of Canada, Mexico, or any of the islands adjacent to the United States.' This policy appeared to be race-neutral in that it applied to all countries with contiguous borders to the United States, but in fact it was meant to categorically deny relief to Mexican and Caribbean migrants.... The racism of the policy was profound, for it denied, a priori, that deportation could cause hardship for the families of non-Europeans...<sup>4</sup>

Ngai's interpretation was not entirely uncontested. In reviewing her book, Ghandnoosh and Waldinger argued that preexamination applied primarily to those who

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<sup>3</sup> Ngai, Mae M., *Impossible Subjects*, rev. ed. Politics and Society in Twentieth-Century America. (Princeton University Press, 2014), 56–89.

<sup>4</sup> Ibid., 87.

had “entered legally on nonimmigrant visas,” many of them German refugees from Hitler. In their view, most preexaminees were quota immigrants who didn’t impact net arrivals because they used quota slots that someone else, with the same national origin, would have taken anyway. Moreover, preexamination represented such a small percentage of migrants that it could not possibly support Ngai’s broader claims. In their view, Ngai’s emphasis on preexamination as a “boon” to Europeans likely signified that she had “let her ideological commitments turn into ideological blinders.”<sup>5</sup>

This divergence in views led to my original interest in preexamination. If one extremely well-informed scholar seemed to view it as fundamentally racist in both implementation and usage, while two other extremely well-informed scholars seemed to see racial distinction as largely irrelevant to its operation, could these views be compared and assessed? Were they reconcilable? As I wondered about this, I came to believe it would be useful to more clearly understand other aspects of preexamination, too.

For example, in its apparent attempt to craft a *somewhat* more open and humane immigration policy for *some* migrants, using laws created for other purposes, preexamination seemed to have contemporary analogues. Notable among them: the Deferred Action for Childhood Arrivals (DACA) program established by President Barack Obama in 2012, halted by President Donald Trump in 2017, and restored by President Joseph Biden in 2021. It might be useful to understand how policymakers sought to adapt existing legal resources, and the cross-pressures they faced in doing so.

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<sup>5</sup> Nazgol Ghandnoosh and Roger Waldinger, “Strangeness at the Gates: The Peculiar Politics of American Immigration,” *International Migration Review* 40, no. 3 (2006): 733, doi:10.1111/j.1747-7379.2006.00039.x.

Studying preexamination might also shed light on shifting attitudes about immigration — including, as Yuki Oda has recognized, attitudes towards family unification.<sup>6</sup>

Finally, as noted above, because preexamination required an adjacent government to accept temporary visitors of uncertain provenance, it was also a foreign policy issue that implicated relationships between the U.S. and its neighbors. During most of the preexamination era, Canada was at least as resistant to foreign entries as the United States was. Some U.S. politicians applauded Canada's skepticism, and in at least one case, may have even encouraged Canadian resistance (see p. 105), reminding modern observers that foreign leverage is sometimes attractive to those pursuing domestic policy objectives.

With these goals, plans, and rationales in place, we can begin — by exploring the environment in which preexamination emerged, and the forces that shaped it.

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<sup>6</sup> Yuki Oda, "Family Unity in U.S. Immigration Policy, 1921–1978" (PhD diss., Columbia University, 2014), 186–188, <https://doi.org/10.7916/D8FB5118>.

## Chapter 1.

### Preexamination to 1940: Origins, Motivations, Design, and Controversies

Chapter 1 provides context for understanding the emergence of preexamination in the mid-1930s. It first reviews the forces that led to the triumph of restrictionists, culminating in strict national origins quotas aimed at curtailing the entry of migrants they viewed as undesirable or unassimilable. Next, it addresses follow-on debates in the late 1920s and early-to-mid-1930s. During these years, the overall quota regime was widely accepted. However, some immigrant representatives and political leaders argued that deserving white ethnic families, already in the U.S., were being unfairly caught in the enforcement net. Joined in 1933 by the new Roosevelt Administration, these advocates sought wider scope for mercy and discretionary relief, but restrictionists pushed back, repeatedly preventing legislative action. Chapter 1 then shows how the executive branch acted on its own, crafting and implementing preexamination in 1935 as an administrative solution for the “hardship cases” it considered most deserving. It shows how an administrative solution to immigration problems can be easier to establish — but also how executive branch solutions can be vulnerable, at least in the short term, to the political opposition they are intended to evade.

#### 1.1. Setting the Stage: Restriction Takes Hold

From 1914–1918, World War I killed tens of millions of people, destroyed multiple empires, left Europe in ruins and susceptible to pandemic, and unleashed profound political and economic instability. Millions hoped to emigrate, but during the conflict, cross-ocean civilian travel was virtually impossible. After the November 1918



armistice, civilian travel was gradually restored, reigniting migration to the United States. The number of aliens admitted as immigrants rose from 141,132 in 1919 to 805,228 in 1921. This led restrictionists to fear that immigration would soon surpass the pre-war heights of over a million per year.<sup>7</sup>

The percentage of immigrants from southern and eastern Europe had soared from 7.2% in the 1870s to 70.8% from 1901 to 1910, and was still nearly 60% throughout the 1910s. Restrictionists argued that earlier measures to limit migration — such as the long-sought imposition of literacy tests in 1917 — were not deterring a new flood of eastern and southern Europeans they considered unassimilable. From June 1920 to June 1921, only 1,450 migrants were excluded by failing literacy tests.<sup>8</sup>

Restrictionists further alleged that the new migrants brought anarchist or communist ideas, or criminal tendencies. Following 19<sup>th</sup> century nativists, some still believed Roman Catholic migrants would follow the directives of an inherently hierarchical religious faith, a worldview they saw as incompatible with citizenship in a “free” American republic. More “modern” eugenic theorists, such as Madison Grant,

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<sup>7</sup> The rebound in migration after World War I was even more substantial than it appeared. Early in the war, the precipitous drop in migration to the U.S. was matched by higher outbound emigration as “many [migrants] went to join the colors of their respective countries.” *Annual Report of the Commissioner General of Immigration to the Secretary of Labor, Fiscal Year Ended June 30, 1924*, U.S. Department of Labor, Bureau of Immigration (Washington, DC: GPO, 1925), 2, accessed March 21, 2021, <https://catalog.hathitrust.org/Record/011159819>.

<sup>8</sup> The 1917 Act that established literacy tests also formalized an “Asiatic Barred Zone” that excluded from entry anyone born in “India, Siam, Indo-China, parts of Siberia, Afghanistan, and Arabia, the islands of Java, Sumatra, Ceylon, Borneo, New Guinea, Celebes, and various lesser groups.” *Annual Report of the Commissioner General of Immigration to the Secretary of Labor, Fiscal Year Ended June 30, 1919*, U.S. Department of Labor, Bureau of Immigration (Washington, DC: GPO, 1920), 379, accessed March 25, 2021, <https://eosfcweb01.eosfc-intl.net/U95007/OPAC/Details/Record.aspx?BibCode=9023439>. Japanese migration had already been dramatically reduced by the “Gentlemen’s Agreement” between Japan and the U.S. government; Chinese were already banned by the Chinese Exclusion Act; Filipinos were U.S. nationals and could not be banned until the Philippines became independent. Also see: Roger Daniels, *Guarding the Golden Door : American Immigration Policy and Immigrants Since 1882* (New York: Hill and Wang, 2004), 46.

argued that the new migrants were racially different, and would soon outnumber and outbreed the races that had built America's society and political culture, driving Anglo-Saxon and Nordic races in America to extinction.<sup>9</sup> Organized labor groups, especially Samuel Gompers's American Federation of Labor, viewed new migrants as unfair competition who lowered wages and gave employers extra leverage against workers.<sup>10</sup>

This rising coalition of restrictionists first passed the Emergency Quota Act of 1921. It limited the number of alien immigrants in each year to 3% of the number of "foreign-born persons of such nationality resident in the United States as determined by the United States census of 1910." In 1922, immigration fell to 309,556, but it grew again thereafter, reaching 706,896 in 1924. Much of this growth reflected increased immigration from the quota-free Canada and Mexico, and only 27.2% of immigrants in 1923–24 were from southern and eastern Europe, so the 1921 quotas appeared to be achieving some of their intended effect.<sup>11</sup> Still, admissions from southern and eastern Europe were again growing, suggesting strong continuing pressure for higher immigration from these regions.

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<sup>9</sup> Grant, Madison, *The Passing of the Great Race* (New York: Charles Scribner's Sons, 1916), 263. See also "Madison Grant publishes *The Passing of the Great Race*," M. Kohlman, Eugenics Archive, published August 16, 2014, accessed August 7, 2020, <http://eugenicsarchive.ca/discover/connections/53eea903803401dae>.

<sup>10</sup> Melvyn Dubofsky, *The Oxford Encyclopedia of American Business, Labor, and Economic History* (New York: Oxford University Press, 2013), 42–43, doi:10.1093/acref/9780199738816.001.0001.

<sup>11</sup> Between 1921 and 1924, authorized immigration from "British North America" (primarily Canada) rose from 72,317 to 200,690, and immigration from Mexico rose from 30,758 to 89,336. *Annual Report of the Commissioner General of Immigration to the Secretary of Labor, Fiscal Year Ended June 30, 1924*, U.S. Department of Labor, Bureau of Immigration (Washington, DC: GPO, 1925), Table I: Immigrant Aliens Admitted from Certain Countries and Areas in Specified Fiscal Years, 4, accessed March 21, 2021, <https://eosfcweb01.eosfc-intl.net/U95007/OPAC/Details/Record.aspx?BibCode=9023705>.

Restrictionists fought to tighten limits on admission still further, ultimately achieving passage of the Johnson-Reed Act of 1924. Quotas were immediately to be reduced to 2% from 3%. They would be based on the 1890 census, taken before most southern and eastern Europeans arrived.<sup>12</sup> Subsequently, quotas would be recalculated to reflect the “origins of the whole of the U.S. population, including natural-born citizens.” This would shift the balance even further towards immigrants from the British Isles and Western Europe, and away from supposedly “undesirable” southern and eastern Europeans.<sup>13</sup>

Crucially, the Johnson-Reed Act also required potential migrants to apply for visas at their local U.S. consulates or embassies before presenting themselves at the border, so they could be evaluated and often rejected thousands of miles away.<sup>14</sup> “Consular control” added a layer of State Department oversight that promoted tighter

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<sup>12</sup> This two-step process is described well in Daniels, *Coming to America, Second Edition*, 282–283.

<sup>13</sup> “The Immigration Act of 1924 (The Johnson-Reed Act),” Office of the Historian, Foreign Service Institute, U.S. Department of State, last modified June 30, 2016, accessed March 21, 2021, <https://history.state.gov/milestones/1921-1936/immigration-act>. Certain categories of individuals were allowed entry outside the quota system, including unmarried children and wives of currently resident U.S. citizens; lawfully admitted immigrants returning from temporary trips abroad; immigrants born in the Dominion of Canada, Newfoundland, Mexico, Cuba, Haiti, the Dominican Republic, the Canal Zone, or an independent country of Central or South America and their families; and certain ministers, professors, and students. *Immigration Act of 1924*, Pub. L. No. 139, 43 Stat. 153 (1924), Section IV, Encyclopedia.com, accessed March 21, 2021, <https://www.encyclopedia.com/social-sciences/encyclopedias-almanacs-transcripts-and-maps/immigration-act-1924>.

<sup>14</sup> *Immigration Act of 1924*, Pub. L. No. 139, 43 Stat. 153 (1924), Chapter 190, Section 2.

restrictions at pivotal junctures. For example, in September 1930, the State Department recommended, and President Hoover ordered, that public charge provisions be interpreted more strictly until “employment conditions again become normal.”<sup>15</sup> Later in the 1930s, State Department officials would repeatedly slow-walk or reject attempts by Jewish migrants to enter the U.S. and thereby escape the Nazis.<sup>16</sup>

Though final quota numbers reflecting the native-born population weren’t approved until early in 1929, the number of alien legal immigrants from the restrictionists’ target groups had already plummeted. Over 1.1 million Italians had been legally admitted as immigrants between 1910–1914. Between 1925–1929, only 67,000 were.<sup>17</sup>

## 1.2. “Illegal”/“Undocumented” White Immigration in the Quota Era

Even before stringent quotas took effect in the 1920s, European migrants had found reasons and methods to enter the U.S. without legal authorization, or to evade rules

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<sup>15</sup> “The President’s News Conference of September 9, 1930,” *Public Papers of the Presidents of the United States: Herbert Hoover*, 1930, GS 4.113:930 (Washington, DC: GPO, 1974–77), 363–365. See also: “Labor Immigration Halted Temporarily at Hoover’s Order,” *New York Times*, September 10, 1930, 1, as cited in “Comments on Department of Homeland Security, Inadmissibility on Public Charge Grounds,” RIN 1615-AA22, 83 Federal Register 51114 (October 10, 2018) Center for American Progress, accessed March 21, 2021, <https://www.americanprogress.org/issues/poverty/reports/2018/11/27/461461/trumps-public-charge-rule-radically-change-legal-immigration/>.

<sup>16</sup> For example, see discussion “‘A Tragic Bottleneck,’” in Jia Lynn Yang, *One Mighty and Irresistible Tide : The Epic Struggle Over American Immigration, 1924-1965* (New York: W.W. Norton & Co., 2020), 62–89.

<sup>17</sup> *Statistical Abstract of the United States, 1930*, Fifty-second Number, Vol. Serial Set No. 9288, United States Congressional Serial Set (Washington, DC: GPO, 1930), Table No. 106, *Immigrant Aliens Admitted and Emigrant Aliens*, 96. In this era, *immigrant aliens* were defined for statistical purposes as aliens “whose permanent residence has been outside the United States who comes to take up a permanent residence here.” These were distinguished from *non-immigrant aliens* “returning from a temporary visit abroad [or entering] the United States for a temporary stay only,” e.g., as tourists or merchants. *Annual Report of the Commissioner General of Immigration, 1924*, 1.

set by U.S. authorities. Late in the 19<sup>th</sup> century and early in the 20<sup>th</sup>, thousands eluded inspection at the U.S.-Canada border annually. Others learned ways to “mask disease, either physically or pharmacologically” at their public health inspections at Ellis Island.<sup>18</sup> Alien seamen deserted in large numbers: 307,000 between 1907 and 1931, according to official statistics. Many aliens, such as K– (INS case file 56069/889) and the mafia leader Joseph Bonanno, arrived in the U.S. on ships as stowaways. Others colluded with ship owners to be fraudulently listed as crewmembers, and then disappeared in port.<sup>19</sup>

During the 1920s, as legal entry became increasingly difficult for European migrants, attempts to evade the emerging “regime of quotas and papers” became more urgent, and in some cases, better organized.<sup>20</sup> In 1925, Pulitzer’s *New York World* and the *New York Tribune* collaborated on a multi-part exposé claiming that “[m]ore than 60,000 aliens were smuggled into the United States during the last six months” of 1924, with the expectation that 125,000–150,000 would be brought in illegally during 1925.<sup>21</sup>

In addition to smuggling via land and water, Pulitzer’s reporting team described conspiracies involving false passports, sham marriages, opportunities to slip through cursory inspections at cross-border commuter ferry terminals, and teams of fast cars

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<sup>18</sup> Allison Bateman-House and Amy Fairchild, “Medical Examination of Immigrants at Ellis Island,” *The Virtual Mentor* 10, no. 4 (2008): 235–41, *AMA Journal of Ethics*, accessed July 20, 2020, <https://journalofethics.ama-assn.org/article/medical-examination-immigrants-ellis-island/2008-04>. doi:10.1001/virtualmentor.2008.10.4.mhst1-0804.

<sup>19</sup> John Philip Colletta, “Proving Family Lore on the High Seas,” *Ancestry Magazine*, January-February 2003, 32–33. The author cites the congressional report *Hearings Relative to Alien Seamen and Stowaways: Deserting Alien Seamen, Fiscal Year Ended June 30, 1910*, by Ports, 3 (chart). Also see: *In the Matter of K*, I&N Dec. 79, 56069/889 (BIA April 28, 1941), approved by the Attorney General December 9, 1941.

<sup>20</sup> Ngai, *Impossible Subjects*. 35.

<sup>21</sup> “125,000 Pay \$300 Million to Enter U.S.,” *Oakland Tribune*, May 14, 1925, 1, accessed November 15, 2020, <https://www.newspapers.com/image/95462808/>.

coordinating to evade border patrol officers along the Canadian border.<sup>22</sup> One migrant smuggled across the Canadian border by car was Minnie Kusnetz, whose story is recounted in Chapter 3. In 1926, a leading U.S. professional soccer coach was even charged with smuggling in four players from Canada.<sup>23</sup>

The *World* and *Tribune*'s reporters claimed that aliens of most nationalities were being smuggled, but "chiefly natives of the Mediterranean and Central European countries most seriously affected by the small quotas of the Act of 1924 — Italians, Greeks, Armenians, Russians, Poles, Hungarians, Portuguese, Spaniards, and Czechoslovaks — and of the Asiatic countries from which all immigration is barred."<sup>24</sup> Allegedly, another 75,000–150,000 Canadians and Mexicans, whose entry wasn't restricted by quota, nevertheless evaded inspection to avoid fees. Their presence within the U.S. was likewise unauthorized. Sometimes, evasion simply continued traditional behavior in which the existence of the U.S. border had been largely irrelevant to everyday life and work. This was often the case for French-Canadian loggers working in Maine, and for Mexican migrant workers in California and the southwest.

Some migrants, such as the Greek migrant "R—" (56071/174) arrived with forged documentation such as a faked birth certificate, or one belonging to someone else from a

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<sup>22</sup> "Alien Smugglers Make Montreal Their Base: Fleet of Autos Bootleg Humans Over Line," *Oakland Tribune*, May 20, 1925, 13, accessed November 15, 2020, <https://www.newspapers.com/image/95463352>.

<sup>23</sup> Jocelyn Cohen, Daniel Soyer, and Yivo Institute for Jewish Research, *My Future Is in America : Autobiographies of Eastern European Jewish Immigrants* (New York: New York University Press, 2006), 288–310. Also: "Giant Official in Bad for Smuggling Alien Athletes," *The Republican-Journal*, March 31, 1926, 7, accessed December 1, 2021, <https://nyshistoricnewspapers.org/lccn/sn84024315/1926-03-31/ed-1/seq-7/>.

<sup>24</sup> "125,000 Pay \$300 Million to Enter U.S.," *Oakland Tribune*, May 14, 1925, 1, accessed November 15, 2020, <https://www.newspapers.com/image/95462808/>.

different country.<sup>25</sup> Others acquired forged documentation inside the U.S., and used it to pursue permanent residency and naturalization. Complex immigration fraud and smuggling rings were repeatedly broken up, sometimes with help from illegal migrants who were occasionally (and controversially) granted relief in exchange. Contemporaneous sources claimed that substantial numbers of individuals traveled to countries near the U.S., intending to use those destinations as temporary waystations towards entry by whatever means necessary.

Widespread publicity about illegal entries, combined with major changes to the ethnic composition of northeast cities, led to growing concerns by so-called “old stock” Americans that they were losing control of both the borders and the country. These perceptions were exacerbated by a popular conception that “alien ideas” were behind subversion, anarchism, labor violence, communism, and other apparent disruptions to the social order in the years before, during, and after World War I. Even as new ethnic communities gained political power, they often found themselves on the defensive against those who viewed them as resisting American laws and mores concerning immigration, alcohol, and other aspects of life.

Community leaders sometimes struggled to balance representing their constituents while also protecting their credibility as “good Americans” in the wider society. For example, according to Libby Garland, El Paso, Texas rabbi Martin Zielonka became so concerned about illegal Jewish European migration across the Mexican border during the 1920s that he established social work initiatives to make Jewish European migrants in

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<sup>25</sup> *In the Matter of R-*, 1 I&N Dec. 118, 56071/174 (BIA June 13, 1941).

Mexico more comfortable about staying there, discouraging surreptitious attempts to cross the border.<sup>26</sup>

As described by Lisa Lundquist Dorr, many migrants were dropped along the Florida coastline by smugglers sailing from Cuba, along with others who were brought as stowaways, impersonated crew members, or were victimized by human traffickers. Dorr cites authorities' contemporaneous estimates that 200 illegal immigrants were being successfully smuggled in every week, earning the smugglers \$180–\$250 per individual.<sup>27</sup>

When it became clear that strict quotas would be imposed in the U.S., the number of individuals traveling to Cuba from Germany, Austria, Hungary, Greece, Japan, Czechoslovakia, Lithuania, Yugoslavia, Syria, Turkey, and Palestine doubled or in some cases tripled. This suggested that many such individuals were responding to advertising and rumors in Europe that they could more easily find their way into the U.S. from Cuba. In 1925, the *World* claimed that 30,000 to 50,000 aliens were awaiting illegal passage in Havana alone.<sup>28</sup>

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<sup>26</sup> Libby Garland, *After They Closed the Gates* (Chicago: University of Chicago Press, 2014), 53–67.

<sup>27</sup> Lisa Lindquist Dorr, *A Thousand Thirsty Beaches* (Chapel Hill: Univ. of North Carolina Press, 2018), 134–138, accessed July 10, 2021, [https://www.jstor.org/stable/10.5149/9781469643298\\_dorr.9](https://www.jstor.org/stable/10.5149/9781469643298_dorr.9).

<sup>28</sup> As cited in Dorr, 133. Also see: “Aliens Slip into U.S. on Cuban Ships,” *Oakland Tribune*, May 17, 1925, 1, <https://www.newspapers.com/image/95463020/>. Roger Daniels notes that Europeans could at first escape quotas legally by establishing and maintaining a year’s residence in a New World country that wasn’t subject to them. Daniels, *Coming to America*, 2nd ed., 292. This was extended to five years in 1922, and the 1924 act eliminated any possibility of evading quotas by sojourning in a western hemisphere country first. As Immigration Commissioner Shaughnessy testified in 1940, “if you were born in Germany, a quota country, and within a year of your birth were brought to Brazil and lived there for 50 years, you are still chargeable to the German quota.” *Hearings on Department of Labor Appropriations, Department of Labor-Federal Security Agency Appropriation Bill for 1941*, 76th Congress, 3d Session, Parts 1–2 (Washington, DC: Government Printing Office), 239, accessed March 24, 2021, [https://www.google.com/books/edition/Department\\_of\\_Labor\\_Federal\\_Security\\_Age/QahTzQbEDHcC?hl=en&gbpv=0](https://www.google.com/books/edition/Department_of_Labor_Federal_Security_Age/QahTzQbEDHcC?hl=en&gbpv=0). Unsurprisingly, these changes made illegal shortcuts more attractive.



Political conditions in Europe often contributed to temporary spikes in unauthorized migration to the U.S. Armenian refugees scattered throughout and beyond the former Ottoman Empire made desperate attempts to resettle in the U.S. beginning in the 1920s. Given annual quotas of 100 migrants for Turkey and Syria, much of this migration was extra-legal. Jews and other minorities made frantic attempts to escape the Third Reich during the 1930s and early 1940s. While many were turned away, some, such as Thomas W. Doeppner (p. 163) made their way in and looked for ways to stay. (Ultimately, the Roosevelt Administration would deport no Europeans from the U.S. to Nazi territory from 1939 onward. However, the future remained precarious for migrants of all backgrounds with no legal right to remain.<sup>29</sup>)

In the mid-1920s, members of the Irish Republican Army fleeing from authorities in the newly independent Irish Free State or the United Kingdom sometimes attempted to enter the U.S. with the help of smugglers or document forgers. In one case, the new Irish government sentenced IRA member John Keogh to a ten-year prison term for assault, arson, and burglary. But a fellow IRA member helped him escape, and he evidently entered the U.S. at Niagara Falls without inspection or a passport. The Irish government sought his capture and extradition, but neither ever happened.<sup>30</sup> (The even more

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<sup>29</sup> “Kristallnacht,” *Holocaust Encyclopedia*, accessed January 1, 2021, <https://encyclopedia.ushmm.org/content/en/article/kristallnacht>.

<sup>30</sup> The following citations are drawn from Gavin Wilk, *Transatlantic Defiance: The Militant Irish Republican Movement in America, 1923–45* (Manchester, UK: Manchester University Press, 2014), 26–53: NAI, Department of Foreign Affairs (DFA), 44/9, Macaulay to Secretary, Department of External Affairs, 21 December 1931; NAI, DFA, 44/9, Macaulay to Secretary, Department of External Affairs, 7 January 1932. NAI, DFA GR 853, Department of Justice to Secretary, Department of External Affairs, 26 November 1926; NAI, DFA, GR 853, Department of Justice to Secretary, Department of External Affairs, 26 November 1926; NAI, DFA, GR 853, Macaulay to Secretary, Department of External Affairs, 11 March 1927.

controversial Irish Republican leader Éamon de Valera had already escaped to the United States as a stowaway aboard the SS Lapland from Liverpool in 1919. He stayed eighteen months and occasionally even made public appearances while in the U.S. without authorization.<sup>31)</sup>

So, too, after Mussolini consolidated power in Italy, he and his special prefect to Palermo, Cesare Mori, sought to wipe out the competing power center of the Sicilian mafia. As Joseph Bonanno later recalled, “many were forced to flee to America.” Bonanno was among them, sneaking into Tampa, Florida in 1924 on a Cuban fishing boat.<sup>32</sup> His own organized crime mentor, Salvatore Maranzano, arrived illegally in 1925. Maranzano quickly rose to control what would later become Bonanno’s crime family, before dying in a mob war in 1931. Estimates of the number of Italian organized crime members who entered the US illegally vary widely, but the number may well have been in the hundreds.<sup>33</sup>

Several factors appear to have reduced the flow of “illegal” white migrants in the late 1920s and early 1930s. First, U.S. authorities gradually established somewhat more effective enforcement mechanisms, including the U.S. Border Patrol, and strengthened coordination with other nations and with corporations involved in international transport.

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<sup>31</sup> “Éamon de Valera’s US Trip that Left Irish America Divided,” *Irish Times*, June 1, 2019, accessed November 15, 2020, <https://www.irishtimes.com/news/world/us/%C3%A9amon-de-valera-s-us-trip-that-left-irish-america-divided-1.3911086>.

<sup>32</sup> From Bonanno’s 1968 autobiography, as cited in Federico Varese, *Mafias on the Move : How Organized Crime Conquers New Territories* (Princeton: Princeton University Press, 2011). Also see Selwyn Raab, “Joe Bonanno Dies; Mafia Leader, 97, Who Built Empire,” *New York Times*, May 12, 2002.

<sup>33</sup> Varese, *Mafias on the Move*. Varese cites two competing estimates: David Chandler’s 1976 estimate of 500, in David Leon Chandler, *Criminal Brotherhoods* (London: Constable, 1976); and Critchley’s lower estimate, in David Critchley, *The Origin of Organized Crime in America : The New York City Mafia, 1891–1931* (United Kingdom: Routledge, 2009), 208.

In one sign of greater control, the number of deserting seamen — somewhat easier to measure accurately than other surreptitious entrants, since vessels were required to name all seamen arriving and departing — dropped from 23,447 in 1927 to 664 in 1933 and 972 in 1934.<sup>34</sup>

Second, the U.S. became a less attractive destination during the Depression. From 1932–1934, according to the Department of Labor, 135,033 more aliens emigrated out of the United States than entered it.<sup>35</sup>

Third, nearby nations tightened their own borders, in response to domestic nativist movements, the Great Depression, U.S. pressure, or all of these. Canada's March 21, 1931 Order in Council PC 695 prohibited entry from all but British subjects from white areas of the British Commonwealth and U.S. citizens with sufficient means to survive until they could find employment; wives and children of legal residents; and farmers with enough money to farm in Canada. The number of immigrants entering Canada dropped from 165,000 in 1929 to 14,400 in 1933.<sup>36</sup> Through the late 1920s and 1930s, Mexico quietly widened restrictions on eastern and southern Europeans, Asians, Africans, Arabs, Turks, and Jews from wherever they came. Cuba imposed a \$200 deposit requirement for immigrants in the early 1930s; in 1937, it required a \$500 bond and limited visas to

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<sup>34</sup> "Deportation During the Fiscal Year Ending June 30, 1934," *Interpreter Releases* XII, no. 7, Series A: Immigration No. 2, February 14, 1935, 36–38.

<sup>35</sup> *22<sup>nd</sup> Annual Report of the Secretary of Labor for the Fiscal Year Ended June 30, 1934*, U.S. Department of Labor, Immigration and Naturalization Service (Washington, DC: GPO, 1935), 59, accessed March 23, 2021, <https://eosfcweb01.eosfc-intl.net/U95007/OPAC/Details/Record.aspx?BibCode=9024259>,

<sup>36</sup> "Orders in Council – Décrets-du-Conseil," RG2-A-1-a, Volume 1479, PC 1931-695 21 March 1931, Library and Archives Canada: Ottawa, Canada, accessed January 21, 2021 via Canadian Museum of Immigration at Pier 21, <https://pier21.ca/research/immigration-history/order-in-council-pc-1931-695-1931>; "150 years of immigration in Canada," Statistics Canada: Ottawa, Canada, accessed March 21, 2021, <https://www150.statcan.gc.ca/n1/pub/11-630-x/11-630-x2016006-eng.htm>.

permanent immigrant settlers likely to promote the nation's development.<sup>37</sup> As Kathleen López has written, as the U.S. closed its gates, those locked out “diverted their paths elsewhere in the hemisphere. A cornerstone of US policy therefore focused on preventing other hemispheric nations with seemingly more porous boundaries, such as Canada, Mexico, and Cuba, from serving as ‘back doors’ through which [they] could gain entry.”<sup>38</sup>

Even so, control over unauthorized migration into the U.S. was always uncertain, and assessments of it were always contested. Controversy quickly arose over the scope of illegal migration to the U.S., and official and unofficial estimates of the number of illegal migrants varied widely during the 1920s and 1930s.

One of the first and most speculative estimates came from U.S. Immigration Commissioner W.W. Husband in 1924. Noting that “it was necessary to refuse about 20 per cent of the applications for permits to re-enter for the reason that record of a prior lawful admission could not be found,” and given that the total alien population in the 1920 census was roughly 7,000,000, Husband found it plausible that 1,400,000 migrants could not demonstrate legal residence.<sup>39</sup> In 1932, Hoover Administration Secretary of Labor William N. Doak estimated that “at least 400,000” people were in the country illegally; his subordinate, Immigration Commissioner Harry Hull shared Doak's estimate with his own observation that there were probably many more. Writing in 1947,

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<sup>37</sup> Kathleen López, “Gatekeeping in the Tropics : US Immigration Policy and the Cuban Connection,” in *A Nation of Immigrants Reconsidered*, Maddalena Marinari, Madeline Hsu, and Maria Cristina Garcia, Vol. 21. Studies of World Migrations (Champaign: University of Illinois Press, 2018), 45.

<sup>38</sup> Ibid., 45.

<sup>39</sup> *Annual Report of the Commissioner General of Immigration to the Secretary of Labor*, Fiscal Year Ended June 30, 1924, 12.

immigration historian Maurice Davie cited another 1920s-era estimate of 175,000 illegal entrants per year; in his view, this was conservative.<sup>40</sup>

Late in 1935, Roosevelt Immigration Commissioner McCormack claimed that “under 100,000” migrants were present illegally and subject to deportation, and “the entire number who entered illegally or who, after a lapse of years, cannot prove their legal entry is believed to be less than 400,000.”<sup>41</sup> In contrast, restrictionist Congressman Martin Dies, Jr. (D-TX) claimed in 1936 that there might be 250,000 illegal aliens in the New York City metropolitan area alone. Dies alleged that many of the 307,000 recorded ship desertions between 1907 and 1931 likely corresponded to people still present illegally; and that over a million Mexicans were in the U.S. illegally. Since quotas were put in place, he argued, “more aliens have entered the country illegally than have come through regular channels.” Dies added that many of the 20 million entries in 1934 were commuters who weren’t “manifested”: “they merely waved a card and passed the barrier; no check was made to whether they returned.” Altogether, Dies said, “there are 8,000,000 aliens here, 3,000,000 illegally; 1,500,000 on relief.”<sup>42</sup> Dies’s 1936 estimate seems high in retrospect, given that less than five million aliens overall registered in response to the well-enforced 1940 Alien Registration Act. If it had been accurate, 2.3% of the U.S.

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<sup>40</sup> Maurice R. Davie, *World Immigration: With Special Reference to the United States* (New York: Macmillan Company, 1947), 400.

<sup>41</sup> Address by Col. Daniel W. MacCormack at the Horace Mann High School, Gary, Indiana, November 20, 1935, 2, Frances Perkins Collection, Box 1, Addresses of Daniel W. MacCormack, Commissioner of the Immigration and Naturalization Service, Linda Lear Center for Special Collections & Archives, Connecticut College, New London, CT. (Hereafter cited as Perkins Collection.)

<sup>42</sup> “Over Million Aliens Seek Entry to United States Despite Our Unemployment, Says Dies – Besides, Thousands Flock in from Non-Quota Countries of Western Hemisphere,” *Washington Herald*, Feb. 23, 1936; “Dies Charges That Labor Department Seeks to Undermine Immigration Laws – Proposed Legislation Would Relax Alien Barriers, Yet Millions Are Jobless,” *Washington Herald*, March 1, 1936.

population would have been here “illegally,” in an era where only about 13–15% of the American population was foreign born.

(One more way to assess the number of individuals in the U.S. “illegally” is to assess deportations and voluntary departures in the era. INS reports show fewer than 120,000 official deportations between 1931 and 1940.<sup>43</sup> However, far more were aggressively encouraged to leave without formal deportation proceedings, often via fear and intimidation. In *The Deportation Machine*, Adam Goodman estimates that “the collective efforts of local, state, and federal officials caused or contributed to the repatriation of as many as half a million Mexicans and Mexican Americans between 1929 and 1939.” To be clear, many individuals of Mexican origin driven out of the U.S. in those years had been either U.S. citizens or were in the U.S. legally.)<sup>44</sup>

From whatever source, the subterranean nature of most sources of illegal migration makes it impossible to quantify accurately, even in retrospect. Considering Jewish illegal migration originating in Europe after the imposition of early quotas in 1921, Libby Garland estimates that it numbered in the “tens of thousands, possibly higher.” At first, she believes, these migrants came primarily from Eastern Europe, but as

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<sup>43</sup> *Twenty-Second Annual Report of the Secretary of Labor for the Fiscal Year Ended June 30 1934*, U.S. Department of Labor, Immigration and Naturalization Service (Washington, DC: GPO, 1934), 63, accessed March 23, 2021, <https://eosfcweb01.eosfc-intl.net/U95007/OPAC/Details/Record.aspx?BibCode=9024259>; and *Twenty-Eighth Annual Report of the Secretary of Labor for the Fiscal Year Ended June 30 1940*, U.S. Department of Labor, Immigration and Naturalization Service (Washington, DC: GPO, 1940), 108, accessed March 23, 2021, <https://eosfcweb01.eosfc-intl.net/U95007/OPAC/Details/Record.aspx?BibCode=9024187>.

<sup>44</sup> Adam Goodman, *The Deportation Machine*, Politics and Society in Modern America (Princeton: Princeton University Press, 2020), 46. In his notes (240), Goodman points out that other estimates vary widely and are both higher (Balderrama and Rodríguez, *Decade of Betrayal*) and lower (Brian Gratton and Emily Merchant, “Immigration, Repatriation, and Deportation: The Mexican Origin Population in the United States, 1920–1950,” *International Migration Review* 47, no. 4 (Winter 2013): 944–75) than his own.

the Nazis rose to power, they also came from Germany and Austria.<sup>45</sup> As already stated, over 50,000 migrants, many without legal authorization, had their status regularized through preexamination. Over 250,000 — some who'd merely lost or never been issued proper papers, many others who'd knowingly arrived and stayed illegally — later had official records of legal entry created for them through provisions of the Registry Act of 1929 (see p. 31). Still others identified by authorities as unauthorized were granted “voluntary departure” in lieu of deportation. Since these individuals had not been officially deported, many could apply for new visas overseas; if granted, they returned as legal entrants.

Combined with other sources of unauthorized migration, as well as individuals who arrived legally on temporary tourist or student visas and overstayed their legal authorizations, it seems likely that several hundred thousand “white” migrants were technically or flagrantly “illegal” at some point during the preexamination era. On the whole, restrictionists may have substantially overestimated the unauthorized population, but some liberalizers may have underestimated it.

### 1.3. After Johnson-Reed: The Politics of Discretionary Relief

The passage of the Johnson-Reed Act in 1924 at first appeared to resolve a decades-long debate over immigration, with restrictionists winning a resounding and seemingly permanent victory. In subsequent years, restrictionist forces inside and outside Congress would remain vigilant against attempts to undo quotas by either legislation or administrative action.

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<sup>45</sup> Garland, *After They Closed the Gates*, 6.

Even so, in the late 1920s, with the landscape of immigration radically reconfigured, a new migration debate began to emerge. It was often constructed around competing narratives of who the migrants were. One way to enter that contemporary debate is to consider competing interpretations of the new “deportation trains” that rolled through American cities during 1931 and 1932.

Newspaper readers often saw reports of these trains arriving secretly to pick up anonymous illegal aliens on their way to the coast, and to expulsion. For example, in a 1932 story titled “Steel-Barred Train of Doom Picks up Three Here at Midnight,” the *Binghamton Press* told of a “a strange home-going for a strange cargo” of 383 deportees: “convicts, bootleggers, thieves, lawbreakers of all types and just plain undesirables being rushed out of the country...”

The *Binghamton Press* describes coach windows barred with steel to prevent the escape of “‘tough birds...’ taken from jails and prisons.” But it also describes a detained ten-year-old boy pressing his nose to a window and grinning. And when it interviews three prisoners boarding at Binghamton, it reports no serious crimes unrelated to their illegal entry.

The reporter gives most attention to Thorwald George Kahl, who was to be deported to Germany. Kahl had deserted a German ship in Baltimore, traveled to New York, found work as a painter, and then began an affair with his employer’s wife. Kahl and his paramour ran off to Montréal, with Kahl using his boss’s identification papers.



Both were subsequently arrested as they attempted to re-enter the U.S. at Rouses Point, New York.<sup>46</sup>

What were Americans to make of these deportation trains? A widely reprinted news story from the Cleveland-based Central Press news syndicate introduced recent Polish bride Anastasia Sardyga and Italian 21-year-old Vincent Amato “fearfully [hoping] against hope that the next deportation train, with its barred windows and exits, will go straight through without stopping to take them aboard. Only a miracle, however, will save them.” Sardyga, found guilty of entering the country on her sister's passport,

...passes most of her time in bewildered weeping. She cannot comprehend her offense. ‘Passport like ticket, I use my sister’s.’

Her husband, Antin (sic; Anton), tries to comfort her, but he, too, weeps when he looks ahead to years without his wife. ‘I cannot go to Poland with her. Here I have a good job and I could support my wife. Over there, there is nothing for me to do. She must go to her sister, in Poland, who already has two fatherless children to support... I do not know what will become of her.’<sup>47</sup>

Amato became deportable because he had committed a felony involving moral turpitude, larceny, within five years of his most recent entry. Immigration authorities alleged (and Amato denied) that this entry followed an afternoon visit to Windsor, Ontario on or about November 1, 1930. Because that afternoon in Canada had reset his

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<sup>46</sup> “Steel-Barred Train of Doom Picks up Three Here at Midnight. Motley Cargo from All Over Nation Aboard: Convicts, Criminals, Other Undesirables Taken to Ellis Island,” *Binghamton Press*, August 8, 1932, 3, accessed October 15, 2020, <https://www.newspapers.com/image/253689434>.

<sup>47</sup> “Unwanted by Uncle Sam, Young Bride and Youth Both Face Deportation,” *Morning Call* (Paterson, New Jersey), January 21, 1932, 13, accessed September 15, 2020, <https://www.newspapers.com/image/552608097/>.

“entry clock,” a crime he committed as a teenager required his deportation to Italy, a country he hadn’t seen since infancy.<sup>48</sup>

Should the American public have viewed the deportation trains as terrorizing aliens who simply wanted to build honest, hard-working lives in America, and deserved lighter punishment, or outright forgiveness? The aforementioned Hoover Administration Commissioner General of Immigration Harry Hull didn’t think so. Hull, formerly a Republican Congressman from Iowa, had been best known for voting against U.S. entry into World War I. Chosen by Calvin Coolidge to run the immigration service in 1925, he had taken office focused on treating aliens of questionable status “with the greatest liberality... as far as permissible to take the humane view and treat each case on its merits.”<sup>49</sup> But his emphasis seemed to change over time. By 1928 he spoke of how “Ellis Island resounded for years to the tramp of an endless invading army,” and told one of the nation’s fiercest restrictionist organizations how crucial it was that “only true friends of the policy of restricted immigration” hold power.<sup>50</sup> Now, in 1932, he viewed the deportation trains as a key element of national defense that was restoring job opportunities to Depression-ravaged Americans, while also protecting them against thousands of immigrant criminals, many of them violent:

From all parts of the country... [the deportation] train is drawing passengers: aliens who have no right to remain in this country; many who had no right to enter in the first place, and came in as law-breakers. The deportation trains run

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<sup>48</sup> Amato later appealed to the federal courts, but his appeal was dismissed later in 1932. Sardyga was apparently still in the United States in 1938 when Congressman Martin L. Sweeney of Cleveland submitted a private bill (H. R. 9542) to protect her. The bill did not pass.

<sup>49</sup> “2,000,000 Aliens Are Here Without the Right to Stay,” *New York Times*, July 26, 1925, 16.

<sup>50</sup> Vincent J. Cannato, *American Passage : The History of Ellis Island* (New York: Harper, 2009) 1; “Hull Asks Curb on Aliens,” *New York Times*, August 5, 1928, 2.

westward, too, picking up deportable aliens who are going back to the Orient, whence they came uninvited and illegally.

These trains have been crossing and recrossing the country [and] will continue to run as long as we find deportable aliens — and the end is not yet in sight... Undoubtedly the deportations occasion some hardship to some of those deported. But there is hardship also to thousands of American citizens who are idle because the jobs they could fill are held by foreign-born men and women who entered this country illegally...

Hull tells of an immigration inspector moved to sympathy by a “pathetic story of ‘injustice’.” A woman had claimed her deportation resulted from refusing to sell her successful small business to a competitor, who then turned her in. But when the inspector investigated, “her cigar and lunch counter, it was discovered, had been merely a blind to cover her real business of procuress.”<sup>51</sup>

Hull argued that the system he administered already offered mercy to the truly deserving, especially when family unification was at stake. “In many cases we do not issue orders of deportation — though we send the aliens out — so that they can apply for re-entry under the quota law... Furthermore, under a recently enacted law we have made it possible even for a formally deported alien, in meritorious cases, to reapply for admission.” Of course, Hull made no guarantee that quota slots would ever be available for those who had been “sent out.” Still, these statements suggested that even moderate restrictionists recognized a limited need for administrative discretion. Later, in arguing that this was a bipartisan cause, his Democratic successor would sometimes quote President Hoover’s Wickersham Commission:

In deportation cases, even when the judgment is just and necessary, hardships are extreme, both upon those deported, and upon their families who are permitted to remain; and in the opinion of the Commission, the limited discretion to permit, in

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<sup>51</sup> Harry Hull, “Holding the Alien in Check,” *Cincinnati Enquirer*, August 7, 1932, 68, accessed September 15, 2020, <https://www.newspapers.com/image/102629031>.

cases of exceptional hardship, a relaxation of the rigid requirements of the present Statutes, would be consistent with the dignity of a great and humane nation.<sup>52</sup>

Meanwhile, for many aliens without legal status, the legal, economic, and social pressures to find a path to legalization and naturalization continued to grow. Some needed to stay in the shadows permanently — for example, John Keogh, who would have been extradited to an Irish prison had he been caught. But for most, it was different.

Unauthorized entry became a crime punishable by fines, imprisonment, and deportation in 1929, and there would no longer be a statute of limitations on deportability.<sup>53</sup> As long as unauthorized migrants remained subject to deportation, their expulsion risked hardship to others around them. This included their U.S. citizen dependents, and in some cases, their employees. Without a legal right to be in the United States, migrants took grave risks if they left — for example, to visit family members or attend family events.

Even if they stayed in the U.S., aliens' undocumented status increasingly presented handicaps and risks. State social welfare and pension programs were often limited to citizens. So, too, were licenses for professionals ranging from lawyer to liquor dealer. During the Depression, WPA, CCC, and other federal government work was as well. When national Social Security was implemented in 1936–37, individuals needed social security numbers to participate. By applying for one, they risked exposure.

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<sup>52</sup> U.S. House of Representatives, Committee on Immigration and Naturalization, 74th Congress, 1st Session, *Deportation of Aliens: Hearings before the Committee on Immigration and Naturalization, House of Representatives, Seventy-Fourth Congress, First Session, on H.R. 6795, April 9, 10, 11, 1935* (Washington, DC: GPO, 1935), 20, accessed March 21, 2021, <https://catalog.hathitrust.org/Record/100669410/Home>.

<sup>53</sup> Allison Brownell Tirres, "Who Belongs? Immigrants and the Law In American History," in *A Companion to American Legal History*, eds. Sally E. Hadden and Alfred L. Brophy (Chicester: John Wiley & Sons, 2013), 234, accessed June 14, 2020, ProQuest Ebook Central.

Restrictionists sought mandatory alien registration rules to draw aliens out of the shadows, finally winning this battle in 1940 (see p. 67). Migrants heard about proposals to deport those who failed to apply for and earn citizenship within a specific timeframe — sometimes, as short as five years — and were therefore seen as resisting assimilation, or as actively disloyal.<sup>54</sup> Citizens had priority in earning coveted quota slots for overseas relatives.<sup>55</sup> Finally, aliens' American-born children, who possessed birthright citizenship, often encouraged them to naturalize. In order for them to do so, however, they first had to demonstrate they were in the U.S. legally.

#### 1.4. Registry Act of 1929: First Form of Post-Johnson-Reed Amnesty

Writing in 1932, Hull could point to the first large-scale opportunity for discretionary relief since the passage of Johnson-Reed: the Registry Act of March 2, 1929. This legislation responded to a problem recognized by all three branches of the federal government: since 1906, aliens had to demonstrate legal entry into the U.S. in order to naturalize, but many aliens of long residence could not do so. According to a 1928 congressional report, this problem was “well known to almost every Member of the Congress, especially to those having foreign-born constituents, all of whom have had repeated appeals for relief...”<sup>56</sup>

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<sup>54</sup> “A New Bill against Foreigners,” *Rassviet (The Dawn)*, February 20, 1936, accessed July 21, 2020, <https://bit.ly/2YRCeua>, page discontinued.

<sup>55</sup> “Annual Report of the Division of Immigration and Americanization for the Year Ending November 30, 1938,” Commonwealth of Massachusetts Department of Education (Boston, April 1939), 8–9.

<sup>56</sup> U.S. House of Representatives, 70th Congress, 1st Session, *Legalization of Residence of Certain Aliens, Report 1774 to Accompany H.R. 13793*, May 19, 1928, Majority and Minority Views (Washington, DC: GPO, 1928), accessed March 20, 2021,

In some cases, the necessary records may have been lost or never created. Migrants might have come legally on a temporary basis and decided to stay permanently at a time when the immigration laws were vague, or seemed vague to them.<sup>57</sup> Many others had evaded inspection, and never gained legal status in the first place. Some had arrived as deserting seamen prior to 1921, overstayed the 60 days of shore leave permitted to them, and remained in the U.S. long enough to outlast the statute of limitations.

Aliens who *were* deportable, or *thought* they were, sometimes found themselves at the mercy of blackmailers who discovered their status and threatened to notify authorities.<sup>58</sup> Still others had been brought to the U.S. as young children and raised as Americans, only to discover their parents had never been naturalized and they had no legal status.<sup>59</sup>

In short, large numbers of aliens were stuck in limbo: neither deportable nor eligible for naturalization. That was a major problem for them. All but extreme restrictionists saw it as a problem for the country, too. As Commissioner General of Immigration Hull said in 1927, “They can not become United States citizens, and the

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[https://www.google.com/books/edition/United\\_States\\_Congressional\\_Serial\\_Set/BTU8AQAAAJ?hl=en&gbpv=0](https://www.google.com/books/edition/United_States_Congressional_Serial_Set/BTU8AQAAAJ?hl=en&gbpv=0).

<sup>57</sup> *Annual Report of the Commissioner General of Immigration to the Secretary of Labor, Fiscal Year Ended June 30, 1924*, 12–14.

<sup>58</sup> Hull, *Holding the Alien in Check*.

<sup>59</sup> *Legalization of Residence of Certain Aliens*, Report 1774, May 19, 1928.

presence in the United States of this unassimilated element is undesirable in the extreme.”<sup>60</sup>

Tight quota restrictions and other Johnson-Reed Act provisions now made it virtually impossible for many unauthorized aliens to leave and return legally with a visa. At one time, immigration officials had created retroactive (“nunc pro tunc”) certificates of arrival for some of these aliens without explicit legal authority to do so, but both the courts and Congress objected, and they had halted the practice.<sup>61</sup>

By 1924, Coolidge Administration immigration commissioner W.W. Husband was arguing that provisions should be made for such otherwise law-abiding migrants, and that such a law should be characterized by “great liberality” and allow immigration administrators to exercise “wise discretion”:

In all dealing with our alien population... we should give them, from the very first contact, the best possible impression of our Government... the first impression is the most lasting, and [the] most desirable type of naturalized citizens cannot be expected if they are not imbued with a sense of just treatment [while] they have resided here as aliens.<sup>62</sup>

After several years of debate, Congress made it possible for an alien to have a record of legal entry retroactively created. To do so, the alien needed to satisfy the Immigration Service that he had entered the U.S. before June 3, 1921 and maintained continuous residence since then. This was the date the original 1921 emergency quotas

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<sup>60</sup> *Annual Report of the Commissioner General of Immigration to the Secretary of Labor, Fiscal Year Ended June 30, 1928*, U.S. Department of Labor, Bureau of Immigration (Washington, DC: GPO, 1928), 30, accessed March 24, 2021, <https://eosfcweb01.eosfc-intl.net/U95007/OPAC/Details/Record.aspx?BibCode=9023919>.

<sup>61</sup> Extract from “Report of the Secretary of Labor, 1927,” in *Legalization of Residence of Certain Aliens*, Report 1774, May 19, 1928, 4–5.

<sup>62</sup> *Annual Report of the Commissioner General of Immigration to the Secretary of Labor, 1924*, 13.

went into effect. Many legislators had apparently been willing to set the date at June 30, 1924, when the subsequent Johnson-Reed Act took effect. But Johnson himself, still chairman of the House Immigration Committee, objected. By mid-1921, he argued, the records were accurate enough that anyone who couldn't prove legal entry afterwards was almost certainly in the U.S. illegally.<sup>63</sup>

Registry Act applicants had to demonstrate good moral character; could not otherwise be deportable, and needed to be eligible for naturalization. The naturalization requirement excluded migrants from China, as well as many others whose national origins were within the Asian Barred Zone established in 1917. Similar restrictions would later apply to preexamination.

As has often been the case with legislation aimed at providing relief, the Registry Act was paired with tougher measures. Just two days later, Congress made it a misdemeanor crime for an alien to enter the U.S. through an unauthorized location, to elude examination or inspection, or to obtain entry by a "willfully false or misleading representation or the willful concealment of a material fact." The same bill made it a felony for someone previously deported to re-enter without authorization.<sup>64</sup> These major steps towards criminalizing unauthorized immigration have had major implications ever since.

Even though Albert Johnson and David Reed, lead sponsors of the 1924 national origins quota act, helped shepherd the Registry Act towards enactment, it still faced

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<sup>63</sup> "Congress Rows on Citizen Bill," *The Knoxville News-Sentinel*, February 26, 1929, 8, accessed July 20, 2020, <https://www.newspapers.com/image/593649943>.

<sup>64</sup> *Remarks in House on Conference Report on Bill (S. 5094) Making it a Felony with Penalty for Certain Aliens to Enter the United States under Certain Conditions in Violation of Law*, 70th Cong., 2nd Sess., *Congressional Record* Volume 70, Part 6 (March 1, 1929): 4951–4952.



significant opposition, ultimately passing the House 218–110.<sup>65</sup> In a pattern that would often recur in immigration legislation, when long-time restrictionists finally agreed to a compromise, even fiercer restrictionists would take the baton and lead continuing opposition. In this case, East Texas Rep. John Box, who had already spent years trying to impose quotas on Mexicans, argued that it

ignores the difference between law-abiding immigrants and bootlegged aliens, and rewards disregard of the law. It throws citizenship and its privileges, including the ballot, into the dirt at the feet of aliens who have despised the laws and are most apt to be without capacity to appreciate or use the ballot.

[Soon] hundreds of thousands of smuggled-in aliens being pardoned and rewarded by this bill will begin to become naturalized citizens... each [will then] be entitled to have admitted as non-quota immigrants... his wife and unmarried minor children...

[Other relatives will then be] entitled to a preference within the quota... This will further congest our consulates, and will be a rank injustice to naturalized citizens and aliens lawfully admitted and their relatives...<sup>66</sup>

Box sounded notes his successors would later raise about preexamination: it encouraged lawlessness by rewarding lawbreakers, and as beneficiaries naturalized, the floodgates would open to family members likely to be equally undesirable. So, too, they argued, the vague official projection of “many thousands” of beneficiaries would prove a

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<sup>65</sup> Ibid., 4951.

<sup>66</sup> Ibid., 4948–4950. Mae Ngai argues that the Registry Act represented another way “legislative and administrative reforms operated in ways that fueled racial disparity in deportation practices”; while it “did not formally favor Europeans over Mexicans,” 80% of its beneficiaries during the 1930s were Europeans. Ngai cites Paul S. Taylor’s claim that many Mexicans would have qualified, but didn’t know about the act, didn’t understand it, or couldn’t afford its fees. See Ngai, *Impossible Subjects*, 80. In contrast, S. Deborah Kang argues that the Registry Act was welcomed and promoted by both southwestern agribusiness interests in Congress and President Hoover as a way of providing steady cheap labor; that they deliberately issued lenient evidentiary requirements to enable more migrants to qualify; and that “local farmers and Mexican consuls subsequently pursued an aggressive publicity campaign to inform Mexican workers of the legalization procedure.” S. Deborah Kang, *The INS on the Line* (US: Oxford University Press, 2016), “The Battle for the Border,” 21. doi:10.1093/acprof:oso/9780199757435.003.0003.

radical underestimate.<sup>67</sup> (At the same time, some of the Registry Act's supporters were comfortable pretending that its beneficiaries would all be victims of mere administrative oversight, when many clearly had deliberately evaded inspection.)

By January 1932, some 32,000 migrants had been legalized through the Registry Act. The federal government had uncovered entry records for another 2,482 applicants, and 49 were found to already be U.S. citizens. Conversely, 1,813 were denied registration. Roughly 2/3 of those denied had failed to demonstrate continuous residence; 552 were deemed "not of good moral character," while 564 had failed to appear for their hearings or left the U.S. on their own.<sup>68</sup>

Even with the Registry Act in place, though, some aliens could not qualify for relief. As just one example, even when the INS interpreted the rules about "continuous residence" fairly liberally, some, such as seasonal migrants, had moved in and out of the United States enough to disqualify themselves. More broadly, the Registry Act was intended to relieve "deserving" individuals who could not be deported in any case, perhaps because they had outlasted the statute of limitations for their potentially illegal entries. What about comparably "deserving" individuals who were not so fortunate?

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<sup>67</sup> *Minority Views, Legalization of Residence of Certain Aliens*, Report 1774, May 19, 1928, 6–9. According to INS, 293,112 individuals were granted Registry Act relief between 1930 and 1958. Samuel Bernsen, "Acquisition of Lawful Permanent Residence in the United States," *I&N Reporter*, Vol. 8, No. 1, July 1959 (Washington, DC: Department of Justice), 3. As would often be the case, relief mechanisms protected more migrants than supporters promised, but fewer than some opponents feared.

<sup>68</sup> Box had also predicted that the work required to investigate Registry Act applicants would cause problems for the Immigration Service. At least at first, this occurred. The full day it took one inspector to research one applicant required shifts in staff away from deportations and led to substantial increases in the agency's budget. House of Representatives Committee on Appropriations, *Hearing before Subcommittee of House Committee on Appropriations, Department of Labor Appropriation Bill for 1931, Statement by W. H. Wagner, Assistant to the Commissioner General of Immigration* (Washington, DC, December 14, 1929), 24–25.

Both the Hoover and Roosevelt administrations repeatedly proposed to move the cutoff date for Registry Act entry to 1924, as Congress had nearly done in its original legislation. That change was finally made in 1939 — more than six years after Johnson had been defeated in the first Roosevelt landslide.<sup>69</sup>

### 1.5. FDR's Officials Seek More Authority for Discretionary Relief

Franklin D. Roosevelt replaced Herbert Hoover as President in March 1933, winning 42 of 48 states in an election held amidst the Great Depression. While his winning coalition included conservative southern Democrats who fiercely resisted any liberalization of immigration, it also expanded the Democratic party's base of working-class ethnic and urban voters in the Northeast. These included many recently naturalized immigrants and their children. As historian William E. Leuchtenburg has written, "Roosevelt appointed Jews and Catholics to important positions... heartening immigrant newcomers who reveled in the appointment of their co-religionists... Most important to the party's success, however, was the emotional attachment recent immigrants felt toward

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<sup>69</sup> The Registry Act cutoff date was moved forward again in 1958, to June 28, 1940. In 1965, as part of the Hart-Celler reforms, it was changed to June 30, 1948. The 1986 Immigration Reform and Control Act of 1986 advanced it yet again, to January 1, 1972. Between 1985 and 2001, another 60,000 migrants used it to become lawful permanent residents. *Immigration: Registry as Means of Obtaining Lawful Permanent Residence (Report RL30578)*, August 22, 2001, prepared by the Congressional Research Service for the U.S. Congress (Washington, DC, 2001), accessed March 24, 2021, <https://www.everycrsreport.com/reports/RL30578.html>. The 1972 cutoff date remains in place, and subsequent legislation has banned registry to those who participated in Nazi persecution, genocide, or terrorism. U.S. Citizenship and Immigration Services, *USCIS Policy Manual, Volume 7, Part O, Chapter 4*, Washington, DC: GPO, accessed March 20, 2021, <https://www.uscis.gov/policy-manual/volume-7-part-o-chapter-4>. As the registry cutoff date has slipped further into the past, registry relief has become useful to ever fewer individuals. "More Than IRCA: US Legalization Programs and the Current Policy Debate," Migration Policy Institute, December 2010, accessed March 24, 2021, <https://www.migrationpolicy.org/pubs/legalization-historical.pdf>. Just 135 non-citizens became legal residents through registry in 2012. Hiroshi Motomura, *Immigration Outside the Law* (Oxford: Oxford University Press, 2014), 193–194.

FDR. They believed that he was their President and saw him a father-figure who watched after their interests.”<sup>70</sup>

Roosevelt had no desire to reverse the Johnson-Reed national origins quotas. They seemed quite popular, citizens demanded the scarce jobs still available, and few immigrant organizations sought their immediate abolition. But, while the Registry Act of 1929 had protected some long-time alien residents from inhumane deportations, his Secretary of Labor Frances Perkins and U. S. Commissioner of Immigration and Naturalization Colonel Daniel W. MacCormack saw a need to further humanize the immigration system. In their view, many sympathetic aliens were unfairly getting caught in its machinery: “for the most part simple, honest folk... found to be respected, hard-working members of their communities and good citizenship material.”<sup>71</sup>

To begin planning reforms and building support for them, Perkins nominated a “non partisan group of men and women to inquire impartially into conditions at Ellis Island and the welfare of immigrants generally and to make recommendations for the guidance of the Department.” This “Ellis Island Committee” sought extensive input from ethnic social welfare organizations who aided immigrants, including prominent figures such as Cecilia Razovsky Davidson (National Council of Jewish Women); Marian Schisby (Foreign Language Information Service, and editor of its influential journal on immigration law and regulation *Interpreter Release*); and Carlotta N.V. Schiapelli (Italian Welfare League).

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<sup>70</sup> “Franklin D. Roosevelt: The American Franchise,” William E. Leuchtenburg, UVA Miller Center, accessed March 23, 2021, <https://millercenter.org/president/fdroosevelt/the-american-franchise>.

<sup>71</sup> Address of Colonel D. W. MacCormack to League of Women Voters, St. Francis Hotel, San Francisco, CA. November 19, 1934 (First Draft), 24, Box 1, Perkins Collection.

