
GEORGETOWN IMMIGRATION LAW JOURNAL



FOREWORD: THE NEED FOR STATUTES OF LIMITATIONS IN
THE IMMIGRATION LAWS *Charles Gordon*

ARTICLES

CONFLICTS OVER BURDEN OF PROOF ON SECTION
291 DEPORTATION: NINTH CIRCUIT VERSUS
THE BOARD OF IMMIGRATION APPEALS—BURDEN,
BURDEN, WHO'S GOT THE BURDEN? *Henry G. Watkins*

COMPREHENSIVE IMMIGRATION REFORM: HISTORY
AND CURRENT STATUS *Larry M. Eig*
Joyce C. Violet

NOTE

THE IDEOLOGICAL EXCLUSION OF INVITED ALIENS:
SHOULD THE UNITED STATES REQUIRE A HIGHER
LEVEL OF TOLERANCE BY ITS CITIZENS THAN
IT MUST DEMONSTRATE ITSELF?

CASE COMMENT

Cardoza-Fonseca v. INS: RECONCILING THE
STANDARD OF PROOF FOR GRANT OF ASYLUM AND
WITHHOLDING OF DEPORTATION

CURRENT DEVELOPMENTS

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INTRODUCTION

Welcome to the *Georgetown Immigration Law Journal*:

Until now, we have lacked a law journal solely dedicated to the rapidly growing area of immigration and nationality law. The *Georgetown Immigration Law Reporter (Reporter)* partially filled that void for the past few years, but it lacked the resources and staff to put out a genuine law review. Recognizing the opportunity to fill that void and desiring to give students the chance to work on a law journal, the faculty of Georgetown University Law Center unanimously approved the establishment of the *Georgetown Immigration Law Journal (GILJ)*.

Taking over where the *Reporter* left off, the *GILJ* will cover the entire spectrum of immigration law and policy with articles, proceedings of symposia, student notes and comments, and an extensive current developments section. As a publication, we will continue to expand and develop to serve as a useful resource to those interested in immigration and nationality law. The *GILJ* will publish three issues a year.

We hope that the *GILJ* will fill the void now existing in the area of immigration law publications and promote vigorous debate on challenging immigration issues of the day. We also hope to further an understanding of the complexities and intricacies of immigration law and practice. Our goal is to keep judges, practitioners, students, and other interested persons informed of important legal issues and developments in the area of immigration and nationality law.

Richard J. Bartolomei, Jr.
Editor in Chief

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VOLUME 1

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CONTENTS

FOREWORD: THE NEED FOR STATUTES OF LIMITATIONS IN THE IMMIGRATION LAWS

Charles Gordon 1

ARTICLES

CONFLICTS OVER BURDEN OF PROOF ON SECTION 291 DEPORTATION: NINTH CIRCUIT VERSUS THE BOARD OF IMMIGRATION APPEALS—BURDEN, BURDEN, WHO'S GOT THE BURDEN?

Henry G. Watkins 5

COMPREHENSIVE IMMIGRATION REFORM: HISTORY AND CURRENT STATUS

Larry M. Eig
Joyce C. Violet 27

NOTE

THE IDEOLOGICAL EXCLUSION OF INVITED ALIENS: SHOULD THE UNITED STATES REQUIRE A HIGHER LEVEL OF TOLERANCE BY ITS CITIZENS THAN IT MUST DEMONSTRATE ITSELF?

61

CASE COMMENT

Cardosa-Fonseca v. INS: RECONCILING THE STANDARD OF PROOF FOR GRANT OF ASYLUM AND WITHHOLDING OF DEPORTATION

81

CURRENT DEVELOPMENTS

INDEX 129
EXECUTIVE BRANCH 131
LEGISLATIVE BRANCH 157
JUDICIAL BRANCH 183
INTERNATIONAL SECTION 227

NOTE

THE IDEOLOGICAL EXCLUSION OF INVITED ALIENS: SHOULD THE UNITED STATES REQUIRE A HIGHER LEVEL OF TOLERANCE BY ITS CITIZENS THAN IT MUST DEMONSTRATE ITSELF?

