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IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

No. TY-77-261-CA

J. AND R. DOE, ET AL.,
PLAINTIFFS

V.

JAMES PLYLER, ET AL.,
DEFENDANTS.

TRIAL BRIEF OF PLAINTIFFS

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

J. and R. DOE, ET AL, PLAINTIFFS, VS. JAMES PLYLER, ET AL, DEFENDANTS.	CIVIL ACTION NO. TY-77-261-CA

TRIAL BRIEF OF PLAINTIFFS

INTRODUCTION

The Plaintiffs, sixteen minor children, seek a declaration that 21.031 of the Texas Education Code (Vernon's Supp., 1976) and the implementing Policy Statement by the Tyler Independent School District are unconstitutional in violation of their rights to Equal Protection and Due Process, and further are unconstitutional as a violation of the Supremacy Clause. The Plaintiffs seek permanent injunctive relief against the enforcement of that statute and policy by each of the Defendants.[1/]

In support of their claim the Plaintiffs will show that (a) all persons within the territorial limits of the United States are entitled to the protections offered by the Equal Protection and Due Process clauses, (b) strict scrutiny is the proper measure of

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1/ In addition to those named as Defendants, the State of Texas orally moved to intervene as a Party Defendant at the time of the hearing on preliminary injunction. That motion was granted (Transcript of September 9, 1977, p.63). Pursuant to the order of this Court and the ordinary rules of litigation, the Defendant-Intervenors are fully subject to this Court's jurisdiction for remedial purposes. The Plaintiffs thus request injunctive relief against the State and each of its subdivisions.

justification for state legislation which effectively excludes innocent alien children from access to an education, and (c) the Defendants are unable to justify this legislation under any standard. The Plaintiff's will also show that this legislation conflicts with the Supremacy Clause in that the federal government has entered into a treaty which requires it to insure that all steps are taken to abolish illiteracy within the country. Further, legislation directly affecting the rights of Mexican citizens conflicts with the unique and delicate relationship which the United States has with Mexico.

I. UNDOCUMENTED ALIENS ARE PROTECTED BY THE GUARANTEES OF THE EQUAL PROTECTION CLAUSE

Undocumented aliens have rarely sought legal protection through the courts. It is well documented how the fear of disclosure and consequent deportation has allowed the unscrupulous to prey upon the undocumented alien, free in the knowledge that he will not seek help from the authorities or the courts.[2/] One consequence of this failure to seek legal protection has been a dearth of authority on the protections actually due him. Most of that authority which does exist emanates from issues raised in deportation proceedings; at such a juncture, the alien has been uncovered and no purpose is served by not invoking constitutional protections.

Repeatedly the Supreme Court has been called upon to protect the undocumented alien against arbitrary legislation and activity surrounding the act of deportation. Repeatedly the Court has ruled that the alien, irrespective of his legal status, is entitled to the protection afforded by the Due Process Clause.[3/] The analysis

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2/ See e.g. Ortega "The Plight of the Mexican Wetback" 58 ABAJ 211 (1972).

3/ See e.g. The Japanese Immigrant Case 189 U.S. 86 (1902), Shaugnessy v. U.S. Ex rel Mezei 345 U.S. 206, 212 (1953); Mathews v. Diaz 426 U.S. 67, 77 (1976).

used to arrive at this conclusion is directly applicable to an inquiry into the protective scope of the Equal Protection Clause; indeed, the leading authority for the proposition that Due Process protects the undocumented alien relies upon the analysis found in an Equal Protection case.

In Yick Wo. v. Hopkins 118 U.S. 356 (1886), the Supreme Court ruled that aliens are protected by the Equal Protection Clause of the Fourteenth Amendment.[4/] In so ruling, the Court held it violative of that clause for San Francisco officials to discriminate against Chinese aliens in the licensing of laundry establishments. Ten years later the Court was called upon to determine whether the companion Due Process Clause attached to admittedly illegal aliens. In ruling that it did, the Court cited to Yick Wo and then added its own observations:

> ...in the case of Yick Wo v. Hopkins, 118 U.S. 369 [30:226], it was said: "The 14th Amendment to the Constitution is not confined to the protection of citizens. It says: 'Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.' These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any difference of race, of color, or nationality; and the equal protection of the laws is a pledge of the protection of equal laws."