The Committee's March 1934 report began by endorsing restrictive immigration laws. While the specific details of a quota regime might be debated when economic conditions improved, restriction "should be continued, [and] the vigorous enforcement of our immigration laws will not only protect the best interests of the United States but in most cases serve the welfare of the would-be immigrant."<sup>72</sup>

Within that framework, the Committee sought to address the "problem of separated families... an evil ever since the first quota law was passed." The Committee proposed to offer asylum to refugees *without* raising quotas or changing the law. It also sought to prosecute and deport alien racketeers and gangsters more aggressively. Specifically, it recommended focusing on deporting "higher-ups" in criminal syndicates who were evading conviction and deportation, even though they presented greater danger than many aliens who were currently being expelled. Overall, the Committee described its goals as aligning enforcement more closely with American values, making the country safer, and generally leaving intact a system that was working fairly well.

As for those entering or residing in the U.S. without legal authorization, the Committee again sought to balance toughness with mercy, perhaps cognizant that aliens long domiciled in the U.S. were now a political constituency, but new illegal border crossers were not:

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<sup>72</sup> *Report of the Ellis Island Committee*, prepared by the Ellis Island Committee for the Immigration and Naturalization Service, Department of Labor, New York, 1934, 5, accessed on March 21, 2021, <https://hdl.handle.net/2027/uiug.30112056692970>.

The country should employ every means to keep out the alien who is not entitled to admission. If he succeeds in crossing our borders, we should use every legal means to search him out and deport him promptly.

Since 1924 the illegal entrant can be deported at any time after entry... [though] in many instances it is unsound to deport an alien years after entry solely because of illegal entrance. If he has established a home and family, is supporting them, and has proved himself a desirable citizen... it would seem more desirable to require such an alien to meet the most rigid tests as to admissibility and character, and if successful, to charge him against the quota and permit him to legalize his residence, rather than to deport him [at government expense, and replace him with a newcomer of uncertain desirability]...<sup>73</sup>

MacCormack integrated many of the Committee's recommendations with others generated within his department. He reported to Congress on April 24, 1934, requesting a detailed set of reforms. Again, the politics of immigration relief suggested pairing merciful provisions with others viewed as tougher.<sup>74</sup> Like the Committee, MacCormack believed flaws in the immigration law were making it difficult or impossible to deport "alien habitual criminals" who were truly dangerous. So he asked for new authority to deport aliens convicted of narcotics offenses, carrying a concealed weapon, or smuggling other aliens.<sup>75</sup>

He paired these enforcement provisions with a request for discretionary authority to protect "hardship cases" from deportation. Most of these individuals had built lives and families in the U.S. but were now at risk of deportation; or were required to travel back to their nations of birth to acquire legitimate visas — an endeavor that was exceptionally

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<sup>73</sup> Ibid., 5–6.

<sup>74</sup> For instance, combining amnesty for some undocumented immigrants with stronger enforcement in the Immigration Reform and Control Act of 1986, and eliminating national origins quotas while incorporating the western hemisphere into overall limitations in the 1965 Hart-Celler act.

<sup>75</sup> Address by Colonel D. W. MacCormack, Commissioner of Immigration and Naturalization, New Haven, Connecticut, November 2, 1934, 7–10, Box 1, Perkins Collection.

costly, time-consuming, difficult, and sometimes dangerous. Since many were young males, they might “be seized and forced into the army” by their former homelands, “delaying for years their return to their families in this country.”<sup>76</sup> Speaking 18 months after Hitler came to power, MacCormack did not choose to mention any other risks, discrimination, or hatreds these returnees might encounter.

MacCormack wished to protect individuals who had entered illegally prior to July 1, 1924, were not deportable, but could be banished if they left the country even for a moment — for example, by taking a train that briefly crossed into Canada en route to another U.S. destination. He also asked for the right not to deport individuals who had briefly relied on state support — for example, by being admitted to state hospitals. Such individuals had to be defined as “public charges” even if they had spent decades supporting themselves and their families. And he requested authority not to deport a child to an unfamiliar country due to her parents’ immigration misdeeds, when she was well-cared for in the U.S. by relatives, and might be institutionalized if sent abroad.

In his report, MacCormack identified 695 cases where “deportation involved cruel and uncalled for hardship... repugnant to every instinct of justice and humanity.” “Under the existing statutes,” he added, “to avert such deportations the administrators must read into the law discretionary powers it did not explicitly provide. *This we would not do.*” [emphasis mine] Later, in objecting to preexamination, MacCormack’s opponents would claim that he and Perkins were doing precisely what they had promised not to do.

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<sup>76</sup> Daniel W. MacCormack, *Memorandum of Commissioner of Immigration and Naturalization to the Committee on Immigration of the Senate and the Committee on Immigration and Naturalization of the House of Representatives Relative to Certain Proposed Changes in the Immigration Law, April 24, 1934* (Washington, DC: GPO, 1934), 15, accessed March 25, 2021, <https://hdl.handle.net/2027/uiug.30112106703512>.

MacCormack told Congress he would “suspend action on particularly meritorious cases” until July 1, 1934 to give it time to act on his requests. As part of his memo to Congress, he summarized the cases he considered most meritorious. Nearly two-thirds came from six countries: Mexico (106), Italy (82), Canada (75), Poland (41), Germany (30), and England (26).<sup>77</sup> While Congress continued to consider the changes MacCormack and Perkins had proposed, the number of suspended deportations kept growing at roughly 100 per month. There were 1,200 by mid-June.<sup>78</sup>

Seeking greater authority to prevent deportations in hardship cases was clearly a high priority for MacCormack. According to Kraut, Breitman, and Imhoof, he stepped back from a confrontation with the State Department over whether it should accept financial bonds as proof that Jewish refugees from Germany wouldn’t become public charges. That fight might cost political capital he needed for his other reforms.<sup>79</sup> Congressional supporters withdrew provisions that would have extended non-quota status to parents over 60 years of age. They also abandoned proposals to offer registry legalization to “persons without a country” who’d been in the U.S. for five years and were subject to social, religious, or political persecution in their nations of origin. Yet again matching liberalization with restriction, supporters added a clause explicitly stating

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<sup>77</sup> Ibid., 14.

<sup>78</sup> *Remarks by Mr. Dickstein Regarding H.R. 9725, Deportation of Habitual Criminals*, 73rd Cong., 2nd Sess., *Congressional Record* Volume 78, Part 11 (June 15, 1934): 11783.

<sup>79</sup> Alan M. Kraut, Richard Breitman and Thomas W. Imhoof, “The State Department, the Labor Department, and German Jewish Immigration, 1930–1940,” *Journal of American Ethnic History* 3, no. 2 (Spring 1984): 5–38, accessed December 15, 2020, <https://www.jstor.org/stable/27500316>.



that laws mandating deportation of anarchists, members of “immoral classes,” and those guilty of crimes involving moral turpitude would remain fully in force.<sup>80</sup>

MacCormack’s campaign for reform included fourteen examples of aliens who would be helped — each with names and 8x10 glossy photographs, and detailed case descriptions prepared by INS employees. These profiles were remarkable both for their emotional tone and their naming of specific individuals, such as the child Fred Abdul-Nour (profiled on p. 146). They were displayed at Congressional hearings, and provided to immigrant social welfare organizations for wider publicity.<sup>81</sup>

Consider, for example, INS’s description of Michael and Rosalie Lacyk and their family (Case #55840/465; see Figure 1). Despairing of ever receiving any of Poland’s limited quota slots, Michael and Rosalie had separately entered the U.S. in the mid-1920s via smugglers’ rowboats from Canada. The pair subsequently met, discovered they’d come from the same town, married, and had three young children in the U.S. The INS’s writer focused on those children:

Despite the fact that they are helpless infants, Walter Lacyk, four, Marian, his two-year-old sister, and babe in arms, all American citizens, will be the innocent victims in deportation proceedings against their father and mother.

The children either must be taken to far-away Poland and lose their right to a childhood in America, where they were born, or remain in this country and become public charges...

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<sup>80</sup> *Remarks by Mr. Dickstein Regarding H.R. 9725, Deportation of Habitual Criminals*, 73rd Cong., 2nd Sess., *Congressional Record* Volume 78, Part 11 (June 15, 1934): 11783.

<sup>81</sup> I discovered these photos and profiles in the archives of the Italian Welfare League at the Center for Migration Studies of New York.

...now their home faces what may be an irrevocable shattering, with three American children paying the heaviest penalty for an offense that wasn't theirs.<sup>82</sup>



Figure 1. Michael and Rosalie Lacyk and Their Family

*INS Photo, March 13, 1934.*

Restrictionists remained unimpressed. They claimed that MacCormack and Perkins were freelancing; the two could not clearly show that FDR supported their bill. Martin Dies Jr. argued vigorously against giving any Secretary of Labor discretionary authority to overturn deportations. Even if honorable, she would be subject to great political pressure “in cities like New York and Chicago... working through political influence and alien organizations.”<sup>83</sup> Rep. Louis T. McFadden (R-PA), was explicit about the real agenda he thought the new chair of the House Committee on Immigration and Naturalization, Samuel Dickstein (D-NY), was pursuing. According to McFadden, Dickstein had recently told a Jewish audience that

it was a fundamental of American doctrine to welcome the oppressed peoples of the world... Hitler would not grant passports to [Jewish] refugees nor would he

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<sup>82</sup> *Immigration and Naturalization Service Press Release, Lacy Family, Case 55840/465, May 13, 1934 (Washington, DC: 1934).*

<sup>83</sup> *Remarks by Mr. Dies Regarding H.R. 9725, Deportation of Habitual Criminals, 73rd Cong., 2nd Sess., Congressional Record Volume 78, Part 11 (June 15, 1934): 11785–11786.*

allow them to stay on German soil. He said, ‘Therefore we Americans must change our law to make it possible for them to come here at once, as there is no other country where they can go.’ He said further that Hitler's persecution of the Jew was growing... and soon these brothers, sisters, fathers, and mothers of ours will be murdered unless we immediately make it possible for them to leave. He said, “You Jews know that money for these poor oppressed Jews isn't keeping them out of America. Our people here are generous and will take care of that, but it is the law which we must change.”

...[Dickstein] pledged himself to work untiringly for the passage of a law that would allow these brethren a quick relief and welcome to our shores. I submit that the gentleman [was referring to this bill], and his expressions are clearly indicative of [its] sole purpose...<sup>84</sup>

On June 15, the key bill in Perkins' and MacCormack's reform package (H.R. 9725) was defeated 185–92, with 152 representatives not voting.<sup>85</sup> Three days later, Dickstein salvaged a unanimous but non-binding resolution from his House committee asking that MacCormack continue to stay deportations where INS found “the alien involved is clearly of the non-criminal class of aliens, and [deportation] would operate a distinct hardship by separation of a family circle, including citizens,” until Congress could revisit the issue in its next session.<sup>86</sup>

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<sup>84</sup> *Remarks by Mr. T. McFadden Regarding H.R. 9725, Deportation of Habitual Criminals*, 73rd Cong., 2nd Sess., *Congressional Record* Volume 78, Part 11 (June 15, 1934): 11785–11787. McFadden, a notorious anti-Semite, had recently cited the fabricated Protocols of the Elders of Zion on the House floor and claimed the elevation of Henry Morgenthau to lead the U.S. Treasury was evidence of their truth. “Senate May Shelve Tydings Report; House Expected to Act on Nazi Protest,” Jewish Telegraphic Agency, January 28, 1934, accessed November 15, 2020, <https://www.jta.org/1934/01/28/archive/senate-may-shelve-tydings-report-house-expected-to-act-on-nazi-protest>.

<sup>85</sup> *Roll Call Vote: To Suspend the Rules and Pass H.R. 9725, Authorizing the Deportation of the Habitual Criminal, Guarding Against the Separation from Their Families of Aliens of the Non-Criminal Classes, and for Other Purposes as Amended*, House Vote #141, June 15, 1934, 73rd Cong., 2nd Sess., <https://www.govtrack.us/congress/votes/73-2/h141>.

<sup>86</sup> *Resolution Unanimously Adopted by the Committee on Immigration and Naturalization in Executive Session on June 18, 1934*, 73rd Cong., 2nd Sess., *Congressional Record* Volume 78, Part 11 (June 18, 1934): 12486.

Through late 1934 and 1935, MacCormack traveled the country arguing for his reforms. He spoke to audiences ranging from the Golden Jubilee Anniversary Dinner of the pro-migrant Hebrew Sheltering and Immigrant Aid Society of America (HIAS), to the far more skeptical local American Legion chapter in Gary, Indiana.<sup>87</sup> His nationwide speaking schedule and the focus of his addresses again demonstrate his deep commitment to this issue. In November 1934, for example, he told the San Francisco League of Women Voters he had been shocked to discover that the law's deportation provisions

...were being applied to tear husband from wife, father and mother from their children; not only to separate but actually to widely disperse families.

The situation... is both shocking and horrifying; one that violates our fundamental American belief in the sanctity of the family ties and... is repugnant to every instinct of justice and humanity...

The very nature of the immigration laws necessitates hardships in their enforcement... Experience has shown, however, that [U.S. interests] would not be adversely affected if relief could be had in deserving individual cases... Laws which deal directly with human beings should leave room for humane considerations.<sup>88</sup>

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<sup>87</sup> The breadth of MacCormack's speaking engagements is reflected in the four full boxes of his speech drafts on file in the Perkins Collection at Connecticut College (<http://collections.conncoll.edu/perkins/dwm1.html>). See also "Washington Official Accepts Invitation," *The Times* (Hammond, Indiana), November 18, 1935, 9, accessed September 15, 2020, <https://www.newspapers.com/image/54702280>. Many of MacCormack's speeches in support of greater discretion were similar, but speaking to the Legion at Gary, Indiana, he began by attempting to convince his audience that there were far fewer illegal migrants than had been alleged, immigration was no menace, and large-scale deportations would dramatically damage the already depressed economy. Address, Col. Daniel W. MacCormack, U.S. Commissioner of Immigration and Naturalization at the Horace Mann High School, Gary, Indiana, November 20, 1935, Box 1, Perkins Collection.

<sup>88</sup> Daniel W. MacCormack, Address to League of Women Voters, November 19, 1934, 14–15, Perkins Collection.

Meanwhile, the number of suspended deportations of “aliens of good character” kept growing. By Spring 1935, it would reach 2,355, with an average of 107 new deportations stayed each month.<sup>89</sup>

MacCormack and Perkins requested discretionary authority again when the 74<sup>th</sup> Congress took office in 1935. Their new vehicle would be the Kerr-Coolidge bill. MacCormack requested rapid action, stating that he did not want to continue staying deportations without clear authority beyond roughly June 1, 1935.<sup>90</sup>

Like its 1934 predecessor, Kerr-Coolidge was marketed primarily as a “deportation bill.” First and foremost, it would tighten loopholes that prevented the deportation of truly dangerous criminals; complementary provisions would offer discretion in hardship cases. Much of that discretion was to be found in two sections:

SEC. 4. The Secretary of Labor may, in his discretion, allow an alien found subject to deportation under any law to remain in the United States if he is of good moral character, and has not been convicted of a crime involving moral turpitude and has not engaged in subversive political agitation or conduct and if he—

(1) Has lived continuously in the United States for a period of not less than 10 years; *or*

(2) Has living in the United States a parent, spouse, child, natural child, stepchild, child adopted prior to the arrest in deportation proceedings, brother or sister, who has been lawfully admitted for permanent residence or is a citizen of the United States.

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<sup>89</sup> House Committee on Immigration and Naturalization, *Hearings no. 74–1–5: Testimony by Daniel W. MacCormack on H.R. 6795*, 74<sup>th</sup> Cong. 1<sup>st</sup> Sess. (Washington, DC: GPO, April 9, 10, and 11, 1935), 23. MacCormack did not guarantee Congress that all of these cases truly deserved leniency; each case would require a lengthy further review, and on preliminary review, nearly one-fourth might ultimately be deported even if INS was given discretion. However, he claimed that INS had already gradually excluded cases related to criminals, radicals, the “immoral classes,” and others who would not benefit even if Kerr-Coolidge were to pass.

<sup>90</sup> *Ibid.*, 23.

SEC. 5. An alien who was or hereafter may be admitted to the United States as a nonimmigrant under section 3 of the Immigration Act of 1924, or as a student under Subdivision (e) of section 4 of that act, and who is of a class admissible to the United States for permanent residence, may make application to the Commissioner of Immigration and Naturalization for a change to the status of [non-quota or preference quota immigrant].

The latter clause aimed to help students and others who arrived as nonimmigrants, married American citizens — thereby becoming eligible for non-quota admission — and wished to change their status. They already had the right to do this. But they were required to return to their countries of origin, to then request a visa at an American consulate, and to be physically examined and have their police record checked there. As MacCormack noted, all those tasks could just as easily be handled in America, where the migrant was already domiciled. A Congressman asked whether such individuals could handle those tasks more conveniently via a same-day visit to a consulate in Mexico or Canada, eliminating the need for a change in the law. This led to the following exchange:

Mr. MACCORMACK. If Canada and Mexico will take them.

The CHAIRMAN. That is right.

Mr. MACCORMACK. But Canada and Mexico are exceedingly reluctant to let them in for that purpose.

While MacCormack did not testify to this, he was already implementing this “same-day visit” model for preexamination.

Kerr-Coolidge faced the same restrictionist adversaries as the previous session’s bill. These included “patriotic societies” such as the Junior Order of the United American Mechanics and the American Legion. Adversaries also included the American Federation of Labor, despite lengthy discussions with MacCormack that attempted to satisfy its objections.

Opponents again called it unacceptable to give a bureaucrat discretionary power to block deportations. Far more illegal migrants would be relieved than the bill's authors claimed, likely including many communists. Moreover, opponents argued, individuals who enter and remain in the U.S. illegally were criminals, no less than any other criminal. If a few true "hardship cases" did exist, the Department of Labor could always ask Congress to review their individual cases. Moreover, some said, the system should become even more restrictive. Quotas should be cut by another 90%, and "habitual aliens" who failed to rapidly earn citizenship should be deported.<sup>91</sup> As restrictionist lobbyist James Patten testified, if Kerr-Coolidge's supporters really wanted to prevent families from being divided:

one additional line in this bill would do more to prevent such alleged "terrible," "cruel," "inhumane," and "heartless" separations than all the rest of the bill — if merely immigration visas were suspended as to any alien separating himself from, or leaving behind, a near family relative, when he comes to this country.<sup>92</sup>

In other words, if an entire family couldn't seek and qualify for visas together, none of its members should get one — hence, no families would ever be separated.

By now well aware of Perkins's and MacCormack's penchant for narratives about sympathetic aliens, the conservative press set out to debunk as many of these stories as it could. In April 1935, the Hearst papers reported that one alien granted "hardship" status

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<sup>91</sup> House Committee on Immigration and Naturalization, *Hearings no. 74-1-5: Statement of James H. Patten, Representing Immigration Restriction League of New York, Inc.; The State Council, Junior Order United American Mechanics of The State Of New York, Inc.; The Commandery General, Patriotic Order Sons of America, Inc.; The Executive Board, Fraternal Patriotic Americans, Inc.; and The Patriotic American Civic Alliance, Inc. on H.R. 6795*, 74<sup>th</sup> Cong. 1<sup>st</sup> Sess. (Washington, DC: GPO, April 9, 10, and 11, 1935), 81.

<sup>92</sup> "Aliens Defy Immigration Laws—Illegally in U.S., Stay Despite Morals Charges," *San Francisco Examiner*, April 2, 1935, 6, accessed September 15, 2020, <https://www.newspapers.com/image/457730711/>.

because he'd recently married an American bride was promptly arrested for beating her. They claimed that almost none of the New York City aliens whose deportations had been suspended could be found at the addresses they gave the INS.<sup>93</sup> Among those: Stevano Christiantiello (a.k.a. James Corti), who had served a prison term for assault with intent to kill, but had been spared deportation due to ill health.<sup>94</sup>

Kerr-Coolidge received no Senate vote in 1935. Then, in June 1936, it failed to overcome a lengthy filibuster by extreme restrictionist Sen. Robert Rice Reynolds (D-NC). In 1937, one more attempt was made. Martin Dies Jr., an opponent of Kerr-Coolidge with a national reputation as a restrictionist and anti-communist, proposed a new compromise bill. Dies's legislation would empower the Secretary of Labor to offer discretionary relief to 3,500 individuals in the first year after passage. She could protect 1,500 individuals per year in each of three subsequent years, and none thereafter.

To those who wanted Congress to handle individual hardship cases without delegating the task to the executive branch, Dies pointed out that the entire House had spent several hours trying — and failing — to resolve just four of them.<sup>95</sup>

Dies's bill, H.R. 6391, included tougher provisions excluding drug dealers, anarchists, communists, and alien criminals who "carry firearms, machine guns, and various other contraptions for illegal and unlawful purposes." (The latter provision

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<sup>93</sup> "U.S.A. Haven for Deportable Criminals," *Pittsburgh Sun-Telegraph*, April 1, 1935, 1–2, accessed September 15, 2020, <https://www.newspapers.com/image/524074746>.

<sup>94</sup> "Aliens Who Should be Deported: Hardship Cases Held Up by Bureau," *Pittsburgh Sun-Telegraph*, April 2, 1935, 11, accessed September 15, 2020, <https://www.newspapers.com/image/524075143>.

<sup>95</sup> *Remarks by Mr. Dies Regarding House Resolution 229. of H.R. 6391, Deportation of Criminals and Certain Other Aliens*, 75th Cong., 1st Sess., *Congressional Record* Volume 81, Part 5 (June 10, 1937): 5540–5541.



targeted urban gangsters, but some legislators worried that rural hunters could be deported for shooting rabbits.) Dies's compromise finally attracted the AFL's endorsement, as well as that of John L. Lewis of the influential United Mine Workers union. Dies even claimed that parts of it were modeled on restrictionist resolutions passed by the American Legion.

These arguments still weren't enough. Dies's bill passed the House by a substantial margin, attracting the votes of many southern Democrats who had opposed previous legislation but trusted the Texan's restrictionist and anti-subversive bona fides. However, the Senate was distracted by debates over FDR's "court packing" plan, and Reynolds was again able to filibuster the bill to death.<sup>96</sup>

Notwithstanding continuing congressional inaction, Frances Perkins' INS continued to stay deportations in what it viewed as "hardship cases." By then, however, it had also quietly crafted and implemented preexamination: an administrative alternative to grant relief to some of the aliens these bills might have protected.

## 1.6. Preexamination Begins

Early in 1935, representatives of the Immigration and Naturalization Service, U.S. State Department, Canadian Immigration Service, and Canadian Embassy met to outline a way for certain aliens already in the U.S. to be preexamined there. Once preexamined, these aliens would be permitted to cross the border, visit a nearby U.S. consulate in

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<sup>96</sup> Harvey C. Mansfield, "The Legislative Veto and the Deportation of Aliens," *Public Administration Review* 1, no. 3 (1941): 281–86, doi:10.2307/972700.

Canada, apply for a visa, and quickly return to the United States. The procedure would work as follows:<sup>97</sup>

1. If the alien seeking preexamination needed first to qualify for non-quota or preference status as the relative of a U.S. citizen, the sponsoring citizen would submit a petition (form 633) to the Commissioner of Immigration and Naturalization requesting this status.<sup>98</sup>
2. Following the Immigration Service's instructions, the alien would mail an extensive set of supporting documents to the U.S. consulate he or she hoped to visit.
3. Based on a preliminary review of those documents, and the likely availability of a quota slot, the consulate would inform the alien whether the information "appear[ed] to be sufficient," pending a full in-person inspection. Often, however, the consulate would find some documents incorrect or incomplete, and the alien needed to send more information.
4. Once the consulate provided a favorable preliminary review, the alien would contact the Department of Labor's immigration inspector at one of 18 established border ports, requesting an appointment for "examination touching upon your admissibility to the United States when and if in possession of the proper visa." The alien was required to pursue preexamination through the same port he planned to use to visit and return from Canada. All 18 of the original ports

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<sup>97</sup> Daniel W. MacCormack, *Letter to all District Commissioners and District Directors of Immigration and Naturalization*, Immigration and Naturalization Service, February 8, 1935, in *Hearings, Labor Department Appropriations Bill 1939* (Washington, DC: GPO, 1938), 259.

<sup>98</sup> "Going to Canada to Change Immigration Status," *Interpreter Releases*, Vol. XII: No. 58, Series A: Immigration, No. 12, December 30, 1935, 456–458.

authorized for preexamination were at the Canadian border. This suggests that preexamination at the Mexican border may not have become even theoretically possible until late 1937. Then, as the burden of processing preexamination cases increased, the Immigration Service permitted candidates for preexamination to choose any port where a Board of Special Inquiry met.<sup>99</sup>

5. Arriving for his scheduled appointment, the alien brought all required paperwork, including 2 passport-size photos. INS examined his admissibility, and also performed a medical examination. If the alien was inadmissible — for example, if he was a member of an excluded class, such as a Chinese or Japanese national — no further assistance was offered, and the INS central office was notified. If the alien was ruled potentially admissible, INS provided a sealed letter to be handed to Canadian border officers. It explained why the alien wished to enter Canada, guaranteed readmission to the U.S. whether or not a visa was issued, and included one of the identification photos.
6. The alien was admitted to Canada for a strictly limited period of time — often, no more than one to three days. (The Foreign Language Information Service, a leading immigrant aid organization, estimated the travel costs associated with a typical preexamination trip at \$50–\$75. For context, a 1936 government study

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<sup>99</sup> The original ports listed in 1935 were: Boston, MA; Calais, ME; Vanceboro, ME; Jackman, ME; Newport, VT; St. Albans, VT; Rouses Point, NY; Buffalo, NY; Niagara Falls, NY; Detroit, MI; Sault Ste. Marie, MI; International Falls, MN; Noyes, MN; Portal, ND; Sweetgrass, MT; Eastport, ID; Seattle, WA; Blaine, WA. James L. Houghteling, *Circular No. 188 to all Districts, Immigration and Naturalization Service*, Immigration and Naturalization Service, *November 5, 1937*, in Hearings, Labor Department Appropriations Bill 1939 (Washington, DC: GPO, 1938), 259-260. If preexamination of Mexican nationals at the Mexican border didn't become feasible until late 1937, it would have only existed for a year or less when American consul William Blocker stonewalled it, as described by Mae Ngai (Ngai, *Impossible Subjects*, 86). Blocker and his activities are discussed on 91 of this thesis.

found the average entry rate for common labor was \$0.451/hour, so a \$50 trip might have cost a laborer at least two weeks' pay, even assuming he could get the time off.<sup>100</sup>)

7. The alien proceeded to the specified consulate, where the U.S. consular officer thoroughly reviewed his visa application, and the alien paid his \$18 visa fee and "head tax." Usually, since a preliminary review had already been performed, the visa would be approved. However, the consular officer's review might uncover facts previously unknown. For example, despite the Department of Labor's 1935 grant of preexamination, a consular official rejected Carlo Gambino's visa application (likely after discovering his criminal record), and he never made another attempt.<sup>101</sup> In certain cases, a visa might be denied for reasons the alien could resolve. If so, he could request a second opportunity to return later. In other cases, such as Gambino's, it might become clear that no visa would ever be forthcoming. Either way, the State Department reserved the right to make its own judgments. However, in the early years of preexamination, consular denials of a

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<sup>100</sup> *Immigration and Refugee Services of America Division of the Foreign Language Press – Press Releases [Folder 14], 1938, Index No. 4610: Canadian Pre-examination*, available through Adam Matthew, Marlborough, *Migration to New Worlds* (online primary source database), [http://www.migration.amdigital.co.uk.ezp-prod1.hul.harvard.edu/Documents/Details/IHRCA\\_1013\\_21\\_02](http://www.migration.amdigital.co.uk.ezp-prod1.hul.harvard.edu/Documents/Details/IHRCA_1013_21_02), accessed March 25, 2021. Also see: "Wages and Hours of Labor: Entrance Rates Paid to Common Labor, July 1935," *Monthly Labor Review*, March 1936, 700.

<sup>101</sup> Much later, Gambino's attorney used this episode to claim a new entry to the United States in 1935 that might have obviated the grounds upon which the INS was deporting him in 1970. The courts rejected this argument. *Carlo Gambino v. Immigration and Naturalization Service*, 419 F. 2d 1355 (2d Cir. 1970)."

<sup>101</sup> Ngai, *Impossible Subjects*, 35.

preexaminee after an on-site interview had been granted seem to have been rare. One official, testifying before Congress, was unaware of any.<sup>102</sup>

8. If acceptable to the consular officer, immigrants approved on a non-quota basis, such as spouses of American citizens, could receive their visas immediately. Immigrants subject to quotas might have to wait 24–48 hours after their personal appearances to receive their quota numbers via a telegraph message they were also required to pay for.<sup>103</sup> (As discussed on p. 249, even though preexamination originated as a solution for non-quota aliens, at least into the early 1950s, a substantial majority of all preexaminees appear to have been subject to quotas.)
9. The alien returned to the Canada-U.S. border for re-entry. If he now possessed a visa, INS noted this. If a visa was rejected, he was nevertheless readmitted “and a report furnished the central office indicating where the alien can be located and, where such information is available, the reason why the visa was refused.” Of course, as long as the alien possessed no visa, he remained ineligible to naturalize, and depending on the facts of his case, might be deportable.

Under MacCormack, preexamination began slowly: only 146 cases were processed in 1935, and 807 in 1936.<sup>104</sup> Congressional restrictionists do not seem to have

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<sup>102</sup> House of Representatives Committee on Appropriations, *Testimony, John F. Simmons, Chief, Visa Division, U.S. State Department, Hearings, Department of State Appropriation Bill, 1939, December 9, 1937* (Washington, DC: GPO, 1938), 41.

<sup>103</sup> A.L. Jolliffe, *Official Circular No. 31 to Immigration Inspectors, Canada*, Department of Mines and Resources, Immigration Branch, Commissioner of Immigration, Ottawa, Canada, in *Hearings, Labor Department Appropriations Bill 1939* (Washington, DC: GPO, 1938), 258.

<sup>104</sup> Statistics on preexamination cases processed from 1935 through 1948 are from *Senate Report 1515, The Immigration and Naturalization Systems of the United States: Report of the Committee on the Judiciary Pursuant to S. Res. 137*, Committee on the Judiciary, U.S. Senate, April 20, 1950 (Washington,

taken notice immediately, as the procedure slowly ramped up and began to be institutionalized.

The precise limits of eligibility shifted during preexamination's first two years. For example, while it was strictly limited at first to non-quota and preference-quota relatives of U.S. citizens, the privilege was extended in late 1935 to certain individuals who had lost their American citizenship when their American parent had departed the U.S. and naturalized elsewhere. (As *Interpreter Releases* noted, this helped individuals like "Mr. Y," who was born in Minnesota but lost his citizenship when his parents took him to Canada at age six and became British subjects. "Mr. Y" then inadvertently committed immigration fraud by claiming citizenship when he returned to the U.S. Upon discovery of his infraction, the INS charged him with illegal entry. But when he attempted to return to Canada to apply for a legitimate visa, Canada refused to admit him.<sup>105</sup>)

As the use of preexamination increased, MacCormack unexpectedly died in January 1937. Deputy Commissioner Edward Shaughnessy shepherded the department through the following months, and continued as deputy after James Houghteling took office in August 1937. While the new officials remained subordinate to Secretary Perkins and supported her policies, on the whole they seemed less passionate about "humanizing" the immigration system than MacCormack had been. For example, restrictionists

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DC: Government Printing Office), Appendix XIII, Table 2, 907. (These do not always precisely match statistics presented elsewhere.) Statistics used from 1948 through 1958 are from INS Annual Reports.

<sup>105</sup> "Going to Canada to Change Immigration Status," *Interpreter Releases*, 457.

appreciated Houghteling's opposition to measures that would have given him authority to liberalize entry restrictions for foreigners he certified as political refugees.<sup>106</sup>

Regardless, preexamination continued and grew. In 1937, 1,532 cases were processed. As the aforementioned 8-step procedure shows, it required ongoing coordination between the Labor Department's Immigration and Naturalization Service, and the Department of State, whose foreign consulates were responsible for issuing visas. INS also needed to coordinate with the Canadian government, which was expected to accept visitors of uncertain provenance, notwithstanding its own highly restrictive immigration policies.

Both relationships seem occasionally to have been fraught. The State Department had earned a reputation for aggressive policing of immigration, especially after Herbert Hoover instructed it to rigorously enforce "public charge" rules that were leaving some quotas as much as nine-tenths unfilled. A State Department representative pointedly told a 1937 Congressional hearing that preexamination was solely the Labor Department's policy.<sup>107</sup>

Outside observers noted that convincing Canada to accept these temporary visitors had been no small accomplishment. Later in 1935, immigrant aid expert Marian Schisby wrote that preexamination had already "proved of great help to many persons

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<sup>106</sup> "U.S. Immigration Chief Balks at Bills Vesting Him with Power to Define 'Refugees,'" January 27, 1938, Jewish Telegraphic Agency, accessed September 15, 2020 at: <https://www.jta.org/1938/01/27/archive/u-s-immigration-chief-balks-at-bills-vesting-him-with-power-to-define-refugees>.

<sup>107</sup> House Committee on Appropriations, *Testimony, John F. Simmons, Chief, Visa Division, and George S. Messersmith, Assistant Secretary of State, U.S. State Department, Hearings, Department of State Appropriation Bill, 1939, December 9, 1937* (Washington, DC: GPO, 1938), 40–48.

who formerly would most assuredly have been refused admission to Canada.”<sup>108</sup>

Restrictionists noted that the procedure seemed to require significant coaxing from the American side. Houghteling admitted that “The Canadian Government has at one time or another questioned this process of sending our aliens to Canada to be readmitted, and we have discussed it with them.”<sup>109</sup> In fact, Houghteling and INS District Director I.F.

Wixon needed to travel to Ottawa in autumn of 1937 to meet their Canadian counterparts, Director of the Immigration Branch of the Department of Mines and Resources Frederick C. Blair and his subordinate, Commissioner of Immigration A.L. Jolliffe. This meeting apparently addressed Canadian concerns about how preexamination was operating.<sup>110</sup>

Canadian immigration inspectors had to be trained carefully on how to handle preexaminees and other border crossers headed to a U.S. consulate. According to a 1938 diary entry by a young inspector, Fenton Crosman, it was easy to make a mistake:

Already I learn that I got stung on a case yesterday morning. The great difficulty for officers here is in connection with U.S. visas cases — aliens in the United States who come to Canada for a Consular visa, enabling them to qualify for permanent residence in the U.S.A. Instructions from the Department require special handling of these cases, for if lacking the proper documents the applicant may not be permitted to return to the States and may thus be stranded in Canada. In many instances where an alien cannot obtain the necessary documents to present to a U.S. Consul in Canada, he comes up to Montreal on a “visit,” denying the real purpose of his coming here. Such was the man I had on the train

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<sup>108</sup> “Going to Canada to Change Immigration Status,” *Interpreter Releases*, 457.

<sup>109</sup> *Agreement with Canadian Authorities to Permit Preexamination of Aliens*, 75th Cong., 3rd Sess., *Congressional Record* Volume 83, Part 16 (February 18, 1938): 2180.

<sup>110</sup> In *None is Too Many*, an assessment of how Canada systematically excluded Jewish refugees during the Nazi era, Blair is described as believing “that people should be kept out of Canada instead of being let in.” Blair was... “a tough administrator who ‘stuck to the rules,’ not so surprising as he had drafted most of them... As James Gibson, a Department of External Affairs official, recalled, ‘He was the single most difficult individual I have had to deal with the whole time I was a public servant. He was a holy terror!’” While making it clear that Blair faithfully represented the views of the Canadian government he served, *None is Too Many* also quotes private correspondence that suggests he was also a fierce anti-Semite. (Irving M. Abella and Harold Martin Troper, *None Is Too Many : Canada and the Jews of Europe, 1933–1948*. 3rd Ed. with a New Epilogue (Toronto: Lester Publishing, 1991), 7–9.)



yesterday morning. He misrepresented his case to me, but fortunately returned this morning with his U.S. visa and was permitted to return there. However, the Department will not know of my error in judgement and I suppose the way to learn is by trial and error.<sup>111</sup>

In 1937, Houghteling provided a two-page summary of the legal reasoning INS had used to claim discretionary authority for preexamination within the U.S. of individuals “not lawfully here for permanent residence.” The argument, in essence, was this: some aliens, while they had entered unlawfully, weren’t in any way inherently ineligible for a legal visa under the 1917, 1920, or 1924 immigration acts. They could conceivably qualify for a visa at a U.S. consulate in their nations of origin. In hardship cases, it was legally acceptable to provide the same opportunity in a different way:

These steps do not violate or defeat the dominant purposes and requirements of the three main immigration acts. The finding by the immigration authorities’ preinspection that the alien would be admissible if he departed and returned with an immigration visa does not deprive the American consular officer of any authority. It merely removes any basis on which he could decide that the alien is inadmissible under the immigration laws and refuse [an] immigration visa. That effect in a similar question was pointed out by the Attorney General in his opinion in 1933.<sup>112</sup>

But what gave the Secretary of Labor authority to readmit an alien who had been refused a visa by the consular authorities or was otherwise ineligible — possibly because they had committed a crime? What allowed her to unilaterally “remove any basis on which [the consul] could decide that the alien is inadmissible”? In the view of Perkins’s Department of Labor, the Seventh Proviso of Section 3 of the 1917 Immigration Act provided that authority. It stated: “That aliens returning after a temporary absence to an

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<sup>111</sup> “‘Young Man, You Take Yourself Far Too Seriously’: The Memoirs of Immigration Officer Fenton Crosman,” Steve Schwinghamer, Canadian Museum of Immigration at Pier 21, accessed March 21, 2021, <https://pier21.ca/blog/steve-schwinghamer/young-man-you-take-yourself-far-too-seriously-the-memoirs-of-immigration>.

<sup>112</sup> 37 Ops. Atty. Gen. 374.

unrelinquished United States domicile of 7 consecutive years may be readmitted in the discretion of the Secretary of Labor, and under such conditions as he may prescribe.”<sup>113</sup>

The Seventh Proviso had been written to permit the readmission of aliens who had lived in the U.S. legally for many years, but were outside the country when the 1917 Immigration Act’s tougher rules took effect. Without it, some individuals on family or business trips might have been locked out of the U.S. when they sought to return.<sup>114</sup>

Eighteen years later, Perkins was extending similar relief to some individuals who’d lived within the U.S. for long continuous periods but had never entered legally or gained legal status in any other way.

The idea of using the Seventh Proviso to provide wider discretionary relief wasn’t entirely original to the Roosevelt administration. Hoover Administration Commissioner of Immigration Harry Hull had been asked in 1932 about illegal entrants who arrived after June 1921, missing the Registry Act of 1929’s deadline for legalization. He responded,

There is a question. I don't know myself, regarding their status under paragraph 7, section 3, of the act of 1917. In my opinion these aliens could be readmitted, there may be some question about that. There is a provision that an alien who has been domiciled in this country for seven years can be readmitted by the Secretary of Labor.<sup>115</sup>

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<sup>113</sup> Pub. L. No. 64-301, 39 Stat. 874 (February 5, 1917), accessed April 4, 2021, <https://www.loc.gov/law/help/statutes-at-large/64th-congress/session-2/c64s2ch29.pdf>.

<sup>114</sup> Ngai, *Impossible Subjects*, 84. Ngai cites Perkins’s letter to Rep. Dave Satterfield, Jr.: September 17, 1940, file Immigration, General, 1940, box 66; Secretary’s General Subject Files, Records of the Department of Labor, RG 174, National Archives, College Park, MD; and memorandum, Attorney General to Rufus Holman, January 4, 1943, 4, file 55819 box 75, accession: 58A734, INS. (I have not reviewed these documents.)

<sup>115</sup> House Committee on Immigration and Naturalization, *Testimony of Harry Hull, Commissioner General of Immigration, Amend the Registration Act (March 2, 1929): Hearings Before the Committee On Immigration And Naturalization*, House of Representatives, 72<sup>nd</sup> Cong. 1<sup>st</sup>. Sess. on H.R. 244, H.R. 385, H.R. 5870 (Washington, DC, GPO, 1932), accessed March 25, 2021,

However, as the debates surrounding the failed 1934 H.R. 9725, the failed 1935–1936 Kerr-Coolidge Act, and the failed 1937 Dies bill had shown, Congress had been extremely reluctant to give the Secretary of Labor authority to legalize *anyone*. This was doubly true if the Secretary was Frances Perkins, one of the administration’s most unabashedly liberal officials. Perkins had repeatedly infuriated restrictionists and anti-communists — perhaps most notably by readmitting the notorious anarchist Emma Goldman, and for refusing to summarily deport the radical unionist Harry Bridges, whose strikes had shut down San Francisco’s docks in 1934.<sup>116</sup>

#### 1.7. Restrictionists Respond

In 1938 and 1939, as the number of preexamination cases processed rose to 2,023 and 2,388 respectively, preexamination attracted fierce opposition from restrictionists in Congress. They had now identified it as a threat to both the processes and values of immigration restriction. The procedure’s most prominent opponents were Malcolm Tarver (D-GA) and Joseph Starnes (D-AL) in the House, and the aforementioned Robert R. Reynolds (D-NC) in the Senate.

These legislators focused much of their fire on the use of preexamination and the Seventh Proviso to prevent deportation of criminals. Even though Reynolds was co-

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[https://books.google.com/books/download/Amend\\_the\\_Registration\\_Act\\_March\\_2\\_1929.pdf?id=NtBEAQAAAJ&output=pdf](https://books.google.com/books/download/Amend_the_Registration_Act_March_2_1929.pdf?id=NtBEAQAAAJ&output=pdf).

<sup>116</sup> “House Resolution 67: Resolution for the Impeachment of Frances Perkins, Secretary of Labor,” J. Parnell Thomas, Columbia University Libraries Online Exhibitions, accessed March 21, 2021, <https://exhibitions.library.columbia.edu/exhibits/show/perkins/item/444>.

sponsoring legislation to slash quotas far beyond Reed-Johnson's limits, he insisted that he knew and admired many immigrants, and only objected to illegality.<sup>117</sup>

As they often did, restrictionists used the venue of an annual appropriations hearing to object to the Department of Labor's policies, highlighting the political risks associated with a purely executive branch solution. In a failed attempt to ban preexamination by defunding it, Tarver listed 34 individuals who would have been deported due to crimes of moral turpitude, if Perkins hadn't intervened. These cases included "Oscar S. Johnson (or Johansson): Conspiracy and extortion," "Lawrence Arthur McClelland: Statutory rape," "James Theodore Johnson: Aiding and abetting shoplifting," "Francesco Collo: Manslaughter," "Szozezan Adomozyk: Bigamy," "Fredrich L. H. Amberger (U.S. wife): Embezzlement; manslaughter." Tarver's list also contained five convicted thieves, one described as "a kleptomaniac and known [as] such by Department of Labor officials."<sup>118</sup>

By that point, 3,982 deportations had been stayed pending Congressional action that still hadn't come. Tarver and Houghteling sparred over whether any of those individuals had been able to escape their quandary through preexamination; after a thorough review of the records, Houghteling told the Committee that 502 had departed voluntarily, and 440 of those were subsequently readmitted lawfully, 257 of them via

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<sup>117</sup> "A New Bill against Foreigners," *Rassviet (The Dawn)*, Feb. 20, 1936, accessed July 21, 2020, <https://bit.ly/2YRCeua>, discontinued. On the House side, Tarver regularly proposed constitutional amendments to stop counting non-citizens in congressional apportionment. Thomas H. Coode, "Georgia Congressmen and the First Hundred Days of the New Deal," *The Georgia Historical Quarterly* 53, no. 2 (June, 1969), 143, <https://www.jstor.org/stable/40579122>.

<sup>118</sup> *Waivers by Department of Labor on Aliens Inadmissible Under the Moral Turpitude Clause*, 75th Cong., 3rd Sess., *Congressional Record* Volume 83, Part 16 (February 18, 1938): 2178. The same list appears with more detail in *Deportation of Aliens: Hearings Before a Subcommittee of the Committee on Immigration*, U.S. Senate, 76<sup>th</sup> Con., 1<sup>st</sup> Session, March 21–23, 1939.

preexamination within the U.S.<sup>119</sup> (Voluntary departures in lieu of deportation had also been used informally by earlier administrations, as Hoover administration official Harry Hull had admitted; see p. 29. But they weren't specifically sanctioned in federal law until 1940.)

Houghteling informed the Committee that he had recently limited preexamination to “cases of aliens having a husband or wife or children or closeblood relatives who are American citizens... “[the] only people to whom we give preexamination are people whose only illegality is illegal entry.”<sup>120</sup> However, he included crimes associated with illegal entry within this scope; e.g., perjury in statements to immigration officials, naturalization fraud, or the fraudulent use of a U.S. passport.

Restrictionists argued vigorously against special treatment for such crimes, stressing how it advantaged lawbreakers over honest migrants, undercutting respect for the law. The Attorney General had ruled in 1933 that many of these crimes indeed involved moral turpitude, qualifying a migrant for exclusion.<sup>121</sup> However, leading pro-immigrant Congressman Samuel Dickstein (D-NY) argued, “I do not think the whole Congress could agree on what moral turpitude is, and I defy you to [interpret the

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<sup>119</sup> *Labor Department Hearings: Preexamination of Aliens Having Criminal Records Sent to Canada and Readmitted to the United States*, 75th Cong., 3rd Sess., *Congressional Record* Volume 83, Part 16 (February 18, 1938): 2179.

<sup>120</sup> *Agreement with Canadian Authorities to Permit Preexamination of Aliens*, 75th Cong., 3rd Sess., *Congressional Record* Volume 83, Part 16 (February 18, 1938): 2180.

<sup>121</sup> 37 Op. Attorney General 293 (1933), as cited in Jack Wasserman, “Crimes Involving Moral Turpitude,” *Immigration and Naturalization Service Monthly Review* 1, no. 9 (March 1944): 2–5.

phrase].”<sup>122</sup> As will be discussed in Chapter 2, the precise meaning of moral turpitude would be debated in preexamination cases for decades to come.

In 1940, Reynolds listed 700 convicted alien criminals who had been granted Seventh Proviso relief, preexamination, and/or stays of deportation during 1939–1940. The vast majority had been convicted of crimes associated with their immigration status, suggesting that Houghteling’s INS may indeed have been pursuing a firmer approach to other alien criminals.<sup>123</sup> Even so, Reynolds’ list still added a few who had committed unrelated crimes, including Arturo Santangelo (“simple larceny”) and William A. Vogt (“convicted of statutory rape with present wife when she was 13 years old; placed on probation 2 years, confined first 6 months...”).<sup>124</sup> While major changes were about to come to the immigration system — and the world — preexamination and the Seventh Proviso would continue to offer a safety valve for at least *some* “criminals” throughout the 1940s.

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<sup>122</sup> Dickstein, a leading supporter of liberalized immigration laws, chaired the House Committee on Immigration and Naturalization. He was backed by another New Yorker: Emanuel Celler, future co-author of the 1965 Hart-Celler Act. (Soviet archives later revealed that Dickstein was taking money from Soviet intelligence; his handlers believed he led “a criminal gang that was involved in shady businesses, selling passports, illegal smuggling of people, [and] getting citizenship.” Peter Duffy, “The Congressman Who Spied for Russia,” *Politico*, Oct. 06, 2014, accessed November 15, 2020, <https://politi.co/2Pu2oP9>.) Courts were still struggling to define “moral turpitude” in immigration cases after 9/11. Derrick Moore, “Crimes Involving Moral Turpitude,” *Cornell International Law Journal* 41, no. 3 (2008): 813–843, accessed March 20, 2021, <https://scholarship.law.cornell.edu/cilj/vol41/iss3/6>.

<sup>123</sup> House Committee on Appropriations, *Hearings, Department of Labor-Federal Security Agency, 1941; Analysis of Cases in Which the Secretary of Labor Invoked the Seventh Proviso of Sec. 3 of the 1917 Act between Feb. 6, 1939 and Jan. 9, 1940* (Washington, DC: GPO, 1940), 212–230, accessed March 20, 2021, [https://books.google.ne/books?id=QahTzQbEDHcC&printsec=frontcover&hl=fr&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.ne/books?id=QahTzQbEDHcC&printsec=frontcover&hl=fr&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false).

<sup>124</sup> *Ibid.*, 223.

## 1.8. Conclusion

In Chapter 1, we have seen how the new, more restrictive immigration regime generated new pressure to offer discretionary relief to certain individuals whose cases seemed more sympathetic. We have also seen how difficult it was for the political system to provide such relief, at a time when restrictionism remained broadly popular. Legislators' inaction led unelected immigration officials to craft an administrative alternative. Once restrictionists noticed, they pushed back angrily.

Immigration officials' creation of retroactive arrival certificates by fiat during the 1920s, as well as Harry Hull's informal use of voluntary departure, each show that the perceived need for greater administrative flexibility preceded the Roosevelt administration. The pressure for more administrative flexibility will be seen again in Chapter 2 during the Eisenhower years. (Similar impulses likely motivated the Obama administration's creation of the Deferred Action for Childhood Arrivals program in 2012.)

Chapter 2 turns to preexamination in 1940 and beyond — now administered by an INS reassigned to the Department of Justice, in a world again engulfing itself in war.

## Chapter 2.

### Preexamination After 1940 — Through Wars, Hot and Cold

From 1940 onward, preexamination continued in new contexts. It would now be administered by an INS housed within the Justice Department, not Frances Perkins' Labor Department. A more central role would be played by the traditionally restrictionist State Department. Preexamination would exist alongside a new form of administrative relief, *suspension of deportation*, in an era where all aliens were required to register with the U.S. government. It would operate as the U.S. moved towards and through global hot and cold wars, in which the survival of western civilization seemed urgently in question. It would disappear, and then return as policymakers grudgingly recognized they sometimes had no better tool at hand. And, in two cases, it would become a tool for achieving important geopolitical objectives, not just offering individual mercy.

Some themes and tropes kept recurring, as they already had through decades of immigration debates. These included competing narratives of deserving vs. undeserving aliens; of family reunification vs. the rule of law; and providing mercy vs. encouraging lawbreaking. As in 1924 — this time led by Sen. Pat McCarran (D-NV) — restrictionists first gained the upper hand. They achieved passage of the largely restrictionist McCarran-Walter Act in 1952. As occurred after the passage of the Johnson-Reed Act in 1924, strict restriction generated more “hardship cases” with no obvious legal remedy. INS managers again widened the opportunities for administrative relief, resurrecting preexamination in 1955 — this time, with the tacit approval of congressmembers who were still not quite ready to craft liberalizing legislation and vote on the record to pass it.



Gradually, however, the political system did reach a rough temporary consensus on how administrative relief should be offered, and who deserved it. Once this consensus was enshrined in 1957 and 1958 legislation, the need for ad hoc relief procedures with debatable legal foundations abated, and preexamination came to an end.

## 2.1. 1940: INS Moves to Justice, Suspension of Deportation Begins

In 1940, several major events reshaped immigration policy and influenced the use of preexamination. First, in June 1940, Franklin Roosevelt moved the Immigration and Naturalization Service from Perkins' Department of Labor to the Department of Justice (DOJ). From 1938–1940, concerns about subversion had grown, both in the context of labor militancy and Europe's rapid move towards war. In May 1940, Roosevelt announced that a "startling sequence of international events" made it essential to improve control over aliens by closely integrating immigration activities with DOJ's law enforcement and anti-espionage work.<sup>125</sup> At about the same time, Houghteling resigned, and a new Immigration Commissioner, Lemuel B. Schofield, was appointed on October 1, 1940 to complete the transition. While restrictionists still raised concerns about INS's policies, they saw INS's move to DOJ as a repudiation of Perkins' liberal approach to immigration and deportation, and hoped for greater rigor in the future.<sup>126</sup>

Two weeks after INS's move to the Department of Justice took effect, restrictionists won another victory: mandatory alien registration. The Alien Registration

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<sup>125</sup> Franklin D. Roosevelt, "Message of the President," May 22, 1940, accompanying Reorganization Plan No. V of 1940.

<sup>126</sup> "The Secretary of Labor and the Aliens," *Green Bay Press-Gazette*, July 17, 1940, 4; "Plans Tighter Curb on Aliens," *The Charlotte Observer*, May 22, 1940, 6.

Act of 1940, a.k.a. the “Smith Act,” prohibited certain subversive activities by citizens and aliens alike, and required all aliens 14 years of age or older to register themselves and be fingerprinted within four months.<sup>127</sup> This increased pressure on aliens who had remained in the U.S. without legal status. Officials estimated that 3,500,000 million aliens would register, but 4,741,971 did. This suggests that the federal government had had an imperfect understanding of the alien population domiciled within the U.S.<sup>128</sup> Subsequently, manifest cards created and maintained by INS to track border crossings suggest that some aliens registered at the same time they were preexamined. (A more extensive discussion of manifest cards appears on p. 213, and they are used in Chapter 4 to analyze several hundred apparent cases of preexamination.)

The Alien Registration Act also provided a new method of discretionary relief: suspension of deportation.<sup>129</sup> Like preexamination, it only applied to those who weren’t “racially inadmissible or ineligible to naturalization” — so, again, individuals from much of the planet were walled off. This new form of relief was intended for aliens who had “proved good moral character for the preceding five years” within the U.S., and weren’t

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<sup>127</sup> Alien Registration Act of June 28, 1940, Pub. L. No. 76-670, 54 Stat. 670 (June 28, 1940), accessed March 21, 2021, <http://www.loc.gov/law/help/statutes-at-large/76th-congress/session-3/c76s3ch439.pdf>.

<sup>128</sup> “President Roosevelt Okehs Bill to Register 3,500,000 Aliens,” *Salt Lake Telegram*, June 29, 1940, 2.

<sup>129</sup> The Alien Registration Act of 1940 also provided a legal foundation for a policy that previous administrations had already utilized less formally: voluntary departure, in which aliens could leave the country on their own in lieu of deportation. Certain European aliens who were refused preexamination were granted voluntary departure without preexamination, and were permitted to apply for and receive visas essentially as if they had never been in the country. Voluntary departure is largely beyond the scope of this thesis, but this procedure’s repeated abuse to expel Mexicans and Central Americans en masse should be noted; e.g., Operation Wetback (see Adam Goodman, *The Deportation Machine: America’s Long History of Expelling Immigrants* (Princeton: Princeton University Press, 2020), 37–72; and “ACLU Achieves Class Action Lawsuit Settlement That Ends Deceitful Immigration Practices,” ACLU of San Diego & Imperial Counties, last modified August 28, 2014, <https://www.aclusandiego.org/en/news/aclu-achieves-class-action-lawsuit-settlement-ends-deceitful-immigration-practices>.

drug dealers, criminals, “prostitutes, procurers, or other immoral persons,” “mentally [or] physically deficient,” or “anarchists, and similar classes.” Beneficiaries especially included aliens who had subsequently married or had children within the U.S., *if* the Attorney General found “that such deportation would result in serious economic detriment to a citizen or legally resident alien who is the spouse, parent, or minor child of such deportable alien.”<sup>130</sup>

Reflecting restrictionists’ allegations that Perkins’s preexamination and Seventh Proviso decisions had been opaque, the Attorney General was required to report all cases to Congress where deportation was suspended for more than six months. That list would be a public document — presumably giving nativists, anti-communists, and other interested parties an opportunity to object. Then, Congress could veto any deportation at any time during its current session. If it did not veto, the Attorney General could then cancel the individual’s deportation permanently, and (upon payment of \$18) record his admission for legal permanent residence, even if he hadn’t been previously admitted legally.<sup>131</sup> The alien could then pursue naturalization.

Like preexamination five years earlier, suspension of deportation started slowly: INS only reported 120 cases to the 76<sup>th</sup> Congress in the twelve months ending June 30, 1941.<sup>132</sup> However, as with preexamination, the number of individuals seeking and

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<sup>130</sup> Alien Registration Act of June 28, 1940, Pub. L. No. 76-670, 54 Stat. 670 (June 28, 1940).

<sup>131</sup> While by 1940 the average wage rate paid to common laborers had risen to 50.6 cents per hour, and a new 30 cent per hour minimum wage rate had gone into effect, \$18.00 obviously remained a significant cost to many migrants: the better part of a week’s wages for many without specialized skills. As with the cost of traveling for preexamination, this may have deterred some migrants from pursuing relief, and could have been *intended* to deter the poorest, who were often viewed as likely public charges.

<sup>132</sup> *Report of Special Assistant to the Attorney General Lemuel B. Schofield In Charge of the Immigration and Naturalization Service (1941 Annual Report Master Copy)*, JV 6414 .A2 194, Lemuel B.

receiving suspension of deportation would grow considerably. For some, suspension of deportation would become perceived as the most attractive form of relief available. As its eligibility widened later in the 1940s, some legislators would argue that preexamination had become superfluous (see p. 114).

## 2.2. Strengthening the Procedural Foundations of Preexamination

As part of the transition to DOJ, Attorney General Robert H. Jackson reconstituted the Department of Labor's old Board of Review as a new Board of Immigration Appeals (BIA): an adjudicatory body responsible to him. Relying on authority he delegated, BIA could review and decide preexamination, Seventh Proviso, and exclusion case appeals, though he and his successors could still overrule its decisions.<sup>133</sup> The BIA would often be asked to overrule INS hearing officers who denied preexamination to claimants. As will be seen later in this chapter, its precedential decisions offer insight into how preexamination was applied after 1940.<sup>134</sup>

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Schofield, Immigration and Naturalization Service, Department of Justice, 10, accessed March 23, 2021, <https://eosfcweb01.eosfc-intl.net/U95007/OPAC/Details/Record.aspx?BibCode=9024639>.

<sup>133</sup> "Evolution of the U.S Immigration Court System: Pre-1983," Executive Office for Immigration Review, U.S. Department of Justice, last modified April 30, 2015, accessed March 24, 2021, <https://www.justice.gov/eoir/evolution-pre-1983>. With reference to Immigration and Naturalization Service, "Title 8—Aliens and Citizenship, Chapter I—Immigration and Naturalization Service [General Order No. C-24], Regulations Governing Departmental Organization and Authority (8 CFR 142.18)," Federal Register 5 Fed. Reg. 3501 (Sept. 4, 1940): 3502-3503, <https://www.loc.gov/item/fr005172/>. Even as a creature of the Attorney General, the Board of Immigration Appeals often maintained a certain de facto independence. For example, "Of 600 published opinions covering the period 1947–1954, [Attorney General] review was found in only thirty-five cases." Maslow, *supra* note 2, at 358 n.3. The Attorney General only overruled a subset of those, and likely reviewed and overruled an even lower percentage of unpublished cases.

<sup>134</sup> Precedential administrative decisions under immigration and nationality laws made by the U.S. Attorney General, Commissioner of Immigration and Naturalization, and Board of Immigration Appeals from 1940 onward are available through Nexus One, HathiTrust, Google Books, CaseText, HeinOnline, and other sources. A small number of individuals, including organized crime leaders Carlo Gambino and Russell Bufalino, appealed their INS and BIA decisions to the U.S. federal courts. By one roughly contemporaneous estimate, "only one percent of the formal proceedings of the Immigration Service ever

On December 31, 1940, the Attorney General promulgated detailed federal regulations for preexamination, more clearly defining its eligibility and operations. INS officers were not to grant preexamination unless they found the applicant admissible to Canada, *and* of good moral character, *and* registered and/or fingerprinted pursuant to the 1940 Alien Registration Act, *and* able to promptly obtain a visa if a consul found him admissible for permanent residence.<sup>135</sup>

As Mae M. Ngai stresses in *Impossible Subjects*, these regulations continued the paradigm of refusing to legally admit those racially ineligible for naturalization.<sup>136</sup> The 1940 Federal Register regulations described preexamination as taking place at the Canadian border, with no mention of Mexico, though they did not explicitly state that it couldn't happen elsewhere. The regulations made preexamination accessible to "any alien, other than a Canadian citizen, who has been within the United States for a period of six months or more, and who intends to apply to a consular officer of the United States in Canada."<sup>137</sup> Between 1940 and 1946, a Mexican national could apply via the Canadian border, and some did (see p. 231).

Meanwhile, the availability of preexamination to aliens who had been within the U.S. for as little as six months made it valuable to some individuals who could not

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get into court." Kenneth W. Graham, "Immigration and Naturalization: Suspension of Deportation: A Look at a Benevolent Aspect of the McCarran-Walter Act," *Michigan Law Review* 61, no. 2 (1962): 354, doi:10.2307/1286808; citing H.R. Report. No. 565, 87th Cong., 1st Sess. 28 (1961), *supra* note 23, at 29.

<sup>135</sup> Immigration and Naturalization Service, "Title 8 — Aliens and Citizenship, Chapter I — Immigration and Naturalization Service, General Order No. C-27, New Regulations Governing Preexamination of Aliens Within the United States," *Federal Register* Vol. 6 Fed. Reg. 65 (January 4, 1941): 65–67, <https://www.loc.gov/item/fr006003/>.

<sup>136</sup> Ngai, *Impossible Subjects*. 84–88.

<sup>137</sup> *Federal Register* Vol. 6 Fed. Reg. 65 (January 4, 1941): 65–67.

otherwise access relief. As will be seen, these included some Europeans fleeing Hitler. These individuals had recently found their way into the U.S. on visitor's visas, and had already overstayed them, or were at risk of doing so.

