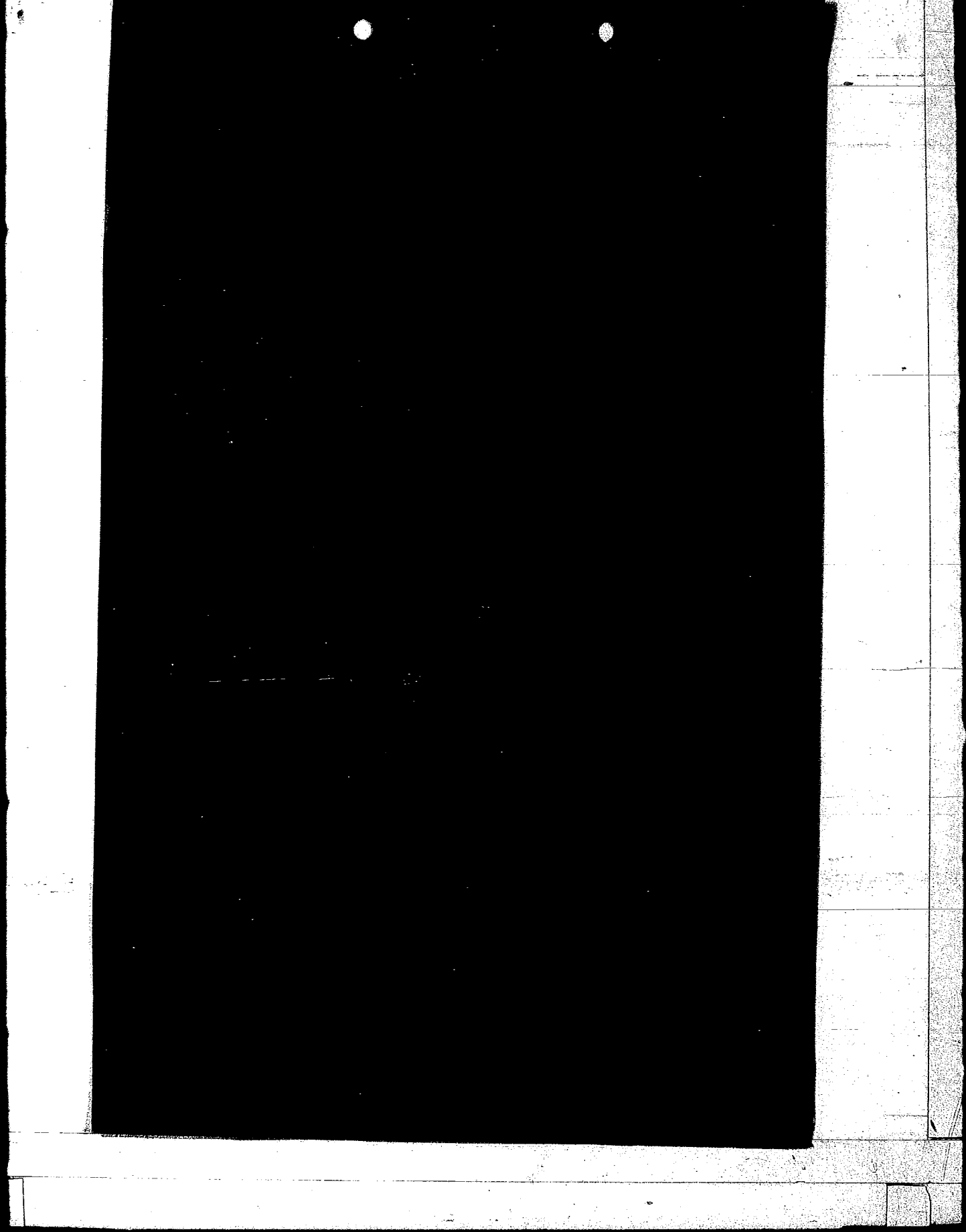
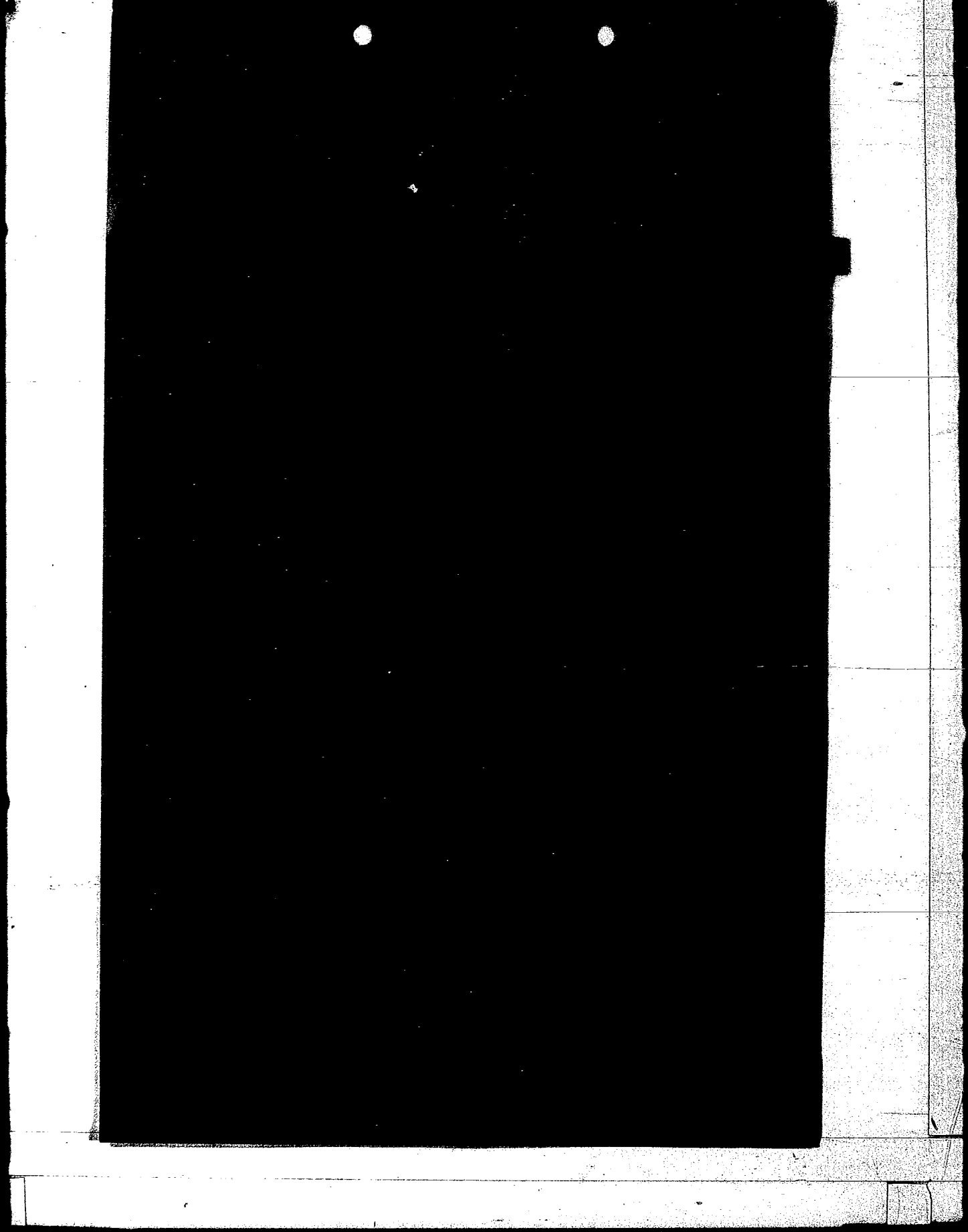
Immigration Memos





TRANSIT VISAS

Many of the private organizations in the refugee field have, in their recommendations to the Board, advised that efforts be made to facilitate the transit of refugees through the United States to final destinations in the Western Hemi-sphere. Admittedly the present procedure for the issuance, by American consular officers to transient refugees, is complicated and, in some instances, seemingly unnecessary. In the light of my own experience in visa work abroad and in the Department of State, I believe it both inadvisable and impractical for the Board to attempt to effect a change in the present regulations for American consular and immigration officers governing transit through the United States. Both the Departments of State and Justice have precedents for emergency handling of transients in groups with an absolute minimum of red tape and formality. While there have been cases of individual transients being admitted with a waiver of visa requirements, there would be considerable opposition to the issuance of transit visas by consular officers abroad without the applicant's having previously complied with the "Form BC" procedure. Furthermore, should we advocate a relaxation of the present procedure, we would lay ourselves open to the charges of attempting to break down the security system now in effective operation and of placing the refugee problem above that of winning the war.