Wong Wing v. United States 163 U.S. 228, 237 41 L. Ed. 140, 143 (1896) (emphasis added).

The Yick Wo - Wong Wing analysis of the wording of the Equal Protection and Due Process clauses is especially appropriate when contrasted with the Privilege or Immunities Clause which immediately precede them. That clause applies only to citizens. It is thus abundantly clear that equal protection and due process were to be extended to a broader group than citizens, that the two

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4/ The Court does not distinguish between legal and undocumented aliens in the opinion, although seemingly the Plaintiffs were lawfully admitted.

> in his Institutes on International Law, p.40, "extend to all persons and things not privileged that are within the territory. They extend to all strangers therein, not only to those who are naturalized and to those who are domiciled therein, having taken up their abode with the intention of permanent residence, but also to those whose residence is transitory. All strangers are under the protection of the sovereign while they are within his territories, and owe a temporary allegiance in return for that protection."

See also Johnson v. Ersentrazer 339 U.S. 763, 771 (1950).

It is thus clear that the basic laws of the country including the constitutional guarantees accorded to "persons" by the Equal Protection and Due Process clauses protect all persons within the territorial limits of the United States. Clearly, the Equal Protection Clause protects the Plaintiffs.

As we earlier observed, few cases since Wong Wing have had the opportunity directly to discuss the applicability of the Equal Protection Clause to undocumented aliens. Several recent cases have however touched upon the issue, invariably holding or observing that this Clause does apply to them. In Williams v. Williams 328 F. Supp. 1380, 1383 (D. VI. 1971), the Court directly observed that:

> ...To deny an alien access to our divorce courts on the sole ground that he may be in violation of an immigration law would be to deny both due process and the equal protection of the laws.

(Emphasis added)

The "violation of an immigration law" discussed was the illegal status of the one seeking access to the Court. The Court further opined that a state's denial of access would be especially questionable given the lack of prior resort to the procedual protections set forth in the immigration laws for determining status. Id.

In Holly v. Lavine 529 F.2d. 1294, 1296 (2nd. Cir. 1975), the District Court refused to convene a Three Judge Court in a case

instant litigation accomplishes the exclusion of children from schooling because they had the misfortune of having been brought into the country ilegally by their parents. This legislation suffers from the same vice found objectionable in those authorities.

In Levy v. Louisiana 391 U.S. 68 (1968), the Court struck down, on Equal Protection grounds, legislation which precluded illegitimate children from suing for the wrongful death of a parent. The Court concluded that the legislation was unconstitutional because:

> ...it is invidious to discriminate against [the children] when no action, conduct, or demeanor of theirs is possibly relevant to the harm that was done the mother.

391 U.S. 68, 72 (footnotes omitted).

In a later case involving the denial of benefits to illegitimate children, the Court observed that:

> "Imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burden should bear some relationship to individual responsibility or wrongdoing."

Weber v. Aetna Casualty & Surety Co. 406 U.S. 164, 175 (1972).

In St. Ann v. Palisi 495 F.2d. 423 (5th. Cir., 1974), the Court held that it violated the concept of substantive due process to exclude a child from school because of the acts of his parents. In so ruling, the Court observed:

> ...Freedom from punishment in the absence of personal guilt is a fundamental concept in the American scheme of justice. In order to intrude upon this fundamental liberty governments must satisfy a substantial burden of justification.

495 F.2d. at 425 (emphasis in original, footnotes omitted).

The children who are the Plaintiffs in the instant litigation are here because their parents brought them here. This legislation punishes them for a status over which they had no control. The

legislation is irrational not only for the reasons discussed in previous sections, but because it strikes at the innocent. This presents an additional reason why this legislation must be found violative of the Equal Protection Clause.