Abourezk v. Reagan, 592 F. Supp. 880 (D.D.C. 1984)* and
Allende v. Shultz, 605 F. Supp. 1220 (D. Mass. 1985)

In *Abourezk v. Reagan*¹ and *Allende v. Shultz*² the courts weighed the right of an American citizen to invite an alien to engage in first amendment speech and association against the right of the government to control immigration and the conduct of foreign affairs. In both cases, the government excluded those aliens whose entry, in the government's view, would be prejudicial to the interests of the United States. An examination of the pertinent statutory grounds of exclusion of invited aliens³ as applied in the *Abourezk* and *Allende* cases reveals the courts' deference to the government's expertise in determining foreign policy, and the courts' hesitancy to intrude upon that sphere.⁴ The courts, rely-

* ED. NOTE: As this Note went to print, the United States Court of Appeals for the District of Columbia vacated the judgment of the district court and remanded the case "for a fuller airing of the activity/mere entry question." *Abourezk v. Reagan*, No. 84-5673, slip op. at 16 (D.C. Cir. Mar. 11, 1986). The Court of Appeals did not address the constitutional issue. *Id.* at 12.

1. 592 F. Supp. 880 (D.D.C. 1984). The *Abourezk* case was consolidated with *City of New York v. Shultz*, No. 83-3741, and *Cronin v. Shultz*, No. 83-3895.

2. 605 F. Supp. 1220 (D. Mass. 1985). In October 1985, the government moved for dismissal on the grounds of mootness because Mrs. Allende subsequently was granted a visa to enter the United States and met with the citizen plaintiffs. The court denied the government's motion because the government failed to negate the possibility that the denial of entry was capable of repetition. *Allende v. Shultz*, No. 83-3984 (D. Mass. Dec. 21, 1985).

3. Although this Note will focus on the *Abourezk* and *Allende* cases, the exclusion of invited aliens is not an isolated occurrence. The list of aliens whom the government has excluded includes Roberto d'Aubuisson (right-wing political leader in El Salvador); Carlos Fuentes (Nobel laureate and writer from Mexico); Gabriel Garcia Marquez (Nobel prize-winning author); Dennis Brutus (internationally known poet and critic of apartheid); Dario Fo (well-known Italian playwright and actor); Angel Rama (Latin American literary essayist and scholar); Bernadette Devlin McAliskey (Irish nationalist and former member of the British Parliament); Reverend Ian Paisley (Protestant leader of Northern Ireland); and some three-hundred and twenty delegates from Japan and other countries seeking to attend the June 1983 United Nations special session on disarmament. See *Visa Denials on Ideological Grounds: An Update*, 8 SETON HALL LEGIS. J. 249, 254-59 (1985) [hereinafter cited as *Visa Denials*]. More recently the government denied entry to Farley Mowat, a prominent Canadian writer on wildlife and conservation. See *Washington Post*, Apr. 27, 1985, at A3, col. 1.

4. See *Allende*, 605 F. Supp. at 1224; *Abourezk*, 592 F. Supp. at 887.

branches in the context of immigration,¹²⁰ perhaps Congress could effectuate greater change than the courts regarding the exclusion of aliens. On May 6, 1985, Representative Barney Frank introduced a bill, H.R. 2361, which would significantly narrow the broad exclusion categories.¹²¹ The bill would amend section 212(a) of the INA,¹²² so that only those whose "behavior" would threaten public order would be excluded.¹²³ Under H.R. 2361, an invited alien, such as Nino Pasti, could only be excluded if the "Attorney General knows, or has reasonable ground to believe, he is likely to engage after entry in" an activity which is either criminal, related to espionage or sabotage, terrorist activity, or has as its purpose the overthrow of the United States government through unconstitutional means.¹²⁴ A bill such as this, if enacted into law, would eliminate the current ambiguity for the courts as to what test they should apply. The bill would also protect the first amendment rights of United States citizens without jeopardizing national security. Most importantly, it would require that the government tolerate opposing views and ideas as it requires its citizens to tolerate opposing views and ideas. If the first amendment was meant to protect the free-flow of ideas and require one to tolerate dissimilar views then the denial of entry to aliens such as Nino Pasti and Hortensia de Alende is unquestionably intolerable.

Richard J. Bartolomei, Jr.

120. See *supra* note 114 and accompanying text.

121. See *supra* note 12.

122. 8 U.S.C. § 1182 (1982).

123. H.R. 2361, 99th Cong., 1st Sess., 131 CONG. REC. E1867-68 (daily ed. May 1, 1985).

124. *Id.*