I strongly recommend, as a practical approach, that we concentrate our efforts for facilitating the passage of refugees from Europe or Africa to final destinations in the Americas outside the United States, on group traffic. In the case of the Spanish Republicans now in Portugal and North Africa who possess Mexican visas, I believe that we should endeavor to have them embark in groups of fifty to sixty or multiples thereof. The Unitarian Service Committee claims that the majority of the Spanish Republican refugees are in hiding in Portugal because of the alleged policy of the Portuguese Government to deport to Spain any such refugees found within its territory. That Committee estimates that there are approximately three thousand of these refugees in hiding and that it is impossible to arrange group departures because of the need for maintaining secrecy. I believe the pressure upon the Portuguese Government is possible and that should we give it assurances that we will take these refugees from its hands and that that Government will be willing to permit their departure in groups of the size mentioned above.

Should group departures be possible, the transit of these refugees from Philadelphia or New Orleans to Mexico by overland routes would thus be facilitated. The average railroad coach carries seventy passengers and if the refugees arrived in the suggested number, a complete car could be reserved and,

once the refugees are entrained, the coach could be sent sealed and with guards across the country to the Mexican border.

Such a procedure would conform to the current practice for handling enemy aliens entering this country for internment. We also have the precedent of the transit of Polish refugees from Californian ports to the Mexican border. That practice is based upon the legal theory that the refugees are refused admittance at the port of entry and hence, are deported overland to Mexico. According to the immigration laws and regulations, these persons would not, in a legal sense, be entering the country, and therefore, are not subject to visa requirements.

With further reference to the Spanish Republican refugees, there is a suggested draft of a telegram to the American Legation at Lisbon containing instructions regarding the handling of these particular refugees. When this cable has been dispatched by the Department of State, we will have established a precedent and based thereon, telegram No. 2 which is attached, can then be sent to the foreign service establishments in the Iberian Peninsula and North Africa. The second telegram, it will be noted, governs the general question of transient refugees.

In the case of refugees possessing valid immigration visas for countries other than Canada and Mexico involving, therefore, subsequent sea travel, it is suggested that the Board, in cooperation with the War and Justice Departments, establish at Philadelphia and New Orleans (the ports to which neutral shipping is restricted by the Navy) reception centers where such transients may be detained. In setting up these centers, we can expect opposition from the Departments of State and Justice on the grounds that the officers in charge of the centers could not continue to hold in custody the transients if writs of habeas corpus are issued by competent courts. It would be incumbent, therefore, upon the Board to use its influence with private welfare agencies to impress upon the refugees and such relatives or friends as they may have in this country that attempts to obtain transients even temporary liberty from the reception centers by recourse to writs will prejudice the escape of other refugees from enemy-occupied territory. In proposing the establishment of reception centers at Philadelphia, New Orleans and such other ports as may be necessary, the Board should give assurances to the Departments of State and Justice that it will exert pressure to prevent persons interested in the refugees from attempting to obtain their entry into the United States while the refugees are in transit. Given the establishment of these centers under that condition, I know of no technical reason or opposition on

the grounds of policy why the Board should not be able to create a steady flow of groups of transient refugees from Europe and Africa via the United States to destinations in the western hemisphere.

ACHMENT #1

DRAFT OF TELEGRAM TO LISBON

Reference is made to the Spanish Republican refugees now in Portugal who are the bearers of valid individual or group Mexican immigration visas. It is understood that the Portuguese Government has been deporting to Spain all Spanish Republican refugees apprehended by its authorities.

You are authorized to employ the good offices of the legation to prevent the return to Spain and to facilitate the departure of those refugees from Portugal. You may inform the appropriate Portuguese officials that arrangements have been made to receive these refugees in groups of fifty to sixty, or multiples thereof, for transit across the United States to Mexico. They should not (repeat not) be issued transit certificates but you may assure Portuguese steamship lines that they will not be held liable under the provisions of Section 16 of the Act of May 26, 1924 for having transported to the United States aliens not in possession of valid visas. You may intercede with steamship lines in behalf of the Unitarian Service Committee with a view to obtaining block bookings of groups of fifty or sixty.

You should confirm with your Mexican colleague the validity of the visas of all Spanish Republican refugees departing for Mexico and traveling to the United States under this arrangement.

Report by telegraph in advance of departure for the information of the Department and the War Refugee Board the names dates and places of birth, name of vessel and dates and ports of expected arrival on all groups traveling under these arrangements.

ACHMENT #2

CIRCULAR CABLE

Arrangements have been made for the reception in the United States of groups (repeat groups) of bona fide alien refugees who are bearers of valid individual or group immigration visas for entry into Canada or the other American republics. These arrangements include those for aliens who may now possess, or who have possessed, enemy nationality and who may be presumed not (repeat not) to be enemy agents or sympathizers. You should not (repeat not) issue transit certificates to refugees traveling under these arrangements. When the representatives of the War Refugee Board have made transportation arrangements you should inform the masters of the transporting vessels that they will not be held liable under the provisions of Section 16 of the Act of May 26, 1924, for having transported to the United States aliens not in possession of valid visas.

You should confirm with your appropriate colleague the validity of the visas for entry into his country.

Report by telegraph in advance of departure for the information of the Department and the War Refugee Board the names dates and places of birth, name of vessel and dates and ports of expected arrival on all groups traveling under these arrangements.

File

EXECUTIVE OFFICE OF THE PRESIDENT
WAR REFUGEE BOARD

INTER-OFFICE COMMUNICATION

DATE March 27, 1944

TO Mr. Lesser

FROM Mr. Standish

SUBJECT: Liberalization of U. S. Visa Policy

The principle conditions resulting in a restrictive visa policy for the United States:

1. The attitude on the part of the individual officers assigned to visa work by the several security agencies (FBI, MID, ONI, Immigration and Naturalization Service, and the Department of State). These officials follow the policy that when the visa applicant appears to be suspected the "United States is given the benefit of the doubt". The result is that where any of the sponsors or the visa applicant has any connection which contains the slightest indication or suspicion that there is any connection whatsoever with the enemy, the visa case is held in suspense.

2. Individual visa-issuing consular officers have had impressed upon them a "No Visa" policy. Consular officers are generally prone to let their individual opinions of the personalities of visa applicants weigh in the balance against the latter.

3. The famous "Relatives Clause" has been responsible in recent years for the greatest number of visa refusals or placing of visa cases in suspense.

Within the frame work of the existing immigration laws and regulations, the following suggestions are made to overcome the above-mentioned difficulties and possibly to liberalize this Government's visa policy.