V. SECTION 21.031 OF THE TEXAS EDUCATION CODE AND THE POLICY PROMULGATED BY THE TYLER INDEPENDENT SCHOOL DISTRICT ARE ATTEMPTS TO REGULATE IMMIGRATION, WHICH ARE PREEMPTED BY THE GOVERNMENT.

The Immigration and Nationality Act, 8 U.S.C. Sections 1101-1503, is the primary and controlling law in the area of immigration and as such, preempts any attempts by the states to regulate in the area. Federal preemption is based upon the Supremacy Clause of the United States Constitution, Article I, Sections 8 and 10, making federal law the controlling law whenever the Constitution grants to the federal government a particular sphere of power or where concurrent powers may be exercised, and the federal government has legislated in the field.

The propriety of federal preemption is beyond dispute in areas specifically reserved to the federal government by the Constitution, Savage v. Jones, 225 U.S. 501, (1911). A more difficult problem of legal analysis results when a court must determine whether an area of regulation is beyond a state's jurisdiction absent an explicit showing of Congressional intent to reserve the area to the federal government. In these cases the Supreme Court has generally looked to the following criteria in determining if federal preemption exists: (1) the extent of the federal government's exclusive authority in the area; (2) a conflict or interference with federal laws or policies; and (3) the need for national uniformity in the area. See Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).

The federal government's exclusive authority in immigration matters was established in Hines v. Davidowitz, 312 U.S. 52 (1941). There the Court articulated the need for uniformity in the area, for "one master theory", and stressed that the federal government's exclusive authority in international affairs warranted its being the single authority in the regulation of immigration.

While affirming the exclusive federal authority to regulate immigration, the recent case of De Canas v. Bica, 424 U.S. 351 (1976), held that not every state enactment dealing with aliens is such a regulation and thus per se preempted by the federal government's power over immigration. In determining if the challenged regulation resulted in a per se violation of the preemption doctrine the De Canas Court applied the tests set out in Hines v. Davidowitz, supra, and reiterated in Florida Lime and Avocado Growers v. Paul, 373 U.S. 132 (1963) stating

> federal regulations...should not be deemed preempted of state regulatory power in the absence of persuasive reasons--either that the nature of regulated subject matter prevents no other conclusion, or that Congress has unmistakenly so ordained.

Id. at 424 U.S. 356.

Further, the De Canas Court stated that even though not preempted per se, a state regulation may be invalid if it "stands as an obstacle in the accomplishment and execution of the full purpose and objectives of Congress. Id. at 424 U.S. 363. The Court held that California Labor Code §2805(a)[18/] which prohibited the knowing employment of undocumented aliens was not a per se violation of the preemption doctrine, but remanded the case to state court for a determination of whether it stood as an obstacle to full accomplishment of Congressional purpose.

A. The State Law and School District Regulations in the Instant Case are Per Se Violations of the Preemption Doctrine.

18/ Section 2805 of the California Labor Code, added by stats 1971, p. 2847, e 1442 §1 reads as follows:

> (a) No employer shall knowingly employ an alien who is not entitled to lawful residence in the United States if such employment would have an adverse effect on local resident workers.

In the De Canas case, the Court determined that the California Labor Code in question was not an invalid state incursion on federal power per se after an evaluation of four factors. First, states have broad authority to regulate the employment relationship to protect workers within the state. Second, the legislative history of the Immigration and Nationality Act does not indicate that Congress intended to preclude harmonious state regulations dealing with the employment of undocumented aliens. Third, employment of undocumented aliens is at best a "peripheral concern" of the Immigration and Nationality Act. Finally, the Federal Farm Labor Contractor Registration Act, 7 U.S.C. §2041 et seq. (1973), specifically allowed supplemental state regulation. Thus, the court held that Labor Code §2805(a) did not involve the subject matter or unmistakeable Congressional direction to create a per se violation of the preemption doctrine.