Preexaminations were to be conducted by a primary immigrant inspector, tasked with thoroughly examining the alien's potential admissibility into the U.S. should he return from Canada with a new visa. The Primary Inspector was to assemble all documents to create the case's formal record. If "not satisfied that the alien is clearly and beyond a doubt entitled to admission when in possession of an unexpired visa," he was to recommend convening a Board of Special Inquiry (BSI) to review the case. Such Boards were available at many (but not all) locations where aliens were interviewed for preexamination.

If either the primary inspector or BSI found the alien ineligible for preexamination, the examination was to be suspended, "and the record transmitted to the Central Office, accompanied in appropriate cases by an application for a warrant of arrest." Where aliens were held inadmissible by a BSI for reasons other than the lack of an unexpired immigration visa, they could appeal to the BIA — but if the BSI granted preexamination and the original primary inspector disagreed, the inspector could also appeal. The BIA was also permitted to give preexamination to eligible aliens who were already being granted voluntary departure in lieu of deportation — thereby simplifying their return as legal residents. However, the BSI's word was final if it rejected aliens due to tuberculosis, other "loathsome or dangerous contagious disease," or other mental or physical defects legally considered excludable.<sup>138</sup>

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<sup>138</sup> Ibid.

Even if an alien successfully navigated this process, was granted preexamination, entered Canada, and returned with a visa, immigration authorities might discover he was inadmissible in the meantime. Then,

he shall be permitted to re-enter for the sole purpose of being taken into custody by the immigration officers at the port of re-entry who shall make a record of such limited re-entry and at once apply to the Central Office for a warrant of arrest in deportation proceedings.<sup>139</sup>

Failed preexaminations rarely led directly to arrest warrants either inside the U.S. or at the border. But the regulations now clearly described a procedure for this, giving aliens one more worry until they had been officially readmitted as legal residents.

The intensive process associated with preexamination and visa applications in Canada could bewilder even sophisticated applicants. Katherine Sweetland, an affluent professional writer of Canadian birth, had lost her Canadian citizenship by marrying an American in 1926 and staying out of Canada for extended periods.<sup>140</sup> Thanks to the 1940 Alien Registration Act and other legal changes, she needed to legalize her presence inside the U.S. in order to safely cross the border. Temporarily stateless, her attorney advised her to pursue preexamination and non-quota immigrant status concurrently. She was also advised to carefully comparison-shop for U.S. consulates, because some were more

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<sup>139</sup> Immigration and Naturalization Service, "Title 8—Aliens and Citizenship, Chapter I—Immigration and Naturalization Service [General Order No. C-24], Regulations Governing Departmental Organization and Authority (8 CFR 142.18)," *Federal Register* 5 Fed. Reg. 3501 (Sept. 4, 1940): 3502-3503, <https://www.loc.gov/item/fr005172/>.

<sup>140</sup> Katherine Sweetland, "I Married an American," *Harper's*, September 1941, 347–357. U.S. Office of War Information press officers noticed Sweetland's article and shared her conclusion with the rest of the federal bureaucracy: "Americans—the helpful, kindly, generous, democratic people who are so greatly in the majority—should know that in their name exists an administrative cult that is as stupid and despotic as it is unnecessary and un-American."

cooperative than others. As she understood her attorney's advice concerning preexamination,

The second method was for my husband to petition the State Department to have his alien wife pre-examined for entry into the United States. What it meant was that I could go to Ellis Island and be stamped okay for entry into the U.S.A. The advantage of pre-examination was that I should be absolutely certain of getting back in the United States. The great disadvantage was that it involved correspondence with the State Department; and the State Department, I was told, was notoriously slow in answering letters.

After mailing nine pounds of documentation to the U.S. consul in Canada, Sweetland's application for non-quota immigrant status moved forward more quickly than her preexamination application. On that basis, she found herself in a U.S. consul's office in Canada, seeking her visa. After navigating an insulting process that only became more civilized when the visa officer realized she'd authored a book he'd enjoyed, she waited for papers alongside preexaminees and other visa applicants:

A young housemaid sat near me, telling her beads with nervous fingers. "Hail, Mary, full of grace, the Lord is with thee..." she kept saying.... Once she turned to me. "I'm that nervous," she whispered. "Do you think they'll let me in?"

[An enraged] Scotch American reappeared with his wife and his solicitor. The lawyer was imploring his client to be less voluble. The Scot was angrier than ever. "I'll be damned if I'll keep quiet," he shouted. "I'm an American citizen and a taxpayer. I'm one of the poor ignorant fools that supports this preposterous and abominable nonsense."

Inside the railing behind me two stenographers gossiped... "I've written this dope three times," one said. "Why the hell should I bother with him any more? The man's a sap and I'm going to tell him no."

A young doctor... [had also] found himself illegally in the United States. He had been at the Consulate three days. His wife was having a baby. His practice was being shot to pieces. He was trying to get a visa but nothing had happened, nothing was happening.

[Another man] related a story about a girl, a Canadian friend of his, who [also married an American]... The bridegroom, a doctor, explained that his wife was delicate and could not stand the heat. He was told that his wife would have to wait her turn. "Could no exception be made?" the worried husband asked. He was told



that no exceptions were ever made. A few hours' waiting at the height of a July heat wave and the girl fainted. The consulate staff were annoyed and sent her home. She returned the next day with a trained nurse and the two of them sat from nine to five on two successive days. Her papers were in perfect order.

Two months after her visit to the consulate, "my husband received a notice from Ellis Island saying that I was to report there. His petition for pre-examination had been finally granted."<sup>141</sup>

While Sweetland was coping with bureaucratic annoyance, others — those desperately trying to stay out of Hitler's grasp — were worrying about survival.

According to *The New York Times*, during the second half of 1940, after President Roosevelt required passports for Canadians and Mexicans entering the U.S.,

pre-examination was suspended to ascertain how the working arrangements between Canada and the United States would be affected by the new situation. Canada simultaneously decided it would admit no one from Germany or German-occupied territories across the border. Much heartburning and delay were caused to hundreds of foreigners already in the United States who wanted to regularize their stay there.<sup>142</sup>

On February 7, 1941, the Jewish Telegraphic Agency news service reported that the Department of Justice and the Canadian government were conferring on a system where

refugees in this country on visitors' visas would be able to volunteer for pre-examination by the Justice Department immigration division preparatory to leaving for Canada for subsequent re-entry into this country as permanent immigrants. If the examination showed the applicant to be acceptable to the United States he would be certified as such to both the Canadian Government and the United States consulates in Canada, which would eliminate delay in securing an immigrant visa.

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<sup>141</sup> Ibid., 357.

<sup>142</sup> "Pre-examination of Aliens Renewed," *New York Times*, January 5, 1941, 1, 31. While the U.S. was not yet at war with Germany, Canada (as part of the British Commonwealth) had been since September 10, 1939.

...In this connection it is noted that part of the immigration quotas for Czechoslovakia, Poland, Hungary and Germany were recently assigned to U.S. consulates in Canada, Mexico and Cuba. It is expected that successful completion of the negotiations with Canada may lead to similar arrangements with other nearby countries.<sup>143</sup>

On March 28, 1941, *The New York Times* reported that new preexamination regulations would help “Hungarians, Rumanians, Poles, Czecho-Slovaks, and French subjects” who “hurriedly fled Europe and who are living in this country under varying conditions affecting their status” but had no practical way to return home and request a visa. Individuals from combatant nations, including German, Italian, and British citizens, still could not be preexamined.<sup>144</sup> While the U.S. had by now halted deportations to Nazi Germany and Nazi-controlled territories, their futures remained deeply uncertain.

At least one preexaminee, “Vera Hrubá, blonde Czechoslovakian figure skater,” gained timely advantage from the recent policy changes. Facing a choice between “marrying an American or being deported,” she happened to catch a U.S. immigration official’s attention:

...he had read about her, and he saw her while her show was playing in Washington. He told her many of her countrymen, who held numbers under the immigration quota system, were unable to get to the United States, and probably she could get one of the numbers. In Chicago last week, she passed a pre-examination, and Fred J. Schlotfeldt, district director of the U.S. Naturalization Bureau, issued her a card, permitting her to leave the country and return under the quota. The next step in her campaign to become a citizen will come in Vancouver, B.C., where the show plays next week. “I have an appointment with the Consul there at 9 o’clock, March 19,” she said.<sup>145</sup>

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<sup>143</sup> “U.S. Plans New Examination System to Aid Exiles’ Entry,” Jewish Telegraphic Agency, February 7, 1941.

<sup>144</sup> “New Refugee Rule Slashes Red Tape,” *The New York Times*, March 28, 1941, 21.

<sup>145</sup> “Thanks Gents, But Skater Won’t Wed for Awhile; She’ll Enter U.S. on Quota, Become Citizen,” United Press, March 11, 1941. Hrubá’s manifest card, issued when she crossed the border from Vancouver on April 3, 1941, mentions that she was visaed and planned to reside in the US permanently, but does not explicitly state that she had been preexamined in Chicago. (Miss Hrubá, 20 years of age at the

Chapter 3's case studies are replete with examples of how fortuitous connections like Hrubá's and Sweetland's could lead to special treatment. For many, however, the process seemed to continually generate inexplicable and worrying obstacles. By mid-August, the Jewish Telegraphic Agency reported that Canadian preexamination was still "at a standstill," with the State Department requesting additional affidavits, and INS still accepting applications, but no actual INS preexaminations taking place at Ellis Island or elsewhere within the U.S.<sup>146</sup>

Ultimately, preexamination got rolling again. Despite the temporary halts, 2,868 cases had been processed in fiscal year 1940; 3,743 in 1941; 3,002 in 1942, and over 4,000 in each of the following two years.<sup>147</sup> In 1942, *Interpreter Releases*, the Common Council for American Unity's indispensable guide for immigration practitioners, described it as

increasingly recognized as an effective method for solving the immigration problems of a large number of persons who are in the United States as visitors or otherwise for temporary stay or are here illegally, and who are unable to return to their home country because of the war.<sup>148</sup>

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time of her apparent preexamination, later married an elderly movie studio executive who repeatedly cast her as Vera Hrubá Ralston in some 20 movies, nearly all money-losers. According to Wikipedia, the authors of "The Golden Turkey Awards" later nominated her for its "Worst Actress of All Time" award.) "Vera Ralston," Wikimedia Foundation, last modified January 21, 2021, at 04:29, [https://en.wikipedia.org/wiki/Vera\\_Ralston](https://en.wikipedia.org/wiki/Vera_Ralston).

<sup>146</sup> "State Department Requires Additional Affidavits for Canadian Pre-examination Cases," Jewish Telegraphic Agency, August 15, 1941, accessed on March 21, 2021, <https://www.jta.org/1941/08/15/archive/state-department-requires-additional-affidavits-for-canadian-pre-examination-cases>.

<sup>147</sup> These numbers come from the later S. Rept. 1515. Other sources vary; notably, a typed draft of the 1941 INS annual report says 8,053 aliens had applied for preexamination the previous year. INS did not track how many preexamination applications it approved until 1947, but most were approved. *Report of Special Assistant to the Attorney General Lemuel B. Schofield In Charge of the Immigration and Naturalization Service (1941 Annual Report Master Copy)*, JV 6414 .A2 194, as cited earlier.

<sup>148</sup> "Canadian Preexamination Procedure," *Interpreter Releases*, November 25, 1942, Vol. XIX, No. 53, Series A: Immigration, No. 12, 381-401.

Chapter 4's analysis of preexaminations among individuals who entered the U.S. in the late 1930s supports CCAU. Europeans who had been sufficiently lucky, well-connected, and/or resourceful enough to get into the U.S. in the late 1930s or 1940 *and* apply for preexamination represented a tiny fraction of those whose lives could have been saved from Hitler. But these fortunate individuals often were granted preexamination and visas within two to three years of entering, even in spite of the aforementioned delays (see p. 236). Of course, as they navigated an opaque and continually changing process — often in an unfamiliar language, as relatives still in Europe found themselves in ever-graver danger — few could have been confident of success.

*Interpreter Releases* editor Marian Schisby observed that the categories of aliens eligible for preexamination were widening, though individuals “racially ineligible for naturalization” were still excluded. INS was also now refusing preexamination to seamen here illegally: as part of the war effort, they were expected to serve on ships departing U.S. ports.

She noted that the State Department's newly-centralized Visa Division now played a central role in preexamination: few applications could proceed without its prior investigation and approval. The alien's choice of sponsors was increasingly critical: whether citizen or alien permanent resident, the sponsor should be “well integrated in the American way of life and in regard to whose belief in ‘the democratic form of Government of the United States’ there can be no suspicion.” Additional layers of review and travel supervision now applied to aliens from nations the U.S. was fighting. Many of these aliens hated Hitler and Mussolini, but were nevertheless categorized as “alien enemies.” The State Department provided an appeals process; if an appeal was necessary,

both Schisby and the Visa Division recommended that the alien travel to Washington, DC to attend in person.<sup>149</sup>

Preexamination rules continued to change — sometimes modestly, sometimes more substantively. In 1942, INS widened access to preexamination for some individuals with a criminal record, by eliminating a requirement that the alien “(c) not [be] within the classes listed in section 19 (d) of the Immigration Act of 1917, as amended.” In 1944, INS published minor changes to forms and processes.<sup>150</sup> Later, in 1949, preexaminees were told to bring recent X-rays and syphilis blood test reports, but only from

hospitals approved by the American College of Surgeons, approved laboratories, and certified radiologists. *X-ray reports and films from other sources may or may not be accepted by the medical officer who examines you.* (emphasis original) The X-ray film should bear the name of the applicant and his passport number; therefore, you should be sure to take your passport to the hospital or radiologist for identification purposes.<sup>151</sup>

Still, preexamination’s existence — never explicitly defined by statute — remained insecure, both through the war years and beyond. In the September-October 1945 issue of *Lawyers Guild Review*, civil rights attorney Carol Weiss King warned that:

... with the end of the war there is agitation in the [Immigration] Service for the complete withdrawal of the privilege of preexamination... A change of rules has been recommended to the Attorney General by the Commissioner which would take preexamination from all others who would not be entitled to suspension of

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<sup>149</sup> If the original committee ruled in favor of an alien, the Secretary of State or an individual dissenter on that committee could also appeal. Therefore, an alien might need to attend an appeal hearing even though the original committee had approved his application.

<sup>150</sup> Immigration and Naturalization Service, “Title 8 — Aliens and Citizenship. Chapter I — Immigration and Naturalization Service. General Order No. C-27, 1st Supplement. Amendment of Preexamination Regulations,” *Federal Register* 7 Fed. Reg. 7791 (October 2, 1942): 7800 (Washington, DC: GPO, 1942, <https://www.loc.gov/item/fr007194/>). Also: Immigration and Naturalization Service, “Title 8 — Aliens and Citizenship. Chapter I — Part 142 — Preexamination of Aliens within United States; Part 150 — Arrest and Deportation; Changes in Preexamination Procedures,” *Federal Register* 9 Fed. Reg. 11881 (September 29, 1944): 11883, (Washington, DC: GPO, 1944), <https://www.loc.gov/item/fr009195/>.

<sup>151</sup> “X-Ray and Blood Test in Preexamination Cases,” *Interpreter Releases*, Vol. XXVI, No. 7, February 8, 1949, 52–53.

deportation because of their American families. This would make it necessary for all aliens not here on a permanent basis and who did not have families here to return to the country of their nativity for immigration visas. Regardless of the danger to which they might be subjected abroad they could not adjust their status otherwise. This would spell disaster to such refugees as the Oneida group, and to aliens long but never legally resident here.<sup>152</sup>

Another sign that the political climate for preexamination was shifting came in late 1946, as the Jewish Telegraphic Agency reported that 1,700–1,900 individuals who had been granted temporary visas during the war by the State Department’s Advisory Committee on Political Refugees has now been denied preexamination and received deportation orders.<sup>153</sup>

Meanwhile, another fundamental change to preexamination — deeply linked to America’s race-based immigration regime — had taken effect.

### 2.3. Preexamination Excludes Mexicans and Caribbean Islanders

As Mae Ngai has written, Commissioner MacCormack’s original preexamination procedure was at least theoretically open to Mexicans, and INS El Paso district director Grover Wilmoth implemented it at least briefly for Mexican hardship cases. But in 1938, the aptly named American consul in Ciudad Juárez, William Blocker, said he was seeing visa applicants “of the laboring class, some of them actually on relief.” These, he argued, should be denied entry.

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<sup>152</sup> Carol Weiss King, “Aliens in the Postwar Period,” *Lawyers Guild Review* 5, no. 5 (September–October 1945): 329–331. The “Oneida group” refers to the Fort Ontario refugees discussed later in this chapter. (Fort Ontario, Oswego, is within Oneida County, New York.)

<sup>153</sup> “Department of Justice Orders Refugees to Leave Country; Extension of Stay Sought,” Jewish Telegraphic Agency, November 19, 1946, accessed January 1, 2021, <https://www.jta.org/1946/11/19/archive/departments-of-justice-orders-refugees-to-leave-country-extension-of-stay-sought>.

A U.S. consul in Mexico since Pancho Villa's era, Blocker was a larger-than-life presence along the border whose influence likely exceeded his title.<sup>154</sup> He would soon be named Supervising Consul General of all U.S. consulates at the Mexican border, including Matamoros, Nuevo Laredo, Piedras Negras, Agua Prieta, Nogales, Mexicali, Tijuana, and Juárez.<sup>155</sup>

Citing contemporaneous correspondence, Ngai says, "Blocker deliberately slowed the work of processing visas for Mexican pre-examination cases to only a handful a month in order to frustrate Wilmoth's efforts to grant relief to Mexican cases."<sup>156</sup> Ngai found no evidence that any superiors at either the Department of Labor or the Department of State attempted to protect Mexicans' right to visas after preexamination. This is unsurprising, as they had apparently accepted the routine denial of visas at Ciudad Juárez and other U.S. consulates in Mexico, even to individuals entitled to them without discretionary relief.<sup>157</sup>

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<sup>154</sup> Christopher R. Stewart, "Pancho Villa's Munition" (1979), *Graduate Student Theses, Dissertations, & Professional Papers*, 3170, accessed March 22, 2021, <https://scholarworks.umn.edu/etd/3170>. Also see oral history interview of John Howard Burns, Vice Consul, Ciudad Juárez (1942–1943), in *Mexico Country Reader*, Foreign Affairs Oral History Program, Association for Diplomatic Studies and Training (ADST), 23–25, accessed March 25, 2021, <https://adst.org/wp-content/uploads/2018/04/Mexico.pdf>.

<sup>155</sup> For example, Blocker played a key role in U.S. policies regarding the Bracero program. He also helped shape U.S. government response to the Los Angeles Zoot Suit riots of 1943. Neil Foley, *Mexicans in the Making of America* (Cambridge: Harvard University Press, 2014), 95.

<sup>156</sup> The following citations are drawn from Mae M. Ngai, "The Strange Career of the Illegal Alien: Immigration Restriction and Deportation Policy in the United States, 1921-1965," *Law and History Review* 21, no. 1 (2003): 69-107. Accessed March 25, 2021. doi:10.2307/3595069; *Memoranda, G. C. Wilmoth to Commissioner General*, Nov. 3, 1938; *William Blocker to Secretary of State*, Nov. 3, 1938; *Wilmoth to Commissioner General*, Nov. 29, 1938, file 55819/402C, box 75, accession 58A734, INS. Wilmoth later became an increasingly pivotal figure in the evolution of immigration enforcement at the Mexico border, until his sudden death from a heart attack in 1951; see extensive discussion in S. Deborah Kang *The INS on the Line*, Chapters 5 and 6.

<sup>157</sup> Oscar J. Martinez, *Ciudad Juárez: Saga of a Legendary Border City* (Tucson: University of Arizona Press, 2018), 85–86; 95, accessed October 15, 2020, <http://muse.jhu.edu/book/57464>.

Arguably, bias shaped *de facto* practice, which increasingly shaped *de jure* rules. Gradually, perhaps tacitly, the preexamination procedure again became something that occurred almost entirely at the Canadian border.<sup>158</sup> Finally, in late 1945, in correspondence between Immigration Commissioner Ugo Carusi and Attorney General Tom Clark, a ban on Mexican and Caribbean island applicants was stated explicitly. On May 22, 1946, the Federal Register made it official, limiting preexamination to:

- (a) An alien — *other than a citizen of Canada, Mexico, or any of the islands adjacent to the United States* — who has been within the United States for a period of *one year or more* and who has a spouse, parent, or minor child, who is in the United States and is a citizen thereof or is a lawfully permanent resident alien;
- (b) An alien — *other than a citizen of Canada, Mexico, or any of the islands adjacent to the United States* — who has resided in the United States for a period of five years or more;
- (c) An alien — *Other than a citizen of Canada* — whose case is found to be an exceptionally meritorious case.<sup>159</sup>

An exception would still be allowed for “exceptionally meritorious” cases of individuals from Mexico or adjacent islands, but its use appears to have been rare.<sup>160</sup> In 1950, INS told Congress that it had construed the phrase “rather strictly,” limiting it to

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<sup>158</sup> For instance, Edith Lowenstein reports a 1952 case where INS granted preexamination to an Italian woman who planned to seek her permanent resident visa in Mexico, but was denied by the U.S. consul there because he concluded she had acquired her original (overstayed) visitor’s visa by fraud. Edith Lowenstein, *The Alien and the Immigration Law : A Study of 1446 Cases Arising under the Immigration and Naturalization Laws of the United States* (New York: Oceana Publications, 1958, published for the Common Council for American Unity), 72–73. Also, as discussed later in this chapter, many Nazi scientists brought to America through Operation Paperclip were preexamined and crossed the border to Mexico to receive visas from U.S. consulates there.

<sup>159</sup> All emphases mine. Note that the 1946 revisions also lengthened the time a close relative needed to be in the country before applying for preexamination, from six months to a year. The revised rule did not ban preexamination for nationals from Central American nations south of Mexico.

<sup>160</sup> *In the Matter of B– and P–*, 2 I.&N. Dec. 638, (B–) 56152/825, (P–) 56154/758, (BIA June 27, 1946), approved by the Attorney General on December 10, 1947.



“aliens who have made a material contribution to the welfare of the people of the United States, such as veterans and persons who served in the merchant marine during the war. The term has also been applied to the cases of children and very old persons.”<sup>161</sup>

In one 1946 BIA case, a Mexican national, “P–,” received preexamination at the Canadian border, after convincing the Board that his use of a false name to enter the U.S. several years earlier didn’t outweigh his military service, continuing employment in the U.S., and good moral character. Ignoring the practical reality of U.S. consuls like Blocker, the board noted that

It is not customary to authorize preexamination in the case of Mexicans since usually they can more easily adjust their status by crossing the border to Mexico to obtain immigration visas.

The respondent, who resides in New York City, however, apparently prefers to go to Canada to procure a visa. In view of the generally favorable record regarding his character and activities in the United States, we are prepared to authorize preexamination.

“P–”’s case was likely in progress when Mexicans were almost entirely disqualified for preexamination, but the BIA rulings make no reference to this change. During the 1940s, I have found no other successful BIA precedential appeal for preexamination in a case involving a Mexican national.<sup>162</sup>

Nor have I found a BIA precedential case in which a national of an adjacent island was granted preexamination after 1945 based on the “exceptionally meritorious” clause.<sup>163</sup> In 1949, the Board considered a Jamaican national’s argument that Jamaica

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<sup>161</sup> *S. Rept. 1515*, 604.

<sup>162</sup> Based on a search of BIA precedential cases at Hein Online. As mentioned earlier, non-precedential BIA cases were not published and are not available through standard legal databases.

<sup>163</sup> Same search procedure as above. Note, however, that my sample of 674 cases (analyzed in Chapter 4) does appear to identify one “Negro” from “Jamaica, British West Indies” who was granted preexamination in March 1947 after these new rules had taken effect. Edward Hollingsworth Austin had

wasn't truly an "adjacent island," and that he also qualified as "exceptionally meritorious." BIA rejected both claims:

The fact that a dictionary definition of the term adjacent, as quoted by one of the attorneys for this alien, would seem to indicate that Jamaica may not be adjacent is not governing. We believe Jamaica is an adjacent island within the meaning of the regulations.<sup>164</sup>

We must, therefore, determine whether the case is an exceptionally meritorious one... [T]he subject is alleged to have served the economic program of the United States while he was working as an agricultural laborer, is of good moral character, has no ties in Jamaica, but that his family are long-time residents of the United States... It is further alleged that his father has extensive property in this country and that the subject will not become a public charge. In the subject's application for preexamination he notes that he has assets of \$125 in the United States and \$3,000 in a bank in Jamaica...

The case presents no unusual or extraordinary factors. There is no allegation that anybody is dependent upon him for support or that his absence while awaiting a visa in Jamaica would render a hardship to anybody in this country.<sup>165</sup>

One may suspect that this Jamaican worked hard to convince INS that he would never become a public charge. But his family's relative affluence may have worked against his request for relief: nobody would be immiserated if he was deported. An alien

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deserted as a seaman in 1928 and been in the U.S. since, married, lived in Brooklyn, NY, and now worked as a retail grocer. Nothing on his card indicates anything "exceptionally meritorious" or any reason why he qualified despite his origin from an adjacent island.

<sup>164</sup> In 1952, the term "adjacent islands" was formally defined as including "Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering in the Caribbean Sea." This definition ensured that the residents of predominantly black Caribbean territories still under European colonial rule would receive inferior consideration compared with residents of their ruling metropole, who benefited from large and often undersubscribed quotas. "Adjustment of Status Provision of Immigration and Naturalization Act Amended: Preexamination Procedure Virtually Eliminated; Implementation by the Immigration and Naturalization Service," *Interpreter Releases*, Vol. 35, No. 31, September 2, 1958, 241–244.

<sup>165</sup> *In the Matter of N— In Preexamination Proceedings*, 3 I. & N. Dec. 704, 56240/338 (BIA August 10, 1949). "Preexamination - Application under 8 C.F.R. 142 - Jamaica, British West Indies as an Island Adjacent to the United States - Exceptionally Meritorious Case - Jurisdiction of Board of Immigration Appeals to Direct Preexamination (On Appeal) Prior to the Institution of Warrant Proceedings," *Administrative Decisions under Immigration & Nationality Laws 3 (1947–1950)*: 704–706.

such as this might have viewed himself in a no-win situation: too *few* resources would make him undesirable to the United States, while too *many* family resources made it impossible to claim hardship. How could one thread a needle like that?

While the issue of an applicant's "whiteness" was almost always left implicit, it was foregrounded at least once. By the 1940s, the federal courts had mostly decided who was to be considered white in the context of the Johnson-Reed Act. But, in one case, the agency had to decide an Afghan national was white before considering his other claims.<sup>166</sup> In so doing, BIA's judges carefully reviewed the Supreme Court cases *Ozawa vs. United States* (260 U.S. 178 (1922)) and *United States vs. Thind* (261 U.S. 206 (1923)), cases that had barred Japanese and Hindu Indians respectively from naturalization. BIA identified ethnological research suggesting that Afghans are Caucasians, and noted that there were so few Afghans in the U.S. that it was impossible to tell whether the "common man" would share the scientists' views — essentially the standard the Supreme Court had set in *Thind*. The BIA judges quoted *Encyclopedia Britannica* and *Encyclopedia Americana* on Afghans' "aquiline" features and "fair complexions." Finally, they cited a 1939 Circuit Court of Appeals case observing that

members of races inhabiting Europe or living along the shores of the Mediterranean are ordinarily to be classed as white persons in construing the naturalization laws. The same thing may be true of some Asiatics whose long contiguity to European nations and assimilation with their culture has caused them to be thought as of the same general characteristics.

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<sup>166</sup> *In the Matter of K-*, 2 I.&N. Dec. 253, 56065/802 (BIA May 26, 1945), approved by Attorney General, No. A-2655247, <https://casetext.com/admin-law/in-the-matter-of-k-27>.

All this was sufficient for BIA to declare the Afghan “white” — hence, not racially ineligible for naturalization. Therefore, he could earn discretionary relief, too — and BIA gave it to him.

#### 2.4. Board of Immigration Appeals: Another Chance for Lenience

As the aforementioned cases suggest, during the 1940s, BIA offered another avenue by which aliens could seek relief via preexamination, suspension of deportation, and/or voluntary departure.<sup>167</sup> Most BIA decisions weren’t published, but precedential decisions were. Savvy attorneys and social welfare organizations sometimes shared draft opinions to help craft more effective appeals for their clients.<sup>168</sup> A review of BIA cases sometimes finds surprising leniency — especially where aliens had committed crimes or engaged in behaviors that made them seem undesirable to some restrictionists, but were part of families that deportation would disrupt.

In 1940, as INS was moving from the Department of Labor to the Department of Justice, Sen. Robert R. Reynolds had listed 700 convicted alien criminals who had been granted Seventh Proviso relief and/or preexamination during 1939–1940. The vast majority had been convicted of crimes associated with their immigration status, suggesting that Commissioner Houghteling’s INS may indeed have been pursuing a firmer approach to other alien criminals than his predecessor McCormack had.<sup>169</sup> Even

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<sup>167</sup> *S. Rept. 1515*, 317–319.

<sup>168</sup> Kenneth W. Graham, Jr., S.Ed., “Immigration and Naturalization-Suspension of Deportation-A Look at a Benevolent Aspect of the McCarran-Walter Act,” *Michigan Law Review* 61 (1962): 352, doi:10.2307/1286808. (Draft decisions are often found in the case files of immigrant aid organizations such as the Italian Welfare League and the National Catholic Welfare Conference.)

<sup>169</sup> House Committee on Appropriations, *Hearings, Department of Labor-Federal Security Agency, 1941; Analysis of Cases in Which the Secretary of Labor Invoked the Seventh Proviso of Sec. 3 of*

so, as discussed on p. 64, Reynolds' list still included a few who had committed unrelated crimes; e.g., William A. Vogt, who had been convicted of statutory rape involving a 13-year-old girl he subsequently married.<sup>170</sup> Leniency for "criminals" was already a hot button issue as BIA was being created, and would remain so.

Criminal behavior that was viewed as "inherently base, vile, or depraved, contrary to accepted rules of morality" within U.S. society disqualified an immigrant for preexamination or other discretionary relief.<sup>171</sup> But debates over precisely which actions qualified as "crimes of moral turpitude" often shaped decision-making over individual preexamination and deportation cases, and shed light on broader societal attitudes.<sup>172</sup>

As Vogt's case suggests, debates about "moral turpitude" sometimes touched on issues of sexual conduct.<sup>173</sup> In a 1943 BIA case, a man and woman had migrated from the Soviet Union and married in Mexico in 1926. In 1927, the wife's husband visited and proposed that he also "marry" her to bring her into the U.S. with legal status as his "wife," a non-quota immigrant. While this "marriage" was never consummated, and she

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*the 1917 Act between Feb. 6, 1939 and Jan. 9, 1940* (Washington, DC: GPO, 1940), 214–244, accessed March 20, 2021, [https://books.google.ne/books?id=QahTzQbEDHcC&printsec=frontcover&hl=fr&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.ne/books?id=QahTzQbEDHcC&printsec=frontcover&hl=fr&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false).

<sup>170</sup> Ibid., 223.

<sup>171</sup> "Recent Decisions of the Board of Immigration Appeals: Interim Decision Number 214, *In the Matter of D— In Exclusion Proceedings*, 7821035, Decided by Central Office October 24, 1950)," *Immigration and Naturalization Service Monthly Review*, 1950–1951, Immigration and Naturalization Service (Washington, DC: Department of Justice, 1951), 124. Also: Wasserman, "Crimes Involving Moral Turpitude," *INS Monthly Review*, March 1944, 2–5.

<sup>172</sup> *Agreement with Canadian Authorities to Permit Preexamination of Aliens*, 75th Cong., 3rd Sess., *Congressional Record* Volume 83, Part 16 (February 18, 1938): 2180–2181.

<sup>173</sup> Issues of sexual behavior suggest the limits of using preexamination to assess the system's moral attitudes. For example, I have thus far found no precedential BIA preexamination appeals involving homosexual behavior, but we know the immigration system banned homosexuals; first, based on allegations of psychopathology, and later by naming them a specific excludable class.

ultimately divorced her brother in Chicago in 1930 by claiming “desertion,” she later confessed to both bigamy and incest as defined by Mexican law. Her “real” husband came across the border illegally, joining them both in Chicago, and subsequently opening successful stores there. BIA chose to overlook her “bigamy” — a crime of moral turpitude — and grant preexamination. INS also let her “real” husband stay.<sup>174</sup>

A 1944 preexamination case involved a woman charged with prostitution six times in the 1920s. She had pled guilty to disorderly conduct for helping to run a house of prostitution. She left her first husband, and lived with another man in a common-law relationship, until finally divorcing her first husband 15 years later. BIA said her conviction didn’t qualify as a crime of moral turpitude, and her excellent behavior after 1928 earned preexamination.<sup>175</sup>

Strict evidentiary rules contributed to BIA’s willingness to grant preexamination or Seventh Proviso relief to such individuals, especially if they had U.S. citizen families. BIA judges were told that “the evidence must establish that a *particular* crime has been committed, which is *recognized as such* in the jurisdiction involved, and the *admission must relate to the specific crime* so charged” (emphases mine).<sup>176</sup>

Hence, a Greek national had admitted that he’d committed fraud by entering the U.S. with someone else’s birth certificate. But INS found that “before it can be concluded that the applicant had admitted the offense of fraud... there must be a statute upon which to

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<sup>174</sup> *In the Matter of Sam and Sarra C-*, 1 I.&N. Dec. 525, 56061/650 (BIA September 4, 1943).

<sup>175</sup> *In the Matter of C-*, 2 I.&N. Dec. 367, A-5536201 (BIA October 5, 1945).

<sup>176</sup> Ernest J. Hoyer, “Administrative Rules: Admission of Crime in Immigration Proceedings,” *INS Monthly Review*, March 1950, Volume 7, No. 9, 117.

predicate such finding. *We know of no statute that defines fraud, of itself, as an offense.*<sup>177</sup>

A Portuguese applicant admitted lying to a U.S. consul regarding his visa request, saying “I did know I was doing something wrong but the extent of my doing I didn’t know, sir, but now I admit it was very wrong.” BIA wrote that “[a]lthough the testimony discloses a factual basis for the offense, nevertheless the applicant has not made a direct admission of the commission thereof, as required by statute.” His statement couldn’t be used to prove the offense. Accordingly, he was granted preexamination.<sup>178</sup>

Even when a crime was recent, and its particulars reasonably clear, BIA might forgive. An Italian longshoreman arrived illegally as a young stowaway in 1927, married a U.S. citizen in 1935, and the couple had three children. He behaved well, until at age 33, he took two raincoats from a lend-lease cargo shipment. He was immediately caught, and fined by the Customs Service. BIA ruled that “while it does appear that the fine was assessed because of possible defrauding of the Government,” this “isolated incident” shouldn’t override his long residence or how his wife and three minor children depended on him. So, too, BIA sometimes chose to interpret liquor offenses as minor infractions, even if an applicant served significant jail time for them.<sup>179</sup>

BIA judges regularly cited precedent. They followed guidance from the Attorney General, as well as relevant published materials such as the Immigration and Naturalization Service *Monthly Review*. Above all, they clearly viewed themselves as constrained by federal law. That said, I found more examples of leniency for white

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<sup>177</sup> Ibid., 116.

<sup>178</sup> Ibid., 118.

<sup>179</sup> *In the Matter of T-*, 2 I.&N. Dec. 614 \* (BIA June 21, 1946), approved by Attorney General, No. A-1021747; *In the Matter of H-*, 1 I.&N. Dec. 394, 56091/68 (BIA January 19, 1943).

criminals seeking preexamination than for non-white aliens. If this anecdotal observation reflects anything more systematic, the causes might include a relative inaccessibility of the appeals process to non-white aliens, and the extremely limited “wobble room” in Congress’s strict national origins language.

## 2.5. Preexamining Refugees at Fort Ontario: A Last Resort Solution

At the end of World War II, preexamination — long viewed as an expedient for offering mercy in hardship cases — also became a last-resort solution for a significant problem of both international relations and domestic politics.

In March 1944, President Roosevelt had authorized creation of the Fort Ontario Emergency Refugee Shelter in Oswego, New York: the only World War II refugee camp on U.S. soil. Roosevelt, always sensitive to restrictionists’ concerns, promised Congress that Fort Ontario refugees would be “returned to their homelands” after the war.<sup>180</sup>

Early in August, nearly 1,000 individuals arrived at Fort Ontario. Selected from refugee camps throughout Italy, about 3/4 were Yugoslav, Austrian, and Polish nationals. Nearly 90% were Jewish. Once there, they were held behind the campground’s barbed wire fence.<sup>181</sup> At first, most were prohibited from even temporarily leaving, though six-hour passes were later provided, and children were permitted into the Oswego public

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<sup>180</sup> Franklin D. Roosevelt, President’s Message to Congress, June 12, 1944.

<sup>181</sup> The statistics in this paragraph and much of the following account draw heavily on the definitive book about the Fort Ontario camp, *Token Refuge*. Sharon R. Lowenstein, *Token Refuge: The Story of the Jewish Refugee Shelter at Oswego, 1944–1946*, The Modern Jewish Experience. (Bloomington: Indiana University Press, 1986). Other parts are from the following first-hand account: Ruth Gruber, *Haven : The Unknown Story of 1000 World War II Refugees, Fiftieth Oswego Anniversary Edition* (Oswego, NY: Safe Haven Publication, 1994), 138.



schools, where many excelled. Still, as months passed, the community grew frustrated with its isolation in what they had expected would be a “land of the free.”

Meanwhile, the Roosevelt administration resisted attempts to permit these refugees to immigrate, or to “parole” some to live with their American relatives.<sup>182</sup> This resistance arose not only from notoriously anti-refugee officials like the State Department’s Breckenridge Long, but also from less unsympathetic figures like Henry Morgenthau and Harold Ickes. As if to underscore the sensitivity of the issue, FDR had already been attacked on the issue during the 1944 campaign by Republican Vice Presidential candidate Sen. John Bricker (R-OH). Bricker alleged that Roosevelt had misrepresented the refugees as primarily women and children when many turned out to be male “writers, lawyers, artists, and intellectuals” — e.g., potential troublemakers.<sup>183</sup>

As 1944 slipped into 1945, Fort Ontario’s European “guests” survived a difficult upstate New York winter in a facility not designed for them. The question of their fate grew ever more urgent. As the Allies’ D-Day invasion progressed, U.S. troops were gaining control over huge swaths of a devastated Europe with millions of displaced and hungry people. On April 12, 1945, FDR died; on May 8, the allies accepted Germany’s unconditional surrender; on August 14, Japan surrendered and World War II ended. Within the U.S., the question of accepting additional displaced persons — whether temporarily or permanently — moved up the political agenda.

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<sup>182</sup> For an assessment, see “Breckenridge Long,” Holocaust Encyclopedia, United States Holocaust Museum, accessed March 23, 2021, <https://encyclopedia.ushmm.org/content/en/article/breckinridge-long>. Ickes stated, “I can imagine nothing better calculated to add fuel to the anti-Semitic sentiment in this country than to permit almost a thousand foreign-born citizens, most of them Jews, to come and go at their pleasure in this country.” Harold Ickes to Dillon S. Myer, March 12, 1945, Records of the Fort Ontario Emergency Refugee Shelter, Columbia University, Box III, as cited in S. Lowenstein, *Token Refuge*, 117.

<sup>183</sup> S. Lowenstein, *Token Refuge*, 111–112.

Some politicians worried that allowing the Fort Ontario refugees to stay would offer fodder to restrictionists such as Sen. Reynolds, who viewed them as the “entering wedge” of a massive invasion: thousands or millions more of the impoverished, poorly educated, and disproportionately Jewish individuals they had long sought to exclude.<sup>184</sup> In some circles, the phrase “refugee” had become shorthand for “Jew.”<sup>185</sup> Polls showed that 63% of Americans in 1940 had ascribed “objectionable traits” to Jews, and 1/3 to 1/2 said they would support hypothetical campaigns against Jews and Jewish influence during the World War II era.<sup>186</sup> Roosevelt — whose “New Deal” had been derided by some as the “Jew Deal” — knew all this well. And for decades, American Jewish leaders had worried about further inflaming anti-Semitism by acting too aggressively to defend refugees or seek liberalized immigration.<sup>187</sup>

Still, the question remained: what to do with the people at Fort Ontario? They might still be returned to Europe; each had been required to sign papers acknowledging that they would someday be sent back. But conditions there were disastrous, and while some Yugoslav refugees ultimately decided to repatriate, roughly 90% of camp residents wanted to stay in the United States. If returned, they would face the daunting challenge of seeking visas and quota slots from U.S. consulates there, like any other migrants. A *New*

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<sup>184</sup> “Reynolds Opens Drive on Refugee Shelters,” *Jewish Post*, Indianapolis, Marion County, August 18, 1944.

<sup>185</sup> Leonard Dinnerstein, *Antisemitism in America* (Cary: Oxford University Press, 1992), 161.

<sup>186</sup> Charles Herbert Stember et al. *Jews in the Mind of America* (New York: Basic Books, 1966). Statistics quoted in review, Morton Rosenstock. “Jews in the Mind of America.” *American Jewish Historical Quarterly* 56, no. 4 (1967): 470–71, accessed March 20, 2021, <http://www.jstor.org/stable/23875567>.

<sup>187</sup> Leonard Dinnerstein, “Jews and the New Deal,” *American Jewish History* 72, no. 4 (1983): 461–76, accessed September 26, 2020, <http://www.jstor.org/stable/23882507>.

*York Post* columnist suggested borrowing the concept of “free ports”: if some merchandise in transit was allowed to remain in the U.S. temporarily without undergoing full customs procedures, why not some humans? Others suggested temporary sponsored leaves, in which either relatives or social welfare organizations would take responsibility for individuals who could then live in more comfortable and productive environments while policymakers made longer-term decisions.<sup>188</sup>

As Sharon Lowenstein writes, long-time INS Deputy Commissioner Edward J. Shaughnessy suggested that preexamination could lead to the refugees’ ultimate admission as permanent residents and eventually to their naturalization. At first, however, Shaughnessy’s supervisor, Attorney General Francis Biddle, shot down the idea. This would break FDR’s promise that the migrants would leave, and call unwanted attention to the entire preexamination procedure, increasing pressure to abolish or further restrict it.<sup>189</sup>

But there was now also a foreign policy issue. The War Department had ruled in July 1945 that no displaced person “will be compelled to return to his former domicile except to stand trial for a criminal offense.”<sup>190</sup> The United Nations Relief and Rehabilitation Administration (UNRRA) also opposed forced repatriation. Would the U.S. drag these individuals away and force them onto boats at the exact moment it was co-founding the United Nations to promote and encourage “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or

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<sup>188</sup> S. Lowenstein, *Token Refuge*, 108–115.

<sup>189</sup> Edward J. Shaughnessy to INS Director Ugo Carusi, Chamberlain Papers, YIVO, December 28, 1944, Box 1, as cited in S. Lowenstein, *Token Refuge*, 116–117.

<sup>190</sup> S. Lowenstein, *Token Refuge*, 132–133.

religion”?<sup>191</sup> As tensions rose between the U.S. and its erstwhile ally, the Soviet Union, foreigners watched to see if America would meet emerging international standards. Would it avoid forcible repatriations, and accept a fair share of displaced refugees, or not?

Inside the U.S., supporters of the refugees began to organize. The liberal chairman of the House Immigration Subcommittee, Samuel Dickstein (D-NY), held two days of hearings at Fort Ontario. The camp’s cheery house newsletter, the *Ontario Chronicle*, quoted him as supporting the refugees’ release “at the earliest possible moment.” He told the refugees and the media that three approaches were possible. Refugees could be released as individuals on their own recognizance; or on bonds which would require the raising of over \$1 million. Or,

The course which the committee chairman prefers and which he hopes the committee will recommend is to have them declared illegally in this country. In that case they will come directly under control of the immigration authorities. They can be given pre-examination and taken over to Canada, which country he understands is willing to accept them under this status. Then those of them entitled to entrance under quota of their countries of origin will be in position to apply for visas to enter the United States legally.<sup>192</sup>

Through summer and autumn of 1945, the government’s internal debate continued. A panel of State, Justice, and Interior Department representatives interviewed each camp resident, but some panel members still seemed to want most of the refugees expelled.<sup>193</sup> Gradually, though, the refugees gained external support, including surprising political support from conservative Senators Robert Taft (R-OH) and Richard Russell (D-

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<sup>191</sup> *Article I, United Nations Charter*, United Nations, San Francisco, CA, October 24, 1945, <https://www.un.org/en/sections/un-charter/chapter-i/index.html>.

<sup>192</sup> “Release at the Earliest Possible Moment,” *Ontario Chronicle*, June 28, 1945, 1.

<sup>193</sup> S. Lowenstein, *Token Refuge*, 130–132.

GA). Russell had concluded that he would rather use 1,000 quota slots on people who had spent nearly two years recuperating and Americanizing themselves in Oswego, rather than on traumatized, starving, and sick refugees straight from European camps.<sup>194</sup>

In December, President Harry S. Truman decided to offer preexamination to the camp's residents, accepting a "corporate affidavit" from welfare organizations guaranteeing that none would become public charges. (This angered some refugees who wanted to pay their own bonds and fees without further assistance.)<sup>195</sup> From January 7 through February 6, 1946, buses shuttled groups of preexamined camp residents across the border to a U.S. consulate in Niagara Falls, Canada. There, they received visas, and re-entered as permanent legal residents.

Truman had acted while Congress was out of session and couldn't stand in his way. But restrictionists didn't fail to notice. In 1947, during debates over how displaced persons should be treated, Sen. William Chapman Revercomb (R-WV) called preexamination "one of the greatest executive abuses of our immigration laws in the history of this country." Revercomb recalled that President Truman's orders admitted displaced persons and refugees, principally from central and eastern Europe and the Balkans, including Camp Oswego residents who

[became] permanent residents although they entered contrary to law... Naturally as a result of this order giving selection to these refugees, those who had been waiting in their countries and were not classed as displaced persons or refugees were pushed aside and the quotas closed to them.<sup>196</sup>

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<sup>194</sup> S. Lowenstein, *Token Refuge*, 134–135.

<sup>195</sup> S. Lowenstein, *Token Refuge*, 136.

<sup>196</sup> *Remarks by Mr. Revercomb concerning S. Joint Resolution 77, Participation in International Refugee Organization*, 80th Cong., 1st Sess., *Congressional Record* Volume 93, Part 2 (March 25, 1947): 2505.

Once again, restrictionists (who were attempting to slash quotas even further) argued that preexamination was unfair to those patiently seeking the slots they sought to eliminate. In so doing, they sought to divide abstract “good immigrants” who *weren’t* here (because they followed the rules) from other (presumably less desirable) immigrants who actually *were* here, because the rules had been broken on their behalf.

## 2.6. Operation Paperclip: Legalizing Former Nazis

Months after the Fort Ontario camp finally closed, the federal government quietly began using a version of preexamination for a very different set of foreign policy goals. Like the Jewish refugees in upstate New York, another set of individuals was domiciled within the U.S. under government supervision, but without legal status. And, once again, the U.S. government struggled to determine how to handle their unusual situation. But the similarity ended there.

These were Nazi scientists, technologists, and their dependents, taken into custody as American troops swept into Germany. U.S. policymakers considered them crucial to national security: capable of utilizing their knowledge to advance American science and technology, and to protect U.S. military advantages. The U.S. government especially did not want their expertise to fall into Soviet hands.<sup>197</sup>

The solution was Operation Paperclip — given the name because a paperclip on a case folder silently signified that the military sought rapid, favorable handling. According to Brian Crim, Project Paperclip ultimately welcomed some 1,500 German and Austrian

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<sup>197</sup> Brian E. Crim, *Our Germans: Project Paperclip and the National Security State* (Baltimore: Johns Hopkins University Press, 2017), 63.

scientists, engineers, and technicians to the U.S., along with thousands of their dependents.<sup>198</sup> These technical experts first participated in specified military projects, and then diffused throughout the growing postwar military-industrial complex. Some, such as Wernher von Braun and Kurt Debus, later helped lead NASA's efforts to send men to the moon.<sup>199</sup>

While these individuals had been taken into custody by U.S. troops — and while most had been members of the Nazi Party — they possessed more leverage than Fort Oswego's refugees had. The Americans, British, French, and Soviets were prepared to compete for their skills.<sup>200</sup> In exchange for joining (and remaining in) U.S. military programs, they wanted assurance they could build new lives without fear of war crimes prosecution or other penalties. Inside the federal government, angry battles exploded over whether they would receive these assurances, with Paperclip's supporters in the Joint Intelligence Objectives Agency (JIOA) battling State Department lawyer Samuel Klaus until President Harry S. Truman decided to support their entry.<sup>201</sup> For years thereafter, according to Crim and others, JIOA investigators routinely understated the Nazi involvement of those they sought to import. JIOA sometimes suggested that individuals of interest were merely "honorary" SS members, or had joined only to get into college or

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<sup>198</sup> Ibid., 3.

<sup>199</sup> Annie Jacobsen, *Operation Paperclip* (Boston: Little Brown & Company, 2014), 397.

<sup>200</sup> John Gimbel, "German Scientists, United States Denazification Policy, and the 'Paperclip Conspiracy,'" *The International History Review* 12, no. 3 (Aug.1990): 448, doi:10.1080/07075332.1990.9640553. Gimbel's citations include: "USNA RG 218, JCS Central Decimal Files, box 94, section 4, file CCS 47 1 .9. For the written British notice see CCS 870/12, 23 Jan. 1946, Memorandum by Representatives of the British Chiefs of Staff, USNA RG 165, box 564, section 1 -A, file ABC 471.6 (7 Oct. 1943)."

<sup>201</sup> Crim, *Our Germans*, 4.

onto elite scientific teams, or even to “escape Gestapo and party harassing.” In some cases, Crim writes, “the JIOA not only ignored negative security reports, but often altered the offending documents to deceive other offices in the government.”<sup>202</sup>

Roughly 90% of the German “Paperclippers” who came to the U.S. ultimately became citizens.<sup>203</sup> But to do so, they first had to become legal residents, and most were arriving without visas. Sending these valuable assets back to U.S. consulates in Europe would not only be expensive and complicated: it risked losing control of them. So, as established by JIOA directive 257/22, they would now be preexamined by the INS within the United States. This would be followed by a brief excursion across the border to a nearby U.S. consulate, accompanied by U.S. military officials to make sure everything went smoothly. Per JIOA, the State Department’s consular officials were required to “accept as final, the investigation and security reports prepared by JIOA, for insuring final clearance of individuals concerned.”<sup>204</sup>

Some “Paperclippers” who worked in the northeast traveled to the U.S. consulate in Niagara Falls, Canada, as the Fort Ontario refugees had. But far more of them worked at Fort Bliss, near El Paso, Texas; at White Sands Proving Range in New Mexico; and starting in 1950, at Huntsville, Alabama. It was easier to send them for visas across the Mexican border: sometimes to consulates at Nuevo Laredo or Tijuana, but often at Ciudad Juárez.<sup>205</sup> So it was that, in Michael Mark Cohen’s words,

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<sup>202</sup> Ibid., 43.

<sup>203</sup> Ibid., 3.

<sup>204</sup> Jacobsen, *Operation Paperclip*, 247.

<sup>205</sup> C. McCleskey and D. Christensen, “Dr. Kurt H. Debus: Launching a Vision,” IAA-01-IAA-2.1.08, *History of Astronautics Symposium, International Academy of Aeronautics*, 7–11, accessed March



on 2 November 1949, [von Braun] and his crew crossed the bridge over the Rio Grande into Ciudad Juárez where they took the street cars to the US Consulate. There they filled out their visa forms in an act of theater prearranged by the State Department. According to their papers, [they] embarked at the port of Juarez, their port of arrival was El Paso, the method of travel indicated as the Juarez city trolley line... With stamped passports and a job from the Army, they became resident aliens of the United States with the possibility of becoming US Citizens.<sup>206</sup>

These former Nazis received their visas from the same consulate where William Blocker had denied them to Mexican preexaminees a decade earlier.<sup>207</sup>

Von Braun's border crossing card (Figure 2) doesn't mention preexamination; this appears to be noted inconsistently, if at all, on Mexican border crossing cards. His card simply describes him, his brother, and his father as "6-a-3" aliens: non-preference or refugee aliens subject to quota.<sup>208</sup>

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21, 2021, [https://www.nasa.gov/centers/kennedy/pdf/112024main\\_debus.pdf](https://www.nasa.gov/centers/kennedy/pdf/112024main_debus.pdf); Jacobsen, *Operation Paperclip*, 316.

<sup>206</sup> Michael Mark Cohen, "Wernher von Braun and Peak Whiteness: Part 3 – Rocket State Cosmology," Medium, accessed January 15, 2021, <https://medium.com/the-secret-history-of-america/the-whitest-man-who-ever-lived-part-3-d37110029ee2>. Among others who were preexamined and then granted visas at Ciudad Juárez: Arthur Rudolph, who went on to earn NASA's Distinguished Service Award, before investigators at the U.S. Office of Special Investigations uncovered so much evidence that he had been directly involved in slave labor brutalities that they authorized denaturalization proceedings. Judy Feigin, *Striving for accountability in the aftermath of the Holocaust*, special report prepared for the Office of Special Investigations, Department of Justice, December 2008 (Washington, DC: U.S. Department of Justice), accessed March 24, 2021, 331–341, <https://www.justice.gov/sites/default/files/criminal/legacy/2011/03/14/12-2008osu-accountability.pdf>.

<sup>207</sup> Monique Laney has also contrasted the treatment accorded former Nazi scientists and technologists compared with Mexican braceros at the same time, observing that "The 1952 McCarran-Walter Act was not designed specifically for [Nazis], but its allocation of 50 percent of visas to highly skilled professionals amplified a trend in immigration policy that had its roots in a longer history of preferential treatment of immigrants with desired skills." Monique Laney, "Setting the Stage to Bring in the 'Highly Skilled'," in Maddalena Marinari, Madeline Hsu, Maria Cristina Garcia, *A Nation of Immigrants Reconsidered*, Vol. 21, Studies of World Migrations (Champaign, IL: University of Illinois Press, 2018), 144–160, doi:10.5406/j.ctv9b2wjb.13.

<sup>208</sup> Reflecting Sec. 6((a)(3) of Public Law 139, May 26, 1924, as amended by President's Directive of Dec. 22, 1945. *Immigration Law and Procedure: USCIS Policy Manual and Adjudicator's Field Manual*, U.S. Citizenship and Immigration Services (Washington, DC: U.S. Citizenship and Immigration Services), last reviewed/updated March 18, 2021, accessed March 21, 2021, <https://www.uscis.gov/book/export/html/68600>, including elements no longer currently applicable.

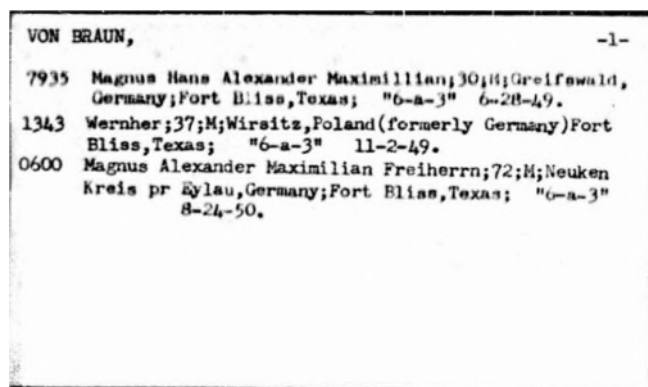


Figure 2. Wernher von Braun's Border Crossing Manifest Card, November 2, 1949<sup>209</sup>

## 2.7. 1946–1948: Preexamination Faces the Red Scare

World War II's strange alliance of Roosevelt, Churchill, and Stalin had temporarily muted America's prewar fears of Communism. But not for long. Even before the war ended, anti-Communist Congressmen had expressed fury when — even though Frances Perkins no longer had anything to do with INS — the agency granted preexamination to Raissa Browder, wife of Earl Browder, General Secretary of the Communist Party USA.<sup>210</sup>

<sup>209</sup> "Wernher von Braun Border Crossing Card," *Border Crossings: From Mexico to U.S., 1895–1964 for Wernher Von Braun*, National Archives and Records Administration, NARA publication A3396: Index to Manifests of Permanent and Statistical Alien Arrivals at El Paso, Texas, July 1924–July 1952. Washington D.C.: National Archives and Records Administration, accessed at AncestryLibrary.com, September 26, 2020, [https://www.ancestrylibrary.com/imageviewer/collections/1082/images/32653\\_b039528-02033?treeid=&personid=&hintid=&queryId=7f6de916679a1f3cff791ec775f259d9&usePUB=true&\\_phsrc=ehs56&\\_phstart=succesSource&usePUBJs=true&pId=10558812](https://www.ancestrylibrary.com/imageviewer/collections/1082/images/32653_b039528-02033?treeid=&personid=&hintid=&queryId=7f6de916679a1f3cff791ec775f259d9&usePUB=true&_phsrc=ehs56&_phstart=succesSource&usePUBJs=true&pId=10558812).

<sup>210</sup> The Browders had married in Moscow in 1926, and Mrs. Browder had entered the U.S. illegally in 1933; the couple had three children, all U.S. citizens. Her deportation had been ordered. But, according to the Department of Justice, a 1944 INS rehearing resolved "the doubts heretofore entertained in this case concerning the respondent's possible membership in or affiliation with an organization believing in or advocating the overthrow of the Government of the United States by force or violence... There is nothing but favorable comment on the respondent's character and demeanor during the years she has lived in the United States." (*Department of Justice Press Release*, April 5, 1944.) Congressman Robert F. Jones

As friction with the Soviets quickly grew after the war, the preexamination procedure faced renewed concerns about subversive infiltration. In November 1946, Rep. John Lesinski Sr. (D-MI), outgoing chairman of the House Immigration Committee, and Rep. Noah Mason (R-IL), held hearings in Detroit on the issue. There, they heard closed-door testimony from State and Justice Department officials who believed immigration enforcement had grown unacceptably lax. According to the *Chicago Tribune*, a conservative newspaper that covered immigration aggressively,<sup>211</sup>

Rep. Mason said the breakdown of the immigration laws started when Frank Murphy, now a Supreme Court justice, was attorney general, and continued under the administration of Francis Biddle.<sup>212</sup> During their regimes, the immigration service developed a procedure known as pre-examination, under which an alien with influential friends in Washington could make a flying trip to Canada and be readmitted within a few hours as a legal immigrant.<sup>213</sup>

Mason said Attorney Generals Murphy and Biddle intervened in many cases, putting pressure on immigration officials to approve applicants who were ineligible under the law — some of them known to be communist sympathizers. As a result the immigration service became demoralized...

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(R-OH) saw the affair rather differently: “I have always thought the Attorney General [Biddle] was kissing around with the Communists, and... the record has not falsified my impression... [Who] can believe that the wife of our No. 1 Communist never attended a Communist meeting at Madison Square Garden or elsewhere, either on the arm of her distinguished husband or otherwise? She is not the wife of a rank-and-file Communist who, in our country of private enterprise, has been duped by Communist propaganda emanating from Russia and earns his living by the sweat of his brow in some war factory. She is the wife of a man who earns his bread and butter by spreading and indoctrinating unsuspecting Americans with the class hatreds of a foreign ideology. The bread he puts on his table, the rent he pays for their little communistic love nest are paid for with assessments laid upon his misguided American dupes.” *Remarks of Mr. Jones concerning The Case of Mrs. Browder*, 79th Cong., 1st Sess., *Congressional Record* Volume 91, Part 3 (March 14, 1945): 2221–2222.

<sup>211</sup> Carl Wiegman, “Tighten Laws on Aliens That F.D.R. Relaxed: Entries from Canada Are Reduced Sharply,” *Chicago Tribune*, November 20, 1946, 9.

<sup>212</sup> Mason’s statement, as quoted, cannot be entirely correct. Murphy served as Attorney General from January 2, 1939 until January 4, 1940, when he was appointed to the Supreme Court. That entire period preceded the reorganization that placed INS under the Attorney General in the Department of Justice. Murphy was succeeded by Robert Jackson, not mentioned in Mason’s quote, who also became a Supreme Court justice on July 11, 1941. Francis Biddle became Attorney General on September 5, 1941, and served until June 30, 1945, three months after Franklin D. Roosevelt’s death.

<sup>213</sup> “Flying trip” was vernacular for a quick excursion, not necessarily one by airplane.