1. An effort should be made to urge the security agencies to take negative action in visa case's except when there is concrete evidence that the visa applicant's entry would be prejudicial to the security of the United States. The present visa policy, while seemingly complicated, has many advantages in protecting national security and with intelligent application, should

not unduly delay, or prevent the entry into this country of bona fide refugees.

2. Efforts should be made to obtain from the Department of State an instruction to consular officers informing them that the Department's policy is that visas should be issued to all persons qualified under existing laws and regulations and whose cases have been cleared in this country for security and against whom the consular officers have no definite evidence that the applicant is either employed by or sympathic to the enemy. In all cases portending visa refusals involving security, the consular officers should, before refusing the visa, submit to the Department such evidence as they may have. The instruction should contain a definite statement that consular officers should avoid any appearance of permitting personality to enter into their consideration of visa cases. Emphasis should be given to the fact that consular officers handling visa work are solely officers administering the United States Immigration Laws and Regulations and that, in this connection, they have no responsibility for determining the type of immigrant to this country.

3. Days of the applicability of the "Relatives Clause" are passed. While the reasons for its application were valid at the time of its establishment, the "Relatives Clause" no longer serves any purpose except to restrict immigration. The Germans are no longer in a position to threaten refugees with the death, torture, etc., of their relatives should the refugees not comply with German demands that they become enemy agents. The Germans have already done, and are doing, their worst to relatives remaining in Germany and German-occupied territory. The internal security system now in force in the United States has practically eliminated any possibility of refugees acting against the United States if admitted thereto. The "Relatives Clause" was necessary at the time of its establishment because of the then limited means available to the security agencies. I believe that the abolishment of the clause will go a long way toward permitting the entry in the United States of those refugees who are qualified for admission.

Stanchish

See Free Ports

MAY 24 1944

TO: Mr. Berle

FROM: J. W. Pehle

Last month approximately 300 refugees arrived in Canada from Lisbon and at the moment an additional 60-odd immigrants are en route to that country. As you know, several hundred additional persons have arrived in Spain recently and there is a prospect that still others will soon be coming. Among these new arrivals are many who would like to immigrate to the United States.

During recent months, immigration to this country has dwindled to a small number. I fully realize that the current immigration procedures are designed to assure the national safety. I wonder, however, whether in view of Canada's action, there is any likelihood of any modification in our current procedures so as to make it possible for the United States to receive as immigrants some refugees now in Spain.

We do not, of course, advocate the abandonment of any necessary safeguards. But we do feel that there may possibly be some alterations in the administrative procedures now employed that may result in increased immigration without in any way compromising necessary security standards.

I shall appreciate your views on this matter.

/s/ J. W. Pehle

LSL:AA:als 5/23/44

John W. McCarthy file

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE Mar. 22, 1944.

TO Mr. Lesser

FROM Mr. Akzin

Subject: Immigration into the Canal Zone

1. United States laws relating to immigration (U.S.Code, Title 8, chapter 6) do not generally apply to the Canal Zone; and admission to or residence in the Canal Zone cannot be construed as implying permission to enter the United States or any other place under the jurisdiction of the United States:

> The term "United States" shall be construed to mean the United States, and any waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone; but if any alien shall leave the Canal Zone or any insular possession of the United States and attempt to enter any other place under the jurisdiction of the United States, nothing contained in this chapter shall be construed as permitting him to enter under any other conditions than those applicable to all aliens.

(U.S.Code, Title 8, sec. 173; Feb. 5, 1917, ch. 29, sec. 1, 39 Stat. 874).

2. This non-extension of the immigration laws of the United States to the Canal Zone is again confirmed by the definition contained in sub-chapter 3 of chapter 6 of Title 8 of the U.S.Code, dealing with Quota and Nonquota Immigrants:

> As used in this chapter -
>
> (a) The term "United States", when used in a geographical sense, means the States, the Territories of Alaska and Hawaii, the District of Columbia, Puerto Rico, and the Virgin Islands...

(U.S.Code, Title 8, sec. 224(a); Mar. 26, 1940, ch. 190, sec. 28, 43 Stat. 168).

3. The same principle of not extending U.S. laws to the Canal Zone is again observed in connection with the provisions for alien registration (U.S.Code, Title 8, chapter 10):

For the purposes of this chapter -

(1) The term "United States" when used in a geographical sense, means the States, the Territories of Alaska and Hawaii, the District of Columbia, Puerto Rico, and the Virgin Islands.

(U.S.Code, Title 8, sec. 459(a); June 28, 1940, ch. 439, sec. 38, 54 Stat. 675).

4. For purposes of immigration into the United States, persons born in the Canal Zone are assimilated to those born in other American Republics, in Canada, or in Newfoundland, in that they can be admitted on a nonquota basis:

When used in this chapter the term "nonquota immigrant" means -

(c) An immigrant who was born in the Dominion of Canada, Newfoundland, the Republic of Mexico, the Republic of Cuba, the Republic of Haiti, the Dominican Republic, the Canal Zone, or an independent country of Central or South America, and his wife, and his unmarried children under 18 years of age, if accompanying or following to join him.

(U.S.Code, Title 8, sec. 204; Mar. 26, 1924, ch. 190, sec. 4, 43 Stat. 155).

In connection with emigration from the Canal Zone to the United States, officers designated by the President or by his authority are entrusted with the function of issuing visas usually handled by consular officers:

... In case of the Canal Zone and the Insular possessions of the United States the term "consular officer" (except as used in section 222 of this title) means an officer designated by the President, or by his authority, for the purpose of issuing immigration visas under this chapter.

(U.S.Code, Title 8, sec. 224(e); Mar. 26, 1924, ch. 190, sec. 28, 43 Stat. 168).

5. By special provision in the Statute, registration and fingerprinting of aliens may be introduced in the Canal Zone by Executive Order:

The President is authorized to provide, by Executive Order, for the registration and fingerprinting, in a manner as nearly similar to that provided in this chapter as he deems practicable, of aliens in the Panama Canal Zone.

(U.S.Code, Title 8, sec. 460; June 28, 1940, ch. 439, sec. 39, 54 Stat. 676).

6. War-time restrictions on exit from and entry into the United States are applicable to the Canal Zone, though the President may order otherwise.

(U.S.Code, Title 22, sec. 223-226; June 21, 1941, ch. 210, sec. 1 and 2a, 55 Stat. 252-253).

Under this provision, the Executive Order 9352 of June 15, 1943 (8 Fed. Reg. 8209), relative to the entry of alien seamen into the United States, is applicable to the Canal Zone.

7. The making of rules concerning the admission of persons to the Canal Zone is conferred by statute on the President:

The President is hereby authorized to make rules and regulations and to alter and amend the same from time to time, touching the right of any person to enter or remain upon or pass over any part of the Canal Zone;...

(U.S.Code, Title 48, sec. 1321; Aug. 21, 1916, ch. 371, sec. 10, 39 Stat. 529).

8. Under the above provision, several classes of persons are excluded from the Canal Zone, as follows:

Classes of persons excluded and deported. All persons of the following-described classes are hereby forbidden to enter, remain upon, or pass over any part of the Canal Zone, and the Governor of The Panama Canal is hereby authorized, in his discretion, to deport such persons when found within the Canal Zone:

(a) Insane persons and persons who have had one or more attacks of insanity at any prior time.

(b) Idiots, imbeciles, feeble-minded persons, epileptics, and persons of consti-

tutional psychopathic inferiority.

(c) Persons afflicted with a loathsome, or dangerous, contagious disease.