A careful analysis of the Texas Education Code §21.031 and the Tyler I.S.D. regulations compels a different result. In the instant case the challenged state and local action results in the absolute denial of education to undocumented children. While education, like employment, is primarily a matter of state and local concern, San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 42 (1973), other aspects which motivated the holding of the De Canas Court are absent in the instant case.

Although De Canas states that the words and legislative history of the Immigration and Nationality Act leave room for some state regulations impacting on aliens, 424 U.S. at 358, the state and local actions at each issue are not such regulations. The central concern of the Immigration and Nationality Act is with "the terms and conditions of admission to the Country." States can neither add nor detract from the regulations controlling the admission, naturalization or residence of aliens. Takahashi v. Fish and Game Commission, supra, 344 U.S. at 419.

The Texas statute, however, allows local or state authorities to determine if a child is in this country lawfully. This determination is precisely the determination which must be made under the Immigration and Nationality Act. The California statute in De Canas required no state or local determination of immigration status and impacted on the employer rather than the alien. It merely forbids an employer to hire someone, knowing that employee is a person already determined by the federal government to be ineligible for work. The employer is not called upon to inquire as to the prospective employee's immigration status or to make any determination as to that status. The statute is aimed at preventing employers from recruiting undocumented labor from Mexico to avoid paying minimum wage to the detriment of resident workforce.

The Texas statute, on the other hand, requires a state or local inquiry into and determination of each child's immigration status. Because Section 21.031 contains no definition of a "legally admitted alien", each district is free to create its own definition. This is precisely the sort of decision that is exclusively the province of the federal government.

Further, the statute and regulations here impact directly on the alien rather than the school district. The school district faces no plenalty for educating aliens, as the employer did for employing aliens in De Canas. Rather, the alien is penalized by being absolutely excluded from access to education if he or she cannot prove to a local school board that under its own definition, which may differ from that of every other governmental entity, that he or she is legally admitted.

Finally, in the instant case there is no federal statutory provision such as the Federal Farm Labor Contractor Registration Act, supra, which explicitly contemplates implementing set of state regulations and would thus take such state regulations out of the sphere of federal preemption. The primary federal statute

dealing with local educational policy is Title I of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. §§241 et seq. (1976). That statute allows for the distribution of federal funds to local schools to aid low income children. The purpose of this act is "to give young people a chance to break the cycle of poverty and poor education that so many of them and their parents have known." U.S. Code Cong. and Admin. News, 1974 P.L. 93-380 p. 4096 (Rep. on H.R. 93-805). In this, children are defined as "all children aged five through seventeen inclusive."[19/] 20 U.S.C., §241(c) (1976 Supp.). The state statute and local regulations in question do not implement Title I, but rather subvert its purpose by operating to deny undocumented low income children access to education.

Thus the statute and regulations at issue in the instant case, unlike the statute at issue in De Canas are invalid incursions on federal power. They attempt not merely to regulate education, but to empower state and local officials to inquire into and determine immigration status. They place a burden on aliens within the State of Texas who cannot prove their "legal" status to the satisfaction of local officials, and they subvert the intent of Title I, the primary federal statute relating to local education. Thus they are the type of regulations which are per se invalid under the test articulated most recently in De Canas. The nature of the regulated subject matter permits no other conclusion and Congress has unmistakenly ordained that this subject matter be regulated federally.

19/ The only possible implication to be drawn from this is that the federal government will grant money to local schools teaching undocumented children of low income.

B. The State Law and Local Regulations are Invalid as a Burden on the Implementation of Federal Objectives.

A state statute is invalid and violative of the preemption doctrine if it stands as an obstacle to the accomplishment or execution of the full purposes and objectives of Congress. Education Code §21.031 and the Tyler I.S.D. regulations impair federal power in two areas. First, they interfere with the implementation of Congressional objectives of the Immigration and Nationality Act. Secondly, they infringe upon the federal government's exclusive power over international relations.