Lesinski and Mason quoted E.E. Adcock, district director of immigration at Detroit, as saying that the situation had improved after President Truman took office and named Tom Clark as Attorney General. According to Mason's account, Adcock said the number of aliens admitted at Detroit through preexamination had dropped to 11 in the past six months, compared with "several hundred" in the preceding six months.<sup>214</sup>

Lesinski and Mason recounted the testimony of John L. Bankhead, American vice consul at Windsor, Ontario, who claimed he was no longer "subjected to pressure for entry permits for aliens who, he believes, are undesirable."<sup>215</sup>

Advocates for aliens seeking preexamination also noticed a tightening of procedures. On June 3<sup>rd</sup>, 1946, the Common Council for American Unity's Q&A column for aliens included the following entry:

Question: I came to the United States as a seaman in 1944 and have remained here ever since. A friend of mine who, like me, was in the United States illegally, went to Canada last Christmas to get an immigration visa and he is back here legally. Can I do the same?

Answer; The regulations about going up to Canada to get an immigration visa — Canadian preexamination is what it is called — were changed recently and it is not so easy to get permission for Canadian preexamination as it used to be...<sup>216</sup>

Vice Consul Bankhead, a scion of diplomats and Senators (and a relative of actress Tallulah Bankhead) now took center stage in a cross-border contretemps over immigration enforcement. In October 1947, the *Windsor Star* and *Detroit Times* reported

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<sup>214</sup> In my own subsample of cases preexamined in Detroit and visaed in Windsor, I find 8 cases in calendar year 1944, 10 in 1945, 4 in the first half of 1946, 2 in the second half, and 5 in all of 1947. This small sample suggests some reduction in cases there after Attorney General Clark took office, but not as radical a reduction as Adcock describes.

<sup>215</sup> "Tighten Laws on Aliens," *Chicago Tribune*.

<sup>216</sup> "Naturalization and Immigration Questions and Answers," Common Council for American Unity: Index #5679, June 3, 1946.

that he had rejected visa applications from two individuals who had passed preexamination within the U.S. despite apparent Nazi background or sympathies:

[Sen. Homer S. Ferguson (R-MI)] gave the committee evidence from the American state department that one of the aliens, who swore he was not a Nazi, actually joined the party in May, 1937, and for four years prior to that was a Hitler storm trooper. This man is Alfred G. Pommer, 41, now living in St. Louis and prospering with \$300,000 he received from the estate of an uncle.

The other alleged Nazi is Dr. Erwin Frankel, 52, a Chicago physician who was approved by the immigration service despite the fact that he was removed by the American government from Panama during the war because he was considered a threat to the security of the Canal Zone. State Department reports obtained by Ferguson say he was alleged to be the most dangerous European in Colon.

...Both men were cleared of all charges by immigration and justice department officials and approved for legal entry to the country. This entry was blocked by Bankhead, who refused them visas at Windsor on the basis of state department information similar to that obtained by Ferguson.<sup>217</sup>

Pommer's INS manifest card (Figure 3) describes him as a 40-year-old male born in Marburg, Prussia, Germany. He had first arrived in the U.S. in 1939, and was a student in 1946.<sup>218</sup> On September 9, 1946, he was preexamined at St. Louis, MO for travel to Canada. While his preexamination trip to Canada was evidently authorized by someone at the Windsor consulate, the card's story might have reasonably given some consuls pause:

Alien is subject of deportation proceedings & has been granted vol. departure with preexamination, St. Louis File 3404/91, K.C. 5000/2-714, C.O. 56123/622, St. Paul 43240/172, N.Y. 99462/863, Miami, 4275/3G, Bismarck 4290/753]. Preex. Authorized by C.O. 3/12/46, file 56123/822; Approval from American

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<sup>217</sup> "M.P. Queries Border Crossing Charges," *Windsor Star* (Windsor, Ontario, Canada), October 7, 1947, 3, 6.

<sup>218</sup> "Alfred Gustav Pommer Border Crossing Card," *Detroit Border Crossings and Passenger and Crew Lists, 1905–1963*, corresponds to NARA Publication M1478: Card Manifests (Alphabetical) of Individuals Entering Through the Port of Detroit, 1906-1954 (Washington D.C.: National Archives and Records Administration) accessed March 25, 2021, [https://www.ancestrylibrary.com/imageviewer/collections/1070/images/mim1478\\_80-5283?treeid=&personid=&hintid=&queryId=024d088b1e6d5d9b929e25db676af0b0&usePUB=true&\\_phsrc=ehs28&\\_phstart=successSource&usePUBJs=true&pId=556587](https://www.ancestrylibrary.com/imageviewer/collections/1070/images/mim1478_80-5283?treeid=&personid=&hintid=&queryId=024d088b1e6d5d9b929e25db676af0b0&usePUB=true&_phsrc=ehs28&_phstart=successSource&usePUBJs=true&pId=556587).

Consul, Windsor, Ont., dtd 6/27/46. A.R. #4654701... Has [illegible] in lieu of PP accepted by Consul; Taken into custody as Alien Enemy 12/9/41, [illegible], paroled 1/1/44, released 11/1/45. Form A8-17A Rev from Security & Ident. Div., FBI, show above facts & that inv. by FBI revealed negative facts.<sup>219</sup>

The image displays two versions of an INS Manifest Card for Albert Gustav Pommer. The left card is the front, dated August 20, 1946, and includes fields for name, date of birth, date of entry, and other personal information. The right card is the back, dated July 30, 1946, and includes a medical certificate and a statement of the alien's status. Both cards are filled out with handwritten information and have official stamps.

Figure 3. Albert Gustav Pommer’s INS Manifest Card  
*Shown front and back.*<sup>220</sup>

The front of Pommer’s card includes a subsequent handwritten notation that he was returned to the U.S. pursuant to 8 CFR 142.18, indicating that he had been found admissible in preexamination but subsequently denied a visa. The 8 CFR 142.18 provision stated that he was to be taken into custody as border agents “at once apply to the Central Office for a warrant of arrest in deportation proceedings.” If Pommer was taken into custody, he seems not to have remained there long.

Ferguson’s claims triggered a detailed review of both cases by Thomas B. Shoemaker, acting head of the immigration service. Pommer evidently survived this

<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

review, because his next appearances in the news involve purchases of Florida coastal property in 1951, and then a visit to Hawaiian orchid gardens in 1957 (according to the *Honolulu Star-Bulletin*, “clad in a sporty pair of Bermuda shorts.”)<sup>221</sup>

Notwithstanding Truman’s change of Justice Department leadership, and the apparent tightening of restrictions in Spring 1946, Bankhead’s issues resurfaced. His congressional supporters soon alleged that he had been removed from his consular post because he kept denying visas to aliens who had been granted preexamination, but were actually security threats.<sup>222</sup>

The dispute escalated in December. Rep. Lesinski claimed that Secretary of State George Marshall had failed to respond to his queries about Bankhead’s reassignment, suggesting “the extent to which certain State Department officials go to embarrass Mr. Bankhead because of his opposition to policies involving Communists, Fascists, and Nazis.” Lesinski encouraged Canadians to complain about how their country was being used by American immigration authorities as a transit point for undesirables such as Pommer. He claimed American authorities were failing to inform Canada of the dangerous nature of aliens it was being asked to admit. American consulates in Canada existed to serve Canadian citizens who sought visas to enter the U.S., but: “For years, the greater proportion of visas issued have been to aliens illegally in the United States, with

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<sup>221</sup> “Real Estate Closures Zoom to New High; Large Ocean Front Tract Sold for \$600,000,” *Fort Lauderdale News*, April 14, 1951, 8; Pat Nation, “Hundreds View Orchids at Stratford Benefit,” *Honolulu Star-Bulletin*, March 20 1957, 17.

<sup>222</sup> “Canadians Victims of Discrimination,” *Windsor Star*, Dec. 27, 1947, 3, 6.

the result that it is practically impossible either for a Canadian citizen to see a consular officer or obtain a visa appointment for months.”<sup>223</sup>

By now, Bankhead and Lesinski’s alarms were ringing within Canada. In October, Canada’s district inspector of immigration at Windsor, Orval C. Adams, assured his nation that Canada carefully supervised all preexamination entrants from the U.S. Canada limited their entry permits to ten days, he said, and immediately investigated any who overstayed. In December, the *Windsor Star* reported that U.S. State and Justice Department officials had traveled to Ottawa again, aiming to coax Canada’s commissioner of immigration into reversing a ruling that refused temporary admission to any alien illegally in the U.S.<sup>224</sup>

Still assigned to Windsor on March 28, 1948, Bankhead claimed someone had fired two shots at him as he returned home. Bankhead said this assassination attempt followed earlier attempts to poison him, likely by Communists. Rep. John McDowell, chairman of the House Un-American Activities Committee — who had recently heard four days of testimony from Bankhead — recommended that Bankhead be returned home for his own safety, at least temporarily. “Whether he has more information than was given to us — information dangerous enough to make someone want to take his life — is something I can’t tell. I do know, however, that more pressure has been exerted upon us

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<sup>223</sup> Ibid.

<sup>224</sup> “M.P. Queries Border Crossing Charges,” *Windsor Star*, October 7, 1947, 6; “Canadians Victims of Discrimination,” *Windsor Star*, December 27, 1947, 3, 6.



to obtain copies of his testimony than has been the case with any other information in our possession...”<sup>225</sup>

There were rumors that some in Windsor thought Bankhead was involved in a hoax.<sup>226</sup> In September 1948, during hearings concerning the workings of the U.S. consulate in Windsor, Bankhead’s supervisor, Bernard Gottlieb, resigned.<sup>227</sup> Then, suddenly, the story went cold. Bankhead was reassigned to the embassy in London, UK. Within two years his name appeared on a *Foreign Service Journal* list of retired officers; subsequently, he disappeared from public notice. Whether his allegations had been factual, false, delusional, or a mixture of these, he had successfully spread the idea that preexamination was ripe for abuse by the powerful — sometimes, on behalf of aliens who might endanger national security.

## 2.8. 1948’s Public Law 863: Suspension of Deportation Refined

While preexamination continued, Congress also revisited the suspension of deportation procedure. Once more, 1948’s Public Law 863 combined liberalization with restriction. Provisions in the 1940 Alien Registration Act had given Congress the right to veto any discretionary suspension of deportation made during its current session. If Congress failed to affirmatively object to a suspension of deportation, the INS could proceed to cancel deportation. Now, Congress further tightened its reins. Henceforth, if both houses of Congress did not pass a resolution *approving* the Attorney General’s

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<sup>225</sup> “Gunman Attacks Official Going into His Own Home”; “Washington is Fearful”; *The Windsor Star*, March 29, 1948, 1.

<sup>226</sup> Hugh Daly, “Consul Shifted in Ontario,” *San Francisco Examiner*, July 24, 1948, 4.

<sup>227</sup> “State Diplomat Named to Windsor Consulate,” *Detroit Free Press*, September 25, 1948, 17.

suspensions of deportation, they would be cancelled, making the individuals deportable. (This quickly proved unworkable. So, the law was changed again. Subsequently, either House could veto a suspension of deportation, but INS could proceed if neither did so. That is how the law stood until 1983, when the Supreme Court ruled the one-house veto provision unconstitutional.<sup>228</sup>)

Public Law 863 also offered relief to some additional migrants. First, it made individuals eligible for relief if they had resided in the U.S. for seven years, even if they could not claim family hardship. Second, the Attorney General could now suspend an alien's deportation "if he is not ineligible for naturalization *or if ineligible, such ineligibility is solely by reason of his race.*"

The latter provision opened a small crack in the race-based immigration regime. While "racially ineligible" individuals still could not naturalize, some of those already here might at least escape deportation — *if* this would cause "serious economic detriment" to a closely-related citizen or legal resident, and *if* their race was their only disqualification.

Restrictionists quickly argued that Public Law 863's liberalizations eliminated any remaining need for preexamination. In its 1949 review of immigration law, the American Jewish Committee pushed back. AJC argued that preexamination was still essential for "many worthy cases where it can be beneficially used for persons who fail to qualify under the seven-year provision of that bill" — presumably including some

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<sup>228</sup> 8 U.S.C. § 1254. Suspension of deportation. subsection (c)(2), (3) (McCarran-Walter Act, 1952) "provides that if either House passes a resolution stating in substance that it does not favor the suspension of deportation, the Attorney General shall deport the individual." Memorandum, Philip Buchen et al from Roderick Hills, August 25, 1975, Box 37, folder "Pay (2)," Philip Buchen Files, Gerald R. Ford Presidential Library. For the 1983 Supreme Court decision overturning this method of legislative review, see *INS v. Chadha et al*, 462 U.S. 919, 103 S. Ct. 2764 (1983).

refugees who had entered the U.S. in the early-to-mid-1940s and could not meet the standards of the new Displaced Persons Act of 1948.<sup>229</sup>

The preexamination procedure again endured. In fact, enough preexamination cases were still being administered through INS's New York office that it maintained a separate preexamination unit. Throughout the 1940s, thousands of border crossing manifest cards show the names of New York-based preexamination specialists such as Habib A. Bishara and Patrick A. McGlynn (see p. 253).<sup>230</sup>

## 2.9. A New "Comprehensive Reform" Debate Begins

By 1950, the comprehensive 1917 and 1924 immigration laws had been modified "by over 200 additional legislative enactments [plus] a number of treaties, executive orders, proclamations, and a great many rules, regulations, and operations instructions."<sup>231</sup> Recent changes had included:

- The 1943 repeal of the Chinese Exclusion Act, creating a new annual quota of 105 for individuals of Chinese origin at a time when Chiang Kai-Shek's Republic of China was a valued ally in the war against Japan.<sup>232</sup>

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<sup>229</sup> "Americanizing Our Immigration Laws: Testimony of The American Jewish Committee Before the Senate Immigration Committee, September 23, 1948" (New York, American Jewish Committee, March 1949), 72, excerpt accessed March 21, 2021, [https://www.google.com/books/edition/Americanizing\\_Our\\_Immigration\\_Laws/T0VDAAAIAAJ?hl=en](https://www.google.com/books/edition/Americanizing_Our_Immigration_Laws/T0VDAAAIAAJ?hl=en).

<sup>230</sup> As observed in letters sent to that unit by immigrant welfare organizations. And, see: St. Albans border crossing manifest cards. Bishara's full name is identified in Barry Moreno, *Encyclopedia of Ellis Island* (Westport, Conn: Greenwood Press, 2004), 112.

<sup>231</sup> *S. Rept. 1515*, 4.

<sup>232</sup> "Repeal of the Chinese Exclusion Act," Office of the Historian, Department of State, last reviewed June 30, 2016, accessed March 20, 2021, <https://history.state.gov/milestones/1937-1945/chinese-exclusion-act-repeal>.

- The 1945 and 1946 War Brides Acts, allowing non-quota immigration by military spouses and fiancés, and then extending that privilege to Chinese spouses.<sup>233</sup>
- The Displaced Persons Act of 1948, enabling 15,000 legally admitted aliens to become legal permanent residents if they could not return “because of persecution or fear of persecution on account of race, religion, or political opinions.” Each admission under this law was counted against future quotas from the individuals’ country of origin.<sup>234</sup>
- Revisions to Suspension of Deportation in Public Law 863 (see p. 107).
- The Internal Security Act of 1950, widening the government’s latitude to control, deport, and denaturalize Communists and other “subversives.”

These and other fragmented changes — combined with the massive disruptions associated with World War II and the deepening Cold War — led some Truman-era policymakers to consider a comprehensive update to America’s immigration system. This would almost certainly affect “adjustment of status” provisions such as preexamination and suspension of deportation. And, as usual, policymakers disagreed fundamentally about how the rules should change.

A coalition of liberals and internationalists — including traditional immigration liberalizers such as Sen. Herbert Lehman (D-NY) and Sen. Hubert Humphrey (DFL-MN) — sought to increase the number of migrants admitted. They also proposed to preserve

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<sup>233</sup> War Brides Act, Pub. L. No. 79-271, 59 Stat. 659 (December 28, 1945), accessed March 23, 2021 at <https://immigrationhistory.org/item/war-brides-acts-1945-1947/>.

<sup>234</sup> Later, in 1953, Congress authorized another 5,000 admissions via the Refugee Relief Act, without counting these against future quotas.

options for discretionary relief, place these provisions on a firmer legal footing, and eliminate racial distinctions they viewed as odious and bigoted. However, few were prepared to seek the abolition of national quotas altogether. Quotas remained popular, and liberalizers could still not agree on an alternative.

Calling attention to claims that American consuls interpreted U.S. immigration law inconsistently and unfairly, Lehman and Humphrey sought to strengthen the State Department's visa appeals process, and give the BIA permanent independent statutory authority to rule on preexaminations and other immigration appeals.

Buoyed by the rise of Cold War anti-communism, Harry S. Truman's unpopularity, and the Democrats' poor performance in the 1950 mid-term elections, restrictionists rapidly gained the upper hand. As described well by Maddalena Marinari and later by Jia Lynn Yang, conservative Sen. Pat McCarran (D-NV) gained firm control of the legislative process. McCarran attacked his opponents as soft on Communism, and implied they were subservient to Jewish or radical interests.<sup>235</sup>

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<sup>235</sup> Maddalena Marinari. "Divided and Conquered: Immigration Reform Advocates and the Passage of the 1952 Immigration and Nationality Act," *Journal of American Ethnic History* 35, no. 3 (2016): 9-40, doi:10.5406/jamerethnhist.35.3.0009; and Jia Lynn Yang, *One Mighty and Irresistible Tide : The Epic Struggle Over American Immigration, 1924-1965* (New York: W.W. Norton & Co., 2020). Speaking in 1953 after the passage of his McCarran-Walter immigration bill, McCarran famously said, "I take no issue with those who would praise the contributions which have been made to our society by people of many races, of varied creeds and colors. America is indeed a joining together of many streams which go to form a mighty river which we call the American way. However, we have in the United States today hard-core, indigestible blocs which have not become integrated into the American way of life, but which, on the contrary are its deadly enemies. Today, as never before, untold millions are storming our gates for admission and those gates are cracking under the strain. The solution of the problems of Europe and Asia will not come through a transplanting of those problems *en masse* to the United States." Privately, McCarran reportedly belittled refugees, telling his administrative assistant: "They are displeased persons rather than displaced persons. 87% are of one blood, one race, one religion. You know what that is without my telling you." McCarran to Adams, October 26, 1949, Adams Papers, UNR, cited in Michael J. Ybarra, *Washington Gone Crazy : Senator Pat McCarran and the Great American Communist Hunt* (Argo-Navis, 2015) 459-84, at 477, quoted in testimony by Hailey Hord on Nevada Senate Bill 174 to remove McCarran's name from the Las Vegas Airport. (The Clark County Commission did vote to rename the airport on February 16, 2021.) McCarran's statue remains one of two chosen by the State of Nevada to represent it in the U.S. Capitol, though multiple Democratic politicians in the state are now seeking to remove it. Humberto Sanchez, "Congressional Democrats Call for Removal of McCarran Statue in U.S.

In 1950, as Chairman of the Senate Judiciary Committee, McCarran led the creation of the nearly 1,000-page *Senate Report 1515, The Immigration and Naturalization Systems of the United States*. The most comprehensive Congressional immigration report since 1911's Dillingham Commission, S. Rept. 1515 combined extensive data with a restrictionist-friendly framing of immigration reform issues. McCarran's investigators interviewed many rank-and-file immigration and consular officials, often eliciting criticisms of loopholes in the current system. As the 1946 Lesinski hearings in Detroit showed, significant factions existed within INS and the consulates that fiercely objected to leniency, and believed aliens often abused it. McCarran shaped S. Rept. 1515's legislative recommendations into the Immigration and Nationality Act of 1952, better known as the McCarran-Walter Act.

S. Rept. 1515 included a full chapter on options available for aliens inside the U.S. without authorization, and those seeking to adjust status from non-immigrant to immigrant. The most extensive discussions were reserved for suspension of deportation and preexamination. In each case, the subcommittee's report authors first offered an even-handed discussion of how the procedure was administered. Next, they presented separate sections of criticism, mostly from anonymous INS field officers or Department of State consular officials.<sup>236</sup>

For example, as part of four pages of insider critiques of suspension of deportation, one unidentified INS officer alleged that "it is the general opinion that if an

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Capitol, Renaming of Airport," *Nevada Independent*, June 19, 2020, accessed November 15, 2020, <https://thenevadaindependent.com/article/congressional-democrats-call-for-removal-of-mccarran-statue-in-u-s-capitol-renaming-of-airport>.

<sup>236</sup> S. Rept. 1515, 591-611.

alien can get into the United States and marry a citizen or a legally resident alien he can remain.”<sup>237</sup> After observing that the procedure had been created primarily for Europeans, the subcommittee report observed that others were using it, too:

...alien parents with many alien children have entered the United States illegally from territory contiguous to the United States, and shortly thereafter, another child is born to the parents. Applications have been made for suspension of deportation by the parents on the ground that a serious economic detriment would result to the citizen child if the parents are deported.

So, too:

... aliens illegally in the United States have married other aliens illegally in the United States. In several such cases, before deportation proceedings were instituted, a child was born to the couple, both of whom were in illegal status. These aliens applied for suspension of deportation.<sup>238</sup>

Turning next to preexamination, S. Rept. 1515 again began with a detailed and even-handed description of the process *circa* 1950. As with suspension of deportation, the subcommittee authors then highlighted criticisms from anonymous State Department and INS officers. These included the same questions about preexamination’s legality that restrictionists had raised in the 1930s:

An official of the Department of State stated that the preexamination procedure is of doubtful legality, because the law requires every immigrant to present an immigration visa. Under the preexamination procedure, aliens who fail to receive an immigration visa in Canada are readmitted into the United States with only a preexamination card...

Statements were made by [INS] officers that preexamination places a premium on illegal entry and aliens who probably could not convince a consul in their home country that they should receive an immigration visa are taken care of under preexamination.

The subcommittee has been informed that the preexamination procedure in conjunction with the exercise of the seventh proviso of section 3 of the act of February 5, 1917 enables aliens to be admitted for permanent residence who

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<sup>237</sup> S. Rept. 1515, 600–603.

<sup>238</sup> Ibid., 600–603.

would be otherwise excludable... It has been contended that the seventh proviso was designed to afford relief to aliens who had been previously lawfully admitted and were returning after a temporary absence abroad and the seventh proviso was not designed to afford relief to aliens in the United States in an illegal status.<sup>239</sup>

So, too, the report's informants argued, as eligibility for suspension of deportation had widened, the only aliens eligible for preexamination but *not* suspension of deportation were "those who (1) are in the United States legally under the nonimmigrant provision of the law and (2) have between 5 and 7 years' residence in the United States." Hence, several INS officers told McCarran's investigators that preexamination was no longer necessary.<sup>240</sup> (Of course, nothing guaranteed that suspension of deportation would remain as liberal as it was at present — and McCarran would soon see that it didn't.)

S. Rept. 1515's chapter on adjustment of status ended with recommendations. The subcommittee proposed phasing out suspension of deportation in its current form, but providing limited opportunities for the Commissioner of Immigration to adjust status for individuals of lengthy residence not already subject to a deportation warrant, and for whom deportation "would result in extreme and unusual hardship." This proposed standard would be far stricter than the current standard of "serious economic detriment to family members." Moreover, instead of qualifying based on length of residence *or* financial hardship, *all* applicants would have to meet *all* the proposed standards. As for preexamination, S. Rept. 1515's answer was simple: abolish it.<sup>241</sup>

Debates over McCarran's bill and more liberal alternatives continued into 1952, when McCarran launched a full-court press to achieve passage. Anticipating McCarran's

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<sup>239</sup> S. Rept. 1515, 605–606.

<sup>240</sup> Ibid., 605–606.

<sup>241</sup> S. Rept. 1515, 611.



plans, President Truman requested an assessment from Felix S. Cohen, a respected attorney who had helped to draft Lehman's more liberal bills. In a 31-page memo, Cohen noted that the McCarran bill's suspension of deportation provision went even further than S. Rept. 1515: the phrase "extreme and unusual hardship" had been replaced by "exceptional and extremely unusual hardship." The bill's provisions would become even tougher after five years, with the result of "virtually doing away with deportation suspensions except by private bills."<sup>242</sup> A Senate Judiciary Committee report supporting the bill demonstrated that its authors intended no less:

The committee is aware that in almost all cases of deportation, hardship and frequently unusual hardship is experienced... The committee is aware, too, of the progressively increasing number of cases in which aliens are deliberately flouting our immigration laws by the processes of gaining admission into the United States illegally or ostensibly as nonimmigrants but with the intention of establishing themselves in a situation in which they may subsequently have access to some administrative remedy to adjust their status...

This practice is grossly unfair to aliens who await their turn on the quota waiting lists... [It] is threatening our entire immigration system and the incentive for the practice must be removed... The bill accordingly establishes a policy that the administrative remedy should be available only in the very limited category of cases in which the deportation of the alien would be unconscionable. Hardship or even unusual hardship to the alien or to his spouse, parent, or child is not sufficient...<sup>243</sup>

In the drafts Cohen reviewed, preexamination would be abolished by a sentence requiring an alien to apply for his visa only "with the consular officer in whose district

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<sup>242</sup> "The Position of Immigrants Under the McCarran Omnibus Immigration Bill, Memorandum on S. 2055," Felix S. Cohen, National Archives, Harry S. Truman Library & Museum, October 29, 1951, 10–13, <https://www.trumanlibrary.gov/library/research-files/report-position-immigrants-under-mccarran-omnibus-immigration-bill-felix-s?documentid=NA&pagenumber=1> (hereafter cited as Truman Library).

<sup>243</sup> U.S. Senate, Senate Committee on the Judiciary, *Senate Report 1137, Revision of Immigration and Nationality*, 82d Cong., 2d Session, Parts 1 and 2, including minority views on S. 2550 (Washington, DC: GPO, 1952), 25.

the applicant shall have established residence” — i.e., no more “shortcut” trips to Canada for aliens from Europe or anywhere else.

McCarran achieved unified support from the conservative and patriotic organizations that had traditionally supported restrictive policies. Taking advantage of public opposition by organizations such as the National Lawyers Guild and the Communist Party of the USA, he effectively tarred his bill’s more moderate opponents as allies of the far left.<sup>244</sup>

Meanwhile, the diverse ethnic and social welfare organizations that had often allied for liberalization instead splintered around more parochial interests. To them, McCarran-Walter seemed to offer the only practical pathway to several long-sought goals. These included: the elimination of the racist Asiatic Barred Zone; the provision of quotas (albeit minimal) for more aliens of Asian ancestry; naturalization for individuals of Japanese ancestry; elimination of gender differences in the law; a preference system helpful to members of Catholic religious orders, and new ways for long-time legal residents over 50 to naturalize without proving literacy in English.<sup>245</sup>

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<sup>244</sup> McCarran’s willingness to redbait extended far beyond actual Communists. In introducing statements of opposition to his bill from across the left side of the political spectrum, he also took a potshot at what he called “the Washington edition of the *Daily Worker*”: the *Washington Post*.

<sup>245</sup> Maddalena Marinari, “Divided and Conquered: Immigration Reform Advocates and the Passage of the 1952 Immigration and Nationality Act,” *Journal of American Ethnic History* 35, no. 3 (2016): 15–17, 22–24, doi:10.5406/jamerethnhist.35.3.0009; Greg Robinson, “The Great Unknown and the Unknown Great: Remembering the McCarran-Walter Act,” *Nichi Bei*, July 11, 2013, accessed January 5, 2021, <https://www.nichibei.org/2013/07/the-great-unknown-and-the-unknown-great-remembering-the-mccarran-walter-act/>. Todd Scribner, “Negotiating Priorities: The National Catholic Welfare Conference and United States Migration Policy in a Post-World War II World, 1948–1952,” *American Catholic Studies* 121, no. 4 (2010): 61–86, accessed March 20, 2021, <https://acs.journals.villanova.edu/article/view/539>. *Annual Report of the Immigration and Naturalization Service, U.S. Department of Justice, for the Fiscal Year Ended June 30, 1954*, U.S. Department of Justice, Immigration and Naturalization Service (Washington, DC: GPO, 1954), 2, accessed March 23, 2021, <https://eosfcweb01.eosfc-intl.net/U95007/OPAC/Details/Record.aspx?BibCode=9025350>. INS reported that the number of naturalization petitions increased “tremendously” after McCarran-Walter took effect. They included 6,750 newly-eligible individuals of Japanese origin.

McCarran-Walter passed both Houses of Congress in June 1952. President Truman quickly vetoed it, saying

I have long urged that racial or national barriers to naturalization be abolished... But now this most desirable provision comes before me embedded in a mass of legislation which would perpetuate injustices of long standing against many other nations of the world... and intensify the repressive and inhumane aspects of our immigration procedures. The price is too high, and in good conscience I cannot agree to pay it.<sup>246</sup>

Truman's central objection was that McCarran-Walter preserved nearly the entire Johnson-Reed national origins system, with its discriminatory view that "Americans with English or Irish names were better people and better citizens than Americans with Italian or Greek or Polish names... [or] Rumanians or Yugoslavs or Ukrainians or Hungarians or Balts or Austrians." But he also noted the bill's overall restrictionist tenor:

Time and again, [McCarran-Walter's revisions] are intended to solidify some restrictive practice of our immigration authorities, or to overrule or modify some ameliorative decision of the Supreme Court or other Federal courts. By and large, the changes that would be made... do not depart from the basically restrictive spirit of our existing laws — but intensify and reinforce it.

On June 27, 1952, Congress narrowly overrode Truman's veto: McCarran-Walter, the "Immigration and Nationality Act of 1952," would take full effect six months hence.<sup>247</sup>

That September, Truman — now a lame duck — tasked a new Presidential Commission to outline a more welcoming vision for immigration. It reported on January

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<sup>246</sup> Harry S. Truman, "Veto of Immigration and Nationality Act of 1952 (McCarran-Walter Act)," June 25, 1952, Truman Library, accessed March 24, 2021, <https://www.trumanlibrary.gov/education/presidential-inquiries/immigration-post-war-america>.

<sup>247</sup> "Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (June 27, 1952).

1, 1953, nineteen days before he left office.<sup>248</sup> In the Commission's parallel universe, earlier standards for suspension of deportation would have been largely maintained. Preexamination would have been replaced with a provision enabling aliens within the U.S. in "temporary or irregular status" to become "lawful permanent resident[s]" without even having to go to Canada, if they could get quota slots or were family members who didn't need them.

As Truman's Commission rushed to deliver its recommendations, immigrants and their advocates struggled to understand their new McCarran-Walter world, and prepare as well as they could.

#### 2.10. McCarran-Walter's Sections 212, 244, and 245

McCarran-Walter repealed and replaced much previous immigration legislation. So, for example, with the 1917 Act gone, there was no longer a Seventh Proviso to authorize readmission of aliens who had left the country and were subsequently been denied visas by a consular officer, whether in Canada or elsewhere. In its place, McCarran-Walter gave the Attorney General discretionary authority to readmit aliens in 25 categories who also had been: "*lawfully admitted for permanent residence* [my emphasis] who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years...."<sup>249</sup>

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<sup>248</sup> Philip B. Perlman, *Whom We Shall Welcome : Report of the President's Commission on Immigration and Naturalization* (Washington, DC: GPO, 1953).

<sup>249</sup> Section 212(c), Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (June 27, 1952).

Attorney Generals had used the Seventh Proviso to readmit aliens who had entered illegally or failed to continually maintain legal status. Section 212(c) of McCarran-Walter was crafted to prevent that.

While the explicit preexamination ban in previous drafts was gone, the Conference Report indicated that the House and Senate conferees had “agreed to retain the prohibition against preexamination.”<sup>250</sup> As it implemented McCarran-Walter, INS would offer no new regulatory provision for it.

For aliens within the U.S. who sought legal status — or wished to move from temporary visa holder to permanent resident eligible for naturalization — McCarran-Walter’s administrative relief could be found in Sections 244 and 245. The Common Council for American Unity assessed what these complex provisions required of a non-immigrant alien within the U.S. who sought legal permanent residency:

1. He must have entered the United States in good faith as a nonimmigrant and not have violated the limitations of that status — for example, by working without getting permission from [INS]. (This requirement excludes almost all persons who have entered the United States illegally...)
2. He must qualify for admission as a quota immigrant or, if he is entitled to nonquota status, it must be because he is the spouse or child of an American citizen. If his claim for nonquota status is based on being married to an American citizen, he must have been in the United States at least one year before he married this citizen. Aliens born in the western hemisphere and alien ministers who claim nonquota status are not eligible for this change in status.
3. If the alien is not eligible for a nonquota visa, a quota number must be available for him both when he applies for this change in status and when his application is

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<sup>250</sup> *S. Rept. 1137*, 1952. In describing the agreement between House and Senate, McCarran told his colleagues that the House bill would have retained preexamination, but the Senate prevailed “on the theory that such a practice is cumbersome and obsolete and, as practiced, contains certain loopholes which permit the adjustment of status of undesirable aliens.” In exchange, he said, “other provisions of the bill were modified to permit the adjustment of the status of certain classes of aliens temporarily in the United States to that of permanent resident.” These are Sections 244 and 245. *Remarks by Mr. McCarran regarding Revision of Laws Relating to Immigration, Naturalization, and Nationality-Conference Report*, 82nd Cong., 2nd Sess., *Congressional Record* Volume 98, Part 6 (June 11, 1952): 7017.

approved. *[CCAU elsewhere noted that this typically meant only nationals of countries with undersubscribed quotas “such as Great Britain, Ireland, Sweden, Switzerland, Belgium” could qualify.]*

4. He must meet the requirements for admission to the United States as a permanent resident.<sup>251</sup>

Helen B. Jerry, attorney for the Immigrants’ Protective League, said her organization was working on 200 to 300 cases of aliens who had entered the U.S. legally as students or visitors, subsequently marrying American citizens and having children. When they had sought extensions of their visas and revealed their marriages, those visas had been cancelled and INS had begun deportation proceedings. Under McCarran-Walter, they could no longer adjust their status, because they had failed to “maintain the lawful status under which they were admitted.” So, too, since Canadian preexamination was gone, even spouses of U.S. citizens entitled to non-quota status, such as a Greek accountant Jerry described, needed to return to their “native” countries to seek a visa:

The family are living with an income of \$245 a month. We tried to get permission for him to enter Canada to get a visa and were told that it would be impossible. We [unsuccessfully] tried Mexico, Cuba, Haiti... He is, therefore, compelled to go back to Greece, but before he goes he must borrow about \$2,000 to pay his transportation and to leave sufficient funds with his wife and child to cover their expenses while he will be away [for at least] 3 to 6 months... [If preexamination were restored], this husband would have little difficulty to enter Windsor, Ontario, Canada, call at the American consulate there, and return the same day with a visa.<sup>252</sup>

Some individuals had already been granted the privilege but had not yet been notified that a quota slot was available, or been able to travel to Canada to claim it. What

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<sup>251</sup> “VI. Changing Status Under the New Immigration Act,” Press Release, January 23, 1953, Index No. 53-51C-W-810, Common Council for American Unity.

<sup>252</sup> President’s Commission on Immigration and Naturalization, *Statement Submitted by Helen B. Jerry, Attorney, Immigrants’ Protective League, Hearings Before the President’s Commission on Immigration and Naturalization* (Washington, DC: GPO, 1952), 828–829.

would happen to their in-progress cases when the Act took effect? At first, INS said they were out of luck. But, on November 13, the Attorney General ruled that any preexamination applications filed on or before November 15 — two days later — could still be processed after McCarran-Walter took effect. After further objections by immigrant advocates — including the U.S. Representative to the United Nations’ High Commissioner for Refugees — the Attorney General relented, accepting new applications right up to December 23.<sup>253</sup>

*Interpreter Releases* said this ruling was “particularly beneficial to husbands of citizens married after January 1, 1948, who become non-quota immigrants after December 24 and until then are chargeable to quotas in which the first preference portion is over subscribed.”<sup>254</sup> Such aliens might have been on waiting lists for a quota slot; after December 24, they no longer needed one.

A 72-year-old married male of Italian nationality, “B.L.,” had lived in the U.S. from 1887 to 1925, and then left for Europe. When B.L. sought to return in 1938, he was excluded due to insanity, but given a one-year visitor’s visa for treatment. He quickly recovered his health, but never left the country. He and his American wife had eleven children, all U.S. citizens; meanwhile, he supported his family as a tailor for decades. In late 1949, B.L. was permitted to legalize his status through voluntary departure,

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<sup>253</sup> What was given with one hand was taken away with the other. Rereading McCarran-Walter more carefully, the INS invalidated applications for Suspension of Deportation filed after the laws enactment on June 27, requiring applicants to refile new forms and surmount tougher new requirements. *Interpreter Release’s* editors advised savvy advocates to consider whether any of their clients might have a better chance at relief by rushing a preexamination application into the system in the eight remaining days while that was still possible. “Applications for Suspension of Deportation Filed After June 27 Ruled Invalid,” *Interpreter Releases*, Vol. XXIX, No. 55, December 15, 1952, 345–346.

<sup>254</sup> “Completion of Preexamination,” *Interpreter Releases* Vol. XXIX, No. 53, November 13, 1952, 343.

preexamination, and the Seventh Proviso. Due to an injury, however, he never traveled to Canada, and the Immigration Service soon restarted deportation proceedings. As all this was occurring, the State Department invited him to Montréal to apply for his visa. By then, however, McCarran-Walter had abolished Seventh Proviso relief, and an INS officer told B.L. he had lost his chance. B.L. appealed to the BIA, which needed to interpret the new law's complex "savings" clause to determine whether his case was considered "in progress" when McCarran-Walter took effect. After three pages of detailed legal analysis, it reversed the officer's decision, and gave B.L. one of the last Seventh Proviso grants ever made.<sup>255</sup>

On occasion, the McCarran-Walter Act enabled discretionary relief that wouldn't have been possible before. For instance, suspension of deportation had been impossible for narcotics law violators; now, under Section 244(a)(5), some could qualify.<sup>256</sup>

Former Nazis also benefited. "B.," a German seaman who jumped ship in 1926, stayed in the U.S. illegally, and married, was subject to deportation because he had been a member of the Nazi Party for several years while in the U.S. The Nazi Party had previously been defined by law as a "totalitarian party" whose members were subject to exclusion. While his case was in progress, however, McCarran-Walter redefined "totalitarian party," adding the rule that such parties must advocate "the establishment in the United States of a totalitarian dictatorship or totalitarianism." Since the Nazi Party had not explicitly done this, his Nazi affiliation no longer demanded his exclusion. With

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<sup>255</sup> *In the Matter of B.L., in Deportation Proceedings*, Interim Decision #435, A-5634929 (BIA February 9, 1953).

<sup>256</sup> Edith Lowenstein, *The Alien and the Immigration Law : A Study of 1446 Cases Arising under the Immigration and Naturalization Laws of the United States* (New York: Oceana Publications, 1958, published for the Common Council for American Unity), 217.



his case already in progress, he was granted preexamination and readmittance under the Seventh Proviso.<sup>257</sup>

McCarran-Walter's softening of the Nazi ban, combined with its new preferences for individuals with specialized skills, apparently helped some additional ex-Nazis legalize their entry through Operation Paperclip. Under the new Section 245, beneficiaries included individuals whose Nazi affiliations had been so concerning that they could not be granted preexamination before. These affiliations had become especially problematic after the 1950 Internal Security Act was passed, making it impossible "to continue to bring German scientists and technicians to the U.S. under the 'Paperclip' program if those scientists or technicians were in any way connected with the National Socialist Government of Germany or any Nazi organization."<sup>258</sup>

One individual who could not pass muster until McCarran-Walter loosened the rules for ex-Nazis was V-2 rocket scientist Kurt Heinrich Debus. Once finally permitted to pursue citizenship, Debus would work on key American missile programs, help to build NASA's facilities at Cape Canaveral, and lead the Apollo 11 launch team (see case study, p. 186). Another such individual was Herbert Axster, a patent attorney whose Nazi

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<sup>257</sup> *In the Matter of B., in Deportation Proceedings*, Interim Decision #445, A-5385180 (BIA May 27, 1953). Overruling the INS Hearing Officer, BIA accepted the alien's claim that he had only joined the Party because he expected he would have to return to Germany to acquire a legal immigration visa to the U.S., and he thought that would be easier for a party member. Hence, having been a Nazi did not compromise his claim of good character, either. A few years later, President Eisenhower rejected the same argument in casting a rare veto of a private bill for another individual who had made a similar choice. Dwight D. Eisenhower, *Veto of Bill for the Relief of Wilhelm Engelbert*, March 17, 1954, Online by Gerhard Peters and John T. Woolley, The American Presidency Project, accessed March 25, 2021, <https://www.presidency.ucsb.edu/node/233607>.

<sup>258</sup> "Operation Paperclip," Federal Bureau of Investigation, U.S. Department of Justice, January 7, 1983, 11, accessed March 25, 2021 at The Black Vault, <https://documents2.theblackvault.com/documents/fbifiles/operationpaperclip-fbi1.pdf>. References November 13, 1950 letter from Deputy Attorney General Peyton Ford to the FBI that Internal Security Act provisions made it impossible to process many Nazi scientists and technicians.

past (and wife's ardent Nazism) proved so troublesome that — even after McCarran-Walter — they ultimately chose to return to Germany.<sup>259</sup>

Meanwhile, more prosaic “legacy” preexamination cases that had begun before McCarran-Walter took effect kept flowing through the system. The National Catholic Welfare Conference apparently convinced INS to treat some older applications for suspension of deportation as if they encompassed requests for preexamination. Therefore, if the former relief was denied, the latter could still be considered. The Common Council for American Unity also helped “Mr. V.,” a 26-year-old native of Spain who had jumped ship, and married an American. Mr. V., now successfully supporting his wife and child, had been told to report for deportation within 48 hours. Back in 1950, he had been granted voluntary departure, but

neither he nor [his] lawyer understood the meaning of preexamination and, as a result, Mr. V. did not proceed with the preexamination, making himself newly deportable. When he came to our office, he was almost hysterical with worry about having to abandon his family and, being unable to pay for a return passage, even if he ever would be admitted again to the United States. We made a motion to reopen and reconsider his case. The motion was granted and Mr. V. was again permitted to avail himself of preexamination... with our assistance he finally appeared before the Canadian Consul on June 30, 1954 and thereafter returned to his family in the United States as a legal permanent resident.<sup>260</sup>

Overall, however, in 1953–1954, the changes in discretionary relief were having the desired effect. No entirely new preexamination cases were being started. As for

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<sup>259</sup> G. W. Crabbe, Colonel, Director USAF, JIOA to James E. Riley, INS, Chief of Entry and Departure Branch, October 22, 1954, Foreign Scientist Case Files, 1945–1958, file AXSTER, RG 330, box 5, National Archives, College Park, MD, as cited in Monique Laney, “Setting the Stage to Bring in the ‘Highly Skilled’,” *A Nation of Immigrants Reconsidered*, 144.

<sup>260</sup> “Case #1: ‘Mr. V.’” Common Council for American Unity, 1954, accessed through Adam Matthew, Marlborough, Migration to New Worlds (online primary source database), <http://www.migration.amdigital.co.uk.ezp-prod1.hul.harvard.edu>. Part of a collection of individual cases where the Council played a part in resolving difficult immigration challenges; used in part to encourage support for the organization.

suspension of deportation, Will Maslow, the American Jewish Congress's General Counsel and Director of its Commission on Law and Social Action, found that:

In the five fiscal years ending June 30, 1952, the Attorney General submitted to Congress a total of 23,329 suspension cases under the 1940 and 1948 suspension statutes, of which Congress approved 20,106, or an average of 4,021 a year. In the next two years, the number of recommendations for suspension dropped precipitously to 419, of which 413 were approved, or an average of 207 a year.<sup>261</sup>

Before McCarran-Walter's rules took effect, Edith Lowenstein's Common Council for American Unity had been able to gain approval for nearly 3/4 of those who applied (32 of 43). Afterwards, only 38% of its applicants were approved (8 of 21).<sup>262</sup>

By reducing opportunities for administrative discretion, however, McCarran-Walter's limits on suspension of deportation and its elimination of preexamination had another predictable effect. They generated more private bills — the last resort for those who now had no other alternative.

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<sup>261</sup> Will Maslow, "Recasting Our Deportation Law: Proposals for Reform," *Columbia Law Review* 56, no. 3 (1956): 309–66, doi:10.2307/1119467. But there may be discrepancies in data on suspensions of deportations during these years. The INS Annual Report for 1953 states that in the twelve months ending June 30, 1953, 5,792 suspension of deportation cases had been submitted to Congress and 3,617 approved, but every one of those was processed under the pre-McCarran rules. *Annual Report of the Immigration and Naturalization Service, U.S. Department of Justice, for the Fiscal Year Ended June 30, 1953*, U.S. Department of Justice, Immigration and Naturalization Service (Washington, DC: GPO, 1953), accessed March 23, 2021, <https://eosfcweb01.eosfc-intl.net/U95007/OPAC/Details/Record.aspx?BibCode=9025296>. The INS Annual Report for 1954 states that 2,241 cases were submitted to Congress under the old law and 6,035 approved (presumably including some of the 1953 cases). 293 cases were submitted under the new law and none yet approved. *Annual Report of the Immigration and Naturalization Service, U.S. Department of Justice, for the Fiscal Year Ended June 30, 1954*, U.S. DOJ, INS, (Washington, DC: GPO, 1954), accessed March 23, 2021, <https://eosfcweb01.eosfc-intl.net/U95007/OPAC/Details/Record.aspx?BibCode=9025350>. The INS Annual Report for 1955 states that 1,089 suspension of deportation cases were submitted to Congress and 1,644 aliens "became permanent residents under that procedure"; presumably by this time, all cases were based on McCarran-Walter. *Annual Report of the Immigration and Naturalization Service, U.S. Department of Justice, for the Fiscal Year Ended June 30, 1955*, U.S. DOJ, INS, (Washington, DC: GPO, 1955), accessed March 23, 2021, <https://eosfcweb01.eosfc-intl.net/U95007/OPAC/Details/Record.aspx?BibCode=9025411>.

<sup>262</sup> E. Lowenstein, *The Alien and the Immigration Law*, 251.

## 2.11. Less Administrative Relief, More Private Bills

When individuals could not gain relief through conventional immigration procedures, they often asked members of Congress to introduce legislation on their behalf. These private bills, which only affected the named individuals, had always been controversial. There were often accusations of untoward influence, or worse.<sup>263</sup> The bills burdened Congressional staff, and required scarce committee time and investigatory resources — even though 80–90% of them failed to become law. INS paused deportation while waiting for action on a private bill, potentially delaying action for years if a Congressman kept resubmitting his bill. In 1939, when restrictionist House member Martin Dies (D-TX) attempted to provide limited new administrative relief (see p. 50), he attributed his change of heart to the time it had taken to consider even a few private bills.<sup>264</sup> Senate Report 1515 described the work triggered by such a bill's introduction:

[A] report is requested from [INS] which refers the case to the field office in the district in which the alien and his witnesses are located. The field office is required to give top priority to requests for investigations of private bills. Every case is also cleared through the records of the [FBI] before a report is made to the congressional committee. The FBI check is made against the existing records, and the security phase of the report is supplemented by further investigation by [INS].

The beneficiary... is questioned in complete detail and persons who appear to have knowledge of the individual are likewise questioned. There have been single

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<sup>263</sup> Private bills would be at the heart of the 1980 Abscam scandal, in which “FBI agents [posed] as Arab sheiks to bribe members of Congress to introduce private immigration bills. Eventually, six representatives and one senator were convicted.” *“The Use of Private Bills,”* CQ Almanac 1988, accessed December 15, 2020, <https://library.cqpress.com/cqalmanac/document.php?id=cqal88-1140700>.

<sup>264</sup> Dies stated: “It was my original thought that the way to handle all these meritorious cases was through special bills. I am absolutely convinced as a result of what has occurred in this House that it is impossible to deal with this situation through special bills. We had a demonstration of that fact not long ago when 15 special bills were before this House. The House consumed 5 1/2 hours considering four bills and made no disposition of any of the bills.” *Remarks by Mr. Dies regarding House Resolution 229. of H.R. 6391, Deportation of Criminals and Certain Other Aliens, 75th Cong., 1st Sess., Congressional Record* Volume 81, Part 5 (June 10, 1937): 5542.

private bills introduced for the relief of as many as 169 aliens, and this means that individual investigations must be conducted for each alien named ...

The congressional committees also request reports from the State Department, and from the sponsor of each bill. The information requested from the sponsor... includes: the circumstances surrounding the entry of the person into the United States; his present activities, how the person is presently earning a living or whether dependent on some other person for support; whether or not he is engaged in any activities, political or otherwise, injurious to the American public interest; and whether or not he has been convicted of an offense under any Federal or State laws, and if so, what offense.<sup>265</sup>

Political scientists have argued that the number of private immigration bills typically rose when the immigration system became more rigid and resistant to administrative relief, but fell when public scandal called attention to how these bills were being used.<sup>266</sup> Early in the McCarran-Walter era, both dynamics were at work. With other forms of discretionary relief severely limited, the number of private bills kept rising (Table 1):

Table 1. Private Bills Introduced and Enacted, 1939–1954.<sup>267</sup>

| Congress         | Bills introduced | Bills enacted |
|------------------|------------------|---------------|
| 76th (1939–1940) | 627              | 56            |
| 77th (1941–1942) | 394              | 24            |
| 78th (1943–1944) | 163              | 12            |

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<sup>265</sup> *S. Rept. 1515*, 608.

<sup>266</sup> Charles Gordon and Stanley Mailman, *Immigration Law and Procedure* (New York: Bender and Co., 1993); E. Ferguson, “Pssst!: Private Bills Can Aid Those with Unusual Problems,” *Gannett News Service*, May 9, 1990. For another view, see Richard T. Boylan, “Private Bills: A Theoretical and Empirical Study of Lobbying,” *Public Choice*, March 2002, Vol. 111, No. 1/2, 19–47. <http://www.jstor.org/stable/30026270>.

<sup>267</sup> Sources: 1939–1944: *Senate Report 1515*, 907–914. 1945–1954: *Annual Report of the Immigration and Naturalization Service, U.S. Department of Justice, for the Fiscal Year Ended June 30, 1954*, 5. These sources present slightly different data for 1945–1950; I have used the later data.

| <b>Congress</b>  | <b>Bills introduced</b> | <b>Bills enacted</b> |
|------------------|-------------------------|----------------------|
| 79th (1945–1946) | 429                     | 14                   |
| 80th (1947–1948) | 1141                    | 121                  |
| 81st (1949–1950) | 2811                    | 505                  |
| 82nd (1951–1952) | 3689                    | 729                  |
| 83rd (1953–1954) | 4797                    | 755                  |

Bad publicity was increasing, too. In March 1954, The Scripps-Howard newspaper chain ran a four-part expose claiming that congressmen were wantonly introducing private bills to protect individuals who deserved deportation:

Communists, criminals, and other unsavory characters dot the lists of aliens who owe their continued stay in America to the mere act of a congressman dropping in a simple bill entitled, “For the Relief of –.”

...[A] well-organized ring of lawyers and self-styled “immigration consultants” is behind the introduction of private immigration bills for such aliens... among the aliens thus saved from deportation — at least temporarily — are some who:

1. Have records of Communist activities or sympathies.
2. Have been active Nazis or Fascists.
3. Have old criminal records which would bar their legal entry.
4. Have committed crimes as serious as rape and dope-peddling since entering the U.S. illegally.
5. Have joined underworld and waterfront gangs, perhaps under blackmail threats.
6. Have abandoned wives and children abroad and started new “families” in this country.<sup>268</sup>

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<sup>268</sup> “Congressmen’s ‘Relief’ Bills Help Aliens with Bad Records to Evade Deportation: Ayres’ Measures Would Aid Persons He’s Never Seen,” *Akron Beacon Journal*, March 21, 1954, 74.

Reporter Jack Steele singled out Reps. Eugene Keogh (D-NY) and William H. Ayres (R-OH) as prime offenders. Many bills, he wrote, “have their origin in dingy little law offices which line Court Street in Brooklyn” — an Italian neighborhood where mostly Italian American lawyers served Italian alien clients, sometimes by finding distant Congressmen to file their bills. “The talk is that the ‘going rate’ for arranging these bills ranges from \$500 to \$2500,” Steele wrote.<sup>269</sup> Privately, immigration advocates at the National Catholic Welfare Conference observed:<sup>270</sup>

There is no mistake that lawyers are reaping the harvest with regard to the introduction of these bills and we are wondering if some Congressmen and Senators are also profiting from introducing such bills... It seems that the aliens in being asked for large fees by the lawyers are given the idea that a certain amount of this fee goes to the introducer of the bill.<sup>271</sup>

Through 1954 and early 1955, Congress sought to rein in private bills. Meanwhile, the INS — while accepting a share of blame for investigatory delays — also limited its policy of halting deportation indefinitely until Congress made a decision.<sup>272</sup>

But Congress also believed that a key factor in the increase was McCarran-Walter’s ban on relief to alien spouses of U.S. citizens who had failed to maintain

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<sup>269</sup> “Lawyers’ Fees Range from \$500 to \$2500 in Immigration Cases: Undesirable Led to ‘Friendly Counsel’ Who ‘Used’ Congress to Bar Deportation,” *Pittsburgh Press*, March 19, 1954, 21.

<sup>270</sup> Mulholland to Mohler, Inter-Office Communication: Four Stories Written by Jack Steele, March 22, 1954, National Catholic Welfare Conference, Department of Immigration, New York Office Collection, CMS 024, Box 16, CMS NY. (Unless noted otherwise, all National Catholic Welfare Conference citations are based on documents found in the NCWC New York Office archives (CMS 024) maintained at the Center for Migration Studies in New York City, hereafter cited as NCWC Collection, CMS NY. Other NCWC documents are maintained elsewhere, and I have not accessed these.)

<sup>271</sup> Thomas Mulholland, Port Director, New York Office, NCWC Department of Immigration, to Bruce Mohler, head of NCWC Department of Immigration, March 22, 1954, Box 16, NCWC Collection, CMS NY. Evidence of friction between social welfare organizations and private immigration attorneys repeatedly appears in these archives.

<sup>272</sup> J.M. Swing to Chauncey W. Reed, Chairman, Committee on the Judiciary, House of Representatives, August 3, 1954; and David Doyle, NCWC Legal Department, to Bruce Mohler, February 1, 1954; both from Box 16, NCWC Collection, CMS NY.

uninterrupted legal status. Therefore, House Committee on the Judiciary staff recommended that, “In the case of a worthy alien seeking [Section 245] adjustment a lapse of status following his lawful nonimmigrant entry should be regarded as of no material significance in the determination of his eligibility for adjustment.”<sup>273</sup>

Congress was also apparently concerned that some aliens otherwise eligible for visas had “nowhere to go and are finding it difficult, if not impossible to enter other countries for this purpose.” This would have especially affected aliens fleeing Communist Eastern Europe.

Recalling that Congress had never explicitly banned preexamination by law, INS reached agreement with the Judiciary Committees of both Houses of Congress to restore it. (Even now, that informal agreement was not translated into legislation. It offered yet another example where it was easier to provide administrative relief than to force Congressmembers to vote to liberalize immigration.) Social welfare agencies were notified informally at a March 1955 luncheon, to “considerable applause.”<sup>274</sup> As Frank Traverso of the Italian Welfare League’s Immigration Committee reported to his board later that year,

Because of our close ties with the Service... we were told, unofficially of course, that the Service was intending to reestablish the [Canadian] preexamination procedure... [So] we were able to stall the departures of numerous Italian aliens who had been told they would have to return to Italy, and as soon as the new regulations were issued we immediately put in their preex. request and thereby

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<sup>273</sup> “Report of the Staff of the House Committee on the Judiciary on the Administration of the Immigration and Nationality Act (1955),” 35, as cited in E. Lowenstein, *The Alien and Immigration Law*, 96.

<sup>274</sup> Mulholland to Mohler: Inter-Office Communication, March 21, 1955, NCWC, CMS 024, Box 16, NCWC Collection, CMS NY.



not only prevented the separation [sic] of family but saved them in each case a minimum/estimated expense of \$4000.00.<sup>275</sup>

When the Federal Register officially published new preexamination rules on May 19, immigration specialists at the National Catholic Welfare Conference noted that they seemed “rather liberal.”<sup>276</sup> They also cryptically noted that NCWC’s long-time representative at the Mexican border would no longer need to engage in methods best kept secret:

Now we will not have to send any more people to Juarez which will be a relief to Mr. Calleros and a weight off our minds, too, for in spite of all precautions, some of these people let it be known when they went up for extensions that they were going to Mexico and several people have asked us how we were doing it. Of course, we did not tell them.<sup>277</sup>

The new regulations resembled those of the late 1940s; the restriction on citizens of Canada, Mexico, or adjacent islands remained. But otherwise admissible applicants of good character, who could get visas, needed only to show that they had entered the U.S. before January 1, 1955, and been continuously physically present since.<sup>278</sup> This wasn’t even five months at the time the rule went into place. In June 1956, INS updated the

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<sup>275</sup> Report of the Immigration Committee of the Italian Welfare League, 1955, Frank Traverso, 1955, Italian Welfare League Collection (CMS 003), Sub-Group X: Immigration Committee, Box 56, CMS NY. Unless noted otherwise, all Italian Welfare League citations are based on documents found in the IWL archives maintained at the Center for Migration Studies in New York City (hereafter cited as IWL Collection, CMS NY).

<sup>276</sup> Immigration and Naturalization Service, “Part 485-Preexamination of Aliens within the Continental United States: Subpart A-Substantive Provisions, and Subpart B-Procedural and Other Non-Substantive Provisions,” *Federal Register* 20 Fed. Reg. 3491 (May 19, 1955): 3496, <https://www.loc.gov/item/fr020098/>.

<sup>277</sup> Mulholland to Mohler: Inter-Office Communication, May 20, 1955, Box 16, NCWC Collection, CMS NY. Cleofas Calleros, NCWC Immigration Director at El Paso, ran that office from 1926–1967, establishing himself as one of the nation’s most committed and effective advocates for Mexican migrants at the border. Maggie Elmore, “Apostles in the desert: How Catholic advocates once led the fight to help Mexican immigrants,” *Cushwa Center for the Study of American Catholicism*, March 28, 2019, accessed March 20, 2021, <https://cushwa.nd.edu/news/apostles-in-the-desert/>.

<sup>278</sup> *Federal Register* 20 Fed. Reg. 3491 (May 19, 1955): 3496.

deadline to January 1, 1956, again shortening it.<sup>279</sup> On October 31, 1956, in response to cases such as that of Thomas O. Robitscher (see p. 194), where an alien was rejected based on secret testimony he couldn't rebut, INS announced that it would avoid such testimony "except when the most compelling reasons involving national safety or security are present." In November, INS allowed more temporary exchange students to become permanent residents via preexamination or McCarran-Walter's Section 245. It also expedited preexamination proceedings for many other aliens, by waiving passport requirements.<sup>280</sup>

The reborn preexamination procedure encompassed many who had been excluded from relief by McCarran-Walter. In 1957, INS handled 3,259 applications, approving 3,084.<sup>281</sup> In 1957, the Italian Welfare League handled 146 of those cases, placing preexamination second only to general visa petitions in its caseload.<sup>282</sup> In 1958, INS reported approving 4,822 preexamination applicants.<sup>283</sup>

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<sup>279</sup> "Amendments to the Regulations Under the Immigration and Nationality Act: Preexamination (33 I.R. 194), *Interpreter Releases*, August 24, 1956. 299.

<sup>280</sup> "New Policy on the Use of Confidential Information Announced by Immigration Service," *Interpreter Releases*, November 1, 1956, 364; "New Policy Announced by Immigration Service Regarding Change of Status of Exchange Visitors," *Interpreter Releases*, November 21, 1956, 386, 391.

<sup>281</sup> *Annual Report of the Immigration and Naturalization Service, U.S. Department of Justice, for the Fiscal Year Ended June 30, 1957*, U.S. Department of Justice, Immigration and Naturalization Service (Washington, DC: GPO, 1957), 7–8, accessed March 23, 2021, <https://eosfcweb01.eosfc-intl.net/U95007/OPAC/Details/Record.aspx?BibCode=9025519>. But INS also reported that the number of private bills submitted had still not dropped.

<sup>282</sup> Handwritten note summarizing January–November 1957 cases, Sub-Group X: Immigration Committee, Box 56, IWL Collection, CMS NY.

<sup>283</sup> *Annual Report of the Immigration and Naturalization Service, U.S. Department of Justice, for the Fiscal Year Ended June 30, 1958*, U.S. Department of Justice, Immigration and Naturalization Service (Washington, DC: GPO, 1958), 7, accessed March 23, 2021, <https://eosfcweb01.eosfc-intl.net/U95007/OPAC/Details/Record.aspx?BibCode=9025572>. Finally, in 1958, the number of private bills plummeted: from 3,144 to 1,217. Of those that remained, however, an unprecedentedly high percentage, 41.2%, were deemed worthy enough to enact.