(d) Persons who have been convicted of, or admit having committed, a felony or other crime or misdemeanor involving moral turpitude.

(e) Professional beggars, paupers, and persons who are likely to become public charges.

(f) Anarchists, and persons whose purpose it is to incite insurrection.

(g) Persons of notoriously bad character.

(h) Persons who engage in any strike in the Canal Zone directed against the Government of the United States or any of its agencies, or who engage in inciting or attempting to incite other persons to engage in any such strike.

(i) Persons who engage in, or incite or attempt to incite other persons to engage in, any strike in the Canal Zone which, although not directed against the Government of the United States or any of its agencies, will result in obstructing, impeding, delaying, or interfering with the operation, maintenance, sanitation, government, or protection of the Panama Canal and the Canal Zone or the observance, safeguarding, and enforcement in the Canal Zone of the neutrality of the United States or the strengthening within the Canal Zone of the national defense.

(j) Any other persons whose presence, in the judgment of the Governor, would be a menace to the public health or welfare of the Canal Zone, or would tend to create public disorder or obstruct the operation, maintenance, sanitation, government, or protection of the Panama Canal or Canal Zone:

Provided however, That the provisions of this section shall be subject (1) to the provisions of section 142 of title 2 of the Canal Zone Code, as amended by section 7 of the Act of June 24, 1936 (49 Stat. 1905), (2) to the provisions of § 10.9, relative to passage through the Canal Zone by excluded or deported persons, and (3) to the pertinent provisions of the General Treaty proclaimed July 27, 1939, between the United States and the Republic of Panama. (Sec. 10, 39 Stat. 529; 2 C.Z. Code, 48 U.S.C. 1321) [As amended by E.O. 8417, May 22, 1940; 5 F.R. 1943]

9. To some extent, the matter of immigration into the Canal Zone was regulated by Art. 12 of the Treaty of Nov. 18, 1903 between the United States and Panama, as follows:

> Art. 12: The Government of the Republic of Panama shall permit the immigration and free access to the lands and workshops of the Canal and its auxiliary works of all employees and workmen of whatever nationality under contract to work upon or seeking employment upon or in any wise connected with the said Canal and its auxiliary works, with their respective families, and all such persons shall be free and exempt from the military service of the Republic of Panama.

The matter was again regulated in Sect. III of the Treaty of 1939 (53 Stat. 1811) as follows:

> 2) No person who is not comprised within the following classes shall be entitled to reside within the Canal Zone:
>
> (a) Officers, employees, workmen or laborers in the service or employ of the United States of America, the Panama Canal or the Panama Railroad Company, and members of their families actually residing with them;
>
> (b) Members of the armed forces of the United States of America and members of their families actually residing with them;

(c) Contractors operating in the Canal Zone and their employees, workmen and laborers during the performance of contracts;

(d) Officers, employees, or workmen of companies entitled under Section 5 of this Article to conduct operations in the Canal Zone;

(e) Persons engaged in religious, welfare, charitable, educational, recreational and scientific work exclusively in the Canal Zone;

(f) Domestic servants of all the before-mentioned persons and members of the families of the persons in classes (c), (d) and (e) actually residing with them.

3) No dwellings belonging to the Government of the United States of America or to the Panama Railroad Company and situated within the Canal Zone shall be rented, leased or sublet except to persons within classes (a) to (e), inclusive of Section 2 hereinabove.

4) The Government of the United States of America will continue to cooperate in all proper ways with the Government of the Republic of Panama to prevent violations of the immigration and customs laws of the Republic of Panama, including the smuggling into territory under the jurisdiction of the Republic of goods imported into the Canal Zone or purchased, produced or manufactured therein by the Government of the United States of America.

10. Prior to the Treaty of 1939, the general question as to whether immigration to the Canal Zone, except as regards persons referred to in Art. 12 of the 1903 treaty, was within the jurisdiction of the United States or of Panama, was not settled as between the two countries. Panamanian authorities insisted that the matter was within Panamanian jurisdiction (Panama Canal, Washington Office, File 21-A-1, Correspondence Oct. 1923-Jan. 1924). Canal Zone authorities, in the course of this correspondence, vigorously maintained the view that the right to regulate immigration to the Canal Zone lies solely within the jurisdiction of the United States. They based their position on the Act of Aug. 21, 1916, quoted above, under 7 (ibidem).

This attitude was not uniformly maintained, however. In a letter of March 27, 1922, to the Washington Office, for communication to the Department of State, the Governor of the Canal Zone states as follows (ibidem):

> For immigration purposes the Canal Zone is considered foreign territory, immigration thereto being controlled by Panama law and administered by the Quarantine Officers of the Panama Canal, who also act as immigration officers. Only persons born in the Republic of Panama or who can prove that they have been legally domiciled therein are entitled, in their own right, to admission; all others, including American citizens, must satisfy the immigration requirements, and may be excluded on grounds of public health, or because they are likely to become public charges, or fall within the class of undesirables, etc.

A recent summary of the Canal authorities' understanding of the position (File 21-A-1: Cross Reference Sheet to 1320-C-Incl. 33-34) states:

> Chapters IX and X of the Rules and Regulations governing the Navigation of the Panama Canal...contain the immigration restrictions. Attention is also invited to Panama Law 13 of 1926...the provisions of which exclude persons of certain races and nationalities from Panamanian territory. Although there is no similar law in the Canal Zone, it is the policy not to permit the entry therein of persons who are not admissible under Panamanian laws, unless such persons are connected with the operation of the Canal.

Chapter IX of the Rules and Regulations corresponds, in the main, to Rule quoted above, under 8. Chapter X refers to the exclusion of Chinese. The Panama law of 1926 excludes Negroes, Syrians, Turks, Hindus and Orientals.

BOARD OF IMMIGRATION APPEALS

56135/227 May 6, 1943

In re: The importation of 6,000 unskilled Mexican laborers.

For consideration under the 9th Proviso to Section 3 of the Immigration Act of February 5, 1917.

Application is made by the War Manpower Commission for permission to import 6,000 unskilled Mexican laborers to maintain the tracks and road beds of American railroads.

The record before us indicates that more than one year ago, the War Manpower Commission was requested by various railroads to recruit labor in the United States to maintain in necessary repair their tracks and road beds. The concerted efforts of the War Manpower Commission through its Employment Service Divisions have been unable to meet the labor requirements from available sources of domestic workers. The shortage of this labor is particularly felt by those railroads whose rights-of-way traverse the vast unpopulated regions of the West and Southwest. Obviously, if railroad facilities are permitted to deteriorate through lack of maintenance and repair, the successful prosecution of the war will be seriously impaired. To stave off such an eventuality, the War Manpower Commission, acting on behalf of the Government of the United States, entered into an agreement with the Mexican Government providing for the recruitment of non-agricultural laborers from Mexico sufficient to meet our needs. It is proposed under this agreement to import 6,000 track laborers to be apportioned among the three main railroads of the Southwest, namely, the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Western Pacific Railroad Company. It is anticipated that eventually, perhaps, 10,000 laborers will be needed. This figure is small, however, compared to the personnel needs of the nation's railroads as reported by the Railroad Retirement Board. The overall manpower needs of the railroads amount to over 67,000 of which figure, track laborers needed for maintenance of way and structures is over 30,000.*

Authority to permit the importation to the United States of unskilled labor is found by implication in the 9th Proviso to Section 3 of the Immigration Act of February 5, 1917. The 4th Proviso to that Section is inapplicable since it refers expressly to skilled labor.

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* From report of United States Railroad Retirement Board on Personnel Needs and Surpluses in the Railroad Industry as of March 31, 1943.