1. The Objectives of the Immigration and Nationality Act.

The third basis for determining if state regulation involves a preempted area is an analysis of whether it interferes with Congressional objectives. De Canas, supra, 424 U.S. at 363. If a state statute such as Education Code §21.031 "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the I[mmigration] and N[ationality] A[ct]" it is unconstitutional Id. The De Canas Court remanded the case to the California Court for a determination of whether, as construed, California Labor Code §2805(a) "can be enforced without impairing the federal superintendence in the field." Id.20/ In remanding, the Supreme Court indicated that the California Court should attempt to reconcile the state statute with the federal scheme. At least one commentator has stated that the California

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20/ Issues raised by the Supreme Court include whether there would be any conflicts with federal immigration law, particularly in the definition of "alien entitled to lawful permanent residence." Id. As yet, the California Court has not acted on this matter.

other, that requires a uniformity of policy that only a federal scheme can provide. States attempting to regulate the behavior or rights of aliens may only adversely affect neighboring states to which aliens may move. If Texas denies free education to children it alone has decided are illegally admitted, these children and their families may simply shift the so-called economic burden to another state. See, e.g. Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed. 600 (1969); Memorial Hospital v. Maricopa County, 415 U.S. 250 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974). The "tranquility of all the states" would be harmed, as was warned by the Court in Hines v. Davidowitz, supra. State enforcement of laws relating to aliens is a dangerous area since "subjecting...(aliens) ...to indiscriminate and repeated interception and interrogation by public officials...bears an inseparable relationship to the welfare and tranquility of all the states." 312 U.S. at 65-66.

When the facts of a particular case indicate that the federal interest in uniformity is great, as is the case here, the presence of even a potential conflict with state law mandates preemption. San Diego Building Trades Council v. Garmon, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959). See also City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624, 93 S.Ct. 1854, 36 L.Ed.2d 547 (1973).

As in Takahashi, supra, no matter how traditionally revered the state interest may be, if it is antithetical to the realization of a legitimate federal objective, it cannot prevail. The federal government's exclusive authority in the area of immigration, its great need for uniformity, and the unbridled freedom with which the Texas statute may be defined by various state and school officials all mandate that a finding of federal preemption in this area be imposed.

statute cannot be reconciled with the federal scheme and is unlawful in this context.[21/]

The statute and regulations in the instant case are irreconcilable with the federal scheme set out in the Immigration and Nationality Act. When a state or local entity is permitted, as in this case, to determine a person's immigration status, an actual, not just potential conflict with federal immigration policies is created. Each School District in Texas is now free to define legal residence in opposition to each other and in opposition to the federal definition. The federal scheme for immigration set forth in the INA clearly anticipates that federal officials are responsible for making these determinations and enforcing immigration law.[22/] Moreover, federal standards determine who is or can be a lawful resident.[23/] State or local involvement in this are is clearly preempted because of its conflict with federal law.

21/ Professor T. Krattinmacher at the Conference on Immigration Law held at Georgetown University Law Center on March 26, 1976, stated:

> "De Canas is a 'sterile' case in that the California court held 2805 unconstitutional in the abstract and the Supreme Court reversed that decision as such... Whether the statute can ever be constitutional as applied to any given fact situation is a totally different question. My hunch is that the state court will find 2805 unconstitutional as well..." (quoted in Comment, "The Undocumented Alien Laborer and De Canas v. Bica: The Supreme Court Capitulates to Public Pressure,") 3 Chicano Law Review, 148, 163 n. 66, (1976).

22/ The Attorney General is charged with the administration and enforcement of the Immigration and Nationalization of Aliens. 8 U.S.C., §1103(a) (1970). In exercising this responsibility, Attorney General Bell has indicated that he intends to eliminate massive deportations of undocumented persons because it would be inhumane and impractical. San Francisco Chronicle, February 14, 1977, at 5 cl. 6.