For at least *some* aliens, the authorities were in an even more sympathetic mood. To be granted preexamination, individuals subject to quotas had long needed to show that they could immediately access a quota slot. But in mid-1956, INS stated that skilled workers with first-preference quota status could stay until a visa became available, even if that took time.<sup>284</sup> NCWC noted that this would especially benefit many of its Chinese and Spanish clients, who could finally escape the constant threat of deportation.<sup>285</sup> This represented one of many examples where a tiny, arcane change in immigration law could transform the lived experiences of many people. Changes like this also aligned with the immigration system's growing focus on specialized skills, as exemplified by McCarran-Walter's allocation of half of visas to skilled professionals.<sup>286</sup>

For all this, it was still possible to find categories of sympathetic Europeans who seemed to deserve better treatment than the system offered. Consider Miss Jane Edith Thomas, age 4, born to a 20-year-old U.S. serviceman and his Italian wife at the American hospital in Trieste during his service abroad. Miss Thomas was issued a visa as an American citizen, but upon return to the U.S., it was discovered that she wasn't

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<sup>284</sup> The "first preference" corresponded to the 50% of each McCarran-Walter quota was set aside for "skilled workers whose services and education would be useful to our nation." 30% of each quota, alled "second preference," went to parents of adult U.S. citizens. The remaining 20%, a "third preference," was for spouses and children of permanent resident aliens. If these three preferences in a national quota were undersubscribed, the remainder went to other aliens, with 25% of the remainder set aside as a "fourth preference: brothers, sisters, and adult children of U.S. citizens. Marion T. Bennett, "The Immigration and Nationality (McCarran-Walter) Act of 1952, as Amended to 1965," *The Annals of the American Academy of Political and Social Science*, September 1966, Vol. 367, *The New Immigration*, 127–136. doi:10.1177/000271626636700114.

<sup>285</sup> Memorandum for the Record, Subject: First Preference Applicants in the United States – Permission to Remain Here Until a Visa Becomes Available, August 10, 1956, Box 16, NCWC Collection, CMS NY.

<sup>286</sup> Monique Laney, "Setting the Stage to Bring in the 'Highly Skilled'," *A Nation of Immigrants Reconsidered*, 145.

entitled to one. McCarran-Walter only gave automatic citizenship to children born to American servicemembers who “had 10 years residence in the United States, *five of which shall be after attaining the age of 16* (my emphasis).” Accordingly, the four-year-old had entered illegally and was deportable — unless, the INS suggested, her parents arranged for the newly-resurrected Canadian preexamination procedure.

Despite residing in Dayton, Ohio, only 213 miles from Windsor, Ontario, the parents said they couldn’t afford the trip.<sup>287</sup> Their Congressional supporters, highlighting the pointlessness of requiring this entire family to visit Canada, offered a private bill to spare them the trouble. These events were catnip for newspaper editorialists such as those at *The Washington Post*:

[Miss Thomas] is under no particular suspicion of desiring to overthrow the Government of these United States by force and violence. There is no record of past associations that might indicate a sympathy towards subversive opinions... It is probably true that she cannot yet read and write her own language — which happens to be English — with any great fluency... [But] Jane Edith got herself born one year too soon, and the immigration authorities, with their customary tenacity, are sticking to the letter of the law. All we can do about it is to echo Mr. Bumble, and say that the law is an ass — and a heartless ass at that.<sup>288</sup>

Each house of Congress spent significant time on Thomas’s case. It proved an example of private bills playing a role their advocates had long claimed for them: surfacing problems that could then be solved for everyone, by revising the law. Legislators discovered 300–500 children in the same position.<sup>289</sup>

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<sup>287</sup> “Little Girl Can Stay,” *Kansas City Star*, July 24, 1955, 13.

<sup>288</sup> “The Child Without a Country,” *St. Louis Post Dispatch*, August 2, 1955, 12.

<sup>289</sup> “Law Urged to Give Citizenship to GI’s Overseas-Born Children,” *The Tipton Daily Tribune*, August 4, 1955, 1.

Here was a merciful reform that even immigration skeptics could get behind. Among its supporters were Francis Walter, the House sponsor of McCarran-Walter, and Michael A. Feighan, who would later insist on imposing quotas on Central and South America in exchange for supporting Hart-Celler.<sup>290</sup> So, after several months of debate and negotiation, the House and Senate agreed to revise McCarran-Walter to cover nearly all children born outside the U.S. to servicemembers during the World War II era, no matter how old their parents were.<sup>291</sup>

Even as the federal government signaled growing openness to some forms of relief, there were telling limits. In 1957, BIA judges ruled that the ban on preexamination for Mexicans, Canadians, and Caribbean natives was arbitrary. But Attorney General William P. Rogers overruled BIA. Anyone who'd been geographically barred from preexamination would still have to leave the U.S. first, through voluntary departure. They would still need to take their chances on getting a visa, without the advance preexamination that made success likelier.<sup>292</sup>

Meanwhile, preexamination was, at last, approaching its final act.

## 2.12. Discretionary Relief Gains Rough (Temporary) Consensus

By the late 1950s, the politics surrounding preexamination and administrative discretionary relief were changing. The Red Scare had peaked and begun to recede; Sen.

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<sup>290</sup> Jia Lynn Yang, *One Mighty and Irresistible Tide*, 250–254.

<sup>291</sup> U.S. House of Representatives, Conference Committee, *Conference Committee Report No. 1842, Jane Edith Thomas*, 84<sup>th</sup> Cong., 2d Sess., March 1, 1956 (Washington, DC: GPO), accessed March 21, 2021, <https://www.google.com/books/edition/Report/684vi8ElQbIC?hl=en&gbpv=1>.

<sup>292</sup> *In the Matter of DEF*, 8 I&N Dec. 68, A-10547426 (BIA July 7, 1958), before the Attorney General, February 26, 1959, <https://www.casemine.com/judgement/us/59149df5add7b04934655181>.

Joseph McCarthy (R-WI) was gone. So was Sen. Reynolds, likely the fiercest Congressional voice against preexamination and administrative discretionary relief. European economies were recovering; fewer World War II-era displaced persons threatened to flood America. Some of the latest European migrants, such as escapees from the Soviet army's invasion of Hungary, were clearly anti-Communist. The Immigration Service was now run by individuals the restrictionists trusted more than the New Dealers. Eisenhower's immigration commissioner, Lt. General Joseph M. Swing, had spearheaded the notorious Operation Wetback to drive Mexican nationals back across the southern border, while maintaining a generally productive relationship with advocates for European aliens. Attempts to fully abolish the national origins quota system or repeal McCarran-Walter had been turned back, in favor of more modest changes. Finally, Republican President Dwight Eisenhower had repeatedly asked for greater legal scope for discretionary relief; even the 1956 Republican platform spoke well of immigration and refugee relief.<sup>293</sup>

On September 11, 1957, Congress passed one set of moderate reforms. It allowed more children to enter, and permitted the Attorney General to adjust status for aliens who could not immediately procure quota slots. It also waived rules barring immigrants who had misrepresented key personal information, if they had been fearful that telling the

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<sup>293</sup> "The Republican Party supports an immigration policy which is in keeping with the traditions of America in providing a haven for oppressed peoples, and which is based on equality of treatment, freedom from implications of discrimination between racial, nationality and religious groups, and flexible enough to conform to changing needs and conditions. We believe that such a policy serves our self-interest, reflects our responsibility for world leadership and develops maximum cooperation with other nations in resolving problems in this area..." *1956 Republican Party Platform*, American Presidency Project at UC Santa Barbara, accessed March 21, 2021, <https://www.presidency.ucsb.edu/documents/republican-party-platform-1956>.

truth would lead to “persecution because of race, religion, or political opinion if repatriated to [their] former home or residence.”<sup>294</sup>

Long-time immigrant advocate Read Lewis, writing a last-minute introduction to Edith Lowenstein’s *The Alien and Immigration Law*, said the new legislation “corrected, or at least alleviated” some of the hardships associated with McCarran-Walter, even if it didn’t go far enough. Eisenhower agreed, signing the bill but asking Congress to do more.<sup>295</sup>

On August 21, 1958, Congress went further. Its new Public Law 85–700 allowed aliens who had entered legally as non-immigrants to adjust their status to immigrant without visiting a foreign U.S. consulate in Canada or anywhere else, as long as they were currently eligible for immigration, even if they had not maintained legal status throughout their entire stay. This was essentially the liberal provision the Truman Commission had recommended in early 1953 (see p. 114). McCarran-Walter’s Section 245 would now explicitly allow relief for non-quota immigrants from Central and South America. Finally, alien non-spouses of American citizens no longer needed to spend a full year in the U.S. before requesting non-quota status. As the Immigration Committee

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<sup>294</sup> Public Law 85-316, Pub. L. No. 85-316, 71 Stat. 639 (September 11, 1957). “An Act To amend the Immigration and Nationality Act, and for other purposes.”

<sup>295</sup> E. Lowenstein, *The Alien and Immigration Law*, vi. Regarding the 1957 Act, Eisenhower wrote, “This measure, while making improvements in present practices, is a disappointment in that it fails to deal with many of the serious inequities inherent in the Immigration and Nationality Act. The new law puts into effect some of the recommendations which I made to the Congress on January 31, 1957, but it does not include many other important changes which I recommended at that time.” President Dwight Eisenhower, *Statement by the President Upon Signing Bill to Amend the Immigration and Nationality Act, September 11, 1957*, Online by Gerhard Peters and John T. Woolley, The American Presidency Project, accessed on March 21, 2021, <https://www.presidency.ucsb.edu/node/233561>.

of the Italian Welfare League reported, “We have experienced a terrific work load under this new section of law.”<sup>296</sup>

The 1957 and 1958 changes didn’t help everyone. They were, again, useless to Mexican and Caribbean nationals. Nor did they help most recent illegal entrants. Suspension of deportation had already been tightened — IWL had only processed 17 cases in 1959 — and now, pursuant to the expiration date specified in McCarran-Walter, it was no longer available for individuals without family ties who had been in the U.S. for seven years. However, certain individuals might earn relief through an update to the old 1929 Registry Act, which now allowed post-dated creation of legal entries for those who could prove arrival before June 28, 1940 (instead of 1924). This enabled IWL to “help out many old timers, who have been in the United States [since] prior to 1924 but could never get the proper documents to prove it.”<sup>297</sup>

These issues aside, there was now a solid legal foundation for administrative relief for most of the aliens Congress thought might deserve it. Accordingly, when INS implemented the new law’s regulations on October 30, 1958, it announced that preexamination would end on June 30, 1959. Starting immediately, no new applications would be accepted. In response to an outcry from advocates, INS announced on September 27 that it would accept new applications through November 30, but they

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<sup>296</sup> Annual Immigration Report for 1958, Sub-Group X: Immigration Committee, Box 56, IWL Collection, CMS NY.

<sup>297</sup> Immigration and Naturalization Report, Mrs. Anthony Mele, 1959, Sub-Group X: Immigration Committee, Box 56, IWL Collection, CMS NY. *Immigration: Registry as Means of Obtaining Lawful Permanent Residence (Report RL30578)*, August 22, 2001, prepared by the Congressional Research Service for the U.S. Congress (Washington, DC, 2001), accessed March 24, 2021, <https://www.everycrsreport.com/reports/RL30578.html>; Annual Immigration Report for 1958, IWL Collection, CMS NY.



would still need to be fully adjudicated — and completed at a U.S. consulate — by June 30, 1959. Immigrant aid organizations scrambled to process as many cases as they could, discovering that INS was resistant to bending any further.<sup>298</sup> (The best that could be achieved: extensions for a few individuals who had received a State Department letter granting them consular appointments after June 30.) Still, the Italian Welfare League proudly announced that all 52 of its remaining preexamination cases had been successfully completed. Then, the era of preexamination was over.<sup>299</sup>

### 2.13. Conclusion

As the 1960s dawned, a new administration would arrive, and new immigration debates would emerge, ultimately leading to the passage of Hart-Celler and the birth of America's modern era of immigration.<sup>300</sup> Well over 50,000 preexamination cases had been processed between 1935 and 1959. Most were approved — from seamen to seamstresses, housewives to Olympic skaters, refugee children at Fort Ontario, NY to Nazi scientists at Fort Bliss, TX.

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<sup>298</sup> Preexamination: Mohler to Mulholland, Inter-Office Memo, June 29, 1959, Box 16, NCWC Collection, CMS NY.

<sup>299</sup> Immigration and Naturalization Report, Mrs. Anthony Mele, 1959, IWL Collection, CMS NY. Later, in July 1963, five months before President Kennedy's assassination, Sen. Jacob Javits (R-NY) introduced comprehensive immigration reform legislation that would have restored preexamination and softened the hardship standard for suspension of deportation from McCarran-Walter's "exceptional and extremely unusual hardship" to "extreme hardship." *Remarks by Mr. Javits concerning Comprehensive Overhaul of Immigration Policy*, 88th Cong., 1st Sess., *Congressional Record* Volume 109, Part 9 (July 2, 1963): 12047–12048. Javits's bill failed.

<sup>300</sup> Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (October 3, 1965), also known as the Hart-Celler Act, accessed March 21, 2021, <https://immigrationhistory.org/item/hart-celler-act/>.

Preexamination had proven indispensable to some migrants, who utilized it precisely for the reasons advocates had fought for it: no other procedure would keep them in the U.S. as legal permanent residents. Others found its ever-changing complexities and nuances unmanageable, and found another way to stay. For still other aliens, it had proven invisible or useless. Some never heard of it; some were represented by advocates who were either unfamiliar with it, or failed to understand its requirements.

To consider migrants' diverse individual experiences of preexamination more closely, Chapter 3 presents eight case studies: seven individuals who were granted preexamination, and one who ultimately chose another path. Then, in Chapter 4, I step back from individuals, to consider the overall population of preexaminees. Utilizing a sample of 674 cases, I analyze who benefited from preexamination throughout most of its existence.

## Chapter 3.

### They Sought Preexamination — Case Studies

Chapters 1 and 2 presented a chronological history of preexamination — from America’s restrictionist turn in immigration policy, through the procedure’s crafting, evolution, and eventual abolition. While these chapters occasionally discussed individual cases, they foregrounded the domestic and international issues surrounding preexamination, and how policy changed in response to the shifting political climate. In Chapter 3, I turn to eight specific individuals who sought preexamination. Most of those profiled here were granted the privilege; this was the case for most individuals who applied for preexamination between 1935 and 1959.

I seek to illuminate the diversity of preexamination cases, and — where possible — the experience of applicants in navigating the system. To do so, I draw on sources including contemporaneous publications, Congressional proceedings, oral histories, the papers of immigrant aid organizations, archives donated to the United States Holocaust Museum and other repositories, and in some cases, official documents such as border crossing manifest cards and declarations of intent to pursue citizenship. In the case of Thomas Doeppner, who ultimately gained permanent residency by joining the U.S. military rather than undergoing preexamination, I rely on the remarkable private family archives that his granddaughter Sarah Snow is currently blogging. She will eventually present this story in a book, and has graciously shared family files with me.<sup>301</sup>

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<sup>301</sup> The case study of Thomas W. Doeppner is based almost entirely on the extensive research done by Sarah Doeppner Snow, Thomas W. Doeppner’s granddaughter, and her husband Jason, at their blog *We’re Not in Kansas Anymore* (<http://www.tomandmarjorie.com>). The Snows drew on an extensive collection of files and correspondence that their grandparents left behind, including Doeppner’s

Doeppner's record is unusually comprehensive. In most cases, the individuals profiled only leave partial traces, so we may not fully understand their choices and actions, how the authorities approached their cases, or what happened to them later. Since the records vary, so does the level of detail presented here.

Four of this chapter's eight case studies (Fahiz Abdul Nour, Pasquale Accusato, Rosaria Baldizzi, Minnie Kusnetz) address individuals who entered the U.S. without legal authorization in the 1920s, well before the rise of fascism and Nazism in Europe. Three of these (Accusato, Baldizzi, and Kusnetz) are the types of individuals Mae Ngai likely envisioned when she described preexamination's role in granting amnesty to white illegal migrants, while providing virtually no comparable opportunities to Mexicans or to most other non-white migrants. The fourth of these cases, that of Nour (described as a Syrian, a term that covered a wide swath of the Middle East) may have been more ambiguous to some Americans of his era.

One of the four, Accusato, was apparently a latter-day "bird of passage": one of 20–30% of Italian immigrants who ultimately returned permanently to the country of his birth.<sup>302</sup> His case also serves to represent thousands of deserting Mediterranean seamen who were granted preexamination decades after their illegal arrivals (see p. 243).

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unpublished manuscript, *From Nazi Germany to a Career in Freedom*. They supplemented this family archive with extensive files from the American Friends Service Committee, which assisted Thomas Doeppner in coming to (and remaining in) the U.S. They have also used other files provided by the United States Holocaust Museum; correspondence, diaries, and personal interviews with family and friends who knew the Doeppners well in Germany, or knew Thomas in America; and a variety of other sources. Sarah Snow offers thoughtful commentary with each of her blog posts; these have strongly influenced my interpretation of events. She plans to write her own book about her grandparents' experience, provisionally titled *A Book About Love*. When published, it will be the definitive account of a truly remarkable journey.

<sup>302</sup> "Birds of Passage: The Italian Americans," *Reimagining Migration*, accessed March 23, 2021, <https://reimaginingmigration.org/birds-of-passage-the-italian-americans/>.

Like thousands of migrants, Thomas Doeppner found his way to America to escape Hitler's grasp, arriving on a legitimate visa that repeatedly expired or was in danger of expiring. Doeppner needed to regularize his status or else risk expulsion and conceivably even repatriation. While he ultimately legalized his presence by joining the U.S. military, his case more closely resembles those Nazgol Ghandnoosh and Roger Waldinger likely envisioned, when they foregrounded preexamination's role in saving refugees from Hitler.<sup>303</sup>

Another escapee from Nazism covered in this chapter is Manya Hartmayer Breuer, one of over 800 Jewish refugees who were brought as "guests of President Roosevelt" to the emergency shelter at Fort Ontario, Oswego (see p. 90). She spent six years trying to survive Hitler, finally coming to the U.S. shortly after Rome's liberation. Like most of those at Fort Ontario, she ultimately was granted preexamination after Hitler's defeat.

As a stark contrast to Breuer and Doeppner, I also present the case of Kurt Debus, a Nazi scientist brought to the U.S. with Wernher von Braun as part of Operation Paperclip (see p. 96), but not granted a visa until 1954 because his background had seemed especially problematic. Finally, to further explore the new complexities of preexamination during the Cold War, I review the case of Thomas O. Robitscher, who was denied relief based on secret information about his political affiliations, and eventually given another chance to clear his name, with the support of prominent advocates and immigrant aid organizations.

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<sup>303</sup> Ghandnoosh and Waldinger, "Strangeness at the Gates," 719–734.

While I have attempted to present a wide cross-section of cases, Robitscher's case suggests one way my sample is unrepresentative. Each case I describe left significant visible traces in the historical record. Many of these individuals either had connections to leverage, or the skill and creativity to find effective advocates on their behalf.

For example, while Thomas Doeppner was still in Europe, his family leveraged two connections to Albert Einstein that resulted in a recommendation from the legendary scientist for a scarce spot as a foreign student. A college ultimately accepted Doeppner based on yet another recommendation, not Einstein's. Even so, that college's president needed a former U.S. Presidential candidate to coax a U.S. consul into approving Doeppner's entry visa. Nour, even as a teenager, knew how to attract attention and sympathy from a major regional newspaper, and from key leaders in his community. Debus had the support of America's national security apparatus. Hartmayer Breuer was among a group of refugees whose plight had become a national cause célèbre: a Congressional committee even visited them. Kusnetz's brother-in-law knew how to meet and motivate a Congressman on extremely short notice, when she was detained at Ellis Island and faced imminent deportation. Robitscher's files are studded with references to legislators; correspondents wonder if the newly elected Sen. John F. Kennedy (D-MA) might help, or if Sen. Saltonstall's sympathetic young assistant Elliot Richardson — a future Attorney General — might be able to do even more than he already had. Any system of discretionary relief is susceptible to inequitable access. Not everyone can attract support from those who can influence authorities to actually exercise their discretion. This was most assuredly the case for preexamination.

Others apparently without such contacts or sophistication, such as Accusato, turned to immigrant aid organizations such as the Italian Welfare League (or to lawyers and fixers of varying levels of competence and integrity) for help in navigating a complex, difficult process. Those who attempted to pursue preexamination largely on their own may have left fewer traces. Baldizzi may have been one of these; the records I have found don't indicate assistance. Her case was discovered fortuitously through the work of New York City's Lower East Side Tenement Museum, where a historical re-enactor portrayed her experience for years.

There is one more way my sample may be unrepresentative. Many individuals who underwent preexamination may never have known what it was called. Later, they may have only recalled "I needed to go to Canada" — or even less. Accordingly, it can be difficult to identify cases of preexamination through oral histories, except where individuals were more educated, comfortable with the immigration process, and fluent in English.

These cases suggest some patterns that are explored in further detail elsewhere in this thesis. For example, some people viewed preexamination as one of multiple avenues of relief that could be pursued until it was either granted, or a better solution was found. While these cases cover a mix of quota and non-quota migrants, many hailed from "national origins" that restrictionists like Johnson and Reed had tried to disadvantage. And, as Chapter 4's analysis will seek to quantify, they represent two temporal peaks of migration: one, prior to the early 1930s, including many aliens who had evaded the immigration system's strictures for extended periods; and a second, beginning in the mid-1930s, involving more who arrived "legally" on a short-term basis, but never left.

Whether granted preexamination or not, all eight of these individuals ultimately found a way to stay within the United States legally. It is to their cases that we now turn.

### 3.1. Fahiz Abdul-Nour (Fred Abdnour): Smuggled Child Seeks to Stay

Fahiz Abdul-Nour (Figure 4) was born in 1922 in Ain-Arab, Syria.<sup>304</sup> While an infant, his father died. According to later press accounts, his mother, Rachidi Abdul-Nour, soon migrated to Tampico, Mexico with him after her mother-in-law had tried to kidnap the baby. In 1931, when Fahiz was seven years old, his mother became seriously ill, and contacted family in Iowa. They dispatched an uncle to retrieve him. When Fahiz was denied entry at the border, the uncle had him smuggled in, and brought to Iowa.<sup>305</sup>



Figure 4. Fahiz Abdul-Nour in 1934.<sup>306</sup>

Subsequently, his mother recovered, married a U.S. citizen in Mexico, and entered the U.S. legally as a non-quota immigrant. She also settled in Cedar Rapids. By

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<sup>304</sup> Slight discrepancies in names and terminology appear throughout the records of this case. Early press reports listed his first name as “Fahis”; his town of birth was sometimes rendered as Ain-Arb, Aine-Arb, or Ayn-Arab.

<sup>305</sup> “Fred Abdnour Becomes Legal Resident of United States; 6-Year Battle Ended,” *Cedar Rapids Gazette*, August 30, 1939. Abdnour’s illegal entry was recorded later on an Immigration Service manifest card as occurring on July 1, 1931 at Laredo, Texas.

<sup>306</sup> “Hope Seen for 2 Alien Boys Facing Deportation,” *Des Moines Register*, May 13, 1934. 3, 15.



late 1932, Fahiz's family had reunited there. Still only nine years old, he and his family had already Americanized his name to "Fred Abdnour." However, INS discovered that Fahiz/Fred was in the U.S. illegally, and ordered him deported to Mexico.

Early news accounts of Fred's plight appeared in the *Des Moines Register* on February 28, 1933.<sup>307</sup> By then, the boy was succeeding in school, and helping to support himself through odd jobs, including the quintessential job for an American youth of that era: newspaper delivery boy. His employer, the *Cedar Rapids Gazette*, got wind of the story, as did his priest, Father Joseph Kacere of the Antiochian Orthodox Christian Church in Cedar Rapids.<sup>308</sup> With their intervention and that of Congressman Cyrenus Cole, the Immigration Service agreed to delay Abdnour's deportation to Mexico until 1934. They paroled him to his mother, pending resolution of his immigration status.<sup>309</sup>

Meanwhile, Franklin D. Roosevelt was sworn in as president and the Immigration and Naturalization Service came under the leadership of Labor Secretary Frances Perkins and Immigration Commissioner Daniel MacCormack. As discussed in Chapter 1, Perkins and MacCormack sought discretionary authority to protect selected hardship cases that seemed especially worthy. Abdnour's was among the cases MacCormack cited in his memorandum to Congress requesting this authority:

Since coming to this country the boy has attended school where his record is excellent. Leaders in the community have protested against the cruelty of

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<sup>307</sup> "Where to Go? Rapids Boy, 10, Faces Deportation As Alien Resident," *Des Moines Register*, February 28, 1933.

<sup>308</sup> As Wikipedia points out, the term "Syrian" was used for migrants of many ethnicities throughout the region, including Arabs, Armenians, Arameans, Assyrians, Syrian Jews, Kurds, Syrian Turkmens, and Circassians. During the 1920s and 1930s, most Syrian immigrants to the U.S., including Fahiz Abdul Nour, were Christians. "Syrian Americans," Wikimedia Foundation, last modified March 21, 2021, 16:36, [https://en.wikipedia.org/wiki/Syrian\\_Americans](https://en.wikipedia.org/wiki/Syrian_Americans).

<sup>309</sup> "Hope Seen for 2 Alien Boys Facing Deportation," *Des Moines Register*, May 13, 1934. 3.

separating him from his family and sending him back to a country of which he knows nothing and where there is no one to care for him.<sup>310</sup>

On June 15<sup>th</sup>, House Immigration Committee chairman Samuel Dickstein cited Abdnour's case on the house floor, saying "Unless this bill passes Congress," Dickstein said, "the Abdnour boy will be deported on July 1 to Syria."<sup>311</sup> The bill did not pass, but Abdnour was not deported.

Throughout 1934–1936, as discussed earlier, Sen. Robert Reynolds stood in the way of the legal changes MacCormack and Dickstein sought. Press reports continued to cite Abdnour as an example of an innocent likely to suffer from Reynolds' intransigence.<sup>312</sup> However, in 1934, his mother, now Mrs. Rachel Shada, naturalized as a U.S. citizen. The family understood that this would solve Fred's problem: he would gain derivative citizenship as a result.<sup>313</sup>

In 1938, it became clear that the Immigration Service saw matters differently: another deportation notice arrived for Fred. On Christmas Eve, Judge Thomas B. Powell of the Superior Court of Cedar Rapids declared that Abdnour had indeed earned derivative citizenship when his mother naturalized. The *Cedar Rapids Gazette* milked this Christmas story for all it was worth:

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<sup>310</sup> Memorandum to the Senate and House of Representatives Regarding Certain Proposed Changes in the Immigration Laws: Appendix I, Deportation Cases Involving Peculiar Hardship: Law Requires Banishment of 12-Year-Old Syrian Boy, United States Catholic Conference, Department of Immigration Records (CMS 023A), Box 8, Folder 113, CMS NY.

<sup>311</sup> "Time Machine: An Immigrant's Story: In 1930s, a Syrian-born Boy Fought to Stay with His Mother in Cedar Rapids," *Cedar Rapids Gazette*, July 9, 2018, accessed November 15, 2021, <https://www.thegazette.com/subject/news/archive/time-machine/time-machine-x2014-an-immigrants-story-in-1930s-a-syrian-born-boy-fought-to-stay-with-his-mother-in-cedar-rapids-20180709>.

<sup>312</sup> Rodney Dutcher, "Behind the Scenes in Washington," *Chippewa Herald-Telegram*, July 8, 1936.

<sup>313</sup> "Abdnour Becomes Legal Resident," *Cedar Rapids Gazette*, August 30, 1939.

Fred heard of Powell's statement Saturday morning. "You mean I won't have to go to Canada?"

"Probably not."

"Boy, what a Christmas!" he shouted in typical American idiom.<sup>314</sup>

Canadian preexamination was evidently already on the table as a potential solution, and Fred, it seemed, had now been spared the journey. But other authorities once again saw the matter differently, and Abdnour spent much of 1939 pursuing preexamination after all.

Because he was a popular student at McKinley High, doing his work well there, was employed after school and Saturdays, the bureau extended the date of his departure until July 1. Throughout the negotiations... officials at Washington and Chicago had said that Fred could come back into this country, after leaving it, if he could obtain a passport permitting his return, and an American consul in Mexico or Canada would give him a visa...

Much difficulty was experienced in getting a birth certificate proving Fred's residence as a baby in Aine-Arb, a small Syrian town. July 1 came and went without success... The immigration bureau extended Fred's stay until September 1... An official certification of his foreign birth finally arrived. Affidavits binding several relatives to his support, thus assuring that he would not become a public charge, were collected. Chief Police Bob Vlach made an affidavit showing that Fred had no police record [and] is an exemplary boy.<sup>315</sup>

On August 28, 1939, Abdnour — by now nearly 17 ½ years old — was finally preexamined in Chicago, guided by local attorney B. D. Silliman. The pair then traveled to Windsor, Ontario, where Abdnour met the U.S. consul and was issued a visa, returning as a legal resident. As soon as he arrived on the U.S. side of the border in Detroit, he telegraphed the *Cedar Rapids Gazette*: "Application for immigration visa formally approved. Happy to say I am now in the United

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<sup>314</sup> "Judge Reveals Abdnour Became Citizen In 1934; U.S. Made No Objection," *Cedar Rapids Gazette*, December 24, 1938.

<sup>315</sup> "Abdnour Becomes Legal Resident," *Cedar Rapids Gazette*, August 30, 1939.

States legally. Cannot express in words my appreciation to you for your kind support. My heartiest thanks to you and your newspaper...”<sup>316</sup>

Revisiting the story in 2018, the *Gazette* briefly described the rest of Abdnor’s life. He attended Iowa State University for a year, then joined the Army Air Corps in 1943, returning to Cedar Rapids after the war. There, he “became a master carpenter and a mason. He changed the spelling of his last name to Abdnor and died — a U.S. citizen — in 2005 at age 83.”<sup>317</sup>

### 3.2. Pasquale Accusato: A Deserting Seaman, A 25-Year Sojourn<sup>318</sup>

Pasquale Accusato was born on March 3, 1886 on Procida, an island off the coast of Naples, in the south of Italy.<sup>319</sup> In December 1910, he married Principia Balzano in Torre del Greco, a small oceanfront town in Naples.<sup>320</sup> He and his wife subsequently had four children. Meanwhile, he performed honorable service during World War I in the local military district.<sup>321</sup>

In March 1927, he accepted work as a seaman on the S.S. Colombo, boarding in Naples. After it arrived at the Port of New York three weeks later, he was one of nine

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<sup>316</sup> Ibid.

<sup>317</sup> “Time Machine: An Immigrant’s Story,” *Cedar Rapids Gazette*, July 9, 2018.

<sup>318</sup> This case study is drawn primarily from Sub-Group XXIII: Immigration Case Files and Allied Social Welfare Case Files 1940s-1960s, Box 101, IWL Collection, CMS NY; complemented by official documents from the National Archives and Records Administration, accessed through AncestryLibrary.com.

<sup>319</sup> Pasquale Accusato, Italian birth certificate, IWL Collection, CMS NY.

<sup>320</sup> Opinion of the Presiding Inspector, In re: Pasquale Accusato, Immigration and Naturalization Service, New York, A-1752856, No. 0300–283, IWL Collection, CMS NY.

<sup>321</sup> Italian Military Discharge papers (original and English translation), IWL Collection, CMS NY.

crew members who deserted, according to the official statement the Master of Vessel was required to make before leaving port.<sup>322</sup> (They were among 23,447 seamen listed as deserting that year. Better enforcement would soon lead to a dramatic decline. Barely half as many would successfully desert in 1928, and the Great Depression drove the number below 1,000 per year.<sup>323</sup>)

After he arrived in New York, he appears to have connected with his brother, Alfredo (a.k.a., Alfred), a Bronx resident who would become a naturalized U.S. citizen in 1935.<sup>324</sup> Like many Italian seamen who deserted in New York, Pasquale found his way to the Brooklyn waterfront. Hired as a longshoreman, he joined the International Longshoremen's Association union in 1929. He also moved to 51 President Street in an Italian neighborhood in Brooklyn, about a mile and a half from the row of immigration lawyers on Court Street described in Chapter 2.<sup>325</sup>

When World War II broke out, he met his legal obligation of registering with the Selective Service, even though he was by then 56 years old.<sup>326</sup> This suggests that he had

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<sup>322</sup> "Statement of Master of Vessel Regarding Changes in Crew Prior to Departure, 'Colombo,'" April 2<sup>nd</sup>, 1927, *New York, Passenger and Crew Lists (including Castle Garden and Ellis Island), 1820–1957*, corresponding to NARA microfilm publication T715, Passenger and Crew Lists of Vessels Arriving at New York, NY, 1897–1957, accessed November 15, 2020, [https://www.ancestrylibrary.com/imageviewer/collections/7488/images/NYT715\\_4026-0765?treeid=&personid=&hintid=&queryId=14fbae8a54b0b5d22058cfcf666f7cc&usePUB=true&\\_phsrc=ehs252&\\_phstart=successSource&usePUBJs=true&pId=2000104237](https://www.ancestrylibrary.com/imageviewer/collections/7488/images/NYT715_4026-0765?treeid=&personid=&hintid=&queryId=14fbae8a54b0b5d22058cfcf666f7cc&usePUB=true&_phsrc=ehs252&_phstart=successSource&usePUBJs=true&pId=2000104237).

<sup>323</sup> See discussion in Chapter 1.

<sup>324</sup> "Alfredo Accusato, Naturalization Petition, Pt. 34146, Form No. 1-IP," *Rhode Island, Indexes to Naturalization Records, 1890-1992 for Alfredo Accusato, Index to Naturalization Petitions, 1906–1991*, accessed November 15, 2020, [https://www.ancestrylibrary.com/imageviewer/collections/2897/images/40797\\_292440-00251?treeid=&personid=&hintid=&usePUB=true&usePUBJs=true&pId=100046](https://www.ancestrylibrary.com/imageviewer/collections/2897/images/40797_292440-00251?treeid=&personid=&hintid=&usePUB=true&usePUBJs=true&pId=100046).

<sup>325</sup> Opinion of the Presiding Inspector, In re: Pasquale Accusato, IWL Collection, CMS NY.

<sup>326</sup> "Selective Service Card, Pasquale Accusato," *U.S., World War II Draft Registration Cards, 1942, New York City*, corresponds to Selective Service Registration Cards, World War II: Fourth Registration, Records of the Selective Service System, Record Group Number 147, National Archives and

also met the requirement to register as an alien in 1940, and that the government was not then prioritizing his expulsion. His illegal entry, however, still made him ineligible for naturalization, and if he left the U.S. — for example, to visit his wife and children — he likely would have had great difficulty returning.

Between 1927 and 1947, Accusato had two minor run-ins with the law. In 1937, he was arrested and charged with “being involved in the ‘policy’ games” (illegal gambling); and in February 1947, he was arrested and charged with selling wine in violation of the laws of the Alcoholic Beverage Control Board. Each resulted in a dismissal of charges, and a close friend testified that the wine was for her family’s personal use, not a purchase. The local police precinct later reported that he had been of good moral character throughout his 21 years in the neighborhood.<sup>327</sup>

During 1947, according to his testimony, his brother Alfredo became seriously ill, and he went to his brother’s house to help out. Accordingly, his income dropped, though he did spend some time helping out at the local luncheonette (where he was accused of breaking the liquor laws). His encounter with the liquor authorities might have convinced him to normalize his status, because he found a private advisor and began the process of pursuing Canadian preexamination.

That is when a new set of problems began for him. It appears that he or his advisor received notification from the U.S. consul in Montréal that a visa was ready for him, but they did not understand that the correct next step was for them to notify INS and

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Records Administration, accessed November 20, 2020, [https://www.ancestrylibrary.com/imageviewer/collections/1002/images/NY-2369119-0579?treeid=&personid=&hintid=&queryId=14fbcae8a54b0b5d22058cfcf666f7cc&usePUB=true&\\_phsrc=ehs253&\\_phstart=successSource&usePUBJs=true&pId=2005387](https://www.ancestrylibrary.com/imageviewer/collections/1002/images/NY-2369119-0579?treeid=&personid=&hintid=&queryId=14fbcae8a54b0b5d22058cfcf666f7cc&usePUB=true&_phsrc=ehs253&_phstart=successSource&usePUBJs=true&pId=2005387).

<sup>327</sup> Opinion of the Presiding Inspector, In re: Pasquale Accusato, IWL Collection, CMS NY.

arrange for preexamination at its offices in New York City. Instead, Pasquale set off directly for Montréal. But when he attempted to enter Canada without a preexamination letter, he was promptly excluded and deported from Canada.<sup>328</sup> Since he could not enter Canada in September, his quota slot disappeared. He would need a new one.

At this point, INS apparently recognized that Accusato needed more assistance than his advisor was offering. It referred him to the Italian Welfare League, which went to work on his behalf, attempting to clear the way for a more successful visit to Canada.<sup>329</sup> In October, the U.S. consul in Montréal again notified Accusato that a quota slot would be available, if he could come to Canada in November and apply for it.

He did so. However, the consul now noticed, *first*, that he had an arrest record; and *second*, that he wasn't earning much income. Might he now become a public charge? These two red flags led the consul to suspend action on his visa application.<sup>330</sup>

Accusato's return to the U.S. without a visa triggered INS to launch deportation proceedings. Now, IWL needed to guide Accusato safely through the deportation minefield. First, he would need to report to the INS every month to ensure that they knew his whereabouts. Second, he would need to provide detailed evidence of both his (limited) assets, and of someone's willingness to support him if he could not do so himself.<sup>331</sup>

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<sup>328</sup> Order of Deportation, Fred Gerilano and Pasquale Accusato, Lacolle, P.Q., September 1, 1947, IWL Collection, CMS NY.

<sup>329</sup> Letter, Miss Angela Carlozzi, Executive Secretary, Italian Welfare League, to H.B. Deniers, Chairman, Board of Inquiry, Canadian Immigration Service, October 8, 1947; Letter, J.A. Boulais, Immigration Inspector in Charge, Canada Department of Mines and Resources, to Angela Carlozzi, October 14, 1947, IWL Collection, CMS NY.

<sup>330</sup> Letter, James E. Callahan, American Consul, Montreal, Canada, to Pasquale Accusato, November 3, 1947, IWL Collection, CMS NY.

<sup>331</sup> Warrant for Arrest of Alien, Pasquale Accusato, November 15, 1947; Letter to Expulsion Section, Immigration & Naturalization Service, from Angela Carlozzo, February 25, 1948; Release on own

Correspondence suggests that IWL had some difficulty keeping Accusato focused on the task at hand; he did not always show up for meetings or understand what was required of him.<sup>332</sup> Nevertheless, in March 1948, after a hearing, the Presiding Inspector in Accusato's deportation hearing recommended that he be granted voluntary departure and preexamination; the Commissioner confirmed these findings. On October 6, 1948, he visited INS's offices (now on the 10<sup>th</sup> Floor of 70 Columbus Avenue, not at Ellis Island any longer). There, he was preexamined and medically examined once more. Then, he once again traveled to Canada. Finally, on October 12, he crossed back at Rouses Point, NY, with a visa that permitted him to stay in the U.S. legally.<sup>333</sup>

The Italian Welfare League wrote to him on November 9<sup>th</sup>, asking the outcome of his trip, and reminding him to visit their offices to start work on his first papers for citizenship.<sup>334</sup> He never responded. They wrote again on March 15, 1949, telling him:

We have not received any word from you since your return from Montreal, Canada. Will you please call at our office with your passport, in order that we may close your case which is now pending in our files.

Please do not fail to come in as we must report the conclusion of this case to the Department of Justice to avoid any further investigation in your case.<sup>335</sup>

IWL apparently never heard from Pasquale Accusato again. A handwritten annotation from IWL social worker Frank Traverso observes, "Never took the trouble to

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Recognizance, Pasquale Accusato, U.S. Department of Justice, December 31, 1948; Opinion of the Presiding Inspector, In re: Pasquale Accusato. All from IWL Collection, CMS NY.

<sup>332</sup> Angela Carlozzi to Pasquale Accusato, November 12, 1947, November 26, 1947, and February 11, 1948; IWL Collection, CMS NY.

<sup>333</sup> W.F. Watkins, District Director, INS, to Pasquale Accusato, September 22, 1948; Manifest card, Pasquale Accusato, Rouses Point, NY border crossing, October 12, 1948, IWL Collection, CMS NY.

<sup>334</sup> Frank Traverso to Pasquale Accusato, November 9, 1948, IWL Collection, CMS NY.

<sup>335</sup> Frank Traverso to Pasquale Accusato, March 15, 1949, IWL Collection, CMS NY.



call at office in answer to our letter.” I have found no evidence that Accusato moved towards citizenship. On January 19, 1952, at age 66, he is recorded as an outbound passenger on the Saturnia ocean liner back to Naples. Social Security records suggest he died in Italy, 24 years later.<sup>336</sup> Once he boarded that boat, there is no evidence that Pasquale Accusato ever set foot in the U.S. again.

### 3.3. Rosaria Baldizzi: From Fraudulent Passport to Regular Voter<sup>337</sup>

Born on January 14, 1906 in Palermo, Sicily, Rosaria Mutolo was “matched for marriage” to Adolfo Baldizzi at age 16; they married on December 16, 1922. Then, according to the Tenement Museum’s research, Adolfo stowed away on a Swiss Navy vessel departing for Switzerland. He narrowly escaped the authorities there, entered France, and then boarded the S.S. Suffren, arriving in New York City on November 1,

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<sup>336</sup> “Pasquale Accusato, Record of Departure,” *U.S., Departing Passenger and Crew Lists, 1914–1966*, corresponds to Passenger and Crew Lists of Vessels and Airplanes Departing from New York, New York, 07/01/1948– 12/31/1956. NARA microform publication A4169, 419 Rolls, NAI: 3335533. Records of the Immigration and Naturalization Service, 1787–2004, Record Group 85, National Archives, accessed March 25, 2021 at: [https://www.ancestrylibrary.com/imageviewer/collections/60882/images/42155\\_333328-01637?treeid=&personid=&hintid=&queryId=14fbae8a54b0b5d22058cfcf666f7cc&usePUB=true&\\_phsrc=ehs253&\\_phstart=successSource&usePUBJs=true&pId=1672903](https://www.ancestrylibrary.com/imageviewer/collections/60882/images/42155_333328-01637?treeid=&personid=&hintid=&queryId=14fbae8a54b0b5d22058cfcf666f7cc&usePUB=true&_phsrc=ehs253&_phstart=successSource&usePUBJs=true&pId=1672903). Also: “Pasquale Accusato,” Social Security Death Index, 1935–2014, corresponding to Social Security Administration, Social Security Death Index, Master File, Social Security Administration, accessed March 25, 2021 at: [https://search.ancestrylibrary.com/cgi-bin/sse.dll?indiv=1&dbid=3693&h=113324&tid=&pid=&queryId=14fbae8a54b0b5d22058cfcf666f7cc&usePUB=true&\\_phsrc=ehs253&\\_phstart=successSource](https://search.ancestrylibrary.com/cgi-bin/sse.dll?indiv=1&dbid=3693&h=113324&tid=&pid=&queryId=14fbae8a54b0b5d22058cfcf666f7cc&usePUB=true&_phsrc=ehs253&_phstart=successSource).

<sup>337</sup> This narrative draws primarily on research performed by (and primary sources located or developed by) The Lower East Side Tenement Museum in New York City. The Museum’s own narrative and interpretation of Rosaria Baldizzi’s immigration journey may be found at “Rosaria Baldizzi: A Complicated Path to Citizenship,” Tenement Museum, February 9, 2019, accessed July 20, 2020, [https://www.tenement.org/development\\_news/rosaria-baldizzi-a-complicated-path-to-citizenship/](https://www.tenement.org/development_news/rosaria-baldizzi-a-complicated-path-to-citizenship/). The Museum consulted with scholars including Mae Ngai and Vincent J. Cannato (*American Passage: The History of Ellis Island*) in its own research on Baldizzi. Museum Senior Director of Curatorial Affairs David Favaloro has provided additional documents to me, including oral history transcripts of conversations with Baldizzi’s daughter Josephine.

1923. By then, provisional quotas on Italians were in effect, but the far more rigorous Johnson-Reed quotas were not, and Adolfo was apparently able to enter legally. On June 23, 1924, he declared his intention to become a citizen, but he was not naturalized for well over a decade.

In the meantime, he wished to reunite with his wife. But with the new laws now in effect, this had apparently become difficult. So, according to oral histories recorded in two sessions with Rosaria's daughter Josephine in 1993, Rosaria was given fraudulent papers to enter the U.S. on April 13, 1925 under the name Giuseppina Castelli:

They were illegal... I says, "How could you do such a thing?" you know? "How could you?" She was... no more than 18, because when I was born, she was 20 years old. She already was here at 19, so... but she was saying, "I didn't know it was terribly wrong," you know. "They made my papers" — these are the people that advised my father, probably. And they just went ahead with it. You know... That's probably why they had no money either. Had to probably pay for all of that...

...Somebody gave her a passport. I don't know how they finagled that! When she told us, I says, "Wow! What if they caught you?" and she said, "Well in those days a lot of people... you know..."

And then they told her "If you don't have \$25 you can't get off the ship." So my father borrowed \$25 from somebody. Went down to the pier, and throws it up to her. And instead of her catching it, it went into the water. And then she says, "This is my life, boy!" (laughter)<sup>338</sup>

Rosaria Baldizzi remained undocumented for fifteen years, until the Alien Registration Act took effect in 1940. As her daughter Josephine tells the story,

...it was 1939 or something. When did the war start? War broke out, and they're telling you, "You got to straighten out your papers. You got to straighten out your papers." The neighbors are Jewish people who were a little more educated about

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<sup>338</sup> "Rosaria Baldizzi: A Complicated Path to Citizenship," Tenement Museum, February 9, 2019, accessed July 20, 2020, [https://www.tenement.org/development\\_news/rosaria-baldizzi-a-complicated-path-to-citizenship/](https://www.tenement.org/development_news/rosaria-baldizzi-a-complicated-path-to-citizenship/).

that. And they used to tell my mother, “You know Sadie you gotta do this, you gotta do that. They’re gonna send you back and your kids will be here.”<sup>339</sup>

So, in October 1940, Baldizzi formally registered as an alien, meeting her obligations under the recently passed Alien Registration Act.<sup>340</sup> Then, two months after Pearl Harbor, she met the additional new requirement to apply for a Certificate of Identity as an enemy alien — still a citizen of Italy, a country America was now fighting. In February 1942, Baldizzi’s husband Adolfo applied to sponsor her immigrant visa; subsequently, in October 1944, she requested preexamination.

Still in the U.S., her application was approved by the State Department in January 1945. However, given continuing wartime conditions, she still needed advance approval to enter Canada. The Canadians knew her first entry into the United States in 1925 had been fraudulent, and worried that the U.S. might not let her re-enter. Through April and May 1945, Canada and the INS exchanged correspondence; INS told Canada that since Rosaria was married to a U.S. citizen, she would have no problem re-entering. Canada authorized a ten-day trip on May 31, 1945. She now scheduled her preexamination within the U.S.; it took place in New York City on June 25. Given her original fraudulent entry, her manifest card notes that the involvement of a Board of Special Inquiry was required.

Baldizzi traveled to Montréal via the heavily trafficked border crossing at Rouses Point, NY. She visited the consul, received her visa, and was readmitted as a legal permanent resident on the Fourth of July. The following year, she petitioned for

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<sup>339</sup> Ibid.

<sup>340</sup> This paragraph draws heavily on a timeline built from Baldizzi’s INS A- and C-files by Marian Smith, Chief of the Historical Research Branch at US Citizenship and Immigration Services, and provided to the Tenement Museum. I have not reviewed the original INS files.

naturalization, and she became a citizen in May 1948 (Figure 5). Her daughter narrates the conventional happy ending so many of the era's European immigrants described:

But finally, both went to school. They both got their diplomas and they got their citizenship papers. Let me tell you they were good citizens. They loved America. They loved the idea of voting. They had that privilege, and they were the first ones to go on to vote. They watched the news, they wanted to be in on all that stuff.<sup>341</sup>



Figure 5. Rosaria Baldizzi in 1948.<sup>342</sup>

*From her Certificate of Naturalization.*

### 3.4. Minnie Yezernitsky Kusnetz: Follower and Leader<sup>343</sup>

Minnie Yezernitsky was born in 1912 to religious Jewish parents in Ruzhany (then in Russia, later Poland, and now in Belarus). The fourth of five children, this

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<sup>341</sup> "Rosaria Baldizzi: A Complicated Path to Citizenship," Tenement Museum.

<sup>342</sup> Ibid.

<sup>343</sup> This case study is sourced primarily from Jocelyn Cohen, Daniel Soyer, and Yivo Institute for Jewish Research, *My Future Is in America : Auto-biographies of Eastern European Jewish Immigrants* (New York: New York University Press, 2006). Cohen and Soyer selected and translated nine remarkable narratives written in Yiddish by Eastern European Jewish immigrants to the United States in 1942, in response to a contest sponsored by the Yiddish Scientific Institute (known in America as YIVO, and now officially named YIVO Institute for Jewish Research). These immigrants were asked to respond to the prompt "Why I left Europe and what I have accomplished in America." Minnie Yezernitsky Kusnetz's narrative, titled "I Haven't Lost Anything by Coming to America," appears as Chapter 9, 288–310. Chaim Kusnetz's narrative, "Why I Left the Old Country and What I Have Accomplished in America," appears as Chapter 8, 233–287. The Kusnetzes puckishly give themselves the nicknames Baron and Mrs. Baron *fon Habenikhts* (German for *have-nothing*).

spirited child acted, sang, and recalled being a favorite of her teachers. Her oldest sister emigrated to America, but Minnie was just eight years old in 1920 when war between the new Soviet Russia and Poland devastated her town, leaving her family near starvation. Soon, another sister emigrated to America. With the Johnson-Reed Act's new quotas in place, it became impossible for other siblings to migrate to America the same way. Both of her brothers traveled instead to Cuba, possibly intending to make their way to America either legally or otherwise. (They are not mentioned again in either Minnie's account or her husband's.)

Left alone with her parents, she weathered most of the 1920s in Ruzhany, while most of her peers scattered to Palestine, South America, and Cuba. Ultimately, she too decided to leave. With the U.S. inaccessible, she wrote to a relative in Winnipeg, who agreed to host her if she received permission from Canada to enter as a servant, and could raise the \$200 cost of passage. She did so — and also paid for a forged Polish birth certificate; at 18, she needed to convince the Polish authorities that she was 21 and had the right to act independently.<sup>344</sup>

Kusnetz ultimately arrived in Winnipeg on November 15, 1929, three weeks after the stock market crash. While the economic impact of the crash was likely not yet felt there, finding work was already difficult. She and a friend connected with her married cousin in Montréal, who reported that factory work was easier to find there. So they moved on. In Montréal, she moved towards success as a garment worker, attended public

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<sup>344</sup> Writing in 1942, Kusnetz said she had encouraged her parents to accompany her to the United States now that all of their children had left for the western hemisphere, but her father was too attached to his home, and was still there. Months after she submitted her contest entry, the Nazis deported most of the town's Jewish residents to the Treblinka death camp.

night school, and found hometown compatriots through the Ruzhany-Volkovysk Provincial Society, where she joined the choir.

Still, she writes, “I was drawn to be with my sisters” in the United States. After a visit from one of her brothers-in-law, she decided to sneak across the border, and he offered to pay the cost of the smuggler. What follows is a remarkable description of how \$200 could bring an undocumented migrant safely across the Canadian border:

I was traveling by car and could not take anything with me. The man led me to the border, and there, next to a forest, stood a car with New York license plates and two Christian men. I transferred to their car, said goodbye to the Jewish man and assured him that, as soon as I arrived at my sister’s, I would call my cousins and they would pay him.

Not to worry. We waited a good while in the forest and then we got on our way, traveling through fields. I had left the house at eight in the morning, and by the evening we were already in Albany. On the way, two officers approached us and asked for papers and the driver’s license. The man sitting with me in the back seat told me not to look in the direction from which the officers had come. The driver showed them all the necessary papers and we departed.

Around six in the morning, we were in New York City on First Avenue. My older sister lived in Brooklyn, and the men took me to her place. When we arrived at my sister’s address, I thanked him, put two dollars in his hand, and got out of the car. He did not make a move after I got out but said, “Ring the bell to your sister’s apartment. As soon as you’re convinced that your sister lives here, let me know and then I’ll leave.” I did as he said and indeed found my sister.<sup>345</sup>

Still “illegal,” she settled into her new life, leveraging her growing skills and confidence to make her way in New York’s garment industry. She even served on her union’s wage committee, annoying her employer by effectively advocating for higher wages — and, as she recalled it, by encouraging her less educated Italian colleagues to do the same.

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<sup>345</sup> Jocelyn Cohen, Daniel Soyer, and Yivo Institute for Jewish Research, *My Future Is in America : Auto-biographies of Eastern European Jewish Immigrants* (New York: New York University Press, 2006), 302.

In 1936, she met and fell in love with Chaim Kusnetz, and they became engaged. Then, as they moved towards marriage, her illegal status was exposed when she refused her employer's request to register for the new Social Security System. On April 1, 1937, she was called into her boss's office to speak with a detective. Within an hour, she was headed to detention at Ellis Island and subsequent deportation.

...they asked me questions, took fingerprints and photographs — just as they would of a real criminal. I had no food at all and didn't sleep all night. I could not stop crying. At one o'clock the next day, my brother-in-law came with a lawyer and put up five hundred dollars. I was released. When I got home, my sister burst into tears at the sight of me and I cried bitterly, too. My lawyer advised me to go to my fiancé and tell him what had occurred. He, the lawyer, said that my only recourse was to get married in court as soon as possible...

[My fiancé] agreed to everything. I assured him that my brother-in-law would help me get myself out of trouble. He knew a lot of politicians. So we agreed to go to City Hall on Monday, take out a marriage license, and get married right there.<sup>346</sup>

Next step: to convince the authorities that this was a legitimate marriage, not a sham concocted for immigration purposes — and that she had unknowingly come into the U.S. illegally. Narrating her story in Yiddish only five years later — long before she was granted citizenship in 1953 — she describes the lies she had told to the immigration authorities:<sup>347</sup>

I told the following story: I had met a boy in Montreal at a dance. We went out for a good while. When he asked me if I had family in the States, I told him that I had sisters.

“Why don't you go to them?”

“How can I? You need the proper papers, you know!”

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<sup>346</sup> Cohen et al, *My Future*, 307-308.

<sup>347</sup> It is striking that she would have confessed all this before she had become a citizen, though admittedly she did so in Yiddish, where her statements might have been less visible to U.S. authorities.

“I can get them for you. I’m going there by car next week. If you want, I’ll take you to your sisters.” I was more than eager to go and did not understand that he was taking me illegally... I only discovered that I was here illegally when I was taken to Ellis Island.

The official asked me if I knew the name of the boy who had brought me across the border from Canada to the States. I told them that I had not seen him since that time. He said his name was Harry, and he was a tall blond boy. That’s all I knew about him.<sup>348</sup>

The outcome of the hearing: Canadian preexamination. “Since my brother-in-law knew high-placed politicians well, he convinced the U.S. Commissioner of Immigration based at Ellis Island to let me stay in the States. I was even allowed to work at the shop while I waited to be called to get my visa....”<sup>349</sup>

This discomfited her boss, who had already gleefully told her fellow employees that she was gone for good.

A short time later, I was called... With [my] entire pack of papers, I set off for Montreal. Officials stopped me at Rouses Point to look everything over. They swore me in to give testimony and asked various questions. As soon as I showed them the letter that the commissioner had given me to take with me, they stopped asking questions and I departed for Montreal. My cousin went with me to the American Consulate, and, after a day of many questions, I finally got the visa. Eight days later, I was with my husband.<sup>350</sup>

As her husband described the same events, “It is a story of ‘pull,’ of documents, and of HIAS. (Her brother-in-law met with his congressman and the latter did not spare the letters and telegrams whenever and to whomever it was necessary — and all for free.)”<sup>351</sup>

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<sup>348</sup> Cohen et al, *My Future*, 308-309.

<sup>349</sup> Cohen et al, *My Future*, 309.

<sup>350</sup> Cohen et al, *My Future*, 309.

<sup>351</sup> HIAS, the Hebrew Immigrant Aid Society, was one of the era’s leading service organizations for Jewish immigrants and refugees. It now serves refugees and asylum seekers of all faiths and ethnic



Minnie Kusnetz gained her American citizenship in 1953, and lived until 1976; her husband, ten years older than her, survived until 2000. According to her family, she wrote short stories for *Forverts*, the leading Yiddish newspaper, under the pen name Mina Yazen. Chaim contributed extensively to the Yiddish press, writing poetry, rhymed humorous sketches, articles, and three books.<sup>352</sup>

### 3.5. Thomas W. Doeppner: A Foreign Student of Conscience<sup>353</sup>

Thomas W. Doeppner (Figure 6) was born in Berlin, Germany on May 22, 1920 to August F. Doeppner, a leading newspaper editor; and Ella Doeppner (nee Fraustaedter), a teacher and private tutor. Ella's family was Jewish. August's family — of Christian heritage though by then agnostic — would have been viewed by the Nazis' Nuremburg racial laws as Aryan. When Thomas was quite young, her parents divorced, but they maintained generally friendly contact as Thomas and his sister moved towards adulthood. Among other things, August shared his deep hobbyist's interest in electronics with Thomas, inspiring the boy to pursue a career in electrical engineering.

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backgrounds. From Chaim Kusnetz's chapter "Why I Left the Old Country and What I Have Accomplished in America" in Cohen et al., *My Future Is in America*, 233–287.

<sup>352</sup> "Minnie Yezernitsky Kusnetz," FindAGrave, last modified July 22, 2018, accessed March 24, 2021, <https://www.findagrave.com/memorial/5638231/minnie-kusnetz>; "Khayim Kuznets (Chaim Kusnetz)." Yiddish Leksikon, March 15, 2019, accessed March 24, 2021, <http://yleksikon.blogspot.com/2019/03/khayim-kuznets-chaim-kusnetz.html>.

<sup>353</sup> As discussed earlier in this chapter, this case study is based on the remarkable archives and archival work of Sarah Doeppner Snow, Thomas Doeppner's granddaughter, as presented on her blog [tomandmarjorie.com](http://tomandmarjorie.com) and in a forthcoming book. For more about Snow's efforts to research and share the extraordinary lives of her grandparents, see p. 152 and associated footnote.



Figure 6. Thomas Doeppner as a Young Boy.

*Courtesy of Sarah Snow.*

When the Nazis took power, the family's partially Jewish background placed it at growing risk. August Doeppner, then a newspaper editor in Germany, resigned instead of running an editorial welcoming the Nazis. An American business contact, Virgil Pinkley, hired him to move to Amsterdam and open a United Press (UP) newspaper wire service office there.

As a child, Thomas Doeppner had participated in a Jewish boy scout group, since disbanded. In its place, he found a Quaker youth group that met to discuss spiritual and philosophical issues. He built lifelong friendships there. The Quakers had earned a reputation for helping anyone who asked — including Nazis who had suffered in Germany's economic collapse after World War I. As a result, the regime warily tolerated them through the 1930s, albeit with occasional terrifying exceptions. The youth group's

guests included members of the worldwide Quaker American Friends Service Committee (AFSC), which later helped Doeppner reach America.<sup>354</sup>

Doeppner's family had already refused to accept Nazi ideology; as tensions rose in Europe, Thomas also found himself deeply influenced by the Quakers' pacifism. When he graduated from high school in 1938, "I was called to the police, where my passport was stamped 'for identification only; not valid for foreign travel.' The reason: I was about to be drafted into the German Army!! I decided right then to leave Germany illegally...."<sup>355</sup>

He had an immediate destination: his father's and stepmother's home in the Amsterdam suburbs. But his first plan failed; after crossing the border surreptitiously, he encountered the Dutch border control, which refused his entry but helped him safely re-enter Germany.<sup>356</sup> Now, sitting in a hotel in Aachen, he needed a new plan. One day, a Dutchman brought a family photo with a note from his father, and then successfully smuggled him across the border. AFSC's records suggest it might also have played a role in his escape.

Now ensconced in his father's house, Thomas needed to remain hidden until he could become a legal temporary resident of Holland. This privilege was eventually granted on the condition that he leave Holland as soon as possible. Only when he had

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<sup>354</sup> AFSC won the 1947 Nobel Peace Prize for its relief work in Europe during and after both World Wars.

<sup>355</sup> "The Nazis," Sarah Snow, We're Not in Kansas Anymore, December 11, 2012, <http://www.tomandmarjorie.com/2012/12/the-nazis.html>.

<sup>356</sup> According to the Snows' records, Doeppner later told some people that he had actually been detained for a week by the S.S. and only fortuitously released, but they have been unable to prove or disprove this. "November 24, 1942: Fact or Fiction?" Sarah Snow, We're Not in Kansas Anymore, April 27, 2017, <http://www.tomandmarjorie.com/2017/04/november-24-1942-fact-or-fiction.html>.

another destination would he receive a temporary Dutch certificate of identity to replace his abandoned German passport.