However, the same requirements fixed by statute for the importation of skilled labor should, at the very least, be applied to a request for the importation of unskilled labor. The War Manpower Commission, an agency of the Government whose function it is to canvass and supply the civilian manpower needs of the nation, certifies that a shortage of this type of unskilled labor exists in the United States in these words: "In fact, there now exists a shortage of workers which must be alleviated. If this is not done, the tracks and road beds of the various railroads will reach a serious condition of disrepair." We are advised that the Joint Labor Management Commission, whose members include representatives of the Congress of Industrial Organizations and the American Federation of Labor one of whom represents the four railroad brotherhoods, at first declined to approve the proposal to import Mexican track laborers, but, apparently recognizing the need, now supports the application. It is proposed that the laborers sought to be imported shall be paid at the prevailing local rates received by similar labor in the United States, in no event less than 46 cents per hours. The alien laborers will, in addition, be entitled to the same facilities as are accorded domestic labor.

Notice is taken of a memorandum dated February 4, 1943, from Lawrence A. Appley, Executive Director, to Management Labor Policy on the subject "Information With Respect to the Bringing in of Mexican Nationals for Track Labor", wherein it is stated

> "It seems likely that at least 5,000 workers may be recruited for track work from workers which may be available in Texas. By late July, some part of the workers released to the railroad industry might have to be returned to agricultural work, since some would have to harvest their own acreage and other would be needed to augment the labor force for the cotton harvest."

Notwithstanding this, the War Manpower Commission certifies to the need of importing 6,000 laborers. Apparently, the War Manpower Commission takes the view that our railroads need 30,000 unskilled laborers and that the Texas workers may be available for only three months and hence would not alleviate the labor shortage.

We believe that it has been established that a shortage of unskilled track laborers exists in the United States and that the importation of such alien labor from Mexico is vital to our war effort and will not displace similar domestic labor. We shall, therefore, grant permission to import 6,000 unskilled Mexican laborers under such conditions as are hereinafter set forth.

56135/227

3.

ORDER: It is ordered that advance authority be granted for the temporary admission under the 9th Proviso to Section 3 of the Immigration Act of February 5, 1917 of such alien non-agricultural workers not exceeding 6,000, natives and citizens of Mexico, who apply for temporary admission for the purpose of engaging in employment as railroad track and maintenance of way laborers in accordance with the agreement entered into by the United States and Mexico dated April 29, 1943, provided that they are 18 years of age or over, and provided they are found to be otherwise admissible then as unskilled contract laborers, as persons unable to read, and as persons whose tickets or passage is paid for with the money of another or who are assisted by others to come to the United States, with the understanding that no such person shall be admitted for longer than the duration of the war in which the United States is presently engaged, subject, however, to the right of the Attorney General to revoke the permission herein granted at any time upon 30 days notice; and provided further that a blanket maintenance of status and departure bond equal to $20 per alien be posted by the respective employer for each alien employed by it, the sum of $500 to become due and payable for each alien who breaches the condition of this bond. The failure of any alien whose temporary admission is hereby authorized to maintain his status as a railroad laborer will be deemed a breach of conditions of admission.

/s/ Thos. G. Finucane
Chairman

This case involves the importation of unskilled labor, and pursuant to the request of the Attorney General to review such cases, the Board of Immigration Appeals refers its decision for such review pursuant to Section 90.12, Title 8, Code of Federal Regulations.

/s/ Thos. G. Finucane
Chairman

LJ:mmb:lam

Order approved by the Attorney General May 6, 1943

AGREEMENT FOR THE TEMPORARY MIGRATION OF MEXICAN WORKERS TO THE UNITED STATES FOR NONAGRICULTURAL EMPLOYMENT made effective by an exchange of notes between the American Embassy at Mexico City and the Mexican Ministry for Foreign Affairs, April 29, 1943

"In order that Mexican workers may be made available for non-agricultural employment in the United States and, at the same time, to ensure that such workers will be adequately protected while out of Mexico, the following provisions are suggested for approval by representatives of the Governments of both countries.

"These provisions include the same fundamental principles which were applied to the departure of farm labor, in accordance with the agreement between the Republic of Mexico and the United States of America dated August 4, 1942.

"I. General Principles

"1. Mexican nationals who enter the United States under contract with an appropriate Government department or agency shall not be subject to military service for the United States.

"2. In accordance with the principles enunciated in Executive Order No. 8802, issued at the White House on June 25, 1941, Mexican nationals who enter the United States as a result of any understanding between the two Governments shall not suffer discriminatory acts of any kind.

"3. Mexican nationals entering the United States for employment in the United States under this agreement shall enjoy the guarantees of transportation, living expenses and repatriation established in Article 29 of the Mexican Federal Labor Law which reads as follows:

"Article 29. - All contracts entered into by Mexican workers, for lending their services outside of their country, shall be made in writing, legalized by the municipal authorities of the locality where entered into and visaed by the Consul of the country where their services are being used. Furthermore, such contract shall contain, as a requisite of validity of same, the following stipulations, without which the contract is invalid:

"I. Transportation and subsistence expenses for the worker, and his family if such is the case, and all other expenses which originate from point of origin to border points and compliance of immigration requirements, or for any other similar concept, shall be paid exclusively by the employer or the contractual parties.

"II. The worker shall be paid in full the salary agreed upon, from which no deductions shall be made in any amount for any of the concepts mentioned in the above sub-paragraph.

"III. The employer or contractor shall issue a bond or constitute a deposit in cash in the Bank of Workers, or in the absence of same, in the Bank of Mexico, to the entire satisfaction of the respective labor authorities, for a sum equal to repatriation costs of the worker and his family, and those originated by transportation to point of origin.

"Once the employer establishes proof of having covered such expenses or the refusal of worker to return to his country, and that he does not owe the worker any sum covering salary or indemnization to which he might have a right, the labor authorities shall authorize the return of the deposit or the cancelation of the bond issued."

"It is specifically understood that the provisions of Section 3 of Article 29 above-mentioned shall not apply as between the Governments of the United States and of Mexico notwithstanding the inclusion of this section in this agreement in view of the obligations assumed by the United States Government under Section III, paragraph A, Item 1 of this same agreement.

"4. Mexican nationals entering the United States under this agreement shall not be employed to displace other workers, or for the purpose of reducing rates of pay or other standards previously established.

"II. Procedures

"A. Contracts

"1. Contract shall be made between the Government of the United States of America, acting through the Chairman of the War Manpower Commission or his authorized representative, and each worker, under the supervision of the Mexican Government. Such contracts shall be written in the Spanish and English languages and shall be in such form as may be approved by the Mexican Government.

"2. The Government of the United States of America, acting through the Chairman of the War Manpower Commission or his authorized representative, shall enter into contracts with employers in the United States by whom workers will be employed, which shall be in accordance with the principles agreed upon by the two Governments.

"3. When the word 'employer' is used hereinafter it shall be understood to mean the owner or operator of a non-agricultural enterprise in the United States by which the Mexican will be employed; and the word 'worker' shall mean a Mexican worker entering the United States under this agreement.

"B. Admission of Workers into the United States

"1. The United States Public Health Service, in collaboration with the Mexican Public Health authorities, shall provide physical examination at the place of selection to determine whether each worker meets the physical requirements of the immigration authorities and the prospective employer.

"C. Numbers

"1. The Government of the United States shall determine in each case the number of workers needed for non-agricultural labor and shall advise the Mexican Government from time to time.

"2. The Government of Mexico shall determine in each case the number and types of workers who may leave the country without detriment to its national economy.