23/ Recently a federal judge ordered the government to stop deportation procedures against 280,000 Mexican and Latino otherwise illegal aliens who were denied visas because of illegal United States immigration quotas. Silva v. Levi, Civil Action, 76c 4268 (N.D. Ill.). Furthermore, certain INA code sections, such as 8 U.S.C. 1254 allow otherwise "illegal aliens" permanent resident status after fact findings and an exercise of discretion on the pert of federal immigration officials.

Further conflict with the Immigration and Nationality Act is realized when one looks at its Sections 261-266 (8 U.S.C. Sections 1301-1306). These sections clearly state that minor children under fourteen (14) years of age are not responsible for their proper registration with the Immigration Service. Section 262(b) makes it the duty of every alien parent, who has children under fourteen (14) years of age, to register them. Section 264 makes it the duty of every alien eighteen (18) years or older to carry with him or her at all times a certificate of registration. Section 265 makes it the duty of every alien parent to give notice of a change of address for his or her minor children. Finally, Section 266 imposes a penalty for willful failure to register and again the parents are liable for their unregistered minor children.

Congressional intent to preempt in the field of alien children's registration is clearly manifested by these statutes. Minor children are not to be victimized by their parent's failure to declare documentation. Yet the Tyler I.S.D. and Section 21.031 clearly punish minor children for their parents deeds.[24/] All the plaintiffs herein are under the age of fourteen (14) and all are being denied admittance to school because of their parents lack of documents. The Congressional intent in this area is clear and Section 21.031 and the Tyler I.S.D. admittance and tuition policy are in absolute conflict with this intent.

2. The Statute and Regulations Have the Potential of Creating Conflict Among the States in Violation of Federal Interest.

The regulation of aliens is a field, more than almost any

24/ Federal law prohibits the states from punishing aliens, adults or children, solely on the basis of thier undocumented status. See Williams v. Williams, 328 F.Supp. at 1383.

3. Exclusive Federal Jurisdiction in the Area of International Relations.

As well as interfering with the federal scheme of immigration, the statute and regulations at issue here interfere with federal jurisdiction in the area of international relations. The United States and other Latin American nations, members of the Organization of American States, have specifically addressed, inter alia, the issue of education in the member states. In 1970, the Protocol of Buenos Aires, amendments to the 1948 O.A.S. Charter was signed by President Nixon and ratified by two-thirds of the Senate in the same year. The Protocol of Buenos Aires had been previously ratified by Mexico in 1968. In specific reference to the issue of educational opportunities to be provided, the treaty amendments stated:

> "The member States will exert the greatest efforts, in accordance with their constitutional processes, to ensure the effective exercise of the right of education on the following basis:
>
> (a) Elementary education compulsory for children of school age, shall also be offered to all others who can benefit from it. When provided by the State it shall be without charge." 25/

See United States Treaties and Other International Agreements (T.I.A.S.) vol. 21, pp. 607 et seq. (1970).

Education was one of the most important social goals recognized by all members of the Organization of American States as necessary for the development of each of the American States of

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25/ Education plays a very large role in the eyes of the signatory countries. This is indicated by the fact that the promotion of educational advances, especially at the primary level, are specifically stated in Articles 31, 45, 46, 47 and 48. Cooperation to achieve these goals is stressed in the Preamble, and in Articles 29, 32 and 34.

of the Hemisphere generally.[26/] For this reason, the member States ratified the treaty amendments in order

> [t]o accelerate their economic and social development, in accordance with their own methods and procedures and within the framework of the democratic priciples and the institutions of the inter-American System, ...agree[d] to dedicate every effort to achieve [inter alia] the following basic goal:
>
> h) Rapid eradication of illiteracy and the expansion of educational opportunities for all...

Id., Article 31 of Chapter VII.