By now it was late 1938: the Nazis had marched into the Czech Sudetenland, and Kristallnacht had just taken place. Thomas, now 18 years old, was seeking one of two routes out. If he could acquire a French visa, he might join his sister, who had already emigrated there as a student. But his application had been lost, and that process needed to be started over. Or, conceivably, he could study engineering in the United States. Here, his contacts began to help — especially Albert and Ann Martin, American Quakers who had spent two years in Berlin, and remembered Thomas from his Quaker youth group.

The Martins recommended him to the indefatigable case workers at the AFSC's offices in Philadelphia. To navigate the many Catch-22s associated with U.S. immigration policy in the 1930s and 1940s, he would need all the help AFSC could provide, and more.<sup>357</sup>

After Kristallnacht, colleges throughout America organized efforts to host German refugee students. Typically, they wanted to help the individuals in greatest danger: those still in Germany. But U.S. authorities would only offer student visas to individuals who would certainly return home when their studies ended. Jewish students from Germany, or other enemies of the Nazi regime, would likely never go back. (This gave Thomas a temporary advantage, since he was already outside Germany, if still not far from Hitler's clutches.)

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<sup>357</sup> The AFSC and Doeppner family files especially show the extraordinary efforts and competence of one remarkable AFSC case worker, Charlotte Salmon.

So, too, immigration authorities wanted to ensure foreign students could support themselves. But Germany was stripping Jews of assets as they left. Students who had lost access to their German school records still had to demonstrate their academic qualifications to U.S. colleges. Beyond all that, as Sarah Snow writes, each institution had its own idiosyncratic preferences:

Some schools wanted older students, some wanted younger. Some wanted females while others wanted males. Some... wanted to ensure their political views weren't too ill-fitted for their campus... [So AFSC] would throw multiple names at the schools in hopes that one of them would stick.<sup>358</sup>

To apply for a student visa, individuals needed an official college admission — and one they could afford to accept, ideally because some costs were being defrayed by scholarship. Recommendations helped facilitate such admissions. Albert Einstein's secretary at Princeton had been a childhood friend of Thomas's mother, and Thomas's second cousin also knew the great scientist. All this was enough to get a complimentary letter. So, too, his father arranged an extremely positive letter from his boss, Pinkley, who had met Thomas in the UP office where he was doing odd jobs while pursuing a visa. Pinkley, a well-known war correspondent, reached out to his own network, including the incoming governor of Oregon. As Sarah Snow writes, the odds facing an endangered student without such contacts must have been daunting.

Doeppner was ultimately accepted by McPherson College, a small institution in Kansas seeking to help a "non-Aryan" student. McPherson, controlled by the Church of the Brethren, made certain that Thomas knew smoking, drinking, and dancing were forbidden there. McPherson didn't offer a full engineering program, but it provided the

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<sup>358</sup> "February-April, 1939: Arbitrary," Sarah Snow, We're Not in Kansas Anymore, December 27, 2013, <http://www.tomandmarjorie.com/2015/04/february-april-1939-arbitrary.html>.

preparatory courses he would need to transfer into one. As a religiously-affiliated liberal arts institution, Snow writes, it appears that Doeppner's recommendations from the Quakers helped far more than Einstein's.

But he still had to get his visa from the American consulate in Rotterdam — the only one in Holland still processing them. His first attempt was rejected. Then, the President of McPherson College pulled still more strings on his behalf: "The change in the mind of the consul was due to a letter from A. Landon, former Governor of Kansas etc., with whom the President of McPherson College happened to be acquainted, and who recommended me to the consul."<sup>359</sup> Doeppner seemed unaware that "A. Landon" was *Alf Landon*, the 1936 Republican candidate for President of the United States.

By the time Landon had prevailed on the U.S. consul in Rotterdam, cross-ocean travel to America was becoming difficult. Thomas was supposed to arrive in Kansas on September 11, but his boat was delayed well into November. He finally found slightly quicker passage on another sold-out boat, by trading his existing ticket to an American businessman who wished to stay in Europe longer. Even so, he didn't make it to New York Harbor until November 15. Then, even with the help of a social worker dispatched to help him, he was only granted an 8-month visitor's visa — not the continuing student visa he expected.<sup>360</sup> (The discussion of student visas on p. 246 suggests that immigration authorities may have viewed him as only temporarily enrolled, not guaranteed admission into a full four-year degree program.) Possessing only a shorter visitor's visa would cause

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<sup>359</sup> "August 22 & 28, 1939: Good Relations Are the Key," Sarah Snow, *We're Not in Kansas Anymore*, October 6, 2014, <http://www.tomandmarjorie.com/2014/10/august-22-28-1939-good-relations-are-key.html>.

<sup>360</sup> "November 16–17, 1939: Arrival at Ellis Island," Sarah Snow, *We're Not in Kansas Anymore*, June 27, 2015, <http://www.tomandmarjorie.com/2015/06/november-16-17-1939-arrival-at-ellis.html>.

him serious problems later. Still, he had arrived just before the mine war intensified, and less than six months before the Nazis invaded Holland.

Now a 19-year-old stranger in a strange land, Thomas quickly began acclimating himself, and catching up on months of lost coursework. By December, he was giving talks about Germany to his fellow students. In letters to his old Quaker youth group friends, he was wrestling with the meaning of his relative freedom. He was also trying to write to his mother (and other relatives) as often as she wanted, and beginning an increasingly hopeless quest to get her out of Berlin.

Within months, with McPherson agreeing to enroll him for a second year, he needed to extend his own stay in America. Without a student visa, this was not routine. His Dutch Identification Card would expire in August 1940, and the Nazis had conquered Holland. If the State Department renewed his visa, he might have nowhere to return to — exactly what the U.S. government sought to avoid. So, too, some observers attributed Germany's dramatic military successes to "Fifth Column" spies, and worried that German students might play that role in the U.S. These concerns needed to be assuaged by the colleges, students, and aid organizations.<sup>361</sup>

Doeppner's status proved so uncertain that AFSC included his case in an in-person conference with a leading INS official in Washington, DC. Its outcome was reassuring:

Mr. Salisbury [E.E. Salisbury, Chief of the Certification Branch of the Immigration and Naturalization Service in Washington, DC] has no question but that Mr. Doeppner's student visa will be renewed as soon as it is possible for the Department to reach his case. The burden of work is particularly heavy at this time, but the case should be reached in a few days. The expiration of the passport

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<sup>361</sup> "June 25, 28, 1940: 5th Column, Psshhhh," Sarah Snow, We're Not in Kansas Anymore, October 9, 2015, <http://www.tomandmarjorie.com/2015/10/june-25-28-1940-5th-column-psshhhh.html>.

does not constitute a difficulty. The extension of the visa granted by the Immigration Service will itself constitute evidence of the acceptance of Mr. Doeppner's nationality and status by the United States Government, in spite of the fact that his passport is no longer valid.<sup>362</sup>

All seemed well until another INS official, Byron H. Uhl, New York District Director, informed him on October 25 that his application to remain in the US had been denied. Uhl instructed him to leave by November 5: just eleven days after he wrote his letter. Thomas urgently wrote both AFSC and Uhl seeking to make sense of this. Uhl promptly reaffirmed his expulsion, even though he had nowhere to go, and possessed no papers that any other country would accept.<sup>363</sup> The AFSC intervened frantically, discovering that

there had been two files on Thomas Doeppner in the Washington office and that the confusion has arisen from this fact. [Mr. Salisbury] will take care of the situation and advises that Mr. Doeppner take no action until a decision is reached in Washington. We asked what action Mr. Uhl might take in the meantime and Mr. Salisbury assured us that Mr. Uhl could take no action except as instructed by Washington.<sup>364</sup>

Months passed with no further correspondence from either INS or the State Department. Meanwhile, after two years at McPherson, Thomas was ready to transfer to a true engineering program. He also wanted a more secure standing inside the U.S.: one that might permit him to sponsor his mother. But that required changing status from “visitor” or “student” to legal permanent resident.

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<sup>362</sup> “Questions Regarding Student Visas: Thomas Doeppner; Conference with Department of Justice, 9-21-40,” Sarah Snow, We’re Not in Kansas Anymore, November 20, 2015, <http://www.tomandmarjorie.com/2015/11/september-27-october-5-25-1940-youre.html>.

<sup>363</sup> Uhl’s actions raise questions about how consistently the ban on deportations to Nazi-occupied Europe was being enforced at this time.

<sup>364</sup> “November 1, 1940: A Tale of Two Files,” Sarah Snow, We’re Not in Kansas Anymore, November 30, 2015, <http://www.tomandmarjorie.com/2015/11/november-1-1940-tale-of-two-files.html>.



Under normal circumstances, the best solution would likely have been preexamination. But in early 1941, the British Commonwealth was at war with Germany, and Canada had shut its borders to German nationals — even those who wished to enter only briefly, to visit a U.S. consulate. In March 1941 AFSC’s Elizabeth Walton told him,

at the present moment, as you probably know, it is necessary to leave the country and re-enter. The only place open to those of German birth is Cuba, and of course you would not want to consider taking this step until at least the summer. If you are considering changing status it would be well for you to start securing the necessary affidavits and papers for the regular immigration requirements. In order to go to Cuba, a deposit of \$500, which is later refunded again, is needed and at least \$200 in cash for traveling and living expenses.<sup>365</sup>

Doeppner responded that he couldn’t afford all that. As it stood, he was struggling to accumulate the higher tuition required for out-of-state enrollees at Kansas State University’s undergraduate engineering program. Moreover, unlike preexamination, a trip to Cuba offered no guarantee of readmission. While the U.S. consul in Havana, Coert Du Bois, was known to be “extraordinarily sympathetic to the plight of Jewish refugees,” if for some reason Du Bois rejected Thomas’s visa application — or his State Department superiors instructed him to become tougher — Thomas could have been stranded in Cuba.<sup>366</sup>

By then, however, his visa had expired: he was in America illegally. Worse, he was working to earn his fall tuition in further violation of the law. AFSC warned that this placed him at grave risk of internment or deportation. Meanwhile, he had received two

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<sup>365</sup> “March 22 & 28, 1941: I’m Not Going to Cuba!” Sarah Snow, *We’re Not in Kansas Anymore*, September 28, 2016, <http://www.tomandmarjorie.com/2016/09/march-22-28-1941-im-not-going-to-cuba.html>.

<sup>366</sup> Yang, *One Mighty and Irresistible Tide*, 81–84.

letters from the German consul in St. Louis, reminding him that he still owed military service to the Nazi state. As chairman of McPherson College's International Relations Club, he well knew that war between the U.S. and Germany was becoming increasingly likely.<sup>367</sup>

He caught a break at the end of May: AFSC's Annelise Thieman informed McPherson College's outgoing president that Canadian preexamination has just been reinstated for German nationals. (Chapter 2 discusses these changes — notably, increasingly rigorous requirements for affidavits and sponsors.)

While the preparations for the change of status in Canada are rather involved and require considerable time, it is not very expensive and does not require bonds or deposits...

He should apply for a "pre-examination" of his immigration papers, at the same time informing Mr. Salisbury to which American Consul in Canada he wants to go. Mr. Salisbury will answer within about four weeks, or perhaps later, sending him the questionnaire containing some fifty questions which Thomas would have to answer carefully...

After that Mr. Salisbury will send him a letter in which he grants (or does not grant) the "pre-examination" of his immigration papers. This letter must be kept carefully, and photostatted in at least three copies. As you see, easily two months will pass before these matters are straightened out. Meanwhile Thomas should try to find a person who is willing to give him an affidavit of support, and who is willing to vouch for his political integrity.<sup>368</sup>

With a better option than Cuba now available for himself, Thomas requested preexamination through the U.S. consulate in Winnipeg. He began to fill out forms and seek affidavits.<sup>369</sup> As required, he registered for the draft. However, he also wrote a

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<sup>367</sup> "June 3, 1941: I'm Mad at Annelise," Sarah Snow, *We're Not in Kansas Anymore*, October 25, 2016, <http://www.tomandmarjorie.com/2016/10/june-3-1941-im-mad-at-annelise.html>.

<sup>368</sup> Ibid.

<sup>369</sup> Cuba momentarily seemed to become an option for his mother. However, when Thomas asked AFSC about this in October, they quickly discouraged him. Arranging a tourist visa to Cuba had become prohibitively expensive. Not only that, "we feel that there is serious reason to fear that Cuba soon may

lengthy letter to AFSC, asking (among other questions), “When getting your first papers or any later papers, do you have to swear to defend the United States by entering the army, or are there provisions made for conscientious objectors? For to swear this is one thing which I could not possibly do.”<sup>370</sup>

In responding, AFSC — itself a pacifist organization led (though not entirely staffed) by Quakers — struggled to balance faith, principle, their client’s interest, and the state of the law:

As to the question about your “first papers” I think we will take that up with you at such a time as you are applying for them, and not now. It certainly would be unwise to take the stand of a “conscientious objector” under the circumstances in which you find yourself at the present time.

Thomas insisted that his stance was firm:

I received my questionnaire from the Draft Board and filled it out as a conscientious objector. I have not sent off the questionnaire yet, but I am not going to change this part in it. Do you think there is any possibility for me to ever get the final or even the first papers, when I take such a stand? The affidavit blanks you sent me ask from the affiant to guarantee my support for his lifetime, or until I shall become an American citizen. If there is practically no change for me to become a citizen, I do not think that I have the right to ask anybody for an affidavit.<sup>371</sup>

Meanwhile, with equal certainty about his principles, he also wrote to the German consulate:

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discontinue honoring these visae and therefore no refugee organizations in the country have felt that they could take the responsibility of giving a helping hand to assist with securing Cuban visae directly. Persons who buy these visae should be aware of the fact that they are taking a chance and that they may or may not be successful in getting the refugees actually into Cuba,” “June 7 & 9, 1941: Identiteitsbewijs,” Sarah Snow, We’re Not in Kansas Anymore, October 26, 2016, <http://www.tomandmarjorie.com/2016/10/june-7-9-1941-identiteitsbewijs.html>.

<sup>370</sup> “June 28, 1941: Do-Over Immigration,” Sarah Snow, We’re Not in Kansas Anymore, February 9, 2017, <http://www.tomandmarjorie.com/2017/02/june-28-1941-do-over-immigration.html>.

<sup>371</sup> Soon afterwards, he wrote that the woman who had offered him an affidavit changed her mind when she learned he would refuse American military service.

One of the main reasons for my decision to leave Germany illegally in 1938 was that I would under no circumstances ever fight under the flag of the Nazis... I really don't care whether you list me in your files as a deserter or otherwise... [I] look forward to becoming a citizen of the United States.<sup>372</sup>

In September 1941, still awaiting full resolution of his immigration status, Thomas enrolled at Kansas State University. Within weeks, he began helping to organize a pacifist Fellowship of Reconciliation club there — an action that took significant courage for a German alien of uncertain status, at a time when many Americans perceived pacifism as just an excuse to appease a dangerous foreign enemy.

Then, on December 7<sup>th</sup>, the Japanese attacked Pearl Harbor. All German nationals were redefined as “enemy aliens,” and faced new requirements to register in the U.S. All emigration from Germany ceased, and the lengthy letters Thomas was receiving from his mother were replaced by sporadic 25-word missives forwarded through the Red Cross. As an “enemy alien,” Thomas needed permission to travel. He had to tell his American roommate they could not possess a shortwave radio that might be capable of contacting Nazi spies. Unknown to him, the Nazis had by now begun deporting the first of his relatives in Germany to death camps.<sup>373</sup>

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<sup>372</sup> “June 13, 1941: Short and Snarky,” Sarah Snow, *We’re Not in Kansas Anymore*, October 27, 2016, <http://www.tomandmarjorie.com/2016/10/june-13-1941-short-and-snarky.html>.

<sup>373</sup> The letters from his mother would stop in early 1944 when she was arrested and deported to the Theresienstadt concentration camp. At some point that year, a letter arrived from his aunt, telling him that she had been taken by the Nazis. Thomas’s mother clearly never left his mind; during her ordeal, he wrote his fiancé that he was struggling to write a short story about her life. Ella Doeppner did survive the war. Theresienstadt was liberated by the Soviets on May 9, 1945, and she was sent to a displaced persons’ camp in Deggendorf, Germany. There, she reunited with Thomas Doeppner, then stationed in France with the U.S. Army. She managed to see both her children and meet her first grandchild before dying from cancer in 1947. “Burke family relative saved from the Holocaust by Albert Einstein?” *Fairfax County Times*, May 25, 2018, accessed January 10, 2021, [http://www.fairfaxtimes.com/articles/burke-family-relative-saved-from-the-holocaust-by-albert-einstein/article\\_f751ac0a-6033-11e8-93b2-03add0b51782.html](http://www.fairfaxtimes.com/articles/burke-family-relative-saved-from-the-holocaust-by-albert-einstein/article_f751ac0a-6033-11e8-93b2-03add0b51782.html).

He did receive one piece of good news from the U.S. government in June 1942. While his preexamination case had not progressed, he was granted a student visa that also let him work towards his tuition.<sup>374</sup> The U.S. government willingly renewed it as long as he stayed in school, and kept informing them of his whereabouts and activities. Since permanent status could no longer help his mother emigrate, he shelved that project. He understood that he could receive a student visa *or* pursue preexamination, but not both.<sup>375</sup>

He had other things on his mind. He was earning honor roll grades, and editing and writing for the university's engineering magazine. Now 21 years old, he also convinced the editor of the local *Mercury and Chronicle* newspaper that he was fully qualified to write a weekly column interpreting the progress of the war, and the geopolitical issues surrounding it. For several months, he did so — offering assessments of events ranging from Allied strategic bombing strategy to the D-Day invasion that were usually insightful and invariably sounded authoritative.

Most important, Thomas had met the woman he intended to marry, the 19-year-old Kansas “farm girl” and fellow KSU student Marjorie Sloan. (Thinking in advance, he quickly wrote to the INS asking what impact their marriage would have on her citizenship status, that of their future children, and of his own. INS informed him that it would change nothing about his own citizenship status. INS did not mention that

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<sup>374</sup> “June 7, 1942: Student Visa Finally!” Sarah Snow, We’re Not in Kansas Anymore, April 20, 2017, <http://www.tomandmarjorie.com/2017/04/june-7-1942-student-visa-finally.html>.

<sup>375</sup> As he told his future wife, “Since I am here as a student and not as an immigrant, I am still considered an “alien-enemy”; there is a law against naturalizing such animals during wartime. I am not much worried about that citizenship deal at the present time, though; for although I shall do my best to get this matter settled as soon as this war is over, I do not suffer under the present status at all; I get along all right, and any suspicious move taken now is liable to aggravate my chances for after the war. Also, the immigration laws are very probably going to be changed after the war, so I would not even know what steps to take.”

marriage to a U.S. citizen might conceivably qualify him as a non-quota immigrant, who would not have to worry about a quota number.)<sup>376</sup>

By Spring 1944, Thomas and Marjorie were engaged. He was graduating — and his May 21st graduation meant that his student visa would expire on June 30. Again, he risked being in America illegally, and he still had nowhere to go if the government expelled him. He needed to quickly resurrect his preexamination application, and convince the authorities to offer a temporary visitor's visa while he awaited their preexamination decision. By now, he knew there was “one easier way of getting the first papers [towards citizenship] in a very short period of time” — almost certainly, a reference to volunteering for the U.S. military.<sup>377</sup> But he took no steps in that direction.

Meanwhile, as his fiancé worked towards a Master's Degree in preschool education — now at the University of Kansas in Lawrence — Thomas needed a paying job. While he still may have viewed himself as a pacifist, many of his best opportunities as an engineer were in the defense industries. He pursued these, but, as with all “enemy aliens” — pacifist or otherwise — he required special permission from the War Department to be hired. Instead, he ultimately found civilian work at the National Geophysical Co. in St. John, Kansas, and moved there.

That is where one traumatic event — likely a misunderstanding — changed his life forever. On the night of July 31, 1944, he was arrested on a charge of “window peeking” (a.k.a., being a “peeping tom”). The next morning, he was fined (and apparently

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<sup>376</sup> “September 18, 1943: Green Card Marriage,” Sarah Snow, We're Not in Kansas Anymore, October 17, 2017, <http://www.tomandmarjorie.com/2017/10/september-18-1943-green-card-marriage.html>.

<sup>377</sup> “September 10, 1943: Completely Reliable,” Sarah Snow, We're Not in Kansas Anymore, October 15, 2017, <http://www.tomandmarjorie.com/2017/10/september-10-1943-completely-reliable.html>.

paid) \$25.00. There had been no evidence that Thomas Doeppner had ever done anything wrong in five previous years in the United States. He seems to have had no problems following McPherson College's rigorous behavior strictures; he seems to have had no subsequent legal trouble. But he now had what he understood as a serious black mark on his record.<sup>378</sup> He still had the presence of mind to immediately request and receive a statement of good conduct from the police chief of McPherson, Kansas, where he had lived peaceably and honorably for years. Such statements were necessary to get a visa, and clearly none would be forthcoming from St. John. He briefly hoped the matter would blow over. But on August 24<sup>th</sup>, he had a frightening visit from an FBI agent:

I told the story, just as I told it in court, but he too didn't believe it... The F.B.I. man was rather unpleasant compared with those officials from the F.B.I. who come around for routine investigations. He said he didn't like my 'attitude,' thought he had caught me in lies, etc. I was terribly nervous, but I don't think I said anything that wasn't so. Probably, the thing will be all over town by now.<sup>379</sup>

The next day, the worst happened: he was fired. Now bereft, he thought he would lose his fiancé, his career, and perhaps his hope of citizenship and a life in America. As he wrote to Marjorie Sloan, in the first letter where he ever sounded defeated by the world, "Any application for citizenship will now in all probability have to wait until the war is nothing but a memory; and who knows? By that time they may have sent me back to Germany."<sup>380</sup>

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<sup>378</sup> As discussed in Chapter 2, some aliens with minor criminal records were granted leniency by the INS or the Board of Immigration Appeals. But Thomas Doeppner would have had no way to know that, and nothing about the experience he was having with American immigration authorities and the FBI would lead him to think pursuing forgiveness for a criminal offense was likely to work.

<sup>379</sup> Thomas W. Doeppner to Marjorie Sloan, August 24, 1944, unpublished letter, provided by Sarah Snow.

<sup>380</sup> Thomas W. Doeppner to Marjorie Sloan, August 26, 1944, unpublished letter, provided by Sarah Snow.

But, by now, she had apparently determined that she would cast her fate with him, come what may. And there was one last resort for this long-time pacifist and conscientious objector: he could voluntarily enlist. However, there were rumors that as the Allies progressed towards victory in Europe, fewer soldiers might be needed. So the couple made a decision, and when he received his letter inviting him for a physical examination, he “just about shouted for joy.” On September 16, Tom and Margie married. On September 22, he passed his physical, and was inducted.

He still hadn’t quite let his past behind. As he wrote his new wife, “The officers were especially nice to me, and I gathered many undeserved laurels for having taken this step voluntarily. If they only knew that I am not quite off that fence....”<sup>381</sup>

Two days later, he attended church, and heard “a very poor sermon” from a chaplain who offered a “very insulting, un-called for accusation to conscientious objectors.”<sup>382</sup> But he also passed all his aptitude tests with flying colors, including a special technical and math exam. That led to a preliminary classification as a “radio research man, Signal Corps.” While no promises had been made, the early signs were that the Army was somewhere Thomas Doeppner could indeed become all he wanted to be.

And soon enough it appears that — as so often before — once Thomas Doeppner arrived at a decision, he was all in.<sup>383</sup> He spent 29 years in the U.S. Army, rising to the

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<sup>381</sup> Thomas W. Doeppner to Marjorie Sloan Doeppner, September 22, 1944, unpublished letter, provided by Sarah Snow.

<sup>382</sup> Thomas W. Doeppner to Marjorie Sloan Doeppner, September 26, 1944, unpublished letter, provided by Sarah Snow.

<sup>383</sup> According to Sarah Snow, Thomas Doeppner’s memoirs make no mention of ever being a conscientious objector, and during the Vietnam War, he apparently had difficult disagreements with a niece who opposed American involvement in that conflict. As she writes, “He either didn’t remember [being a C.O.] or forcibly forgot it. Here’s where I start guessing about things I don’t know anything about. I wonder if Opa felt guilt or shame about his ideals as a young man. Guilt because perhaps he thought his stand was a



rank of colonel. By 1969, as director of the Electromagnetics Directorate, Office of the Assistant Chief of Staff for Communications Electronics, Department of the Army, Washington, he was leading technical delegations to the same White Sands missile range where many of the Operation Paperclip scientists had once been sent.<sup>384</sup>

By all accounts, he and Marjorie also built the wonderful family life they had dreamt about. His life was shaped by war and weaponry, but it seems fair to end this account with Sarah Snow's observation about it: "That's what saved Opa: love."<sup>385</sup>

### 3.6. Manya Hartmayer Breuer: Six Years of Escapes, Then a New Life

Manya Hartmayer Breuer was born in Berlin, Germany on September 4, 1922 to parents of Polish descent.<sup>386</sup> Named Manya Begleiter at birth, she was reassigned a grandfather's name: the Nazi regime refused to accept birth documents created by Jewish authorities. Raised in Berlin, she was one of thousands of Jewish children whose life

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road-block for his mother coming to the United States. Shame because after 30 years in the military, I can imagine C.O.'s are a thing of severe ridicule. I wonder if Opa stood so solidly by the US in the wars (in Vietnam and Korea) because to show any questioning meant to question his service, his decision to join... Maybe remembering his Quaker ideals meant remembering a painful part of his past, his home country that was ripped apart and could not be saved by his ideals." "August 10, 15, 20, 1941: People Change," Sarah Snow, We're Not in Kansas Anymore, March 7, 2017, <http://www.tomandmarjorie.com/2017/03/august-10-15-20-1941-people-change.html>.

<sup>384</sup> "Briefings Given at White Sands," *El Paso Herald Post*, October 28, 1969.

<sup>385</sup> "The Quakers," Sarah Snow, We're Not in Kansas Anymore, December 8, 2012, <http://www.tomandmarjorie.com/2012/12/the-quakers.html>.

<sup>386</sup> Except as cited, the following narrative is based primarily on extensive video oral history interviews with Manya Hartmayer Breuer. These include: Manya Hartmayer Breuer, interviewed by Nancy Carpenter, Interview 6059, August 28, 1985, Visual History Archive, USC Shoah Foundation, 1999, accessed December 20, 2020, <https://collections.ushmm.org/search/catalog/vha6059> (hereafter cited as USC Shoah Archive); Manya Breuer, Ruth Gruber, Jack Bass, and Amanda Bass, joint interview by Oswego County Oral History Program Fort Ontario Refugee Project – Tape 1 of 2 #270, August 2003; and Manya Breuer, interviewed by Safe Haven, Inc., August 6, 1994, accessed Dec. 20, 2020, <https://collections.ushmm.org/search/catalog/irn512739>.

changed forever when Hitler came to power. Virtually overnight, friends would no longer associate with her, and she found herself repeatedly called a “dirty Jew.” Conditions worsened through the early 1930s, and her grandfather was beaten by Hitler Youth in 1936. As she recalls,

My parents talked about America... My father wrote to his relative in New York, his Uncle David, who had changed his name to David Hartman, and asked for an affidavit [that Hartman would be responsible for supporting the family if it entered the U.S.]. We got our affidavit in 1938, but we were not issued a visa then because the quota was filled, the consulate told us. So my father was constantly, after that, trying to get papers for America.<sup>387</sup>

At one point, her father arranged to smuggle the family to Katowice, Poland while he stayed in Berlin attempting to get U.S. emigration papers. After “things calmed down a little bit,” the entire family returned to Berlin. Then, in November 1938, Kristallnacht happened, and normal life suddenly ended:

[My father] had a friend, a customer, who was an officer in the police department, and he... said, Hermann, don't sleep at home tonight. They're going to pick you up in the morning. So my dad went... to one of the cafes and warned everyone that the males are going to be [arrested]. *Hide yourself!* And there was a big round table, and people playing cards, and I remember my uncle turning around and saying, ‘Hermann, did you pay your taxes? Do you have your papers in order? What's the matter with you? Why should they take us?’ And they kept on playing. Nobody left.

My father was discouraged. He walked home, and he slept in the house. He said he didn't want to leave the family anyway. In the morning, at 6 o'clock, the Gestapo came to the door. My little brother opened it up, and there was the SS. I ran in the kitchen, ‘momma, it's the police,’ and she took all the feather bedding and put it over my father's body.

By then, the Gestapo is inside, demanding, ‘where's your husband?’ She said, ‘well, we had a fight and he left.’ The Gestapo man called her a liar and hit her. She said, *come see for yourself*, and he looked under the bed while my father was

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<sup>387</sup> Manya Hartmayer Breuer, Interview 6059, Segment #15, USC Shoah Archive.

on top, and finally told her, *if he comes home, immediately bring him to the police*. That's how my father... was the only one who survived.<sup>388</sup>

So began a terrifying six-year journey. Her family escaped to Antwerp, Belgium, which was soon bombed by the Nazi Luftwaffe, so they joined throngs of refugees escaping by rail across France towards the Pyrenees. Captured by Vichy authorities in 1940, her family was held at the Clairfonds internment camp alongside prisoners from the losing side of the Spanish Civil War — the first of several camps she would survive. Transported to the larger Agde camp, she and her mother were separated from her father and brothers, barely escaping a fire that burned their barracks. They found temporary freedom when her mother forged a pass allowing the entire family to visit a doctor in town; and moved high into the mountains when Vichy authorities arrived where they were hiding. Subsequently recaptured, they were transported to yet another camp:

There were women giving away their children to strangers to save them. We knew, already, what was happening, the French told us 'the Germans are killing you Jews like rabbits.' My father was taken out by a truck one day. They said they needed him for work. It was a terrible scene, women begging not to be separated from their husbands... We found out later he jumped off the truck and saved himself and turned up later in the South of France. And my two brothers escaped and were taken to a farm in another part of France, and I was alone with my Momma....<sup>389</sup>

After transfer to yet another "dark, cold, damp, smelly" camp,

people started crying. I had made a friend from Vienna, and she said, *Manya, why don't you sing?* So we started singing a happy American song we had heard on the radio, and it changed the whole atmosphere, my friend started to dance, and I've never stopped singing since then...

I got to be known as a singer in the camp. Sometimes a church group paid by the Rothschilds came to try to take children out. One day a woman came in with

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<sup>388</sup> Manya Hartmayer Breuer, Interview 6059, Segment #15, USC Shoah Archive.

<sup>389</sup> Manya Hartmayer Breuer, Interview 6059, Segment #56, USC Shoah Archive.

papers to get several children out, but they were already a lot of children gone, so she asked, *where's the girl that sings?*<sup>390</sup>

So Manya found herself temporarily protected at an orphanage in Cantal — carrying a Polish passport her mother had given her, in hopes it might help her get to America. Then a coded message arrived from her father, telling her Nazis were coming: she needed to travel immediately by overnight rail to Nice. After a solo trip without papers, involving multiple close-call escapes, she reunited with her father and brothers. They found temporary safety under Italian supervision. Then, Mussolini was murdered, the Nazis occupied the area directly, and Hartmayer's family joined a throng of refugees seeking escape on foot over the Alps. By 1944, she had found refuge in a convent in Rome. But when she needed an emergency tonsillectomy, authorities discovered her true identity. The nuns had to smuggle her away from danger one more time.

Then the liberation came, on June 5, 1944. It was one morning, very early, totally dark outside, and in the most beautiful Italian I ever heard, the words, Marianna, the Americans have arrived... I saw vehicles with big stars on them; I thought, they look like Mogen Dovid's [Jewish six-pointed stars].<sup>391</sup>

That day, a photo of her kissing an American G.I. who helped liberate her convent appeared in newsreels and movies throughout the U.S. — just one of many times that something about Hartmayer drew outsized attention.<sup>392</sup> Soon thereafter,

I went to the synagogue, near the [Roman] Colosseum, and Jewish organizations took my name and my address at the convent, and contacted me right away. *Do you want to go to America?* I said, *What do you mean? I've waited years for an*

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<sup>390</sup> Manya Hartmayer Breuer, Interview 6059, Segment #64-66, USC Shoah Archive.

<sup>391</sup> Manya Hartmayer Breuer, Interview 6059, Segment #95, USC Shoah Archive.

<sup>392</sup> Soon after she finally arrived at Fort Ontario, legendary photographer Alfred Eisenstaedt — himself an escapee from the Nazis — shot a photo of her being issued a bar of soap in line with hundreds of other migrants. That photo appeared in *Life* Magazine, and Breuer recalls getting fan mail from all over the country.

*affidavit, I have no papers.* But do you want to go? Yes! OK, I'll put you on the list...

So we boarded an Army truck to Naples. We had to cross close to the battlefield. It was still steaming from mines... and we were shipped out on the Henry Gibbons... Even out in the Mediterranean we were attacked by U-boats and Messerschmidts, the war was right in our lap, and I was praying in German that I would see America before I die. And the woman who was sent by President Roosevelt [Ruth Gruber] heard me pray, and she wrote all this down, and you can see my words in her book, *Haven*, that came out 45 years later.<sup>393</sup>

The Henry Gibbons carried nearly 1,000 refugees, all of whom had agreed to return to Europe at war's end. Manya Hartmayer was traveling with a man she had fallen in love with, Ernst Breuer. They asked the ship's captain to marry them, but he said a warship captain could not do so. When they finally disembarked a Delaware, Lackawanna & Western railcar and entered the safer (but still barb-wired) camp of Fort Ontario on August 5, their first priority was to get married.<sup>394</sup> But, as Gruber recalled,

The legal obstacles to their getting married mounted in my brain, a pyramid of nightmares — all because they had entered America outside the immigration laws. Even now, letters were going back and forth between government agencies, trying to define the group's legal status. The War Department wanted to register them as aliens under the Alien Registration Law. Then they would have both a legal and a political [status]. The Department of Justice refused. 'They cannot be registered as aliens, because they are not aliens.' POWs were aliens. Enemy civilians allowed in from Latin America were aliens. But the 982 refugees, "guests of President Roosevelt," were in limbo: stateless, paperless, homeless. It was as if this camp on the banks of Lake Ontario were on another planet...<sup>395</sup>

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<sup>393</sup> Manya Hartmayer Breuer, Interview 6059, Segment #101-102, USC Shoah Archive.

<sup>394</sup> Jessica Wambach Brown, "A Safe Harbor for Refugees at New York's Fort Ontario," HistoryNet, June 2020, accessed December 15, 2020, <https://www.historynet.com/a-safe-harbor-for-refugees-at-new-yorks-fort-ontario.htm>.

<sup>395</sup> Ruth Gruber, *Haven : The Unknown Story of 1,000 World War II Refugees* (New York: Coward-McCann, 1983), 147.

Gruber was able to manage the paperwork, arrange a brief accompanied pass to City Hall for the couple to get a marriage license, and have her mother bring a wedding dress and veil. On August 17<sup>th</sup>, two weeks after she and Ernst had entered the United States, she was a bride. And once again, Manya Hartmayer Breuer found herself newsworthy enough to see her photograph printed in the newspaper (Figure 7).



Figure 7. The Wedding of Manya Hartmayer and Ernst Breuer.<sup>396</sup>

*At Fort Ontario's Baseball Field.*

As discussed in Chapter 2, the Fort Ontario refugees' status would remain unsettled for nearly 18 months. When Breuer gave birth to her first daughter, Diane, in the camp's military hospital, her daughter's citizenship status immediately became controversial, too. As Ruth Gruber recalled in an oral history interview,

I think [Fort Ontario was] the only place in the world where children born on part of American soil were not yet considered American citizens. You could have a baby in a freighter in the South China Sea and it was an American. But if you had

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<sup>396</sup> Leni Sonnenfeld (photographer), Jewish Wedding Ceremony of Jewish Refugees at Camp Oswego, USA 1943, The Oster Visual Documentation Center, Museum of the Jewish People at Beit Hatfutsot, Sonnenfeld Collection, ID# 204054, accessed April 4, 2021, [https://dbs.anumuseum.org.il/skn/en/c6/e204054/Photos/Jewish\\_Wedding\\_Ceremony\\_of\\_Jewish\\_Refugees\\_at\\_Camp](https://dbs.anumuseum.org.il/skn/en/c6/e204054/Photos/Jewish_Wedding_Ceremony_of_Jewish_Refugees_at_Camp), as cited in Jessica Wambach Brown, "A Safe Harbor for Refugees at New York's Fort Ontario."

a baby as Manya Breuer did... the lawyers in Washington couldn't decide whether that baby was an American citizen.<sup>397</sup>

All this was finally resolved with the decision to grant Canadian preexamination to all the camp's refugees who still wanted it. The Breuers traveled to Niagara Falls, Canada on February 2, 1946, receiving their visas and legal permanent residency.<sup>398</sup>

The family subsequently moved to southern California, and raised three children, though Manya and Ernst ultimately divorced. Both of her parents survived the Holocaust and migrated to Israel. She did not see her mother in person for seventeen years, until a surprise reunion arranged by the *It Could Be You* TV show.

After settling in California, Manya built a successful career as an art dealer, judged one of Beverly Hills' leading art shows, and worked on the 1984 Los Angeles Olympics. She was one of 30 camp residents who returned for a 40-year reunion in 1986. At age 79, she was a docent at The Jewish Federation's Los Angeles Museum of the Holocaust. When a movie was released based on Ruth Gruber's book *Haven*, she saw herself played by actress Tamara Gorski.<sup>399</sup>

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<sup>397</sup> Ruth Gruber, Oswego County Oral History Program, Fort Ontario Refugee Project – Tape 1 of 2 #270, transcribed August 2003, accessed December 20, 2020, <https://www.oswego.edu/library/oral-histories-emergency-refugee-shelter-fort-ontario-safe-haven>.

<sup>398</sup> "Manifest card, Marianne Breuer," February 2, 1946, accessed at AncestryLibrary.com, November 20, 2020.

<sup>399</sup> "Holocaust Refugees Tell of Imprisonment in U.S.," Associated Press, *Longview News-Journal*, March 22, 1986. 7-D; Naomi Pfefferman, "The Real Manya," *Jewish Journal*, February 8, 2001, accessed January 20, 2021, <https://jewishjournal.com/culture/arts/3858/>.

### 3.7. Kurt Debus: Peenemünde to Cape Canaveral, via Ciudad Juárez<sup>400</sup>

Born in Frankfurt-am-Main Germany on November 29, 1908 to upper-middle-class parents, Kurt Debus's childhood encompassed the economic collapse following World War I, as Germany experienced military defeat and the reparations demanded by its adversaries in the Versailles treaties.<sup>401</sup> A capable student, Debus contemplated entering medicine but instead attended Darmstadt Technical University for electrical engineering. There, he focused on "theoretical electro-techniques, measuring techniques, high-tension techniques, and construction of electromechanical machines, networks, installation techniques, and technical theory of heat." Between semesters, he gained extensive practical experience in machine shops and foundry operations as an employee of the Frankfurt companies Halderwerken A.G. and Voight & Haeffner A.G.

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<sup>400</sup> This case study is drawn primarily from secondary sources, in part due to the current inaccessibility of primary sources at the National Archives and elsewhere due to the COVID-19 pandemic. Accordingly, I have needed to navigate the complex historiography surrounding Operation Paperclip (discussed in Chapter 2), the arrival and patriation of former Nazi scientists into the U.S. and into its military-industrial complex and civilian space program from the 1940s through the 1960s. As Brian E. Crim writes, the importation of former Nazi scientists was controversial within the government from the outset; subsequently, histories of these events have been shaped pivotally by investigative journalists such as Tom Bower, Linda Hunt, and Annie Jacobsen, perhaps at least as much as by professional historians. Crim argues that much literature on Paperclip is "reductive and oversimplified. One can express continued moral outrage over the government's brazen duplicity and deception by providing a haven for the most unsavory characters, or conversely, venerate and chronicle German science's exceptional contribution to America's Cold War victories and storied space program. Neither approach is particularly enlightening." Brian E. Crim, *Our Germans : Project Paperclip and the National Security State* (Baltimore: Johns Hopkins University Press, 2017, 5. Later accounts by those involved were often self-serving and occasionally false. I don't agree that raising serious moral questions about these events is unenlightening, but I have sought a balanced treatment of Debus and the context in which he lived and acted.

<sup>401</sup> This account of Debus's early life is drawn from Carey M. McCleskey and D. Christensen, *Dr. Kurt H. Debus: Launching a Vision* (IAA-01-IAA-2.1.08), accessed October 15, 2020, [https://www.nasa.gov/centers/kennedy/pdf/112024main\\_debus.pdf](https://www.nasa.gov/centers/kennedy/pdf/112024main_debus.pdf). McCleskey and Christensen presented this celebratory account of Debus's career at the International Academy of Astronautics' 35<sup>th</sup> History of Astronautics Symposium. McCleskey served as Technical Manager of the Systems Engineering Office in the Spaceport Engineering & Technology Directorate at NASA's John F. Kennedy Space Center in Florida; hence, his professional interests were primary technical and scientific.



After graduating in 1934, shortly after Hitler took power, Debus continued to assist university engineering professor Dr. Ernst Hueter in more advanced work. He ultimately earned a doctorate in engineering in 1939, writing his thesis on surge voltages, and serving as assistant professor. During this era, Darmstadt Technical University worked closely with the German Army. Debus's research applied to its plans for a long-range guided missile, though he later claimed he had been unaware of this at the time.<sup>402</sup>

Debus's combination of theoretical and technical experience prepared him well for the rocketry career he soon pursued. Conceivably, his college experience as a fencer — and the facial scars it left — may have also made him a more credible figure in the military circles he would later frequent.

McCleskey writes that in 1939 Debus met Wernher von Braun, Technical Director at Heeresversuchsanstalt Peenemünde, Nazi Germany's premiere rocket R&D lab. Debus also discovered the role he and his university had been playing in the development of what would become the V-2 rocket. According to McCleskey's account and earlier interviews with Debus, at that stage of the conflict, Debus refused to join von Braun's military team. But "with growing emphasis by the Reich on rocket research, he was finally given the choice in 1943 of serving at Peenemünde as a civilian or elsewhere as a soldier."<sup>403</sup>

He chose Peenemünde. There, he joined a colleague, Dr. Hans Gruene, to improve the V-2's electrical, guidance, and control systems, and help transform a prototype into a "into a dependable, production quality, field-deployable weapon system"

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<sup>402</sup> McCleskey and Christensen, *Dr. Kurt H. Debus: Launching a Vision*, 3–4.

<sup>403</sup> *Ibid.*, 4.

that could be rapidly launched against civilian targets in England. Debus took responsibility for missile test stands, playing a key role in ensuring that the missiles worked as intended. So it was that on September 8, 1944, the first of more than 1,300 V-2s crashed into London, killing three and injuring 22.<sup>404</sup>

As the Peenemünde scientists worked, the war turned against Germany. By early 1945, Debus recalled later,

The Russians were advancing on one front and the Allies along another. Hitler was still saying we'd win the war — but we knew this was foolishness. It was simply a matter of choosing whether to live under Communist rule or in a free society. We chose the latter because many of us knew first hand what it was like to live in Russia.<sup>405</sup>

Nazi scientists' later defense — that they had reluctantly chosen to serve the regime due to their horror at Communism and Stalinism — would resonate more comfortably as the U.S. refocused its post-war fears on the same adversary. But, for now, the scientists were in danger and needed to act. Von Braun, now in charge of Peenemünde, directed Debus to lead his mobile launching team westward towards Cuxhaven. There, they would be likelier to fall into American or British hands, rather than those of the Soviet Red Army. Amidst the chaos of the war's final days, Debus and his colleagues then moved south towards Bavaria, where they were indeed detained by the Americans in May.<sup>406</sup>

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<sup>404</sup> Ibid., 4; and Richard Hollingham, "V2: The Nazi rocket that launched the space age," BBC Future, September 7, 2014, accessed March 21, 2021, <https://www.bbc.com/future/article/20140905-the-nazis-space-age-rocket>.

<sup>405</sup> McCleskey and Christensen, *Dr. Kurt H. Debus: Launching a Vision*, 5.

<sup>406</sup> Ibid., 5.

Together, the Americans, British, and Canadians prioritized understanding the German rocket technology. To do so, they supervised the Nazi scientists in duplicating the Nazis' launch infrastructure, and in actually preparing and launching a V-2 rocket. Debus played a key role in coordinating these efforts. He acted as "technical and diplomatic liaison" between two groups of German scientists, and between the Germans and the Allies. Late in the year, his family was reunited with him, in American custody near Munich. The next step was to bring them and many of their colleagues to America. At first, Debus and his colleagues were hired as short-term contractors to begin recreating much of their Peenemünde rocketry work in Fort Bliss, Texas, and at the White Sands Proving Range north of there. Debus arrived at Fort Bliss on December 6, 1945 (Figure 8).<sup>407</sup>



Figure 8. Kurt Debus, Wernher von Braun, and Other Former Nazi Scientists, c. 1946<sup>408</sup>

*At the Fort Bliss, TX swimming pool. Debus and von Braun are the first two seated men to the right of the men in white hats.*

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<sup>407</sup> Ibid, 6–7; also: "Transplanted Rocket Pioneers," Charles A. Lundquist, Digital Collections, University of Alabama in Huntsville, 29, accessed March 24, 2012, <http://libarchstor2.uah.edu/digitalcollections/scripto/transcribe/56/398#?#transcription&c=0&m=0&s=0&c v=0>.

<sup>408</sup> McCleskey and Christensen, *Dr. Kurt H. Debus: Launching a Vision*, 7.

After Germany's conquest, occupying armies had set up a system of "denazification," to understand who had been guilty of war crimes, and who could be allowed back into roles of authority. But Debus and the other Peenemünde rocket scientists had not undergone this vetting. Many had been spirited off to America without visas.<sup>409</sup> What was now to be done with them — and with others the U.S. military might wish to follow?

After fierce debate within the government, consensus was reached. For other aliens, the law typically required a consular inspection outside the U.S., prior to issuance of a visa and admittance to the U.S. But the scientists and technicians the U.S. wished to recruit would follow a different procedure. They could come to the U.S. first — many were already there — and undergo INS preexamination within the U.S. Rather than performing its own investigations, the State Department would "accept as final, the investigation and security reports prepared by [the Joint Intelligence Objectives Agency (JIOA)] for insuring final clearance of individuals concerned."<sup>410</sup> In other words, the military and intelligence communities would control the information INS and the State Department received about these individuals. Accusations that some were "ardent Nazis" would be softened. Blanket rules against importing individuals who had won Nazi awards or served in the Nazi S.S. would be eliminated.

Hundreds of Debus's colleagues were promptly preexamined and sent to adjacent consulates. Some were sent to Canada, like most other preexaminees. But most

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<sup>409</sup> Annie Jacobsen, *Operation Paperclip : The Secret Intelligence Program That Brought Nazi Scientists to America* (New York: Little, Brown and Company, 2014), 279.

<sup>410</sup> Ibid., 280.

“Paperclippers” went to a U.S. consulate in Ciudad Juárez, Mexico, near Fort Bliss, and just over the border from El Paso, TX. As discussed on p. 98, von Braun himself was preexamined and then granted his visa in Ciudad Juárez on November 2, 1949.

But Debus was not. The Office of Military Government, United States (OMGUS), the temporary military government established to administer U.S.-occupied areas of Germany, had raised concerns about him. OMGUS’s report called him an “ardent Nazi.”<sup>411</sup> Debus had apparently claimed he had merely applied to join the S.S., when he had actually been a member since 1939, and was known to wear its forbidding black uniform at work. According to Linda Hunt’s *Secret Agenda*, after Debus had been taken into Allied custody, he also “violated security by sending messages to his girlfriend in Germany in code so that his wife would not find out.” Worse, OMGUS claimed Debus had once gone out of his way to inform on a colleague, Richard Craemer, for his private anti-Nazi comments; Craemer was ultimately sentenced to two years in prison.<sup>412</sup>

Debus’s actions regarding Craemer are still debated. Debus claimed that he actually defended his colleague and encouraged the court to suspend Craemer’s sentence. However, Hunt writes that Craemer “was convicted as a direct result of Debus’s derogatory testimony. Furthermore, his prison sentence was suspended as a result of intervention by his employer, not Debus.” In *Our Germans*, Brian Crim says a JIOA reinvestigation of Debus partially exonerated him. “The JIOA learned from another Paperclipper involved in the Craemer trial that Debus’s denunciation and testimony were

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<sup>411</sup> Ibid., 280.

<sup>412</sup> Crim, *Our Germans*. 75; Linda Hunt, *Secret Agenda : The United States Government, Nazi Scientists, and Project Paperclip, 1945 to 1990*, 1st ed. (New York: St. Martin’s Press, 1991), Chapter 3, Peenemünde on the Rio Grande; Crim, *Our Germans*. 75.

coerced, and that Craemer actually apologized to Debus for assuming it was deliberate.” Even so, Crim adds, the JIOA’s exculpatory efforts could not eliminate the phrase “ardent Nazi” from his record. While he had now been granted a new five-year contract to help lead America’s Redstone military rocket project in Huntsville, Alabama, he could not yet move towards citizenship.<sup>413</sup>

This finally changed in December 1952, when the McCarran-Walter Act took effect. As discussed in Chapter 2, McCarran-Walter softened the earlier ban on Nazis, proscribing only individuals who advocated “the establishment in the United States of a totalitarian dictatorship or totalitarianism.” Neither Debus nor virtually any of the Germans serving America’s military-industrial complex could be accused of doing this. So, even though INS had temporarily eliminated preexamination within the U.S. for most aliens, it would now be authorized for Debus and for another individual with a troubling Nazi past, Herbert Axster. As Monique Laney wrote,

the assistant commissioner of the Inspections and Examinations Division of [INS] explained that their “past membership in organizations which were affiliated with the Nazi party” no longer constituted grounds for inadmissibility. As the central considerations for this decision he offered “that the subjects are engaged in scientific projects deemed essential to the public security” and that they “appear to be otherwise admissible.”<sup>414</sup>

Debus carried his preexamination approvals across the border to Ciudad Juárez, re-entering El Paso via streetcar with a legal permanent resident’s visa on February 24,

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<sup>413</sup> Hunt, *Secret Agenda*, Chapter 3; Crim, *Our Germans*. 75; McCleskey and Christensen, *Dr. Kurt H. Debus: Launching a Vision*, 9.

<sup>414</sup> *In Re: Kurt Heinrich Debus and Herbert Felix Axster, From: Assistant Commissioner, Inspections and Examinations Division*, February 12, 1953, Foreign Scientist Case Files, 1945–1958, file AXSTER, RG 330, box 5, National Archives, College Park, Md., as cited in: Monique Laney, “Setting the Stage to Bring in the ‘Highly Skilled’,” *A Nation of Immigrants Reconsidered*, 1.

1954 — just as von Braun had done, more than four years earlier.<sup>415</sup> He filed his Declaration of Intention to become a U.S. citizen one month later.

Meanwhile, like his rockets, Debus's career in the U.S. was taking off. Joining von Braun at the new Ordnance Guided Missile Center in Huntsville, he was given leadership of its Experimental Missiles Firing Branch. Drawing on his Peenemünde experience, he implemented advanced processes for analyzing rocket failures and improving reliability. Shortly after the Soviet launch of Sputnik in 1957, he led the launch of the first U.S. rocket to reach space. After NASA's founding, he was placed in charge of converting Redstone's launch complexes in Florida for a new Mercury program of manned spaceflight. Then, again under von Braun's leadership, he ran the new Launch Operations organization, responsible for launching the enormous Saturn V rocket that would take Americans to the moon. He finally became the first director of the Kennedy Space Center at Cape Canaveral, Florida.<sup>416</sup>

In 1974, Debus retired to a beachfront home within sight of NASA's Florida launchpads.<sup>417</sup> By then widely viewed as an American hero, he signed off from the program on November 19, 1974 with the observation: "I don't fear overpopulation or that the Earth will poison itself with pollution. The Earth will find ways to become that

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<sup>415</sup> "Kurt H. Debus, Declaration of Intention, March 23, 1954," accessed through AncestryLibrary.com.

<sup>416</sup> "Dr. Kurt H. Debus, Former Director, 1962–1974," Kennedy Space Center Biographies, John F. Kennedy Space Center, NASA, last modified January 17, 2012, accessed March 24, 2021, <https://www.nasa.gov/centers/kennedy/about/biographies/debus.html>.

<sup>417</sup> William J. Broad, "Dr. Kurt Heinrich Debus is Dead; Helped Develop Modern Rocketry," *New York Times*, October 11, 1983.

beautiful island that our astronauts saw when they viewed it from the moon... and I can say, 'I told you so.'"<sup>418</sup>

Debus died on October 10, 1983. In 1984, his close colleague in Germany and at NASA, Arthur Rudolph, was driven out of the United States. The Justice Department had charged him with “working thousands of slave laborers to death” at the factory that took over V-2 production after Peenemünde was bombed. (Von Braun had repeatedly visited that factory. Observers are entitled to speculate about what he may have told his close colleague and confidante Debus about it.) In 1985, Linda Hunt’s expose, *US Coverup of Nazi Scientists*, called new attention to Operation Paperclip and the former Nazis it protected. Subsequent books (Tom Bowers’ *Paperclip Conspiracy* in 1987, Hunt’s *Secret Agenda* in 1991, and Annie Jacobsen’s *Operation Paperclip* in 2014) have returned to the controversies surrounding Debus’s actions in Germany. Lunar craters and aerospace awards are still named after him, but 40 years after his death, his memory is as contested as ever.<sup>419</sup>

### 3.8. Thomas O. Robitscher: A Reputation, and the Right to Defend It <sup>420</sup>

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<sup>418</sup> R. Thornburg, “Launch Team, Von Braun Praise Retiring KSC Chief,” *Evening Times* (Melbourne, Florida), November 20, 1974. As cited in McCleskey, 20.

<sup>419</sup> McCleskey and Christensen, *Dr. Kurt H. Debus: Launching a Vision*, 20; “Wernher von Braun and the Nazis,” Michael J. Neufeld, “Chasing the Moon,” The American Experience/PBS, May 20, 2019, accessed March 24, 2021, <https://www.pbs.org/wgbh/americanexperience/features/chasing-moon-wernher-von-braun-and-nazis/>; Linda Hunt, “U.S. Coverup of Nazi Scientists,” *Bulletin of the Atomic Scientists* xli September 15, 1985, 16-2, doi:10.1080/00963402.1985.11455944; “Debus (crater),” Wikipedia, last modified February 19, 2021, accessed March 24, 2021, [https://en.wikipedia.org/wiki/Debus\\_\(crater\)](https://en.wikipedia.org/wiki/Debus_(crater)); and “Dr. Kurt H. Debus Award,” National Space Club Florida Committee, accessed March 24, 2021, <https://www.nscfl.org/debus-award/>.

<sup>420</sup> Most of this case study draws from the Robitscher Family Collection 1910-1970, Leo Baeck Archives, and Center for Jewish History, New York, accessed July 25, 2020 via Internet Archive, <https://archive.org/stream/robitscherfamily02robi> (hereafter cited as the Robitscher Collection). Additional information is from the Common Council for American Unity (CCAU), including a detailed memorandum



Thomas Otto Robitscher was born in Karlsbad (Karlovy Vary), in Czechoslovakia's Sudetenland region, on April 8, 1924; he lived there until March 1939. Then, five months after Neville Chamberlain handed the Sudetenland to Hitler in exchange for "peace in our time," Thomas and his mother Magdalena Robitscher née Hahn — a dentist, and a Jew — fled to La Paz, Bolivia. There, he stayed throughout World War II, still a Czech citizen hoping to someday return home.<sup>421</sup>

In 1947, at age 23, Robitscher received a student visa for undergraduate pre-medical study at Syracuse University, where he gradually mastered English as he studied.<sup>422</sup> He remained in the U.S. into the 1950s, earning entry into Boston University's medical school in 1950. There, his grades placed him among the top ten students in his class.<sup>423</sup> While he studied in the U.S., Communists took control of Czechoslovakia; since he would not return there, the new regime refused to renew his passport (Figure 9).<sup>424</sup>

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describing the case and several pages of Edith Lowenstein's *The Alien and Immigration Law*, describing the same case without naming Robitscher. The case study also reflects official Congressional documents associated with Robitscher's failed private bills, and other documents retrieved through AncestryLibrary.com.

<sup>421</sup> Thomas O. Robitscher to Sen. Leverett Saltonstall, January 30, 1953, in U.S. House of Representatives, 83rd Congress, 2nd Session, *Relief of Thomas O. Robitscher*, Report No. 1160, February 4, 1954, (Washington, DC: GPO, 1954), 3, accessed March 24, 2021, [https://www.google.com/books/edition/United\\_States\\_Congressional\\_Serial\\_Set/kwo7AQAAMAAJ?hl=en&gbpv=0](https://www.google.com/books/edition/United_States_Congressional_Serial_Set/kwo7AQAAMAAJ?hl=en&gbpv=0).

<sup>422</sup> Thomas O. Robitscher, from Ayerst Laboratories newsletter, circa 1957, Robitscher Collection.

<sup>423</sup> James M. Faulkner, M. D., Dean., Boston University School of Medicine, in U.S. House of Representatives, 83rd Congress, 2nd Session, in U.S. House of Representatives, *Relief of Thomas O. Robitscher*, Report No. 1160, February 4, 1954, 3.

<sup>424</sup> Thomas O. Robitscher to Sen. Leverett Saltonstall, in U.S. House of Representatives, *Relief of Thomas O. Robitscher*, Report No. 1160, February 4, 1954, 3.

Robitscher's mother returned to Czechoslovakia to practice dental medicine, but Thomas denied that he shared her political sympathies.<sup>425</sup>

As Robitscher pursued medical education and an internship in pediatrics, medicine, and surgery at Roosevelt Hospital in New York City, he decided he wanted to remain in the United States. He sought to change his status to legal permanent resident, to seek citizenship. Many states then required citizenship to qualify for the medical exam and license; others at least required the submission of first papers towards citizenship. If Robitscher couldn't meet these requirements, he wouldn't be able to practice medicine.



Figure 9. Thomas O. Robitscher.

*From his Czechoslovakian passport, c. 1947.*<sup>426</sup>

Accordingly, in September 1948, Robitscher applied to normalize his status through the new Displaced Persons Act. His hearing wasn't scheduled until March 1950, and it took another ten months for the U.S. government to deny him relief. The Act had been intended for people who could not return home due to persecution, but U.S.

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<sup>425</sup> U.S. House of Representatives, *Relief of Thomas O. Robitscher*, Report No. 1160, February 4, 1954, 3.

<sup>426</sup> Tomas Robitscher, Cestovní Pas (Passport) 221043, Republika Československá, Robitscher Family Archive, Leo Baeck Archive, 111.

authorities claimed Robitscher was under no threat of persecution in Bolivia. As immigrant advocate Edith Lowenstein later wrote, “The fact that he could not return to Bolivia because he had no travel documents had no bearing on his eligibility under the [Displaced Persons] Act.”<sup>427</sup>

Robitscher stayed in school in the U.S., even though the government had refused to extend his student visa. By staying, he lost legal status. Since he had only arrived in 1947, he didn't meet the seven-year residency requirement required for suspension of deportation. Nor could he earn preexamination, because the Czech non-preference quota was consistently full: he couldn't assure the INS that a visa would be waiting for him.<sup>428</sup>

Then, at the end of 1952, the McCarran-Walter Act went into effect. As discussed in Chapter 2, this essentially eliminated preexamination. Moreover, since he had no longer maintained legal status continuously through his stay in the U.S., he was ineligible for the limited Section 244/245 relief it offered. So, in 1953, INS served him with a deportation warrant. Even though INS acknowledged his good moral character, its Special Inquiry Officer concluded that he wouldn't leave voluntarily, and ordered him deported by September 1953.<sup>429</sup>

By now, Robitscher was pursuing the last-resort option attempted by thousands of aliens during the McCarran-Walter era: a private bill. This temporarily stayed his deportation. In many respects, he seemed an ideal candidate. He was represented by a capable official of the Division of Immigration and Americanization of the

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<sup>427</sup> E. Lowenstein, *The Alien and the Immigration Law*, 142.

<sup>428</sup> Ibid.

<sup>429</sup> In re: Thomas Otto Robitscher, July 24, 1953, Decision by Special Inquiry Officer J. W. Kinnevan, US Department of Justice, INS, Boston, MA, File No. #-89240 (Boston), Robitscher Collection.