"III. Conditions under which Mexican Workers shall be Contracted

"A. Transportation

"1. All costs of transportation (including subsistence) from the place where contracted to the place of employment and return to the place of contract, including expenses occasioned by the immigration regulations of the United States of America shall be met by the United States Government acting through the Chairman of the War Manpower Commission.

"2. Personal effects of each person transported up to a maximum of 35 kilos per person (77 pounds), or such additional amount as may be found to be appropriate in the event household effects are transported, shall be transported at the expense of the United States of America acting through the Chairman of the War Manpower Commission.

"3. In accord with the intent of article 29 of the Mexican Labor Law, it is expected that the United States Government may, at its election, arrange with the employer for such employer to pay all or part of the cost accruing under 1 and 2 above. This does not diminish the scope of the obligations which the United States Government assumes under 1 and 2 above.

"B. Wages and Employment

"1. Wages paid to Mexican workers under this agreement shall be the same as those paid for similar work to domestic workers at the place of employment. (If wages are to be paid on a piece-rate basis, the rate shall be so set as to enable a worker of average ability to earn the prevailing wage). In no case shall the wages be less that 46 cents per hour.

"2. Each worker shall be exclusively employed as a non-agricultural laborer for which contracted; and any change to another type of work within this classification shall be made only with the express approval of the worker and with the consent of the Mexican Government.

"3. Wages shall be paid in full with no deductions except those required by law of domestic workers engaged in similar employment.

"4. Work for minors under 16 years shall be strictly prohibited and minors shall have the same schooling opportunities as those enjoyed by children of other workers in the same locality.

"5. Workers domiciled at any place of employment under this agreement shall be free to obtain articles for their personal consumption or that of their families wherever it is most convenient for them.

"6. The Mexican workers will receive hygienic lodgings adequate to the physical condition of the region, of the type furnished domestic workers engaged in similar employment: sanitary and medical services, and restaurant facilities enjoyed by workers admitted under this understanding shall be not less favorable to them than those enjoyed by other workers engaged in similar employment at the same place of employment.

"7. Workers admitted under this agreement shall enjoy as regards occupational diseases and accidents the same guarantees enjoyed by domestic workers engaged in similar work under Federal or State legislation in the United States.

"8. Groups of workers admitted under this understanding shall elect their own spokesmen to deal with the employer, with the duly authorized representative of the craft or class of employees, or with other interested parties, concerning matters arising out of the interpretation or application of this agreement; but it is understood that all such spokesmen shall be working members of the groups.

"The Mexican Consuls, assisted by the Mexican field inspectors, recognized as such by the War Manpower Commission within their corresponding jurisdictions, will seek to ensure that all measures of protection are taken in the interests of the Mexican workers in all questions affecting them. Complaints of the Mexican officials involved should be taken up in the first instance with that office of the War Manpower Commission nearest to the place where the complaint arises. They will have free access to the places of work of the Mexican workers. The War Manpower Commission will see that the Employers grant all facilities to the Mexican Consuls and the assistant field inspectors of the Mexican Government for the compliance of all the clauses of this contract.

"9. Mexican workers shall be afforded opportunity to work the same number of working hours per week as other workers engaged in similar employment at the place of employment. In view of the fact that in accordance with custom in the United States no subsistence allowances are furnished to non-agricultural workers, Mexican workers are guaranteed under this agreement a minimum of 75% of full time employment in each pay period and at

least 90% of full time employment during period for which contracted. However, if the worker is afforded an opportunity to work but is unwilling or unable to work the guarantee in the previous sentence shall not apply.

"10. The term of the contract shall be agreed upon by the representatives of the two Governments with privilege of extension with the consent of the worker and approval of the Mexican Government.

"11. At the expiration of the contract, and if the same is not renewed, the authorities of the United States shall consider the continued stay of the worker in the territory of the United States to be illegal from an immigration point of view, with the exception of cases of physical impossibility of the worker to return to Mexico.

"C. Savings Fund

"The War Manpower Commission assumes responsibility for the safekeeping of amounts contributed by Mexican workers for the formation of the Savings Fund until such amounts are credited to the Bank of Mexico in such agency or agencies of said bank in the United States and which agencies will be determined by means of an exchange of notes. The Bank of Mexico for its part will transfer the sums in question to the Banco del Ahorro Nacional, S. A.

"Whenever the War Manpower Commission shall have made the deposits referred to in the previous paragraph it shall send directly to the Banco del Ahorro Nacional, S.A. a list containing the names of the beneficiaries and the amount corresponding to each of them for the above-mentioned fund.

"General Provisions

"It is understood that the War Manpower Commission will cooperate with such other agencies of the Government of the United States in carrying this understanding into effect whose authority under the laws of the United States are such as to contribute to the effectuation of the understanding. Either Government shall have the right to renounce this understanding giving appropriate notification to the other Government ninety days in advance. This understanding may be formalized by an exchange of notes between the Ministry for Foreign Affairs of the Republic of Mexico and the Embassy of the United States of America in Mexico."

Name _____ Contract Number _____

Address _____ Account Number in Banco del Ahorro Nacional, S.A. _____

Age _____ (Married or single) _____

Economic dependents _____

Accompanying Family Members _____
(Names and addresses)

_____

_____

INDIVIDUAL WORK AGREEMENT

Entered into between the Government of the United States of America acting by and through the War Manpower Commission hereinafter referred to as the "Patron" and

---

a Mexican laborer hereinafter referred to as the "Worker".

DECLARATIONS

1. The Government of the United States and the Worker mutually desire that the Worker be benefically employed in the United States of America with a view to alleviate the present shortage of non-agricultural workers in that country and to cooperate in the successful prosecution of the war.

2. The Worker declares that he is a Mexican national by birth.

3. The War Manpower Commission of the United States of America is represented in the execution of this contract, by Mr.

WHO HAS ESTABLISHED HIS AUTHORITY TO THE SATISFACTION OF THE Mexican authorities

4. The Worker satisfies the physical requirements for fulfilling this agreement, as evidenced by the attached certificate issued by the duly authorized officers of the Department of Health of Mexico and the United States Public Health Service.

The Patron admits that such requirements have been met to its satisfaction, in view of which it agrees that this agreement may not be terminated due to the physical condition of the Worker or to any change in such condition that may occur during the period of employment; but the Patron may terminate the agreement immediately upon finding that the Worker is suffering from a heart, mental or venereal disease or has a chronic condition not contracted during or as a result of his employment in the United States, or if he has a contagious disease discovered while traveling from the point of origin to his destination in the United States.

5. The Patron agrees to enter into agreement with the proprietor or administrator (hereinafter referred to as the employer) of the industry in which the worker will work, under terms guaranteeing him proper compliance with the terms of this agreement, it being understood that the Patron will be responsible to the Worker and to the Mexican Government for such compliance.

THE WORK AGREEMENT IS SUBJECT TO THE FOLLOWING PROVISIONS:

1. The Worker shall be employed exclusively in non-agricultural work.

2. The Worker shall receive the same wages as those paid by the employer to domestic workers for similar work in the region in which they are employed. Said wages will not be less than 46 cents an hour (U. S. Currency). Any overtime worked shall be at the same rate paid to domestic workers doing similar work. The computation of wages, according to the custom in the United States, covers any payment which may be due for the seventh day, as required by the Federal Labor Law of Mexico. Rates for piece work will be so determined that a worker of average ability will earn the prevailing wage established in the area of employment.

3. The Patron agrees that its representatives or agents will inform the Worker at the beginning of his work and as frequently thereafter as may be necessary, using the Spanish language and in an adequate manner, concerning the wage rates to which he is entitled, and the housing conditions, medical attention and other facilities to which he is entitled by virtue of the provisions of this agreement.