Rather than encouraging the rapid eradication of illiteracy the Texas Education Code §21.031 fosters illiteracy by denying undocumented aliens, many of whom are nationals of Mexico, another signatory state to the Protocol of Buenos Aires, access to education. The Texas statute is clearly contrary to this treaty's spirit and creates further conflict with the federal government's exclusive domain in international law. As the De Canas Court pointed out:

[26/] The United States Senate was aware of the strong commitment made to education and other social and economic goals at the time the treaty was ratified. In response to a question by a Senator to the OAS Ambassador as to why provisions which "may embarass us later" should be adopted into the OAS Charter, the Ambassador responded:

> "Obviously the reason these economic and social standards are being incorporated into the Charter is to give them the highest significance, with the support, not only of the Executive or his representative who signed the Alliance for Progress charter, but of the governments through both the executive and the legislative branches indicating that this represents their policy and their aspiration. For the Latin American Countries this aspect is particularly meaningful."

Hearings before the Senate Committee on Foreign Relations, Ex. L, 90-1, Amendments to OAS Charter, February 6, 1968.

> "...(E)ven absent such a manifestation of Congressional intent to 'occupy the field', the Supremacy Clause requires the invalidation of any state legislation that burdens or conflicts in any manner with any federal laws or treaties."

424 U.S. at 357 n. 76.

As well as being violative of the OAS treaty, it is apparent that the Texas Statute here in question could have a devastating effect upon the United States' international relations with Mexico.[27/] Recently, the United States and Mexico have held negotiations aimed at solving the complex problems presented by the migration of undocumented aliens which the State of Texas now simplistically attempts to deal with by the statute in question. These ongoing negotiations conducted in the spirit of cooperation

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27/ As was discussed supra at p. 7, the court in Hines v. Davidowitz not only warned of what might happen to the interstate relations of the United States if each state were allowed to impose "repeated interceptions and interrogations by public officials" on aliens, but it also warned of the international repercussions that would arise from such actions. The Court stated:

> "Laws imposing such burdens [are not mere census requirements], and even though they may be immediately associate with the accomplishment of a local purpose, they provoke questions in the field of international affairs." 325 U.S. at 66.

Earlier in its decision, the Court warned that:

> "One of the most important and delicate of all international relationships, recognized immemorially as a responsibility of government has to do with the protection of the just rights of a country's own nationals when those nationals are in another country. Experience has shown that international controversies of the gravest moment sometimes even leading to war, may arise from real or imagined wrongs to another's subjects inflicted, or permitted, by a government. This country, like other nations has entered into numerous treaties of amity and commerce since it inception--treaties entered into under express constitutional authority, and binding upon the states as well as the nation." Id. at 64-65.

are chronicled in the papers of former Presidents Nixon and Ford.[28/] Current negotiations are evidenced by President Carter's recent immigration proposal. Such negotiations are interferred with and disrupted by state action such as that at issue here.

Dated: December 9, 1977.

Respectfully submitted,

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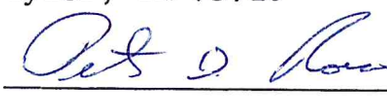
BY: 

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[28/] See, e.g. Presidential Papers of Richard Nixon, June 22, 1972, p. 695 and Presidential Papers of Gerald R. Ford, October 21, 1974, p. 419 for a discussion of cooperation, understanding and study necessary to solve the problems raised by illegal immigration.

CERTIFICATE OF SERVICE

I, PETER D. ROOS, hereby certify that a true and correct copy of the foregoing has been hand delivered to MR. JOHN C. HARDY, Wilson, Miller, Spivey, Sheehy, Knowles & Hardy, 200 Peoples Bank Bldg. South, Tyler, TX 75702; SUSAN CARDWELL, Asst. Attorney General, P.O. Box 12548, Austin, TX 78711; and MR. MICHAEL WISE, U.S. Department of Justice, Washington, D.C. 20530 on December 12, 1977.

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