Commonwealth of Massachusetts.<sup>430</sup> Congress received glowing letters of recommendation from Robitscher's medical school dean. The President of Boston University wrote,

He is recognized by our faculty as one of the ablest students in the medical school and is giving evidence of extraordinary ability as a research scholar. In the important field of cancer research, it is conceivable that he may make an outstanding contribution to human welfare.<sup>431</sup>

A bill was at first approved by the House Judiciary Committee, and attracted the support of prominent U.S. Senator Leverett Saltonstall (R-MA), who introduced it in both 1953 and 1954. But his testimony at his Displaced Persons hearing was raising questions about his political reliability. The INS Special Inquiry Officer who denied his 1953 application for voluntary departure in lieu of deportation had written:

...the respondent was a member of the Union Eslava from 1946 to 1947, while residing in Bolivia, and... served as [its secretary] for about one year. He testified that the purpose of the Union Eslava was to further the "Pan-Slavic idea" and to encourage a closer union between the Soviet Russia and the Slavic nations of Eastern and Central Europe. He continued by stating that he favored the closer union between Soviet Russia and Slavic countries on a non-political basis but he radically changed his opinion after the Communist coup in Czechoslovakia during February, 1948.

...he also belonged to a group of Jewish persons from Germany and Austria who met to study Marxism and Leninism. It is his testimony that the only purpose of the group meetings was to keep informed of the current developments of the war. He further testified that he was never a member of the Communist Party... he might have believed in some ideas which are also advocated by the Communists

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<sup>430</sup> Henry Nicolls, INS, Boston, MA to Thomas O. Robitscher, September 23, 1953; Correspondence by Alice W. O'Connor to various legislators and influencers, 1953–1954, Robitscher Collection.

<sup>431</sup> U.S. House of Representatives, *Relief of Thomas O. Robitscher*, Report No. 1160, February 4, 1954, 3.

but he has not to his knowledge specifically believed in Communism, and that he does believe in the democratic form of government.<sup>432</sup>

At some point in 1953 or 1954, according to Lowenstein,

certain ‘derogatory information’ was communicated to the [House] Committee which caused it to recommit the bill... The sponsoring Senator [Saltonstall] stated that he had advised the Commissioner of Immigration and Naturalization of his interest in seeing that the alien had an opportunity to refute the derogatory information about him.<sup>433</sup>

Robitscher also begged Congress for the opportunity to clear his name, telling the Judiciary Committee that he was becoming ever more American:

I have made friends here; English is more and more becoming the language in which I best express myself; the social, cultural and educational conditions prevailing are in harmony with my own abilities and inclinations. It is my hope that I should be permitted to contribute in a useful way to a society which has given me these splendid opportunities... [and that] after having been a refugee for fifteen of thirty years of life, I will finally be permitted to settle and to dedicate myself to useful work...

Congress did not give him the opportunity to refute his accusers, and his private bill died.<sup>434</sup> A letter from J. M. Swing, the new Commissioner of Immigration, told him that Presidential Executive Order 10290 prevented him from seeing confidential reports about himself. Robitscher’s hundreds of pages of personal immigration files include lengthy memos he wrote to himself about his situation, trying to understand where he stood, and to deduce the source of the accusations. Continuing failures to resolve his status wore on him, and he began to contemplate abandoning his medical career.<sup>435</sup>

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<sup>432</sup> In re: Thomas Otto Robitscher, July 24, 1953, Decision by Special Inquiry Officer J. W. Kinnevan, Robitscher Collection.

<sup>433</sup> E. Lowenstein, *The Alien and the Immigration Law*, 143.

<sup>434</sup> Ibid.

<sup>435</sup> For example, Thomas O. Robitscher, memo to self, June 18, 1954; and Thomas O. Robitscher to Alice W. O’Connor, July 14, 1955, Robitscher Collection.

Fortunately, his Commonwealth of Massachusetts advisor had connected him with one of the nation's most aggressive advocates for aliens: the aforementioned CCAU attorney Edith Lowenstein of CCAU, then the editor of *Interpreter Releases*, the era's leading journal for immigration practitioners.

As discussed in Chapter 2, Congress — overrun with private bills — had informally agreed with the INS to resurrect Canadian preexamination in early 1955. After the government turned him down for yet another form of relief — adjustment of status under the Refugee Relief Act of 1953 — officials encouraged him to apply for preexamination with CCAU's assistance. He would no longer have to wait for a quota slot with thousands of other non-preference Czech natives: his new medical degree, combined with a shortage of doctors in America, might qualify him for a first preference quota slot.<sup>436</sup>

Given all that had happened by then, Lowenstein and CCAU asked the Immigration Service if they knew of any secret information that would keep him from qualifying for preexamination. INS reassured them that no such information appeared in their files.<sup>437</sup> But when the application was filed on August 24, 1955, it took INS only two weeks to reject it:

Examination of the immigration files relating to the respondent reflect clearly that, upon the basis of confidential information, the disclosure of which would be prejudicial to the public interest, the respondent is ineligible for the privilege of voluntary departure and will not qualify for the prompt issuance of a visa by reason of the applicability — whether in the alternative or the aggregate — of

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<sup>436</sup> In the Matter of Thomas O. Robitscher: Motion to Reopen, Edith Lowenstein, File No. A6 772 293, Robitscher Collection.

<sup>437</sup> E. Lowenstein, *The Alien and the Immigration Law*, 144.

Sections 212(a) (27), 212(a)28 or 212(a) (29) of the Immigration and Nationality Act.<sup>438</sup>

In December 1955, INS rejected an unusual in-person appeal by Lowenstein on Robitscher's behalf. But by now, CCAU — apparently viewing Robitscher's experience as a Kafkaesque injustice — moved to sue in federal court to prevent the government from using secret information against him.<sup>439</sup> As he tracked his own experience with the U.S. immigration system (Figure 10), prominent Bostonians finally prevailed on the Attorney General to reopen Robitscher's preexamination hearing and let him respond to these secret allegations.<sup>440</sup>

As it turned out, Lowenstein wrote later, there had never been a claim that Robitscher “was either a Communist Party member or even a sympathizer.” Rather, he had merely “showed some youthful indiscretion of association and... an inquiring mind.” “Confronted squarely with the derogatory information,” he quickly cleared up the government's concerns. Suddenly, preexamination was approved. Robitscher traveled to Montréal for his visa in July 1957. Visa in hand, he filed his declaration of intention for citizenship on July 23, 1957, and became a U.S. citizen in 1961. The entire process had taken thirteen years.<sup>441</sup>

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<sup>438</sup> Ibid. These provisions were intended to prevent the entry and naturalization of subversive aliens.

<sup>439</sup> As all this was taking place, another Supreme Court case, *Jay v. Boyd*, 351 U.S. 345 (1956), reaffirmed that an INS hearing officer had a unilateral right to determine whether an alien could hear confidential information being used against him. Likely in part due to the Robitscher case, Immigration Commissioner Swing announced on October 31, 1956 that he would henceforth use this power only in extraordinary cases.

<sup>440</sup> File No. A6 772 293, 304, Robitscher Collection.

<sup>441</sup> E. Lowenstein, *The Alien and the Immigration Law*, 145; United States Lines of Affidavit and Identity, Robitscher Collection.



Figure 10. Robitscher's Tracking of His Experience with U.S. Immigration.<sup>442</sup>

Robitscher's first marriage failed in 1963. He spent the rest of his life in a common-law marriage with Anne Keleman, a holocaust survivor from Vienna whose parents had been murdered by the Nazis in Poland, and was now working with the elderly at a Jewish social welfare agency in New York City.<sup>443</sup>

Once Robitscher had finally cleared his path towards citizenship, Lowenstein believed his story had an important lesson to teach America:

Only a determined and well adjusted person could have withstood the strain of this situation without breaking down. He was lucky to the extent that through the eight years of the controversial immigration procedures, there were always people who took an interest in his case and were willing to help him...

...as it stands now the case illustrates not only the many technical complications of the immigration law and the need of almost superhuman resilience on the part of the alien, but it also indicates that a person without funds is completely dependent on the services of voluntary agencies...<sup>444</sup>

<sup>442</sup> Undated handwritten note by Thomas O. Robitscher, multiple annotations through 1956, Robitscher Collection.

<sup>443</sup> Addenda, Collection Overview, Robitscher Collection, accessed July 25, 2020 at: <https://archives.cjh.org/repositories/5/resources/19335>; and "Survivor Story: Anne Kelemen," Claims Conference on Jewish Material Claims Against Germany, accessed January 5, 2021, <http://www.claimscon.org/regions/north-america/united-states/new-york/survivor-story-anne-kelemen/>.

<sup>444</sup> E. Lowenstein, *The Alien and the Immigration Law*, 146.



Tragically, Thomas O. Robitscher's stores of resilience proved finite. According to the Leo Baeck Institute, "after suffering years of mental illness, Thomas Robitscher ended his own life on January 24, 1974 in Frankfurt am Main. He is buried in the Jewish Cemetery there, along with his mother, who died in 1977."<sup>445</sup>

### 3.9. Lessons from These Case Studies

These diverse cases do suggest lessons. As discussed at the beginning of this chapter, they are often — to paraphrase Chaim Kusnetz — “stories of ‘pull.’” To reach and remain in the U.S., it helped to know somebody, or at least to know somebody else who did. Preexaminees like Manya Hartmayer Breuer (as well as others discussed briefly in Chapters 1 and 2) tell stories of contingencies: close calls, lucky breaks. (Recall Vera Hrubá, who received preexamination because a senior immigration official saw her perform as a skater and realized that she might qualify for one of the many Czech quota slots currently going unfilled.) Sometimes the lucky break involved encountering an unusually sympathetic U.S. consul (or perhaps one who was having a good morning); while preexamination was bedecked with rules and regulations, it was still a matter of human discretion, granted by inconsistent humans.

Preexamination offered the hope of an exception, but hope was never distributed equitably. The more complex the procedure became, the more expert assistance was required to navigate it. This likely exacerbated inequity by limiting preexamination to those with the resources, skills, contacts, and fortitude to navigate it. Meanwhile, as aliens attempted to navigate the system, they continually recalculated their best options to

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<sup>445</sup> Addenda, Collection Overview, Robitscher Collection.

remain in the United States, trying to comprehend a changing and often arbitrary legal regime as best they could. (*Preexamination? Travel to Cuba? Private bill? Join the military?*)

Since preexamination did not ramp up until the late 1930s, the titanic events of the World War II era were rarely far from view. The war's disruptions brought even more uncertainty, randomness, and luck into the process of gaining legal permanent residency, even for some individuals who had originally entered the U.S. decades earlier. For others, such as the Operation Paperclip scientists (and the more prosaic ex-Nazi Party seaman "B—" discussed on p. 122), preexamination also might have helped to erase actions or affiliations best left forgotten.

But historiographic conversations over preexamination and related forms of discretionary relief rarely question the role of contingency, or doubt whether certain individuals gained special treatment. Such conversations also increasingly recognize the aliens' own agency. As for preexamination, though, another question requires more quantitative evidence: *overall, who was helped?* In Chapter 4, I attempt to shed at least partial light on this.

## Chapter 4.

### Who Was Helped, How, and When? A Preliminary Quantitative Analysis

To complement the personal cases and experiences presented in Chapter 3, this final chapter seeks to bring greater quantitative clarity to the history of preexamination. I first assess the official data on preexamination cases between 1935–1959, note apparent gaps, and attempt to develop a more complete picture. Next, I analyze a subset of data on specific cases, drawn from INS border crossing manifest cards, to shed light on questions such as:

- What were the nationalities, ages, and genders of those granted preexamination?
- How long had they been in the United States?
- What can be known about how they arrived, and their legal status prior to preexamination?
- What purposes did preexamination serve? For example, to what extent was it a method of protecting refugees from Nazism, as compared to other purposes?
- How did preexamination and its beneficiaries change over time?

This chapter's provisional answers reflect the limitations of the sources and my sample, as well as the era's complex and changing immigration rules. Deeper research may shift these findings; I hope to offer a credible foundation for that.<sup>446</sup>

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<sup>446</sup> A note on how I approached my research may be helpful. I began by attempting to understand preexamination's history and evolution. As I did so, I identified the St. Albans manifest cards as a potential source for understanding how that history translated into the behavior of specific migrants and immigration agents. (So, for example, knowing that restrictionists had targeted Seventh Proviso cases of criminals being granted preexamination, I could look for these cases.) The extensive news coverage of preexamination at the Detroit/Windsor border, especially during the 1940s, suggested that the separate set of Detroit manifest cards might also be worth investigating.

Concurrently, I began to explore potential case studies, coming to recognize that not all relevant case studies would be explicitly described with the term "preexamination." The diversity of understandings

#### 4.1. Exploring the Official Statistics on Preexamination

Drawing on S. Rept. 1515, and the annual reports of the INS from 1942–1959, Mae Ngai estimated that “between 1935 and 1959 the INS processed nearly 58,000 pre-examination cases and granted approval in the vast majority of them.”<sup>447</sup> This estimate has been cited widely. However, INS’s method of reporting preexamination cases was inconsistent. It seems likely that the actual number of preexamination cases entering the INS system was somewhat higher, even if not all were officially adjudicated.

Like Ngai, I first combined data from S. Rept. 1515 and INS Annual Reports (see Table 2 below). The column at the far right selects the most complete data point available, as a first estimate for how many cases were handled by the immigration system each year, whether completed or not. This total is 76,745.

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of preexamination among migrants, along with evidence that different U.S. consular offices sometimes responded to applicants inconsistently, prepared me to see that immigration agents and offices might also treat (and record) these cases differently. While each office aimed to record information to track individual entries and help prevent unauthorized or illegal entries, this isn’t the same goal as developing consistent records for use either in contemporaneous tracking by the INS Central Office or Congress, or by historians in the distant future. Understanding this was essential for my analysis of manifest cards in this chapter.

As I became more familiar with the manifest cards, historical documentation, and case studies, I began seeing ways each informed my understanding of the others. In some cases, this supported a “macro-level” understanding. For example, when I saw that few preexaminees had originally arrived in the early 1930s, I could connect this with an overall dramatic decline in entries during those years, when more migrants officially left the U.S. than arrived. When I saw that preexaminees were disproportionately male, I could observe that they differed significantly from the entire population of migrants, and attempt to account for the differences (with only partial success).

In other cases, this interplay supported a better understanding of individual cases or groups of cases. For example, only by closely reviewing categories of visas granted upon original entry (see 261) did I understand why Thomas W. Doeppner only received an 8-month visitor’s visa, not the more secure student visa he had expected. By counting the number of Detroit preexaminations in my sample after new Attorney General Tom Clark tightened the rules in 1945–6, I could assess the testimony of immigration officers at Congressman John Lesinski’s 1946 hearings there. Knowing how federal law and regulation were evolving in their treatment of Mexican and Chinese migrants, I could seek to understand the characteristics and implications of specific cases involving individuals with these national origins.

<sup>447</sup> Ngai, *Impossible Subjects*, 300.

Table 2. Official INS Data on Preexamination.<sup>448</sup>

| <b>Year ended June 30</b> | <b>Applications received</b> | <b>Cases completed (resolved?)</b> | <b>Applications approved</b> | <b>Preexamination denied</b> | <b>Authority revoked</b> | <b>Best available “official” # of cases addressed</b> |
|---------------------------|------------------------------|------------------------------------|------------------------------|------------------------------|--------------------------|-------------------------------------------------------|
| 1935                      | Unreported                   | 146                                | Unreported                   | Unreported                   | Unreported               | 146                                                   |
| 1936                      | Unreported                   | 807                                | Unreported                   | Unreported                   | Unreported               | 807                                                   |
| 1937                      | Unreported                   | 1532                               | Unreported                   | Unreported                   | Unreported               | 1532                                                  |
| 1938                      | Unreported                   | 2023                               | Unreported                   | Unreported                   | Unreported               | 2023                                                  |
| 1939                      | Unreported                   | 2388                               | Unreported                   | Unreported                   | Unreported               | 2388                                                  |
| 1940                      | Unreported                   | 2868                               | Unreported                   | Unreported                   | Unreported               | 2868                                                  |
| 1941                      | 8053                         | 3743                               | Unreported                   | Unreported                   | Unreported               | 8053                                                  |
| 1942                      | 4428                         | 3002                               | Unreported                   | Unreported                   | Unreported               | 4428                                                  |
| 1943                      | 4718                         | 4110                               | Unreported                   | Unreported                   | Unreported               | 4718                                                  |
| 1944                      | 3313                         | 4538                               | 4485                         | Unreported                   | Unreported               | 3313                                                  |
| 1945                      | 7176                         | 3471                               | Unreported                   | Unreported                   | Unreported               | 7176                                                  |
| 1946                      | 8015                         | 5151                               | Unreported                   | Unreported                   | Unreported               | 8015                                                  |

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<sup>448</sup> Notes on this table:

1935: All “Cases completed” numbers from 1935–1948 are from S. Rept. 1515. INS did not report the numbers of preexamination (“PX”) cases it approved and rejected until 1947.

1941: In 1941, INS Annual Reports began including the number of PX applications the agency received. Some applications were not resolved in the year they were submitted.

1943: While the 1943 INS Annual Report does not mention PX cases, the 1944 INS Annual Report provides a number for the subsequent year, and says 1944’s number was down 1,405 from 1943.

1944: S. Rept. 1515 and INS Annual Report data seem inconsistent.

1946: From 1946–1952, INS reported PX cases for individuals not currently in deportation proceedings, apparently excluding some Seventh Proviso cases.

1947: It appears that S. Rept. 1515 inadvertently reversed 1947 and 1948 INS data presented in the agency’s annual reports.

1953: These cases would have been filed but not resolved by December 24, 1952. As discussed in Chapter 2, immigrant aid organizations rushed to file as many cases as possible prior to the end of the procedure.

1954: No 1954 cases reported; some lingering pre-McCarran cases continued (see Chapter 2).

1955: The Federal Register officially published new preexamination rules on May 19, 1955, so while no cases are reported for the fiscal year ending 6/30/55, pent-up demand suggests that some new applications may have been filed by then.

1956: Total number of cases shown includes approvals and denials.

| <b>Year ended June 30</b> | <b>Applications received</b> | <b>Cases completed (resolved?)</b> | <b>Applications approved</b> | <b>Preex-amination denied</b> | <b>Authority revoked</b> | <b>Best available “official” # of cases addressed</b> |
|---------------------------|------------------------------|------------------------------------|------------------------------|-------------------------------|--------------------------|-------------------------------------------------------|
| 1947                      | 4324                         | 5920                               | 2585                         | 1367                          | 791                      | 4324                                                  |
| 1948                      | 1473                         | 5471                               | 2111                         | 392                           | 152                      | 1473                                                  |
| 1949                      | 2078                         | Unreported                         | 1754                         | 324                           | 101                      | 2078                                                  |
| 1950                      | 3805                         | Unreported                         | 2356                         | 34                            | 38                       | 3805                                                  |
| 1951                      | 1945                         | Unreported                         | 1201                         | 156                           | 30                       | 1945                                                  |
| 1952                      | 1904                         | Unreported                         | 1855                         | 272                           | 12                       | 1904                                                  |
| 1953                      | 0                            | 2912                               | Unreported                   | Unreported                    | Unreported               | 2912                                                  |
| 1954                      | 0                            | Unreported                         | Unreported                   | Unreported                    | Unreported               | 0                                                     |
| 1955                      | Unreported                   | Unreported                         | Unreported                   | Unreported                    | Unreported               | 0                                                     |
| 1956                      | Unreported                   | Unreported                         | 2366                         | 149                           | Unreported               | 2515                                                  |
| 1957                      | Unreported                   | 3259                               | 3084                         | Unreported                    | Unreported               | 3259                                                  |
| 1958                      | Unreported                   | Unreported                         | 4822                         | Unreported                    | Unreported               | 4822                                                  |
| 1959                      | Unreported                   | Unreported                         | 2241                         | Unreported                    | Unreported               | 2241                                                  |
| <b>Total</b>              |                              |                                    |                              |                               |                          | <b>76745</b>                                          |

One problem with this estimate is that the same case may appear as an application in one year, and appear as resolved in a different year. From 1941 through 1948, there are significant apparent imbalances between new and completed cases. To reduce double-counting in my “best available” column, I have been consistent in my selection of INS estimates of applications throughout these years. So, for example, there were only 1,473 new applications recorded in 1948, while 5,471 cases were resolved as the system apparently caught up on older proceedings. Even so, over these eight years, 41,500 cases are shown as entering the system, and only 35,406 (85.3%) appear as completed. While

some individuals may have died before their cases were adjudicated, and a few may have abandoned their U.S. domiciles, this probably accounts for only a small part of the 14.7% discrepancy. Others may have found another route to legal permanent residency, such as enlisting in the U.S. military (like Thomas Doeppner, see p. 163). Another potential source of double-counting may be individuals who applied, were granted preexamination, failed to travel to Canada for their visas, and then reapplied again later.

While some double counting may remain, the preliminary estimate may also undercount in some respects. For example, from 1935–1940, only “completed” cases are counted. As with 1941–1948, additional applications may have been received but not completed. (Admittedly, World War II’s disruptions may have increased the number of cases left unresolved, so the 1935–1940 discrepancy may be smaller than in 1941–1948.)

INS annual reports show no cases entering the system from July 1, 1953-June 30, 1955. At least some cases likely did. For instance, some BSI appeals granted preexamination belatedly. And, given the pent-up demand for preexamination amongst those for whom no other McCarran-Walter solution was available, some new applications may have been filed quickly after preexamination was restored on May 19, 1955. (As discussed on p. 130, immigrant welfare organizations had months of advance notice that PX would be returning, and managed to delay relevant old cases until they could be refiled as preexaminations as soon as this became possible.) Also, from 1946–1952, the INS statistics exclude preexamination cases where individuals were in deportation proceedings. But some of these aliens were ultimately granted Seventh Proviso relief together with preexamination, and permitted to go to Canada for their visas. According to S. Rept. 1515, from 1946–1948, 23% of Seventh Proviso cases involved

preexamination.<sup>449</sup> If a comparable proportion applied in other years, then (based on INS annual reports from 1946–1952) there might have been another 300 preexamination cases and 266 grants of approval from 1946 through 1952. If Seventh Proviso cases were also excluded from pre-1946 tallies, the number could be higher.

Finally, but potentially most significantly, the official statistics might not include German scientists, technicians, and families granted preexamination at the Mexican border in connection with Operation Paperclip and its successor programs. Brian Crim estimates that Paperclip brought “approximately fifteen hundred German and Austrian scientists, engineers, and technicians, along with thousands of dependents.”<sup>450</sup> (See discussion of Operation Paperclip, p. 96.) Most arrived between 1945 and 1947, though their preexaminations did not begin until April 1948, and large groups of preexaminees were processed in 1950. While the first of these former Third Reich preexaminees received his visa from the American Consul at Niagara Falls, Canada, most were preexamined to receive visas in Mexico.<sup>451</sup>

With this background in mind, Table 3 attempts to fill gaps in the known data with reasonable projections. My estimates are in boldface, and the accompanying footnote explains my reasoning.

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<sup>449</sup> *S. Rept. 1515*, 882.

<sup>450</sup> Further research is required to determine this with certainty. For estimates of Operation Paperclip arrivals, including dependents, see: Crim, *Our Germans*, 3.

<sup>451</sup> Monique Laney, “Setting the Stage to Bring in the ‘Highly Skilled’,” *A Nation of Immigrants Reconsidered*, 152–153.



Table 3. Estimates of Preexamination Cases.<sup>452</sup>

| Year ended 6/30 | Applications received | Cases completed | Applications approved | PXs denied | Authority revoked | Add'l. 7th Proviso Cases | Addl. Op. Pap'clip Cases | Total cases | Total approvals |
|-----------------|-----------------------|-----------------|-----------------------|------------|-------------------|--------------------------|--------------------------|-------------|-----------------|
| 1935            | 161                   | 146             | 131                   | 13         | 1                 | 0                        | 0                        | 161         | 131             |
| 1936            | 888                   | 807             | 726                   | 73         | 8                 | 0                        | 0                        | 888         | 726             |
| 1937            | 1685                  | 1532            | 1379                  | 138        | 15                | 0                        | 0                        | 1685        | 1379            |
| 1938            | 2225                  | 2023            | 1821                  | 182        | 20                | 0                        | 0                        | 2225        | 1821            |
| 1939            | 2627                  | 2388            | 2149                  | 215        | 24                | 0                        | 0                        | 2627        | 2149            |
| 1940            | 3155                  | 2868            | 2581                  | 258        | 29                | 0                        | 0                        | 3155        | 2581            |
| 1941            | 8053                  | 3743            | 2860                  | 614        | 580               | 0                        | 0                        | 8053        | 2860            |

<sup>452</sup> Notes on this table:

1935–1940: During these years, I speculate that 10% more applications were received than cases were completed. I also speculate that 90% of cases were approved, reflecting the sense that invitations to preexamination were sent primarily to individuals the INS was inclined to approve.

1941–1946: With INS moved to DOJ, increased concern about national security, and greater political pressure against discretionary relief, I speculate that the percentages of denials and revocations quickly rose in 1941–1946 to the averages shown in INS records for 1947–1952 (76.4% approvals, 16.4% denials, 7.2% revocations).

1947–1952: Speculative estimates of additional 7th proviso cases are based on INS annual reports stating that such cases were likely excluded from other PX statistics, and Sen. Report 1515 finding that 23% of 7th proviso cases between 1946–1948 involved PX proceedings.

1948–1953: I speculate a ramp-up of Operation Paperclip preexaminees not otherwise counted, beginning in April 1948 and peaking in 1950–1951. Further research is required to confirm that all or many of these individuals have not been counted in the official tallies, and to clarify how many family members were in fact preexamined.

1949–1952 Estimates of “Cases completed” result from adding published data on approvals, denials, and revocations.

1953: I use the same percentages for approvals, denials, and revocations in 1953 as for 1947–1952. My speculative estimate of 2,400 new cases by December 24, 1952 reflects the shorter deadline associated with the end of PX, and the rush to make new applications reported by social welfare organizations such as NCWC, IWL, and CCAU.

1954–1955. These speculative estimates are based on the appearance of small numbers of new cases in BIA appeals, and discussion of new and continuing cases in social welfare organization documents.

1956–1959: Once PX was reinstated, approval percentages seem to have been far higher than in 1947–1952.

1957–1959: With PX standards significantly relaxed, I speculate the same high percentage of approvals as in 1956: 93.5%. I assume 5% denials and 1.5% revocations. I also assume an additional 5% of applications that were never resolved; this relatively low number assumes more clarity about the process, and less need for applicants to take alternate paths such as military enlistment.

| Year ended 6/30 | Applications received | Cases completed | Applications approved | PXs denied  | Authority revoked | Add'l. 7th Proviso Cases | Addl. Op. Pap'clip Cases | Total cases  | Total approvals |
|-----------------|-----------------------|-----------------|-----------------------|-------------|-------------------|--------------------------|--------------------------|--------------|-----------------|
| 1942            | 4428                  | 3002            | 2294                  | 492         | 319               | 0                        | 0                        | 4428         | 2294            |
| 1943            | 4718                  | 4110            | 3140                  | 674         | 340               | 0                        | 0                        | 4718         | 3140            |
| 1944            | 3313                  | 4538            | 4485                  | 744         | 239               | 0                        | 0                        | 3313         | 4485            |
| 1945            | 7176                  | 3471            | 2652                  | 569         | 517               | 0                        | 0                        | 7176         | 2652            |
| 1946            | 8015                  | 5151            | 3935                  | 845         | 577               | 0                        | 0                        | 8015         | 3935            |
| 1947            | 4324                  | 5920            | 2585                  | 1367        | 791               | 62                       | 0                        | 4386         | 2647            |
| 1948            | 1473                  | 5471            | 2111                  | 392         | 152               | 57                       | 400                      | 1930         | 2568            |
| 1949            | 2078                  | 2179            | 1754                  | 324         | 101               | 77                       | 500                      | 2655         | 2331            |
| 1950            | 3805                  | 2428            | 2356                  | 34          | 38                | 40                       | 1000                     | 4845         | 3396            |
| 1951            | 1945                  | 1387            | 1201                  | 156         | 30                | 32                       | 750                      | 2727         | 1983            |
| 1952            | 1904                  | 2139            | 1855                  | 272         | 12                | 33                       | 500                      | 2437         | 2388            |
| 1953            | 2400                  | 2912            | 2225                  | 478         | 173               | 0                        | 250                      | 2650         | 2475            |
| 1954            | 100                   | 250             | 191                   | 41          | 7                 | 0                        | 0                        | 100          | 191             |
| 1955            | 250                   | 150             | 115                   | 25          | 18                | 0                        | 0                        | 250          | 115             |
| 1956            | 2656                  | 2530            | 2366                  | 149         | 15                | 0                        | 0                        | 2656         | 2366            |
| 1957            | 3422                  | 3259            | 3084                  | 163         | 12                | 0                        | 0                        | 3422         | 3084            |
| 1958            | 5347                  | 5092            | 4822                  | 255         | 15                | 0                        | 0                        | 5347         | 4822            |
| 1959            | 2485                  | 2366            | 2241                  | 118         | 7                 | 0                        | 0                        | 2485         | 2241            |
| <b>Total</b>    | <b>78632</b>          | <b>69862</b>    | <b>55058</b>          | <b>8590</b> | <b>4040</b>       | <b>301</b>               | <b>3400</b>              | <b>82333</b> | <b>58759</b>    |

This revised estimate suggests that 82,333 preexamination cases at least entered the system. It also suggests that 58,759 individuals (including 3,400 Operation Paperclip beneficiaries) were granted preexamination within the U.S., and the right to travel over

the border to request a permanent residence visa that would usually be granted.<sup>453</sup> If accurate, these modestly higher estimates would suggest that preexamination had modestly greater impact on overall immigration; and that it was likely considered by more migrants and advocates than previously believed, even if not pursued by all of them.

#### 4.2. Border Crossing Manifest Cards: Drilling Down to Individuals

Manifest cards maintained by INS at Canadian border entry points (typically Form 548 or, later, Form I-448, *Manifest or Report of Inspection*) sought to capture substantial information about individuals who presented themselves for entry. According to the National Archives, these cards generally include:

...the person's name, age, sex, marital status, place of birth, physical description, occupation, citizenship ("nationality"), race, ability to read and write and in what language, place of last permanent residence, port and date of arrival, destination, purpose for entering the U.S., intention of becoming a U.S. citizen or of returning to country of previous residence, head tax status, and previous citizenships... the name and address of the friend or relative whom the alien intended to join, persons accompanying the alien, and the name and address of the alien's nearest relative or friend in the country from which he or she came.

If the alien had ever been in the U.S. in the past, the dates and places of such residence or visitation are indicated. Additional information may be recorded if the alien appealed a decision deporting or barring him or her from entering the U.S.<sup>454</sup>

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<sup>453</sup> As discussed elsewhere, even after the U.S. State Department signed off on preexamination and offered an appointment at a consulate, it reserved the right to deny a visa when its consular representative actually met the individual involved. While this happened only occasionally, I have found no data quantifying these rejections. This information might be found in State Department files at the National Archives.

<sup>454</sup> National Archives, *Manifests of Alien Arrivals at Columbus, New Mexico, 1917–1954*, NARA publication A3370 (Washington, DC: National Archives, 2001), digitized from microfilm, accessed December 29, 2020, <https://www.archives.gov/files/research/microfilm/a3370.pdf>.

The cards state whether an individual could enter, or instead had been “debarred.” In a majority of cases I have reviewed, if a visa was granted, the cards specify its nature. Most INS border officials at the Canadian border also appear to have understood that they were expected to identify preexamination cases involving a visit to a U.S. consulate that handled visas — for instance, in Montréal, Quebec, or Windsor, Ontario.

Many of these manifest cards were first microfilmed and subsequently digitized and made available for review through online sources such as Ancestry.com and FamilySearch.org. They offer a valuable potential source for information about large numbers of preexamination cases involving a trip to a U.S. consulate in Canada. However, using them for analysis presents challenges. The following section describes some of these challenges, how I have addressed them, and remaining limitations.

4.2.1. Database Size. Several million manifest cards exist, and millions of individuals were able to enter the U.S. during the preexamination era (1935–1959), even in spite of limits established by Johnson-Reed, McCarran-Walter, and other restrictionist legislation.<sup>455</sup> I narrowed my review by focusing on two card databases where earlier research suggested that “PX” cases would be especially common:

- *St. Albans, VT.* The St. Albans card database encompass cards from multiple border crossing locations throughout the northeast. Many thousands of individuals were preexamined in New York City at Ellis Island. The vast majority of them proceeded to Montréal for their visas, via border crossings included in the St. Albans files. They most often crossed at Rouses Point, NY and at St. Albans

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<sup>455</sup> Ghandnoosh and Waldinger, “Strangeness at the Gates,” 733.

itself, but some also crossed at Highgate Springs, VT; Vanceboro and Calais, ME; and at other locations throughout the northeast. The St. Albans cards also capture many cases handled in Boston, MA.<sup>456</sup> *This appears to be, by far, my richest source; some 6–12% of the cards I have reviewed appear to be PX cases.*

- *Detroit, MI.* These cards capture thousands of preexaminations which occurred in midwestern cities such as Detroit, MI, Chicago, IL, Cleveland, OH, Milwaukee, WI, St. Louis, MO, and Kansas City, MO. Most of these individuals then traveled across the Detroit River to Windsor, Ontario to apply for visas at the U.S. consulate there. (Recall Chapter 2's discussion of controversies surrounding this consulate in the late 1940s.) *Of the Detroit cards I have reviewed, approximately 2% appear to be PX cases.*

I also reviewed a smaller sample from western New York State, including many border crossings to Niagara Falls, Ontario. In 1,000 cards, I found 16 apparent preexamination cases (1.6%). In addition, I reviewed 1,000 cards from crossings at Blaine, WA (typically associated with the Vancouver, B.C. consulate) including individuals from all over the west coast, and found only 7 preexaminations, or 0.7%. (Three were performed in Los Angeles, CA; one in Oakland, CA, one in Stockton, CA, one in Reno, NV, and one in an indeterminate location.) Since I did not proceed further with these apparently lower-yield file collections, I excluded their smaller samples in my dataset. However, deeper research on these files may yield useful insights. The western New York files may contain enough cases that they would be a natural future option for

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<sup>456</sup> One important exception: the St. Albans cards do not include crossings at Niagara Falls, NY, such as those made by the Fort Ontario refugees discussed in Chapters 2 and 3.

widening this research, and the west coast files could illuminate whether the national origins of preexaminees varied regionally.<sup>457</sup>

The St. Albans cards comprise 98 reels of microfilm (4,140,062 images), alphabetized using the Soundex system, and covering crossings for the entire period from 1924–1952.<sup>458</sup> The Detroit cards comprise 117 reels (851,363 images), alphabetized conventionally, and covering crossings from 1906–1954.<sup>459</sup> Each reel contains thousands of cards, and no easy way to achieve a truly random sample suggested itself. I therefore chose to search the first and last reel in each location.

Since the cards are alphabetized, the resulting sample's cases are almost all of individuals with last names beginning with A, W, X, Y, or Z. Since distributions of

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<sup>457</sup> While I suspect there were also significant numbers of preexaminations at the Mexican border, at least in some early years of preexamination (and not necessarily involving Mexican nationals), my very preliminary review of El Paso cards shows none. These cards are much simpler, often listing multiple names on one card. No suggestion of preexamination appears on cards I reviewed for individuals such as Wernher von Braun who were preexamined via Operation Paperclip, though their sensitive treatment and military roles might have foreclosed such notation.

<sup>458</sup> National Archives, *Soundex Index to Entries into the St. Albans, Vermont, District through Canadian Pacific and Atlantic Ports, 1924–1952*, NARA publication M1463 (Washington, DC: National Archives, 2001), digitized from microfilm, 98 rolls, accessed December 29, 2020 via FamilySearch.org at <https://www.familysearch.org/ark:/61903/3:1:3QS7-9981-WPMN?owc=3KMS-DP8%3A1018494401%3Fcc%3D2185163&cc=2185163&personaUrl=%2Fark%3A%2F61903%2F1%3A1%3AQK3R-DVQM>. The Soundex system assigns a coded surname to each last name based on how it sounds rather than how it is spelled (e.g., surnames like SMITH and SMYTH are filed together). See National Archives, *The Soundex Indexing System*, Washington, DC: National Archives, 2007, accessed March 20, 2021, <https://www.archives.gov/research/census/soundex>. More background on the St. Albans cards may be found at “Vermont, St. Albans Canadian Border Crossings - FamilySearch Historical Records,” FamilySearch, last modified January 4, 2021, accessed March 24, 2021, [https://www.familysearch.org/wiki/en/Vermont,\\_St.\\_Albans\\_Canadian\\_Border\\_Crossings\\_-\\_FamilySearch\\_Historical\\_Records](https://www.familysearch.org/wiki/en/Vermont,_St._Albans_Canadian_Border_Crossings_-_FamilySearch_Historical_Records).

<sup>459</sup> National Archives, *Michigan, Card Manifests (Alphabetical) of Individuals Entering Through the Port of Detroit, 1906–1954*, NARA publication M1478 (Washington, DC: National Archives, 2001), digitized from microfilm, 98 rolls, accessed December 29, 2020 via FamilySearch at <https://www.familysearch.org/search/image/index?owc=https://www.familysearch.org/service/cds/recapi/collections/1916040/waypoints>. More background on the St. Albans cards may be found at “Michigan, Detroit Manifests of Arrivals at the Port of Detroit - FamilySearch Historical Records,” FamilySearch, last modified January 18, 2021, accessed March 24, 2021, [https://www.familysearch.org/wiki/en/Michigan,\\_Detroit\\_Manifests\\_of\\_Arrivals\\_at\\_the\\_Port\\_of\\_Detroit\\_-\\_FamilySearch\\_Historical\\_Records](https://www.familysearch.org/wiki/en/Michigan,_Detroit_Manifests_of_Arrivals_at_the_Port_of_Detroit_-_FamilySearch_Historical_Records).

names may differ by national origin, this is a source of non-randomness. For example, I may have overrepresented individuals of Polish nationality, whose last names often start with Z.

4.2.2. Incomplete Timeframe. Preexamination officially halted on December 24, 1952 when McCarran-Walter took full effect, though as discussed in Chapter 2 and earlier in this chapter, some “legacy” cases were still being processed in 1953 and 1954. Then, in Spring 1955, INS officially agreed to begin processing new PX cases again, and it did so until 1959. However, as mentioned above, St. Albans files only include manifest cards through 1952, and the Detroit card set ends in 1954. This means neither set of files captures preexamination cases performed after the process was resurrected in the mid-1950s. Therefore, my findings underrepresent individuals who sought preexamination late, sometimes after escaping the Soviet bloc.

4.2.3. Inconsistent Data. Officials chose to identify “PX” cases (and other data) in ways that varied across time, between locations, and occasionally even between inspectors at the same location. While some larger offices gradually developed more consistent approaches to recording information, it can be difficult to determine whether an individual was preexamined within the U.S. and falls within the scope of this research. Identifying relevant cases can be especially problematic during the mid-to-late 1930s, when the procedure was new and had not yet been fully formalized (see Chapter 1).

Given the estimates of preexamination cases I presented earlier in this chapter, the vast majority of cards — likely at least 97–98% nationwide — do not involve “Canadian

preexamination.” Therefore, a rubric is needed to rule out large numbers of “non-PX” cases without missing true PX cases. While some cards appear as “borderline” cases, most have been ruled in or out based on the following methodology:

1. *Cards with the following characteristics appear **not** to be cases of “Canadian preexamination”:*

- Crossings before mid-1935 (or after 1959, though these later crossings do not appear in my databases).<sup>460</sup>
- Crossings by Canadian citizens. (Crossings by Mexican citizens after May 1946 should almost never be preexaminations. However, my sample identified two exceptions.)
- Crossings by US citizens, or by aliens who have already become legal permanent residents in another way.
- Crossings where a “preexamination” happened *outside* the U.S., e.g., at a U.S. consulate in Montréal, Quebec; Niagara Falls, Ontario; Windsor, Ontario; or Vancouver, B.C. (All individuals seeking entry to the U.S. needed examination; the conventional process involved getting it *outside* the U.S. What made “Canadian preexamination” different was that individuals could be preexamined *before* leaving the U.S., pre-arranging their re-entry, and the strong probability that they would in fact be issued visas.)
- Crossings where an individual had never previously spent time in the U.S.

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<sup>460</sup> The precise date when preexamination began is unclear. While preexamination statistics begin with 1935, one mysterious 1934 card in my dataset appears to present the characteristics of a preexamination.



(The preexaminees I am concerned with *had already been in the U.S.* They now needed a way to legally establish permanent residence, often because they had lost legal status or never had it in the first place.)

- Crossings where the “Previously examined at:” data field indicates that an individual had been preexamined within the U.S., *but* this was associated with an earlier legal entry. For example, a card might indicate that an individual had been granted a visitor’s visa several years earlier. Or, a seaman’s card might note brief authorization to stay before shipping out again. For the card to reflect a “real” Canadian PX case, it should indicate a *new* examination made shortly before a trip to Canada. (On occasion, the individual may have waited as long as 12 or 18 months to make the trip, but it should be clear that the examination was not associated with an earlier entry. In particular, some trips may have been delayed in 1940–1941 and at other times when Canada halted preexamination border crossings in the interests of its own security.)

2. *Cards with at least one of the following characteristics likely **are** relevant*

*U.S. preexaminations:*

- Describe the preexamination in detail (with its date, U.S. location, and sometimes even the immigration inspector’s name); or more briefly (e.g., “Pre-ex. at Ellis Island”).
- Include the initials “PX” or “PXU.” Some cards will combine “V/D” (“voluntary departure”) with “PX.” However, V/D alone suggests that

preexamination had not been granted. In such cases, the alien was permitted to reapply for a visa once he left the country, but likely did not have the benefit of any preliminary reviews or approvals.

- Indicate a U.S. location within the “Previously examined at:” box, but if so, as discussed above, the date must be clearly associated with a trip to Canada soon afterwards.
- Include a handwritten notation indicating that this is a preexamination case.
- In a small number of early cases (prior to roughly 1940, before preexamination was routinized and widely understood within INS), include entries that say “approved by Department of Labor, approved by Department of State,” with accompanying approval dates.<sup>461</sup>

4.2.4. Incomplete Data. Some manifest cards are incomplete. Others are partly illegible, due to poor original handwriting, deterioration over time, and/or poor microfilming. From 1935–1959, most cards are typed, but some are handwritten entirely or in part. Even where officials diligently attempted to fully complete these cards, some information was unavailable or forgotten. Or certain information might have been elided by aliens worried about answering too completely. Some data, such as the length of a temporary visitor’s visa that had been granted on first arrival, was not recorded universally (see p. 237).

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<sup>461</sup> I know no other reasonable interpretation of these early cases other than preexamination, but one may exist.

Finally, some known preexamination cases were not recorded as such on manifest cards. For instance, contemporary press reports stated that Vera Hrubá had been preexamined in Chicago and received her visa in Vancouver. But her manifest card does not describe a preexamination. (I suspect, but cannot prove, that preexaminations were more likely left unrecorded at border crossings where they were rare.)

A-files held by the National Archives and Records Administration (NARA) on migrants born before 1919 would likely help resolve uncertainties about many individual cases. These are normally viewable by appointment at the National Archives at Kansas City or San Francisco, but these facilities were closed due to COVID-19 during this research.<sup>462</sup>

With these heuristics and limitations in mind, I first briefly summarize the dataset I have developed. Next, using this dataset, I review demographic findings, attempt to quantify the legal status of preexamined aliens prior to their achieving legal permanent residence, and explore the legal categories used to grant it to them. Finally, I briefly discuss what this dataset says about where and how preexamination was administered.

### 4.3. Overview of Dataset

My dataset comprises 674 apparent cases of preexamination within the United States that were followed by a pre-arranged visit to a U.S. consulate in Canada (Table 4). Of these, 435 cases were handled through the “St. Albans” border crossings, as discussed

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<sup>462</sup> “Alien Files (A-Files),” National Archives, last reviewed January 16, 2020, accessed December 27, 2020, <https://www.archives.gov/research/immigration/aliens>.

above. The remaining 239 cases were handled through the border crossing at Detroit, MI.<sup>463</sup>

Table 4. Summary Dataset.

| <b>Location</b> | <b>Roll #</b> | <b>Cards</b>        | <b>Est. # of individuals (Appx.)<sup>464</sup></b> | <b>Preexam-inees</b> | <b>% of cards found to be PX cases</b> |
|-----------------|---------------|---------------------|----------------------------------------------------|----------------------|----------------------------------------|
| St. Albans      | 1             | 7940                | 3772                                               | 246                  | 6.52%                                  |
| St. Albans      | 98            | 1700 <sup>465</sup> | 1615                                               | 189                  | 11.70%                                 |
| Detroit         | 1             | 7147                | 6790                                               | 107                  | 1.58%                                  |
| Detroit         | 117           | 5280                | 5016                                               | 132                  | 2.63%                                  |
| <b>Total</b>    |               | <b>22,000</b>       | <b>17,192</b>                                      | <b>674</b>           | <b>3.92%<sup>466</sup></b>             |

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<sup>463</sup> A compressed ZIP file containing an Excel spreadsheet with all 674 cases, together with Word documents containing screen captures of all corresponding manifest cards (including a small number that I considered and ultimately ruled out as likely preexaminations) is available by request at <https://drive.google.com/file/d/1Agt0uaeFTfoqWIRQPjNVtmc97oR99Qck/view?usp=sharing>.

<sup>464</sup> Some microfilm rolls present both the front and back of a manifest card on the same image. Others present them separately, so two images are required for each individual, and a roll contains roughly half as many individuals. A small number of cards contain headings, microfilm information, and other “metadata,” not individual records. I estimate that 5% of the cards I reviewed contain no individual records.

<sup>465</sup> As this table shows, the density of preexamination cases in St. Albans Roll #98 was extremely high. It was so high that I became concerned it would skew my sample, especially given the number of Poles and other eastern Europeans found with last names starting with “Z.” Accordingly, I decided to stop reviewing Roll #98 cards at #1700 rather than continuing to the end of the roll, #3005.

<sup>466</sup> Nationally, far fewer than 3.92% of Canadian border crossing manifest cards should contain “Canadian preexamination” cases. I expect this will be the case, because preexamination was especially common in the locations I chose. Other locations, especially further west, are likely to have encountered preexaminees far less often.

#### 4.4. Preexaminees by Gender, Gender Role, and Age

As shown in Table 5, 69.1% of the individuals in my sample of preexaminees were male. The percentage rises a bit higher still when children under 18 are excluded. This means preexaminees were unusual, because among *all* migrants to the U.S., women outnumbered men every year from 1930–1959. Throughout the entire decade of the 1930s, 55.3% of all migrants to the US were women; through the 1940s, 61.2%, and through the 1950s, 53.7%.<sup>467</sup>

Table 5. Gender.

|        |     |       |
|--------|-----|-------|
| Male   | 466 | 69.1% |
| Female | 208 | 30.9% |

It is true that overall male migration to America had outnumbered female migration prior to 1930, and 39.9% of “future preexaminees” in my sample did enter before that date. However, even among those who first entered the US in 1930 or later, 60.5% were male. The percentage of women did continue to grow, but even after 1935, they only represented 41.2% of new entrants in my sample (see Table 6).

As will be discussed on p. 243, one key reason for the higher proportion of males among preexaminees was the disproportionate presence of (male-only) seamen among preexaminees. However, even after factoring them out, this sample’s population is

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<sup>467</sup> Marion F. Houstoun, Roger G. Kramer, and Joan Mackin Barrett, “Female Predominance in Immigration to the United States Since 1930: A First Look,” *The International Migration Review* 18, no. 4 (2018): 908–63, doi:10.1177/019791838401800403.

unusually male for its era. Many may have been traveling long distances for work opportunities — though, as will be seen, the earliest entrants were actually *less* likely to be single. I found this surprising and don’t have a convincing hypothesis to explain it.

Table 6. Gender, Before and After 1935.

|        | <b>First entry<br/>1900–1935</b> | <b>Percentage</b> | <b>First entry<br/>after 1935</b> | <b>Percentage</b> |
|--------|----------------------------------|-------------------|-----------------------------------|-------------------|
| Male   | 263                              | 79.9%             | 203                               | 58.8%             |
| Female | 66                               | 20.1%             | 142                               | 41.2%             |
| Total  | 329                              |                   | 345                               |                   |

Among women preexaminees, 86 reported their occupation as “housewife”; among these, 60 (69.8%) arrived after 1935.<sup>468</sup> The proportion of children under 18 also rose among preexaminees who first entered the U.S. after 1935 (Table 7). The proportion of individuals over 50 years old rose even more steeply. Though individuals of prime working age, disproportionately male, still predominated, the family structures of those entering and subsequently preexamined did gradually become more diverse.

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<sup>468</sup> One woman who arrived in 1930 described herself as a “Housewife and Laborer.”

Table 7. Age.

|              | <b>Entire sample</b> | <b>% entire sample</b> | <b>First entry 1900–1935</b> | <b>%</b> | <b>First entry after 1935</b> | <b>%</b> |
|--------------|----------------------|------------------------|------------------------------|----------|-------------------------------|----------|
| Under 18     | 83                   | 12.3%                  | 32                           | 9.7%     | 51                            | 14.8%    |
| 18–49        | 554                  | 82.2%                  | 296                          | 90.0%    | 258                           | 74.8%    |
| Over 50      | 37                   | 5.5%                   | 1                            | 0.3%     | 36                            | 10.4%    |
| <b>Total</b> | 674                  |                        | 329                          |          | 345                           |          |

#### 4.5. Marital Status and Family Unification

Early advocates of preexamination, such as Immigration Commissioner Daniel W. MacCormack, argued strenuously that its primary goal was family reunification. In contrast, restrictionists sometimes implied that liberalized policies such as preexamination might actually separate families: these policies encouraged men to come and leave their families behind. Restrictionists argued that no individual should be permitted entry if his entire nuclear family couldn't all qualify for visas and arrive together. While the border crossing cards don't fully resolve that old debate, they do indicate marital status, and usually say where a spouse was at the time of preexamination (Table 8). My dataset suggests that, in general, preexamination did help keep families together.

Only 7% of the preexaminees in this sample reported that their wives or husbands were out of the country; most were married, and most of those intended to return to a domicile they shared with their spouse. However, it is unclear how many individuals married their spouses in the US before legalizing their status, as opposed to reuniting with partners they had married before emigrating, and did temporarily leave behind. (As

mentioned earlier, those who arrived after 1935 were somewhat less likely to be married to a spouse currently living within the U.S.).

Table 8. Marital Status.

| <b>Marital Status</b>              | <b>Entire sample</b> | <b>% entire sample</b> | <b>First entry 1900–1935</b> | <b>%</b> | <b>First entry after 1935</b> | <b>%</b> |
|------------------------------------|----------------------|------------------------|------------------------------|----------|-------------------------------|----------|
| Married, spouse in US              | 364                  | 54.0%                  | 198                          | 60.2%    | 166                           | 48.1%    |
| Married, spouse outside US         | 48                   | 7.1%                   | 24                           | 7.3%     | 24                            | 7.0%     |
| Married, spouse's location unclear | 30                   | 4.5%                   | 11                           | 3.3%     | 19                            | 5.5%     |
| Single                             | 187                  | 27.7%                  | 72                           | 21.9%    | 115                           | 33.3%    |
| Divorced                           | 16                   | 2.4%                   | 8                            | 2.4%     | 8                             | 2.3%     |
| Widowed                            | 26                   | 3.9%                   | 14                           | 4.3%     | 12                            | 3.5%     |
| Status Unclear                     | 3                    | 0.4%                   | 2                            | 0.6%     | 1                             | 0.3%     |

#### 4.6. Diverse Occupations, Primarily Manual

Whatever work they had done in their countries of origin, the preexaminees spread across a wide array of industries and roles by the time they were ready to become U.S. legal permanent residents. As shown in Table 9, many clustered in the



restaurant/food, garment/apparel, manufacturing, building, and marine industries. (Fourteen individuals said they were *currently* seamen. In the context of immigration, *former* seamen represent a special category, discussed in greater detail on p. 243.)

Smaller numbers found work as laborers, in hospitality, sales, entertainment, publishing, and office work. A smattering of engineers and clergymen also appear. Not shown in the table below, 57 (8.5%) appear identifiable as business owners, and an additional 30 (4.5%) claimed management or supervisory responsibilities.

Table 9. Preexaminees' Most Common Occupations.

| Category <sup>469</sup>                 | Number |
|-----------------------------------------|--------|
| Restaurant & food services              | 86     |
| Garment/apparel & related industries    | 55     |
| Manufacturing & factory work            | 55     |
| Building/real estate & related services | 45     |
| Marine industries                       | 26     |
| Laborers                                | 23     |
| Hotel & hospitality                     | 19     |
| Sales                                   | 19     |
| Entertainment                           | 18     |
| Publishing & media                      | 16     |
| Office work                             | 15     |
| Education                               | 14     |

<sup>469</sup> *Restaurant & food services roles include:* baker, bartender, busboy, butcher/meatcutter, chef, cook, cook-helper, counterman, fruits/vegetables dealer, waiter/waitress, kitchen worker, pantry man, pastry maker, restaurant owner/manager/worker, tavern keeper, grocer. *Garment/apparel & related roles include:* garment worker, presser, cutter, operator, dressmaker/dyer, embroider, finisher, floorgirl (ladies clothing), furrier/fur cutter, jeweler/jewelry model maker, knitting mill owner, mannequin maker, dress factory manager, shoe repair, silk manufacturer, tailor, wool importer, cotton broker, diamond broker, laundry services. *Manufacturing & factory roles include:* auto worker, box maker/nailer/repair, core maker, die setter, factory worker, foreman, grinder, machinist, machine operator/repairman, manufacturer, millworker, pattern maker, punch press operator, shearer (tin), steel mill chipper, steel worker, tank cleaner, tool factory worker, toolmaker, welder. *Building/real estate & related roles include:* custodian, janitor, superintendent, construction superintendent, contractor, carpenter, electrician, elevator operator, gardener, handyman, painter/paint contractor/paint sprayer, plasterer, window washer, cabinet maker, furniture repair, stone cutter, terrazzo worker, upholsterer, watchman. *Marine roles include:* seaman, longshoreman, scow captain, shipyard carpenter, stevedore, fisherman. *Hotel & hospitality roles include:* chambermaid, housekeeper, manager, owner, ship steward, porter. *Sales roles include:* sales agents, supervisors, "salesgirls," salesmen. *Entertainment roles include:* actor, singer, musician, circus performer, producer. *Publishing & media roles include:* writer, editor, artist, designer, art writer, advertising agent, book publisher, bookbinder, journalist, lithographer, photographic services. *Office work includes:* executive, manager, clerical, secretary, stenographer, typist. *Education includes:* teachers of various types; instructors, tutors, professors. *Engineers include:* architectural, chemical, chief, civil, mechanical, and structural engineers. *Transportation & logistics roles include:* trucker, chauffeur, motorman, delivery and moving services, freight traffic management, warehouse foreman, steam crane operator. *Religion includes:* clergymen, priests, rabbis, ministers, missionaries. *Domestic and personal services include:* domestics, child's nurses, governesses, masseurs, hairdressers. *Finance includes:* accountants, bookkeepers, auditors, economists, and insurance professionals. *Medical/health includes:* doctors, nurses, and dentists. *Retailing includes:* store owners, proprietors, clerks, and stockmen not covered in other categories. *Science & research roles include:* chemists and laboratory technicians.

| <b>Category</b> <sup>469</sup>   | <b>Number</b> |
|----------------------------------|---------------|
| Engineering                      | 11            |
| Transportation & logistics       | 10            |
| Religion                         | 9             |
| Merchant (unspecified)           | 9             |
| Domestic and personal services   | 8             |
| Finance                          | 7             |
| Medicine and health              | 7             |
| Mechanics (auto and other)       | 7             |
| Retailing (not listed elsewhere) | 5             |
| Farming                          | 5             |
| Science & research               | 5             |
| Import/export                    | 5             |
| Assorted not included above      | 20            |

#### 4.7. Preexaminees by National Origin

During the era of preexamination, the national origins of immigrants were a continuing preoccupation of policymakers, who continually asked the same question: *Where are these people coming from?* The national origins of preexaminees in my sample appear in Table 10.

Table 10. Preexaminees by National Origin.

| <b>National Origin</b>                                                  | <b>Number</b> | <b>%</b>   |
|-------------------------------------------------------------------------|---------------|------------|
| Italy                                                                   | 105           | 15.58%     |
| Poland <sup>470</sup>                                                   | 93            | 13.80%     |
| Greece                                                                  | 51            | 7.57%      |
| United Kingdom <sup>471</sup>                                           | 40            | 5.93%      |
| Germany                                                                 | 38            | 5.64%      |
| USSR <sup>472</sup>                                                     | 28            | 4.15%      |
| Turkey                                                                  | 20            | 2.97%      |
| China                                                                   | 19            | 2.82%      |
| Yugoslavia                                                              | 19            | 2.82%      |
| Norway                                                                  | 18            | 2.67%      |
| Sweden                                                                  | 17            | 2.52%      |
| Netherlands                                                             | 17            | 2.52%      |
| Czechoslovakia                                                          | 16            | 2.37%      |
| Lithuania                                                               | 16            | 2.37%      |
| France                                                                  | 13            | 1.93%      |
| Romania                                                                 | 13            | 1.93%      |
| Syria & Lebanon                                                         | 12            | 1.78%      |
| Spain                                                                   | 9             | 1.34%      |
| Egypt                                                                   | 8             | 1.19%      |
| Malta; Mexico; Portugal                                                 | 7 each        | 1.04% each |
| Iraq; Latvia; Bulgaria; Denmark                                         | 6 each        | 0.89% each |
| Hungary; Finland; Argentina; Switzerland; Austria; Iran; Belgium; Korea | 5 each        | 0.74% each |

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<sup>470</sup> As mentioned earlier, large numbers of individuals from Poland were preexamined, but they may be somewhat overrepresented in my sample. It includes the last reel in the St. Albans and Detroit databases, which contain many individuals of Polish extraction with last names beginning with “Z.”

<sup>471</sup> Includes England, Scotland, N. Ireland; British West Indies and Australia listed separately.

<sup>472</sup> Does not include Lithuania, Estonia, or Latvia, which were still recognized as separate nations by the US after their absorption by the USSR in the 1940s. These are listed separately.

| National Origin                                                                                                   | Number | %          |
|-------------------------------------------------------------------------------------------------------------------|--------|------------|
| British West Indies; Cuba; Palestine; Venezuela; Philippines                                                      | 4 each | 0.59% each |
| Colombia; “Arabia”                                                                                                | 3 each | 0.45% each |
| Australia, Estonia, Chile, Brazil, Bermuda, Jamaica, Nicaragua, Danzig Free City, Pakistan, Honduras, “Stateless” | 1 each | 0.15%      |

A few points are worth noting. First, while Mae Ngai discusses the refusal of U.S. consul William Blocker to offer preexamination to Mexican nationals at the Mexican border, seven Mexican nationals in my dataset were successfully preexamined at Detroit between 1941 and 1949.<sup>473</sup> These included a mother and son who made it through the immigration gauntlet in Detroit in 1949, three years after Attorney General Tom Clark essentially banned preexamination of Mexican nationals. (One or both might have been granted the “exceptionally meritorious” exception defined in Clark’s regulation, but this is not mentioned on the manifest cards.) Chapter 2 describes how the Board of Immigration Appeals granted another Mexican national preexamination via Canada in 1946. Overall, however, the move from “discouraging” to “banning” Mexican preexamination seems to have achieved its goal, at least in St. Albans and Detroit.

Second, between 1947–1952, nineteen Chinese nationals were preexamined at Detroit, sixteen (84.2%) of them non-quota immigrants. This compares with only 23.6% of non-quota immigrants who were not Chinese nationals. (See the discussion of quota vs. non-quota preexaminees on p. 249.) These preexaminations coincided with the Chinese civil war and the eventual victory of the Red Army. While a small sample, these cases suggest that preexamination became another strategy for Chinese nationals to

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<sup>473</sup> Ngai, *Impossible Subjects*, 86–87.

reunify their families in the U.S. after World War II. Three quota immigrants (one apiece in 1947, 1948, 1949) doesn't sound like many. However, the entire annual quota for Chinese nationals was still around 100.<sup>474</sup> This raises the question: prior to reforms that enabled more refugees from newly-communist China to enter, what percentage of that quota was used by preexaminees already inside the U.S.?

All this said, as Ngai and Ghandnoosh/Waldinger both expected, this dataset suggests that preexamination was primarily used by Europeans. Including the Mexican nationals discussed earlier, 32 individuals (4.7%) came from non-quota nations in Central and South America, or the Caribbean. Including the Chinese nationals described above, 29 came from Asia (4.3%). No nationals of India (even while under British rule) or Japan appear in this sample. Fifty-eight (8.6%) came from the Middle East (Turkey, "Arabia," Syria, Lebanon, Palestine, Iran, Iraq, Egypt). The remaining 82.4% were European.<sup>475</sup>

One more way to view these nationality statistics is to compare them with the strict permanent quotas that were fully implemented in 1929. Table 11 compares the percentage of quota slots granted to each nationality in 1929 with the percentage of individuals granted preexaminations in my sample. (Percentages *over* 100% in the right-hand column indicate that preexaminees were overrepresented compared with the quota slots made available by the President and Congress. I show only nations represented by at least 10 preexaminees in my sample.)