4. No deductions shall be made from the wages of the Worker for commission, fees or any other purpose (except as required by law or noted in item 17 below or group hospitalization for which the Worker shall have the benefit of the usual services of the Employees Hospital Department) which will have the effect of reducing his wages below that provided for by No. 2.

5. The Worker agrees that 10% of his wages may be deducted for his savings fund and authorizes the Patron to receive such amount from the Employer, and to place it on deposit, to be refunded to him on his return to his place of contract, or as soon as practicable, in the form of credits to his account in the Banco del Ahorro Nacional, S. A.

6. The Worker accepts transportation, food, lodging, subsistence and work under the terms of this agreement, and shall execute all documents, receipts and instructions which the Patron may require in connection with this agreement.

7. The Patron shall furnish to the Worker and to the members of his family named in this agreement, sanitary facilities and medical care identical to those enjoyed by domestic workers engaged in the same work in the same region.

8. The Patron, at no expense to the worker, shall arrange for the transportation of the Worker and the members of his family named in this agreement and not in excess of 35 kilos (77 pounds) of personal effects for each member of the family (which shall not include household goods) from----------, Mexico to the point or points of destination within the United States, where the Patron has determined the work will be performed, and return to point of contract.

9. The Patron shall arrange for the Worker and the members of his family accompanying him to receive all necessary food, medical care and subsistence needs during periods of travel.

10. The Patron shall make all arrangements necessary under the laws for the entry and exit of the Worker and members of his family accompanying him, to and from the United States.

11. The Worker shall work for a period of 180 days Sundays and legal holidays excepted, starting the day following his arrival at the point of destination in the United States unless the contract is terminated by the Patron because of circumstances justifying such termination arising out of the end of the present war.

12. The Worker shall perform all work required of him with proper application, care and diligence during the term of this agreement under the direction and supervision of the employers.

13. This agreement may be renewed upon its termination upon the express consent of the Worker and with the knowledge of the Mexican Government.

14. Any member of the family under 14 years of age shall have the right to the same schooling as that received by children of domestic laborers in the area of employment in which the worker may be working at any given time.

15. The Worker shall not be required to purchase articles or services for consumption or use by him or his family in any establishment not of his own choice.

16. The Worker shall not be subject to discrimination in employment because of race, creed, color or nationality, in accordance with the provisions of Executive Order No. 8802 of the President of the United States, dated June 25, 1941.

17. Food, lodging, medical (if furnished to domestic workers), sanitary services and other indispensable articles furnished to the Worker and to members of his family by the Patron or the Employer shall meet the reasonable minimum standards approved by the Patron; the price of food, when furnished by the employer through restaurant facilities, shall be deducted from wages and will not cost more than similar service to domestic workers in similar employment.

18. The Worker shall enjoy, as regards occupational diseases and accidents, the same guarantees enjoyed by domestic workers under Federal and State legislation in the United States.

19. The Worker designates as his economic dependents those persons whose names and addresses are set forth in the block at the beginning of this contract, whom he designates as the beneficiaries of the sums and indemnities to which he would be entitled under the Law and this agreement.

20. The Patron guarantees that the Worker will receive wages equal to 90% of the term for which contracted as set forth under item 11 even when there may be temporary suspension of work for reasons not imputable to the Worker.

When during any pay period the Worker shall not have worked full time, provided that his unemployment is not due to his unwillingness or inability to work, he shall receive as a minimum when payment is made for the pay period, 75% of the wages which he would have received had he worked full time.

In making payment for the last pay period there will be added together that which the worker has received as wages during all previous pay periods and, if the total is less than the 90% guaranteed under the first paragraph of this same item, he will be paid the difference.

21. In the event that there should be an increase in the hourly rate of pay, because of increased cost of living in the United States or for any other reasons, the Worker shall receive the increased rates which have been granted to other workers performing the same type of employment.

22. The Worker shall have the right to join with other Mexican laborers admitted under the understanding between the Governments of Mexico and the United States in the election of spokesmen to negotiate with the Patron or employers, such spokesmen to be members of the group electing them.

23. All disputes between the Worker and his employer or employers shall be resolved, according to procedures established by the Government of the United States, acting by and through the Chairman of the War Manpower Commission, for non-agricultural workers.

24. The Worker represents and warrants that he knows of no reason which would prevent him or his family from leaving or returning to Mexico, or entering or leaving the United States, as contemplated by this agreement. If the Worker or a member of his family shall not be permitted to leave Mexico or enter the United States, the Patron or the employer shall, at its expense, return the Worker and his family to their place of contract in Mexico. If after entrance into the United States the Worker or any member of his family becomes subject to deportation or removal therefrom under the Immigration or other laws of that country, or if the War Manpower Commission decides, after hearing the defense of the Worker, that the latter is unable or unwilling to work in accordance with the provisions of this agreement, or if the Worker or any member of his family violates any law of the United States, this agreement may forthwith and without notice be terminated by the Patron or the Employer. Upon the termination of this agreement or upon the expiration of the period of employment provided for in paragraph 11, the Worker and his family shall immediately return to their place of contract in Mexico, at the expenses of the Patron or the Employer. If the Worker or any member of his family refuses so to return, the Patron or the Employer may cause the Worker and his family to be removed to their place of contract.

25. All rights; privileges and powers conferred by this agreement upon the Government of the United States shall be exercised by the Chairman of the War Manpower Commission of the United States or by his duly authorized representative. Executed at Mexico,

D. F., this _____ day of _____ 194_____

United States of America
by War Manpower Commission

_____ _____

Worker

Approved By: _____

Federal Register

AND

TRANSPORTATION AGREEMENT

This Agreement made this _____ day of _____ at _____ by the United States of America, acting through the Chairman of the War Manpower Commission or his authorized representative, and _____ Railway Company _____ hereinafter called the Employer, with respect to the employment and transportation of certain Mexican Workers.

WHEREAS, the United States of America and the Employer wish to cooperate in making workers available to alleviate the present shortage of maintenance of way labor needed to keep the railroad lines of the Employer in suitable and safe condition for operation and thus to aid in the successful prosecution of the war,

NOW, THEREFORE, in furtherance of a general plan approved by the Chairman of the War Manpower Commission for alleviating the maintenance of way labor shortage on railroads and in consideration of the undertakings hereinafter set forth, the United States of America and the Employer agree as follows:

1. The United States of America shall use its best efforts to obtain workers in the Republic of Mexico for employment by the Employer in railroad maintenance of way labor as provided in this agreement.

2. Mexican Workers to whom this agreement applies are those selected by the Employer or his duly authorized agent, from the pool of workers made available by the War Manpower Commission for this selection process. There shall be executed with respect to each Mexican Worker selected a Selection Card in the form attached hereto as Exhibit A. Upon the execution of a Selection Card with respect to any Mexican Worker, such Selection Card shall become part of this agreement, and all provisions of this agreement shall be applicable to such Worker. The term "Worker" as hereinafter used shall mean a Mexican Worker with respect to whom a Selection Card has been executed.

3. The Employer shall pay the cost of transportation of each Worker (including adequate subsistence during travel), and his personal effects (limited to 77 pounds) from the Point of Contract specified in the Selection Card to the Destination Point specified in the Selection Card, and return to the Point of Contract, all in accordance with regulations prescribed by the Chairman of the War Manpower Commission, unless relieved of the obligation to pay return transportation by other provisions of this agreement. If the Worker shall not be permitted to leave Mexico or enter the United States, or for any other reason should be returned to his Point of Contract before entering upon his employment, the Employer shall, notwithstanding, pay the cost of return to the point of origin.