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<sup>474</sup> See, for example, "Asian and Pacific Islander Americans in Congress: From Exclusion to Inclusion, 1941–1992," U.S. House of Representatives, accessed March 23, 2021, <https://history.house.gov/Exhibitions-and-Publications/APA/Historical-Essays/Exclusion-to-Inclusion/Immigrants-and-Refugees/>.

<sup>475</sup> This treats Russia and the USSR as one European nation.

Table 11. Preexaminee Over/Underrepresentation vs. National Origin Quotas.

| <b>National Origin</b> | <b>Percentage of preexaminees</b> | <b>Percentage of quota slots (1929)</b> | <b>Preexaminee over/under-representation</b> |
|------------------------|-----------------------------------|-----------------------------------------|----------------------------------------------|
| China                  | 2.82%                             | 0.06%                                   | 4700%                                        |
| Greece                 | 7.57%                             | 0.20%                                   | 3785%                                        |
| Syria & Lebanon        | 1.78%                             | 0.08%                                   | 2225%                                        |
| Turkey                 | 2.97%                             | 0.15%                                   | 1980%                                        |
| Romania                | 1.93%                             | 0.19%                                   | 1016%                                        |
| Lithuania              | 2.37%                             | 0.25%                                   | 948%                                         |
| Yugoslavia             | 2.67%                             | 0.55%                                   | 485%                                         |
| Italy                  | 15.58%                            | 3.75%                                   | 415%                                         |
| Poland                 | 13.80%                            | 4.22%                                   | 327%                                         |
| Russia (USSR)          | 4.15%                             | 1.80%                                   | 231%                                         |
| Norway                 | 2.67%                             | 1.54%                                   | 173%                                         |
| Czechoslovakia         | 2.37%                             | 1.86%                                   | 127%                                         |
| Sweden                 | 2.52%                             | 2.14%                                   | 118%                                         |
| Netherlands            | 2.37%                             | 2.04%                                   | 116%                                         |
| France                 | 1.93%                             | 1.99%                                   | 97%                                          |
| Germany                | 5.64%                             | 16.78%                                  | 34%                                          |
| United Kingdom         | 5.93%                             | 42.48%                                  | 14%                                          |

As discussed in Chapter 1, quotas had been intended to limit migration from southern and eastern Europe. But preexamination disproportionately assisted southern and eastern European migrants who were already here. It is therefore little surprise that

restrictionists disliked and sought to eliminate it. (A closer look at the quota impacts of preexamination follows on p. 249.)

Regardless of how one chooses to count aliens, the national origins regime and its enforcers aimed to reify identities that often resisted simple categorization. These statistics reflect their attempts. However, racial and ethnic ambiguities in an era of massive human displacement often complicated the ways individuals understood themselves, and how the immigration system understood them. Manifest cards contained boxes for “Quota Country Charged,” “Place of Birth,” “Language or Exemption,” “Race,” and “Nationality,” often presenting kaleidoscopic individual identities.

For example, in the wake of the Armenian genocide and diaspora, fourteen cards (2.1%) refer to Armenian identity, though no applicants came from “Armenia.” Until 1943, the U.S. immigration system provided a separate racial category of “Hebrew” for migrants of Jewish descent, and this designation appears on 66 cards (9.7%).<sup>476</sup> Whether because of evolving policies, differing inspector viewpoints, migrants’ fears and preferences, or some combination of factors, the cards of many clearly Jewish individuals did not include the “Hebrew” identifier, even before 1943. In one late 1943 case, “Hebrew” was typed in the “Race” box for every card in a family of five preexaminees, but crossed out on all five, and replaced with the handwritten notation “White.” This case may have begun prior to the policy change; or perhaps the family members or agent may have taken it on themselves to demand or enter this change. So, too, one Rabbi would

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<sup>476</sup> “Immigration to the United States 1933–1941,” Holocaust Encyclopedia, United States Holocaust Memorial Museum, accessed March 23, 2021, <https://encyclopedia.ushmm.org/content/en/article/immigration-to-the-united-states-1933-41>.



have been “Hebrew” when he first entered in 1940, but was now recorded as “White” on a manifest card created to document his 1944 return from Canada.

Some examples of complex identities appearing on these cards include:

- Quota: Turkey; Race: Hebrew; Nationality: Greece; Last residence: Bulgaria
- Quota: Egypt; Language: English; Race: Hebrew; Nationality: Panama
- Quota: Turkey; Race: Armenian; Nationality: Stateless
- Quota: British; Race: Lithuanian; Nationality: “Scot”
- Quota: “Great Britain and Northern Ireland”; Race: “Negro”; Nationality: British West Indies

Such complex identities arose inevitably in an immigration system that insisted on slotting individuals by national origins, race, nationality, and last residence — in an era where these forms of identity had become more fluid than legislators wished to imagine.

#### 4.8. Two Peaks of Entry

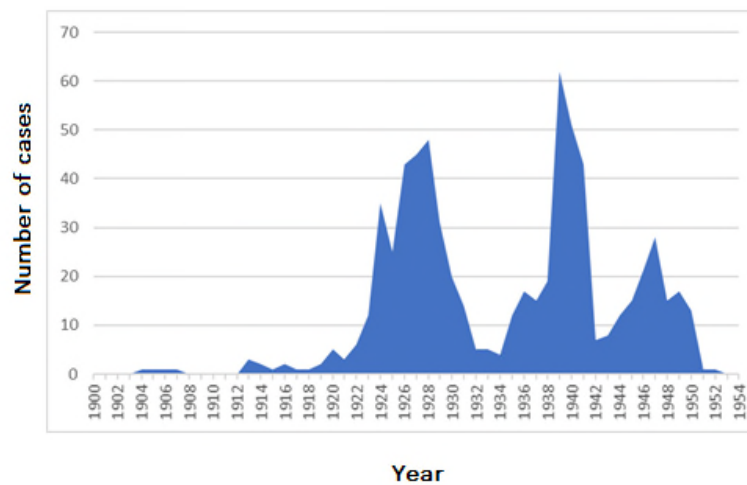
We have already seen differences in the characteristics of preexaminees based on when they first entered the United States. We can now look more closely at the time-based patterns of entries that eventually led to preexaminations.<sup>477</sup> Table 12 shows a first peak appearing in the early-to-mid-1920s. These individuals typically stayed for many years before preexamination became available and they decided to pursue it — sometimes because the pressure to legalize themselves had grown. (Most entered in 1924

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<sup>477</sup> In about two dozen cases, multiple entries are recorded on the individual’s manifest card. In this graph, I have used the first entry, assuming that it represented his or her first meaningful contact with the United States.

or later, when the law was changed to make it possible to deport an illegal entrant at any time after entry, regardless of their length of stay.) A trough appears in the early 1930s. This is unsurprising, because more migrants overall left the U.S. during those years than arrived (see p. 21). A second peak appears after 1935; this includes more individuals growing desperate to leave increasingly dangerous environments, primarily in Europe.

Table 12. Dates of First Entry into the U.S.



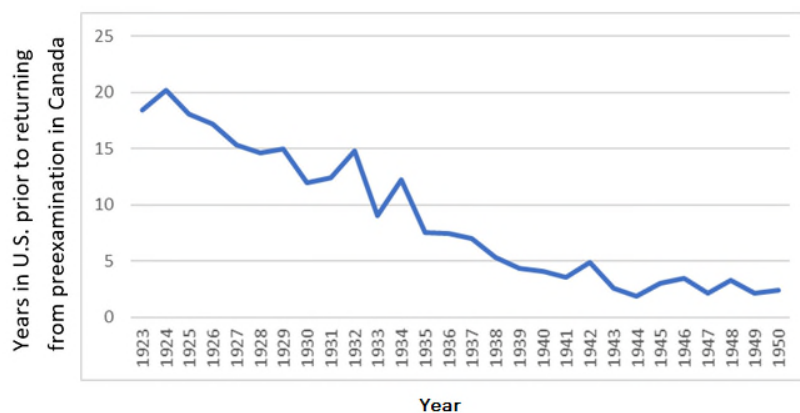
Of course, as is well known (and discussed in Chapter 3's case studies of Manya Hartmayer Breuer and Thomas Doeppner), relatively few reached America to gain safety from Hitler's Reich. Among the later arrivals who were granted preexamination, however, many did earn it sooner after entering than their predecessors had.<sup>478</sup>

As Table 13 shows, the time from first entry to preexamination and legal permanent residency shrank substantially over time. This appears to be a natural artifact of preexamination first becoming available in the mid-to-late 1930s, when some

<sup>478</sup> Arguably a third peak may rise late in World War II, as more people reach the U.S., and the number of displaced persons and Iron Curtain refugees grows. However, since my data ends in the early 1950s, the full extent of this peak is not reflected in this sample, and I have not explored it separately.

candidates had already spent many years in the U.S. But some of the acceleration may be attributable to the procedure's institutionalization, and immigrant aid organizations' growing expertise in leveraging it for their clients. It is especially striking when one considers additional delays during the pre-war and World War II years introduced by new Canadian restrictions on entry, and new U.S. restrictions on travel by aliens from nations the Allies were fighting.

Table 13. Time from First U.S. Entry to Canadian Visa Appointment.



#### 4.9. Original Entries: Legal or Otherwise?

As U.S. immigration laws tightened through the late 1910s and 1920s, more entrances occurred that would later require regularization. The cutoff for relief via the Registry Act of March 2, 1929 was early June 1921; even after it was extended into 1924, many entries without a record of inspection came too late, or had been too obviously illegal to qualify. As the preexamination alternative took shape during the 1930s, restrictionists (and their sympathizers in the press, such as the Hearst newspapers) often focused on its use to “reward” illegal entries.

To explore what this sample of manifest cards might say about preexamination's use to "forgive" evasions of law, I first captured their incomplete information about how individuals originally entered the U.S. (see Table 14). For example, how many arrived in irregular ways that quickly made their status precarious? How many came as stowaways, or deserted ship, or entered without inspection, sometimes with help from smugglers?

Table 14. Status of Future Preexaminees at Original Entry.<sup>479</sup>

| Category | Definition                                                                                                     | All (St. Alb. & Detroit) | % of All Cases | Detroit Only | % Detroit Cases | St. Albans Only | % St. Albans Cases |
|----------|----------------------------------------------------------------------------------------------------------------|--------------------------|----------------|--------------|-----------------|-----------------|--------------------|
| 3(1)     | Foreign government or intl. agency officials and their families                                                | 11                       | 1.6%           | 1            | 0.4%            | 10              | 2.3%               |
| 3(2)     | Short-term pleasure or business travelers (typically 6 months; no more than 1 year w/o special INS permission) | 90                       | 13.4%          | 26           | 10.9%           | 64              | 14.7%              |
| 3(3)     | Permitted to transit US territory to non-U.S. destination                                                      | 10                       | 1.5%           | 5            | 2.1%            | 5               | 1.1%               |
| 3(4)     | Permitted to cross an int'l. border in traveling between US locations                                          | 1                        | 0.1%           | 0            | 0.0%            | 1               | 0.2%               |
| 3(5)     | Seaman                                                                                                         | 47                       | 7.0%           | 6            | 2.5%            | 41              | 9.4%               |
| 3(6)     | "Treaty merchant" engaged in international trade                                                               | 4                        | 0.6%           | 1            | 0.4%            | 3               | 0.7%               |

<sup>479</sup> Notes:

3(2): Unspecified length: 531; year: 8; 6 months: 106 months; ext. to 10/10/46: 1; 4 months: 3; 4 months ext. to 1/15/46: 2; 4 months, converted from 3(3): 1; 3 months: 1; 3 months & ext. to 1/46: 1; 60 days: 1; 60 days ext. to 1/1/42: 2; 59 days to adjust status: 1; 5 weeks: 1; changed from 3(1): 2; bond to guarantee departure: 1; ext. to 3/15/43: 1

3(3): No additional details: 2; 60 days: 1; BSI 3; 9 days bond, ext to 12/20/42: 1; "Adm Transit": 6

3(5): Of these, 25 appear to have abandoned their profession and built careers on land, without adjusting status as required. Seamen in the U.S. apparently without authorization are discussed on p. 255.

"Non-Immigrant" and other temporary admissions: No add'l. detail: 57; 10 months: 1; 6 months: "PASSED": 2; "Adm 3 months": 1; "Adm 6 months": 4; "Adm 6 months (extended)": 1; "Adm temp": 9

Assorted: 1 each: "8 CFR 142.18"; "PL 471 Visitor"; "RET RES"; "W/O inspection (as US soldier)"

| Category                                        | Definition                                                                         | All (St. Alb. & Detroit) | % of All Cases | Detroit Only | % Detroit Cases | St. Albans Only | % St. Albans Cases |
|-------------------------------------------------|------------------------------------------------------------------------------------|--------------------------|----------------|--------------|-----------------|-----------------|--------------------|
| “Non-Immigrant” and other temporary admissions  | Section 3 [3(1) through 3(6) admissions with no detail provided)                   | 78                       | 11.6%          | 2            | 0.8%            | 76              | 17.5%              |
| 4(e)                                            | Alien students: “immigrants” limited to a specific length of stay                  | 25                       | 3.7%           | 12           | 5.0%            | 13              | 3.0%               |
| Assorted                                        | Assorted PX situations that do not seem linked to illegal entry                    | 4                        | 0.6%           | 1            | 0.4%            | 3               | 0.7%               |
| Deserting Seaman                                | Specifically listed as deserting a vessel                                          | 62                       | 9.2%           | 6            | 2.5%            | 56              | 12.9%              |
| Stowaway                                        | Specifically listed as a stowaway                                                  | 21                       | 3.1%           | 1            | 0.4%            | 20              | 4.6%               |
| Smuggled In                                     | Specifically listed as having been illegally smuggled into the US                  | 8                        | 1.2%           | 1            | 0.4%            | 7               | 1.6%               |
| Entered Without Inspection (EWI)                | Specifically listed as having failed to undergo legally required border inspection | 42                       | 6.2%           | 12           | 5.0%            | 30              | 6.9%               |
| Otherwise specified as present w/o legal status | “Deported, inadmissible, fraud, excluded, excluded/paroled, paroled in,” etc.      | 9                        | 1.3%           | 7            | 2.9%            | 2               | 0.5%               |
| No data on status at original entry             |                                                                                    | 262                      | 38.9%          | 158          | 66.1%           | 104             | 23.9%              |
| <b>Total</b>                                    |                                                                                    | <b>674</b>               |                | <b>239</b>   |                 | <b>435</b>      |                    |

In my overall dataset, 61.1% of cards offer clear information for interpreting individuals' status upon arrival. For example, a card might indicate that an individual arrived on a six-month visitors' visa a decade ago, and show no evidence that the individual had ever negotiated extensions or status adjustments. Or, conversely, it might show that an individual arrived fairly recently and pursued preexamination promptly, before his visa expired. Yet another card might specifically indicate "EWI" — "Entry Without Inspection" — or use a comparable euphemism for a surreptitious arrival intended to avoid the required border inspection.

38.9% of cards don't provide sufficient information for a judgment. Here, the differences between St. Albans and Detroit cards are significant. More than 3/4 of the 435 St. Albans cards — many originating with preexaminations at Ellis Island — offer usable information for interpreting status. However, barely 1/3 of the 239 Detroit cards do.

I hypothesize that the Ellis Island inspectors and their colleagues at the border had more effectively institutionalized the process of capturing this information. I suspect their data may be more trustworthy as well as more complete. (More discussion of Ellis Island's preexaminations appears on p. 253.) For instance, the Detroit authorities recorded many entrances where an individual arrived in North America by boat at Halifax or other eastern Canadian ports during the 1920s, and then found their way across the U.S. border in subsequent months. During the mid-to-late 1920s, this was widely reported as a common route for illegal entry. But the Detroit border personnel and Midwest preexamination inspectors rarely identified it as such on their manifest cards. (That said, Ellis Island was also a primary detention center for aliens who had been

apprehended, and — like Minnie Kusnetz, see p. 158 — immediately applied for preexamination to forestall deportation. Hence, the Ellis Island inspectors might also have seen an overrepresentation of cases involving lawbreaking.)

Across both St. Albans and Detroit, 21% of the manifest cards note a blatant (and usually clearly illegal) attempt to evade immigration rules at the point of entrance. For example, Giuseppe Zivec from Slovakia entered as a member of the crew of the S.S. Lackenby on May 12, 1930, and deserted ship; his wife remained in Trieste, Italy. Sixteen years later, while living on Ludlow Street in New York's Lower East Side (a few blocks away from the current Tenement Museum), he was preexamined at Ellis Island and found admissible. The same day, he departed to Montréal to acquire his new visa. The next day, May 13, 1946, he successfully re-entered through Rouses Point, NY. Another card might explicitly or implicitly indicate an "EWI" — for instance, Lithuanian laundry housekeeper Leokadie Yesalones, whose card records an arrival in Detroit via rowboat on April 1, 1926. Fred Abdul-Nour, profiled on p. 146, also "entered without inspection."

In addition, as will be discussed in the next section, another 25 individuals (3.7%) were admitted only as seamen, but appear to have left the profession without adjusting their status on a timely basis, to remain in the U.S. legally. All told, therefore, roughly 1/4 of the cards (24.7%) describe what appears to be clear illegality.

The vast majority of these entries occurred by 1935; only 8.1% of later entries show any of these red flags. While *all* migration to the U.S. had declined in the early 1930s, during the depths of the Great Depression, legal entries had begun to rise again in the late 1930s. However, the far lower numbers of illegal entries after 1935 in my dataset



suggests that authorities may have gained better control over migration *by the types of individuals who might qualify for preexamination*.<sup>480</sup>

In contrast to the entries just discussed, 36.7% of the full sample presents no illegal behavior connected with entry, and 38.9% offer insufficient information for an assessment.<sup>481</sup> Often, these entrants were granted temporary visas and permitted to enter. Then, the question for authorities (and restrictionists) became: *were the terms of those visas honored?* I explore that question in the context of seamen first, and then more broadly.

#### 4.10. The Special Case of Alien Seamen

Non-U.S. seamen represent a special challenge for immigration systems, because they must be granted access to ports to do their essential work. Strikingly, the manifest cards for 102 (15.1%) of my sample of 674 individuals — all male, in that era) indicate current or former employment as a seaman. Of these, 14 claimed current employment; the other 88 had moved on to other careers. 60 of those 88, like Pasquale Accusato (profiled on p. 150), are explicitly described as deserters. One is described as a stowaway, and two more as “EWI.” The remaining 25 were originally “admitted only as seamen,” with special “3(5)” visas. Some of these 25 were described as “discharged,” “paid off,” or “abandoned.” But in each case, their original admissions as seamen had been many years earlier, and they now presented with different, land-based careers. Nothing on the cards

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<sup>480</sup> It should also be noted that after 1940 aliens were required by the Smith Act to register their presence. Most did so, and in the World War II era, it became increasingly challenging to “completely” hide from the U.S. government.

<sup>481</sup> Of course, this raises the possibility that even more individuals had originally entered illegally, but this was not flagged or recorded even by the skilled inspectors at Ellis Island.

suggested that they had worked with INS to officially change their status in the intervening years. The clear implication: they had left service and overstayed without authorization.

When these individuals are counted, 13.1% of my entire preexaminee dataset consists of male seamen without authorization to remain. Nearly half of these came from Italy or Greece, with significant contingents hailing from Germany, Norway, Malta, Sweden, and Yugoslavia.

As discussed in Chapter 1, the U.S. had found itself hosting many unauthorized foreign seamen during the 1910s and 1920s. But, late in the 1920s and through the mid-1930s, stricter controls (combined with a decline in overall migration to the U.S.) made the problem somewhat more manageable to authorities.<sup>482</sup> As with the broader contingent of illegal entrants discussed on p. 242, most of these had already arrived by 1935. Of those, the average stay in the U.S. before earning legal permanent residency via preexamination was nearly 17 years.

Alien seamen may have originally gone to sea — and subsequently decided to stay in the U.S. — for economic opportunity. Of course, by the time they sought preexamination, returning to Europe may have seemed undesirable for political and

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<sup>482</sup> Though World War II raised its own new problems, as the Allied governments generally agreed that capable alien seamen should be helping to deliver crucial wartime supplies, rather than pursuing permanent legal residence on land in the United States. However, adding to the always complex handling of alien seamen, many were Italian nationals, and hence considered “enemy aliens.” In 1947, as the U.S. was helping post-war Italy rebuild its merchant marine, the INS reported that it had interned as many as 1,285 Italian seamen during the conflict; 1,213 had subsequently departed, but 59 had already legalized themselves through either preexamination or naturalization while in the Armed Forces; another 91 had been paroled into the U.S. pending further immigration proceedings. *Annual Report of the Immigration and Naturalization Service, U.S. Department of Justice, for the Fiscal Year Ended June 30, 1947*, U.S. Department of Justice, Immigration and Naturalization Service (Washington, DC: GPO, 1947), 28–29, accessed March 23, 2021 at <https://eosfcweb01.eosfc-intl.net/U95007/OPAC/Details/Record.aspx?BibCode=9024974>.

personal reasons, too. A review of Italian Welfare League records shows that Italian former seamen seeking preexamination after World War II sometimes told authorities they had been uncomfortable returning to Mussolini's Italy because they opposed fascism.<sup>483</sup> Authorities were rarely in a position to prove or disprove such a claim, and after the defeat of the Axis powers, doing so was far less urgent.

#### 4.11. Assessing "Overstays" Among Aliens Who Arrived Legally.

Individuals "admitted as seamen" with 3(5) visas were only one of many types of temporary visitors. Anyone who entered without first stating an intent to immigrate (and demonstrating their right to do so) was slotted into a category specified by the Immigration Act of 1924. "Non-immigrant" categories were described in the corresponding section of Section 3 of the law: 3(1) through 3(6). For instance, tourists and short-term business visitors were marked "3(2)," and their entries were typically limited to a maximum of one year (often, six months or less). Individuals merely traversing U.S. territory *en route* elsewhere were "3(3)," and were expected to leave quickly.<sup>484</sup> Sometimes, instead of listing the subsection, immigration inspectors simply described an individual's entry as "temporary" or "non-immigrant."

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<sup>483</sup> Case records at Center for Migration Studies of New York, reviewed July 2020.

<sup>484</sup> Contemporaneous reports suggest that one way to evade the new Johnson-Reed Act in the late 1920s was to purchase boat passage from New York to Europe while still in Canada. By showing a ticket to U.S. immigration authorities, individuals could enter the U.S. with a 3(3) "transit" visa, and then simply stay. The cost of the wasted ticket was reportedly lower than the cost of hiring a smuggler. Philip C. Jessup, "Some Phases of the Administrative and Judicial Interpretation of the Immigration Act of 1924," *The Yale Law Journal* 35, no. 6 (1926): 711, doi:10.2307/788785. While it is unclear how often this actually occurred, 1.5% of the preexaminees in my sample originally entered "in transit."

Students were another significant category of temporary visitor defined by the 1924 Act. Those who were at least 15 years old and sought to enter “solely for the purpose of study at an accredited school, college, academy, seminary, or university, particularly designated by him and approved by the Attorney General” were technically treated as “immigrants” and covered in Section 4(e), not Section 3. However, as Thomas Doeppner (see case study, p. 163) and many others found, they were also expected to leave when their studies ended, just as Section 3 temporary visitors were.<sup>485</sup>

Of course, once individuals entered legally, many decided they preferred to remain. For some, the easiest short-term response was to simply “overstay” legal visas. When they needed a less precarious, more permanent solution, many turned to preexamination (or to alternatives such as suspension of deportation, as discussed on p. 68). These offered a pathway to legal permanent residence and — if desired — naturalization.

Manifest cards can offer insights into how often individuals overstayed, and who the “overstayers” were. These insights are provisional because they don’t always represent the full dialogue between an individual and the authorities. While INS’s agreement to extend an individual’s stay should ideally be noted on the cards, often it isn’t. If a card is marked “N-I” (non-immigrant), it’s highly likely that the individual was required to leave within a year, but not absolutely certain. Here and elsewhere, a modern

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<sup>485</sup> Immigration Act of 1924, Pub. L. No. 139, 43 Stat. 153 (1924), Section 4(e). However, “foreign students enrolled as part-time students, in short courses, or in schools that had not been approved” could only be approved on Section 3 visitors’ visas, for periods ranging from three months to a year. “Temporary Admissions of Nonimmigrants to the United States: 2006,” prepared by the Office of Immigration Statistics Policy Directorate. U.S. Department of Homeland Security (Washington, DC, July 2007), 29, accessed March 24, 2021, [https://www.dhs.gov/xlibrary/assets/statistics/publications/Ni\\_FR\\_2006\\_508\\_final.pdf](https://www.dhs.gov/xlibrary/assets/statistics/publications/Ni_FR_2006_508_final.pdf).

researcher must make judgments, and these are occasionally fraught. For instance, if an individual entered as a student and didn't seek preexamination for seven years, did it legitimately take that long to complete their studies? Perhaps so, if he was now a 26-year-old chemist, engineer, physician, or clergyman — but what if she was now a 32-year-old housewife? Finally, certain specialized or temporary provisions of 80-year-old immigration law relevant to specific preexaminees may be opaque to a modern researcher. For example, in September 1939, the Jewish Telegraphic Agency quoted government officials as saying the U.S. had halted deportations to Nazi Germany and Nazi-controlled territories in Europe, and “several thousand” holders of visitors’ visas would become eligible for two-year extensions at the ports where they had landed, with further extensions possible if the war continued.<sup>486</sup> Some individuals who had already fallen out of legal status could presumably now regain it. Some approaching the end of their visas could now extend them. Some of both groups were eventually granted preexamination. But it is not clear exactly who was granted these extensions.

With these caveats in mind, I have reviewed each card that appears to identify a temporary legal entry, and assigned them to one of five categories (see Table 15).

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<sup>486</sup> “Refugees Here on Temporary Visas Will Not Be Deported During War,” Jewish Telegraphic Agency, September 12, 1939, accessed February 1, 2021, <https://www.jta.org/1939/09/12/archive/refugees-here-on-temporary-visas-will-not-be-deported-during-war>.

Table 15. Who May Have Overstayed?

| Category                                                                                                                                                     | Number     | % (of assessments) | % (of overall 674 cases) |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--------------------|--------------------------|
| Likely overstayed by more than a year at some point while in the U.S. [including 3(5) seamen who abandoned their profession] <sup>487</sup>                  | 75         | 29.5%              | 11.1%                    |
| May have stayed more than 1 year but <i>not</i> fallen out of status due to temporary extensions arising from World War II era policies staying deportations | 51         | 20.1%              | 7.6%                     |
| Appear to have overstayed for a year or less, possibly while working with INS towards adjustment of status                                                   | 31         | 12.2%              | 4.6%                     |
| Seem likely not to have overstayed visa                                                                                                                      | 75         | 29.5%              | 11.1%                    |
| Cannot judge based on available information                                                                                                                  | 22         | 8.7%               | 3.3%                     |
| <b>Total</b>                                                                                                                                                 | <b>254</b> |                    |                          |

By combining these numbers with the categories of illegal / unauthorized / undocumented status discussed earlier, I can estimate how many individuals in my

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<sup>487</sup> Includes 25 seamen who appear to have lost legal status by exiting the profession and staying within the country without adjusting status; 29 additional individuals who arrived prior to 1938 from diverse points of origin; 3 who arrived before September 1938 (i.e., more than a year before the U.S. announced it would allow visa extensions to visitors from Nazi Germany and Nazi-occupied territories); 12 who arrived between 1939 and 1945 from outside Europe, and apparently overstayed by more than a year; and 6 who arrived after the end of World War II and appear to have overstayed by more than a year.

sample may have been in the U.S. without authorization for substantial periods of time: roughly 1/3 (see Table 16). This estimate may err on the lower side. It excludes those who might have lost legal status for less than a year, on the assumption that they may all have been working with INS towards adjustment of status, and INS may have deferred enforcement as they did so. It also assumes that everyone who may have been eligible for a war-related visa extension starting in September 1939 actually received one.

Table 16. Provisional Estimate of Unauthorized Individuals.

| <b>Category</b>                                                              | <b>Number</b> | <b>% of total sample</b> |
|------------------------------------------------------------------------------|---------------|--------------------------|
| Deserting seamen                                                             | 62            | 9.2%                     |
| Stowaways                                                                    | 21            | 3.1%                     |
| Smuggled in                                                                  | 8             | 1.2%                     |
| “Entered Without Inspection” (EWI)                                           | 42            | 6.2%                     |
| Otherwise specified as illegally present                                     | 9             | 1.3%                     |
| Others likely “overstaying” by 1+ years without authorization (see Table 15) | 75            | 11.1%                    |
| <b>Total</b>                                                                 | <b>217</b>    | <b>32.2%</b>             |

#### 4.12. Immigrant Quota Status and Classes

During the preexamination era, some immigrants could gain permanent residency in the United States without first receiving a quota slot — for instance, if they were the wives or young children of a U.S. citizen, or came from a western hemisphere country exempt from quotas. Other quota immigrants, such as siblings of permanent residents, or aliens from quota countries who did not have close U.S. relatives, needed a quota slot to receive a visa. For most of the preexamination era, they also needed reasonable assurance

that a quota slot would be available for them in Canada, *before* they could be preexamined within the United States.

Table 17 shows the categories of preexaminees in my sample, with official INS definitions indicating which categories were “quota” vs. “non-quota.”<sup>488</sup>

Table 17. Class of Immigrant Granted Legal Permanent Residence.

| Section / Subsection | Definition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Number | Quota?   |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|----------|
| 3(b)4                | Eligible displaced person: resident and national of Greece entitled to first preference quota status as parent or husband of U.S. citizen or as skilled agriculturist; [or] a resident and national of Greece entitled to second preference quota status as wife or child of alien resident of the United States.                                                                                                                                                                                                                              | 1      | Quota    |
| 4(a)                 | Husband or wife or unmarried child of a U.S. citizen member of the U.S. Armed Forces (otherwise racially inadmissible); husband or wife or unmarried child of a U.S. citizen (to include an alien who changed status from a nonimmigrant to an immigrant under PL 271 (Dec. 28, 1945); after 12/22/45 may also include refugee husband or wife or unmarried child of a U.S. citizen (nonquota); after 6/25/48 may also include displaced persons temporarily residing in the United States, who were granted the status of permanent resident. | 120    | Nonquota |
| 4(c)                 | Native or refugee native of Canada, Newfoundland, Mexico, Cuba, Haiti, Dominican Republic, Canal Zone, or an independent country of Central or South America; wife or refugee wife or the unmarried child (born in a quota country) of a native of a non-quota country. ( <i>Author note:</i>                                                                                                                                                                                                                                                  | 27     | Nonquota |

<sup>488</sup> Category descriptions are from “Classes Currently Not in Use - Legal Permanent Resident Aliens,” *INS Adjudicator’s Field Manual*, U.S. Citizenship and Immigration Services, accessed December 19, 2020, <https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm23-external.pdf>.



| Section / Subsection | Definition                                                                                                                                                                                                                  | Number | Quota?   |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|----------|
|                      | <i>Canadian citizens were ineligible for preexamination.)</i>                                                                                                                                                               |        |          |
| 4(d)                 | Minister or refugee minister of a religious denomination his wife or unmarried child (nonquota); professor or refugee professional of a college, academy, seminary, or university, his wife, or unmarried child (nonquota). | 21     | Nonquota |
| 5                    | Quota immigrant or orphan (under 10 years of age)                                                                                                                                                                           | 272    | Quota    |
| 6                    | Refugee Relief Act of 1953, refugee adjustment. <i>(Author note: Card notation may be incorrect.)</i>                                                                                                                       | 1      | ?        |
| 6(a)                 | Quota <i>(subsection unclear)</i>                                                                                                                                                                                           | 2      | Quota    |
| 6(a)1                | First preference: parent or husband or refugee parent or husband of U.S. Citizen (quota); skilled agriculturist or refugee skilled agriculturist, his wife, or child (quota).                                               | 129    | Quota    |
| 6(a)2                | Second preference: wife or refugee wife or child of an alien resident of the United States (quota).                                                                                                                         | 6      | Quota    |
| 6(a)3                | Non-preference alien or refugee alien (quota).                                                                                                                                                                              | 70     | Quota    |
| M-1                  | Spouse of a U.S. citizen (nonquota).                                                                                                                                                                                        | 7      | Nonquota |
| Unclear              | Blank or ambiguous                                                                                                                                                                                                          | 18     | ?        |

In their 2006 critique of Ngai, Ghandnoosh and Waldinger wrote,

That there were many foreigners then present on visitor's visas is actually testimony to restriction's success: many were German refugees who had taken visitor visas as the option of last resort, when permanent visas were unavailable. Pre-examination was a convenient way for the government to avoid the unpalatable alternative of deportation, without in any way having an impact on net intakes, as the numbers generated via pre-examination were deducted from the (under-subscribed) German quotas.<sup>489</sup>

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<sup>489</sup> Ghandnoosh and Waldinger, *Strangeness at the Gates*, 733.

My dataset, if representative, suggests that this analysis is partly but not entirely accurate. First, strictly speaking, only 38 (5.6%) of preexaminees were German nationals, though obviously as Germany conquered growing swaths of the European continent, far more became profoundly vulnerable — among them, Czechs, Poles, Danes, Norwegians, Belgians, Nederlanders, Luxembourgers, French, Yugoslavians, Greeks, residents of the conquered parts of the Soviet Union, and others (see preexamination data by national origin, p. 230). Still, in my dataset, 345 (51.1%) made their *last* “pre-preexamination” entrance to the U.S. before 1938, when the number of refugees from Nazi oppression began to soar. Another 100 (14.8%) entered in 1946 or later, after the war ended. As described in Table 15 above, only 51 entered from Europe after September 1938, within 12 months of the public announcement of visitor’s visa extensions for endangered Europeans, and before August 1945 when World War II ended. So the preexamined migrants were not all precisely who Ghandnoosh and Waldinger may have thought, even if many did have life-or-death reasons to avoid Europe.

Second, as shown in the figure above, while 480 preexaminees (71.2%) were quota immigrants, 175 (26.0%) were not.<sup>490</sup> As Ghandnoosh and Waldinger point out, that means 480 fewer quota slots were available for others outside the country seeking entry into the U.S. In *some* years, for *some* countries, quota slots were undersubscribed and might have been left unused if not for preexaminees already in the country. But the 175 non-quota preexaminees in this sample would have needed to find another way to stay in the U.S. Many may well have succeeded, but (especially before or after the war) some may have been required to depart.

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<sup>490</sup> The quota status of 2.8% of preexaminees could not be identified from their manifest cards.

Ghandnoosh and Waldinger's observation that preexaminees represented a very small percentage of migrants remains absolutely true, even if preexamination might have touched somewhat more than 58,000 lives. By rough order of magnitude, my sample likely represents about 1% of all preexaminees. When the numbers are scaled up to the entire population, it seems plausible that preexamination generated slight upward pressure on overall legal immigration from Europe. As Ngai points out, this occurred while the U.S. was also aggressively trying to limit permanent migration from Mexico.

#### 4.13. Where and How Was Preexamination Done?

Even though this sample of manifest cards is far from geographically random, it sheds some light on when and how preexamination was performed.

For instance, of the 674 cases in my sample, 321 (47.6%) were handled at New York City. Almost all of those were processed at Ellis Island, before its operations were moved into Manhattan. The cards suggest that a team of specialists handled preexaminations at Ellis Island: Inspector H.A. Bishara handled 82 cases from at least 1941–1949. P.A. McGlynn handled 40 (1942–1948), H.A. Mintzer, 34 (1945–1950), U.A. Magee 31 (1942–1945), and S.P. Helmick 15 (1942–1948).<sup>491</sup> Earlier, Ellis Island inspections did not generally include the inspectors' names, so some of these individuals may have inspected many other preexaminees. Moreover, the very small sample of western New York crossings I reviewed suggests that many individuals who received visas at Niagara Falls, Ontario had also been preexamined at Ellis Island by the same

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<sup>491</sup> I had hypothesized that individual inspectors might have handled specific types of cases, or specialized in working with applicants from specific national origins. But I see no evidence that this was the case. Each inspector seems to have handled whatever cases came through when they were on duty.

inspectors. Throughout their careers, Bishara, McGlynn, Mintzer, Magee, and possibly even Helmick may have *each* examined thousands of PX applicants. These five individuals likely understood the inner workings of preexamination — and the hopes and secrets of the preexaminees — better than anyone else ever has, before or since.

Notwithstanding the disproportionate number of cases handled in New York City, and the multiple reorganizations and consolidations of INS during the preexamination era, it was still possible to be preexamined in many locations, including some border crossings (see Table 18). But some of these locations likely saw cases only rarely, and a few (such as El Dorado, AR) raise the question of whether preexaminations were ever arranged on a “bespoke” basis to avoid inconveniencing certain aliens.

Table 18. Locations of Preexaminations Outside New York City.

| <b>Location</b>                                   | <b># of PXs</b> |
|---------------------------------------------------|-----------------|
| Chicago, IL                                       | 75              |
| Detroit, MI                                       | 69              |
| Boston, MA                                        | 20              |
| Rouses Point, NY                                  | 19              |
| Philadelphia, PA                                  | 17              |
| Cleveland, OH                                     | 15              |
| St. Albans, VT                                    | 15              |
| Newark, NJ                                        | 14              |
| Hartford, CT                                      | 11              |
| Baltimore, MD                                     | 8               |
| Milwaukee, WI                                     | 7               |
| Flint, MI; Providence, RI; Washington, DC         | 6 each          |
| Atlanta, GA; Gloucester City, NJ; Kansas City, MO | 4 each          |
| New Orleans, LA; St. Louis, MO                    | 3 each          |

| <b>Location</b>                                                                                                                                                                                                                      | <b># of PXs</b> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Pittsburgh, PA; Youngstown, OH                                                                                                                                                                                                       | 2 each          |
| Albany, NY, Appleton, WI, Calais, ME, Cincinnati, OH, Columbus, OH, Denver, CO, El Dorado, AR, Houston, TX, Malone, NY, Newport, VT, Newton, MA, Norfolk, VA, Portland, ME, Springfield, MA, Tampa, FL, Toledo, OH, Wilkes Barre, VT | 1 each          |
| No Location Specified                                                                                                                                                                                                                | 30              |

#### 4.14. Conclusion

The data presented in this chapter may point towards a deeper understanding of preexamination, and perhaps of discretionary relief more broadly, during the restrictionist Johnson-Reed era of immigration.

To the extent that this sample is representative, it suggests that the population of preexaminees was more male than their median non-preexaminee contemporaries, partly because preexamination served a large number of former seamen who needed to legalize their presence. The sample suggests that two peaks of entrances to the U.S. eventually led to preexaminations. An early set of entrances began in the early 1920s and continued through the early 1930s. Many of these individuals arrived illegally, by deserting ship, stowing away, evading inspection, or paying smugglers. A later set, including somewhat more women, children, and older individuals, peaked around 1938–1941. While some of these migrants also “snuck in,” far more found themselves managing expiring or expired visas in an era of growing wartime disruption and danger. Overall, roughly 1/3 of all those preexamined in my sample had almost certainly been in the U.S. without legal authorization for extended periods of time. Whatever their legal status, preexaminees who first entered the U.S. during or after 1935 were generally able to move to legal permanent residence more quickly than their predecessors had.

The manifest cards show the immigration system attempting to follow the national origins mandates of the Johnson-Reed Act, but finding that many migrants presented complex identities that belied its rigid formulas. Overall, it appears, while preexamination mostly helped Europeans, it helped *different* Europeans from those preferred by Johnson, Reed, and their restrictionist successors.

Finally, preexamination highlights Ellis Island's underrecognized role in immigration enforcement during the 1930s and 1940s, long after the tired, poor, huddled masses had been barred from its golden door. While the cases I researched are by no means geographically random, it is striking that nearly half came through New York City — and a substantial majority of *those* were processed by five inspectors. More than Senators, Congressmen, Presidents, and Commissioners, it is tempting to view them as America's true gatekeepers of preexamination.

## Conclusion

Whether it turns out that 58,000 or 80,000 individual applications were processed, it is true (as Ghandnoosh and Waldinger argue) that preexaminees represented a relatively small percentage of those granted legal permanent residence during the quarter century that began in 1935. Nevertheless, preexamination was indispensable to thousands of individuals who could normalize their status in no other way, including significant numbers (such as Minnie Kusnetz and Pasquale Accusato, profiled in Chapter 3) who had been taken into custody and threatened with imminent deportation.

Preexamination may be best viewed as one of a continually changing suite of options for normalizing status. These options also included: creating post facto records of entry via the Registry Act of 1929; official suspension of deportation (after 1940); Section 245 relief via McCarran-Walter, and others. Individuals who considered pursuing preexamination but ultimately chose different paths were also touched by its existence. Throughout the era, those who sought to update immigration laws needed to account for it. Those who sought to abolish it needed to convince others that the system would offer sufficient flexibility and mercy without it.

*Who, finally, did preexamination help?* As discussed in Chapter 4, mostly Europeans, as Mae Ngai believed — but not entirely. (If my sample is representative, for example, thousands of preexaminees came from the Middle East.) Disproportionately, the Europeans helped by preexamination were those the Johnson-Reed era restrictionists disfavored; far higher percentages came from southern and eastern Europe than the national origins quotas would have suggested. This is likely one major reason restrictionists objected to it. Of course, considering preexamination from several decades

later, it was indeed one mechanism the immigration system used to bring certain previously discriminated-against people under the umbrella of “those we welcome” — and grant them advantages generally linked to the perception of “whiteness.”<sup>492</sup>

Was the ethnicity of preexaminees largely irrelevant, as Ghandnoosh and Waldinger suggest, because they used quota slots that would have gone to their overseas countrymen and women anyway? Not entirely; one-fourth of my sample were non-quota immigrants, and some of the rest used quota slots that might have been left unused. (While this would change as migration rebounded, 80% of European quota slots *had* gone unused through most of the 1930s, disappearing forever at the end of each year.<sup>493</sup>) To the extent that preexamination *did* offset migrants who’d never been in the U.S. with others who’d lived there for years (and were presumably partially assimilated), it might have slightly eased the adjustment of foreigners and natives to each other.

Were the preexaminees primarily escapees from Nazism that the U.S. preferred not to deport, as Ghandnoosh and Waldinger argue? Again, as I discuss in Chapter 4, some were, but many others had arrived in the U.S. long before the flood of refugees from Hitler began — including large numbers of deserting seamen, and sizable populations of stowaways and those who were smuggled in or otherwise evaded

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<sup>492</sup> See p. 276 for a discussion of how the limits of my archival research affect my ability to confidently weigh in on questions of explicit v. implicit racism in preexamination.

<sup>493</sup> Committee on Immigration, U.S. Senate and a subcommittee of the Committee on Immigration and Naturalization, U.S. House of Representatives, *Hearings on Joint Resolutions S.J. Res. 64 and H.J. Res. 168 to Authorize the Admission into the United States of a Limited Number of German Refugee Children*, 76<sup>th</sup> Congress, 1st Sess., April 20, 21, 22, and 24, 1939, (Washington, DC: GPO, 1939, 234, accessed March 24, 2021, <https://babel.hathitrust.org/cgi/pt?id=mdp.39015030514627&view=1up&seq=9>). Even in the year ending June 30, 1939, when quotas for Albania, Bulgaria, Czechoslovakia, Danzig, Germany, Greece, Hungary, Latvia, Lithuania, Poland, Rumania, and Yugoslavia were actually fully used, many individuals from elsewhere in Europe – e.g., Italy, Norway, the USSR, Sweden, Spain, Finland, France, and Malta – were preexamined, using slots that would have otherwise been lost.



inspection, especially in the 1920s. (In my own sample, about one in five are described in ways that explicitly suggest illegality; at least another one in nine are described in ways that suggest lengthy overstays of legal entry visas that may well have been deportable.) Still other preexaminees arrived after Hitler was defeated (though many of these may have been escaping Communism, Chinese as well as eastern European). Of course, since all but very rare “exceptionally meritorious” Mexicans had been explicitly banned from preexamination in 1946, the procedure was essentially without value to Mexicans seeking to escape the era’s enormous apparatus of deportation and expulsion.

*How, finally, was preexamination experienced by those who attempted it?* Each individual has their own story; but some themes often recur. First, even for sophisticated individuals like Katherine Sweetland (see p. 73), preexamination was often bewildering — and even more so to uneducated individuals such as Pasquale Accusato. Whoever you were, it seemed that the rules kept changing, and the paperwork kept growing. During World War II, individuals who hated and were terrified of Hitler faced additional difficulties as “enemy aliens.” At times, Canada halted border crossings altogether. And some aliens wondered *why did you have to spend all that time and money to leave the country, just to be allowed to stay in it, anyway?*<sup>494</sup>

While the United States presented itself as a more egalitarian society than those the migrants came from, many preexaminees found that it helped to have connections and

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<sup>494</sup> Ngai, *Impossible Subjects*. 87. Ngai cites a letter from Frances Perkins to Eleanor Roosevelt, January 27, 1939, file: Immigration-Deportations 1939, box 69, Perkins Papers. This objection was at the heart of the complaints about preexamination by Jane Edith Thomas’s family and supporters (see 132).

pull strings — and were grateful when they found “strings to pull.” In this respect, like so many systems, preexamination was deeply human, contingent, and unequal.<sup>495</sup>

For many, returning across the border at Rouses Point, St. Albans, or Detroit with a newly-issued visa and the right to legal permanent residence was an enormous relief — whether it heralded the beginning of a new life, or simply the end of hassles from the INS. Finally, preexamination led to some authentically happy endings (Manya Hartmayer Breuer) — and some that were anything but (Thomas O. Robitscher). That is what human systems — and especially systems of human migration — seem to do.

#### How Preexamination Illuminates Recurring Themes in Immigration

In addition to the findings described above, this section outlines several ways in which preexamination illuminates or reflects recurring themes in U.S. immigration politics and law.

*When immigration laws are significantly tightened, pressure often grows to widen opportunities for discretionary relief.* Johnson-Reed’s quota regime and increased enforcement led to pressure to forgive at least some illegal entries — first through the bipartisan Registry Act of 1929, and later through preexamination and suspension of deportation. When preexamination was halted at the end of 1952, larger numbers of private bills led Congress to restart it.

*It is often easier to widen relief through executive action than to pass legislation achieving the same result.* Preexamination was created via action within the Department

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<sup>495</sup> As I write this, I’m preparing to receive a COVID-19 vaccine that is only coming my way in early February 2021 due to luck, contingency, and connections.

of Labor and INS, after legislation such as Kerr-Coolidge failed and even the more limited Dies bill was filibustered to death. After Congress struggled with the growing numbers of private bills generated by McCarran-Walter, committee leaders tacitly permitted INS to process preexaminations again, rather than immediately moving to fix the problem legislatively.

*It is more difficult for Congress to loosen immigration law than to tighten it.*

Unusual confluences of events are often required for substantial liberalizing reform to occur. Within the period covered here, the 1957 and 1958 laws that finally made preexamination unnecessary resulted not only from the urging of a Republican President (Eisenhower), but also restrictionists' apparent confidence that INS was now led by a tough enforcer, General J. M. Swing.

*When some immigration restrictionists decide the time has come for a grand bargain, others often pick up the baton of opposition.* For example, when restrictionist Rep. Martin Dies attempted to offer tightly circumscribed administrative relief while satisfying the concerns of traditional political opponents, fiercer restrictionists such as Rep. John Box grabbed leadership roles in opposing any compromise. A similar dynamic appeared as the "Gang of Eight"'s Border Security, Economic Opportunity, and Immigration Modernization Act failed in 2013, after relentless opposition led in part by Sen. Jeff Sessions (R-AL), later to become President Trump's first Attorney General.<sup>496</sup>

*Immigration reformers often attempt to combine liberalizing provisions with others that establish tighter restriction.* As Daniel Tichenor has pointed out, this "strange

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<sup>496</sup> "Sessions Takes on Senate Immigration Gang, Vows to 'Expose' Flawed Bill," CNN, May 21, 2013, accessed March 1, 2021, <https://www.cnn.com/2013/05/21/politics/sessions-immigration-reform/index.html>.

bedfellows” dynamic has recurred repeatedly.<sup>497</sup> During the preexamination era, it can be seen in Immigration Commissioner Daniel W. MacCormack’s 1934 proposals to link wider administrative relief with stronger tools to deport criminals. It appears again in the 1940 linkage of universal alien registration with a new opportunity for suspension of deportation. The restrictive McCarran-Walter Act attracted key support by eliminating racist prohibitions on Japanese immigration. After preexamination ended, as Mae Ngai has pointed out, the widely-praised 1965 Hart-Celler reforms also imposed the first quotas on immigration from Mexico: something that restrictionist Harry Hull was already fighting for in 1926.<sup>498</sup> Similarly, the Reagan-era Immigration Reform and Control Act of 1986 paired legalization of millions of undocumented immigrants who arrived before 1982 with new penalties for knowingly employing undocumented workers.<sup>499</sup>

*Debates over immigration are often personalized through competing narratives of the migrants’ lives and characters.* Humans respond to human stories more than to data or theory. So liberalizers focus on families being torn asunder and children being threatened with expulsion to faraway lands they have never seen, where they will be at great risk. They focus attention on individuals whose violations are technical or easily forgivable, rather than premeditated and wanton. In contrast, restrictionists point to migrants who bring crime or subversion and will be public charges or unassimilable. They point to examples of migrants who convince authorities to extend mercy and then

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<sup>497</sup> Daniel Tichenor, “The Political Dynamics of Unauthorized Immigration: Conflict, Change, and Agency in Time,” *Polity* 47, no. 3 (2015): 283–301. doi:10.1057/pol.2015.11.

<sup>498</sup> “Wants Limit Placed on All Immigration,” *New York Times*, May 13, 1926, 8.

<sup>499</sup> Betsy Cooper and Kevin O’Neil, “Lessons from the Immigration Reform and Control Act of 1986,” Migration Policy Institute, August 2005, accessed October 20, 2020, [https://www.migrationpolicy.org/sites/default/files/publications/PolicyBrief\\_No3\\_Aug05.pdf](https://www.migrationpolicy.org/sites/default/files/publications/PolicyBrief_No3_Aug05.pdf).

prove unworthy of it. They claim that illegal migrants are “jumping the line” at the expense of honorable migrants who follow the rules; and describe good Americans as the true victims of the crime and unfair economic competition that excess migration brings.

*People who want to stay use whatever resources are available to help them do so.* The historical record of the 1930s and 1940s is replete with examples of individuals who appear at imminent risk of deportation and then, several years later, are still in the U.S. and often moving towards naturalization. If one approach to legalizing their status didn’t work, they often found another. If required to voluntarily depart, they often sought and eventually received a new visa through conventional means. If all else failed, many men opened a path to naturalization by joining the U.S. military.

*Both as individuals and as groups, some alien residents are more equal than others.* The case studies and examples presented here suggest that migrants who were more resourceful, sophisticated, and well connected were likelier to successfully navigate the complexities presented by preexamination and the U.S. immigration system. More than this, however, procedures like preexamination existed in a broader context. Some groups of alien residents — such as southern Europeans and European Jews — were gaining the political power required to protect themselves from expulsion. Others, such as Mexicans, were not. It was therefore easier for authorities to accept adjustments to the system that benefited some migrants, while also accepting adjustments that disadvantaged others — such as ending preexamination for Mexicans first at the Mexican border, and then also at the Canadian border except in very rare cases.

*Administrators’ experience with procedures tends to suggest refinements; advocates and migrants who are more informed and well-connected will be more*

*successful in navigating these changes.* Officials notice drafting errors, unanticipated consequences or loopholes, or the need to clarify their authority. These lead to either informal changes in interpretation, or official changes such as those published in the Federal Register. Obviously, such changes are often inflected by the officials' values and worldviews; Commissioners Daniel W. MacCormack (under FDR) and Harry Hull (under Hoover) would likely have had different priorities. Even where politics was peripheral or irrelevant, though, the changes and their implications needed to be continually tracked, so migrants and advocates could take advantage of them and avoid new pitfalls. Those who understood such changes had an advantage over those who didn't.

*Ethnic groups' power to protect themselves from the immigration system exists on a continuum; it may be easier to protect those already here than others still seeking entry.* Italians and Jews gained sufficient power to protect many who were already here long before they were able to loosen overall quota limits. With preexamination, which applied to individuals already domiciled within the U.S., advocates could bend the quota system one individual at a time, using the procedure to benefit more people from their ethnic group than restrictionists might have wished. Granted, for several years it was physically impossible to deport one's neighbors to Nazi-occupied territory, but easier to maintain strict entry limits that condemned their invisible family members to concentration camps. Even so, preexamination suggests that migrants already establishing themselves in the U.S. can sometimes leverage support unavailable to others.

*Migrants' advocates and representatives often play a key role in mediating the relationship between individuals and the immigration system.* Records of organizations

such as the Common Council on American Unity, the Italian Welfare League, and the National Catholic Welfare Conference show deep and continuing interactions with INS. Advocates served on official INS and Ellis Island committees; continually asked questions and requested clarifications about policy; and sought liberalizations “around the edges” — e.g., requesting that cutoff dates for preexamination applications be extended to the very last day the law allowed. As they represented individuals, they often avoided making demands that couldn’t be accepted, or behaving in ways that would damage their credibility in representing future clients or advocating for their entire constituency. As they explained to migrants what is required of them, they represented INS to the migrants as well as vice versa. In some cases, INS encouraged migrants with complex or difficult problems to seek them out.

#### Directions for Further Research

As mentioned in the Acknowledgments, the COVID-19 global pandemic emerged as I was beginning research for this thesis. Most archives I had planned or hoped to visit in person quickly closed, and remained closed through my research process. These included National Archives locations containing records for the State, Labor, and Justice Departments; the Center for Jewish History (which hosts records for the Hebrew Immigrant Aid Society and other immigrant organizations); the Immigration History Research Center at the University of Minnesota; Library and Archives Canada; and Harvard University’s archives. This meant I sometimes found myself inferring answers to questions that might be answered more definitively with archival research; and accepting that I simply could not answer some questions.

Some of these are outlined below. Of course, creative or well-informed scholars may know of other resources for addressing them, even if some archives remain inaccessible.

Internal INS policymaking. Access to INS papers within the Department of Labor (1935–1940) and Department of Justice (1940–) archives may shed more light on how preexamination was established, and how decisions were actually made about the eligibility of Mexicans and other non-whites. Without further exploring these files, I am handicapped in assessing the extent to which these decisions were the result of outright and unabashed racism (as Mae Ngai’s Blocker correspondence suggests); racism-inflected path dependence partly linked to the Mexican-American community’s relative political impotence in this era; or entirely different rationales, such as a careful assessment of the limits placed on INS by Congress (whose actions would, of course, have been shaped by legislators’ attitudes about Mexicans).<sup>500</sup>

INS papers might also help refine my interpretation of the notations on specific border manifest cards, potentially ruling out some cases and ruling in others as preexaminations.<sup>501</sup> They might supplement the agency’s incomplete published

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<sup>500</sup> Representatives’ views of Mexicans as individuals did not always match their views of liberality in Mexican migration, as some southwestern Congressmen were extremely concerned about ensuring an inexpensive agricultural labor supply for growers they represented. See S. Deborah Kang’s discussion in *INS on the Line*, including this passage: “Pro-bracero legislators also defended the interests of borderlands growers in more pointed ways, issuing explicit warnings to Immigration Service officials. When the Border Patrol conducted a roundup in Texas, Representative Lloyd Bentsen, having received numerous complaints from farm constituents, threatened to initiate an investigation of Border Patrol practices. In 1951 Congressman Poage of Texas, the vice chair of the House Committee on Agriculture, secured a guarantee from Border Patrol supervisor Willard F. Kelly that the Patrol would not disturb the undocumented immigrant population on the US–Mexico border.” Kang, *INS on the Line*, Chapter 5, *An Agency in Crisis*, 19–20.

<sup>501</sup> For example, they might suggest a reason other than preexamination that some late-1930s manifest cards say “approved by Department of Labor, approved by Department of State.”



preexamination data, leading to more precise estimates of how many cases were processed and approved. They might also contribute to a better understanding of how agents were instructed to handle cases on a day-to-day basis, and resolve discrepancies in notations as individual offices and agents tried to track entries as each thought best. At Ellis Island, several agents whose names we know — Bishara, McGlynn, Magee, Mintzer, Helmick — personally handled many thousands of preexaminations. Perhaps records or oral histories exist to illuminate what *they* thought and felt about their work.

Interdepartmental and diplomatic issues. Access to State Department and U.S. consular archives may shed light on how State Department officials (who had a reputation for supporting restrictive immigration policies) coordinated on preexamination with INS at Labor and then at Justice. They might illuminate State's view of how preexamination implicated the immigration relationship with Canada. State Department archives might shed light on the strange case of John Bankhead, the U.S. consular officer in Windsor, Ontario who alleged high-level corruption in the granting of preexamination, and also claimed to have faced assassination attempts there. Finally, State Department (and INS) archives could clarify how many European migrants inside the U.S. were at least temporarily "undocumented" during the World War II era before they were protected by preexamination (or other procedures).

Canadian decision-making. Access to Library and Archives Canada may illuminate how Canadian immigration authorities responded to U.S. requests that preexaminees be allowed entry, and exactly what problems Canada faced in managing U.S. preexaminees. For example, how often did American preexaminees overstay? Why did Canada halt preexamination at times? What did Canada negotiate in exchange for

allowing it to restart? Did they view preexamination as a domestic political problem? Did the issue of anti-Semitism ever explicitly arise?

INS's move to the Justice Department. The Harvard Law School library holds the papers of Henry Melvin Hart, who served as Special Assistant to INS as it was being re-established within the U.S. Attorney General's Office in 1940 and 1941. Hart's papers may also shed light on how the Roosevelt administration viewed discretionary relief. As one of the era's leading legal scholars, he may have been involved in establishing the Board of Immigration Appeals, which ruled on many preexamination cases. Hart may have also shaped the evolution of preexamination itself during the early 1940s; he signed the Federal Register's publication of these changes.

Operation Paperclip. Primary and secondary sources repeatedly describe the procedure former Nazi scientists underwent to arrange visas from within the U.S. as preexamination, and describe how they traveled from camps in Texas and Alabama to U.S. consulates such as Ciudad Juarez, typically returning the same day with visas. But clearly the special "national security" treatment of these individuals meant this was not "ordinary" preexamination. Beyond requiring the State Department to accept sanitized military investigations of potential preexaminees rather than performing their own, and sending most of these preexaminations to consulates in Mexico rather than Canada, how else did the process differ? What had to occur to facilitate Operation Paperclip preexaminations in 1953 and 1954 when other preexaminations had ceased?

Independent of archival access, my work leaves other questions unresolved that may be worth more attention. Here are just a few:

Preexamination from 1955–1959. The St. Albans and Detroit manifest card datasets I utilized end in 1952 and 1954 respectively, so they do not reflect preexaminations after the procedure was briefly resurrected in 1955. Was this population of preexaminees different? For example, did it include more individuals fleeing the Soviet bloc? If so, how did their treatment compare with predecessors fleeing other unfree regimes?

Preexamination on the West Coast. Researching west coast border manifest cards might identify demographic or other differences from preexaminees who crossed the border in the Northeast and Midwest. My sample of Detroit manifest cards suggested that significant numbers of Chinese nationals may have been preexamined and received non-quota visas in the late 1940s. Would researching west coast manifest cards find even more? If so, did preexamination contribute meaningfully to the reemergence of Chinese migration to the U.S. as the Communists were winning China's civil war?

Role of private attorneys. Primary sources from non-profit migrant advocacy organizations suggest a rivalry with (and skepticism of) private attorneys also serving aliens seeking preexamination or other forms of discretionary relief. These attorneys are sometimes described as overpriced, poorly informed, or corrupt. How did working immigration attorneys, such as those on Court Street in Brooklyn (see p. 129) view their work, their clients, and their non-profit competitors? How did they actually go about doing what they did? These were, by and large, not "elite" lawyers; their archives are rarely held at Ivy League law schools. I haven't found good sources for investigating their work and experiences, but if these sources exist, they are likely fascinating.

Preexamination after 1959. When Congress approved liberalizations in 1958, most observers seemed to agree that these were sufficient to obviate the need for preexamination. But in 1963, years after preexamination ended (and after the timeframe covered in this thesis), Sen. Jacob Javits attempted to resurrect it. Why? Had he identified a population of worthy migrants who still had no viable alternative? Did preexamination play any role in the 1965 Hart-Celler debate?

To conclude, preexamination has proven as rich a subject as I hoped it would be. The history and experience of preexamination says much about how immigration law and procedure is made, and how the making of law and procedure affects actual human lives. It also helps us consider how often contingent human choices — made as policymakers, as interpreters and enforcers of the law, as citizens, or as migrants — affect the future of entire societies.

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