4. (a) The Employer shall employ each Worker on the date following that on which he reports at the Destination Point for work and thereafter, all in accordance with the provisions of this agreement and with the terms and conditions of employment set forth on the Selection Card for such Worker. The Employer shall employ each Worker only in those States and portions of States specified on the Selection Card, provided that a Worker may be employed elsewhere in the United States for periods of not to exceed fourteen consecutive days in the event of extreme emergencies requiring such employment; and provided further that the United States of America may, with or without the

... of the Employer to extend or further limit the ... or ...
... within ... Worker may be ... [illegible]

(b) The Employer shall afford each Worker an opportunity for employment for at least the period beginning with the day following his arrival at the Destination Point and ending on the 150th calendar day thereafter, unless relieved of such obligation by other provisions of this agreement. In each pay period the Employer shall afford each Worker an opportunity to work not less than the number of hours equal to the product of eight times 75 per cent of the number of working days (all days except Sundays and legal holidays) in such pay period. During the period for which contracts the Employer shall afford each Worker an opportunity to work not less than the number of hours equal to the product of eight times 90 per cent of the number of working days (all days except Sundays and legal holidays) in said contract period. If the Worker is afforded an opportunity to work but is unable or unwilling to work, the Employer shall be relieved with respect to the above guarantees to the extent of the Worker's unwillingness or inability to work during the periods covered by the guarantees. The manner of time worked shall be calculated solely on a time basis whether such work is at straight time or overtime rates.

(c) For each hour that the Employer fails to afford any Worker opportunity to work as required in paragraph (b) of this section, the Employer shall pay such Worker his regular hourly rate of pay.

(d) If during the contract period the employment of any Worker is terminated by or at the request of an authorized representative of the Chairman of the War Manpower Commission (i) for reasons other than breach of the Employer's obligations under this agreement, or (ii) because of circumstances justifying such termination arising out of the end of the present war, the Employer's obligations with respect to such Worker under paragraphs (b) and (c) of this section shall be reduced with respect to such Worker to the guaranteed number of hours in that portion of the contract period preceding the date of such termination. If during the contract period the employment of any Worker is terminated for cause attributable to such Worker justifying such termination, the Employer shall be relieved with respect to such Worker of liability under paragraphs (b) and (c) of this section with respect to the remainder of such period.

(e) Work shall be paid for in lawful money of the United States either at the end of each regular pay period or in accordance with the established procedure followed by the Employer. In case the regular procedure of the Employer is other than payment at the end of each pay period, then in order to assure that the Worker will have funds within a reasonable period, the Employer shall upon the Worker's request and not later than at the end of the first fifteen days worked, make a token or advance payment consisting of the product of eight times 75 per cent of the number of days worked multiplied by the hourly rate, less all proper deductions. Such token or advance payment shall be offset against or deducted from the final settlement at the end of the contract period. A regular work day shall consist of eight hours. In making payment to the Worker for the last pay period, under this contract, the Worker shall receive payment for the difference, if any, between the actual amount which has already been paid to him and the amount due under the guarantee of 90 per cent of full time employment.

(f) The Employer shall in no way discriminate against any Worker and shall afford each an opportunity to be employed no less than the minimum number of working hours per week as prevail for domestic workers who are engaged in similar work at the same place of employment, and shall employ each at wage rates (including time and one-half for all hours over eight hours per day subject to approval under Executive Orders Nos. 9250, 9299 and 9328) and under working conditions not less favorable to him than those prevailing for domestic workers, and shall accord each rights and privileges (including rights and privileges with respect to promotions and general wage increases and rights and privileges arising under applicable collective bargaining agreements) not less favorable to him than those accorded such domestic workers. The Employer shall provide or make available for each Worker housing, sanitary, medical, and commissary facilities not less favorable to him than the facilities provided domestic employees engaged in similar employment at the Place of Employment, at the same rates charged domestic employees.

(g) No deductions from wages shall be made for commissions, fees or any other purpose which shall have the effect of reducing the wages below those herein provided for except as follows:

(1) Deductions may be made for board or reimbursement for other commissary supplies voluntarily incurred by the Worker.

(2) The current hospital fee, not prorated, shall be deducted in return for which the Worker shall have the benefit of the usual services of the hospital department provided for such employees, provided that adjustment shall be made for any increase or reduction in fees as applied to all employees.

(3) There shall be deducted any and all sums or taxes which the Employer is required by law to deduct with respect to other workers who are residents of the United States.

The Employer shall not require any Worker to purchase at any source not of his own choosing articles or services for consumption or use by him and shall not require any Worker to purchase articles or equipment not customarily required of other employees.

(h) Notwithstanding the provisions of paragraph (g) above, the Employer shall deduct from the wages of each Worker and pay to such depository as the Chairman of the War Manpower Commission or his authorized representative may direct, such sums as the Chairman of the War Manpower Commission or his authorized representative, pursuant to the Worker's agreement with the United States of America, may direct the Employer so to deduct and pay, in connection with the Worker's Savings Fund provision of the agreement between the United States of America and the Republic of Mexico.

(i) The Employer shall promptly release any Worker upon the request of an authorized representative of the Chairman of the War Manpower Commission, provided that no such request shall be made during the first 90 days of the contract period for reasons other than breach of the Employer's obligations under this agreement except where circumstances arising out of the end of the present war or causes attributable to the Worker justify earlier termination of the Worker's employment; and provided further that if any such request is made for the purpose of transferring the Worker to other employment, the Employer shall be relieved with respect to such Worker of liability for return transportation of such Worker to the Point of Contract in Mexico.

(j) If the Employer fails in a material respect to meet with respect to any Worker the Employer's obligations hereto [illegible] an authorized representative of the Chairman of the War Manpower Commission may terminate such Worker's employment. If after any such termination such Worker with the approval of an authorized representative of the War Manpower Commission accepts other employment in the United States during the remainder of the contract period, the Employer's obligations with respect to such Worker under paragraphs (b) and (c) of this section shall be reduced with respect to such Worker to the guaranteed number of hours in that portion of the contract period preceding the date of commencement of the Worker's employment with another employer.

(k) The Employer may terminate the employment of any Worker if the authorized representatives of the Chairman of the War Manpower Commission decide, after hearing the defense of the Worker, that the Worker is unable or unwilling to meet his obligations as provided in the agreement between the Worker and the United States of America.

5. The United States of America may pay to any Worker all or any part of any sum which the Employer is obligated by virtue of this agreement to pay to such Worker, and which the Employer has not paid, and the United States of America may pay the cost of any transportation (including subsistence) which the Employer is so obligated to pay but has not paid, and the Employer shall pay to the United States of America, upon demand, any sum so paid, together with interest thereupon at 6 per cent per annum from the date of such payment by the United States of America.

6. The Employer shall keep, in accordance with regulations prescribed by the Chairman of the War Manpower Commission, full and complete records of each Worker's employment, wages, and any other facts pertinent to the performance of the Employer's obligations under this agreement. Such records shall at all times be open to inspection and examination by the Chairman of the War Manpower Commission, or his duly authorized representative, who shall be entitled to make copies thereof.

7. The Employer shall give prompt written notification to the manager of the War Manpower Commission's local employment office nearest the place where the individual last worked if any Worker is for any reason separated from employment for the employer or for any reason performs no services for the Employer in any seven consecutive days. If any Worker is separated from employment for the Employer, the Employer shall transport such Worker to the place designated by an authorized representative of the Chairman of the War Manpower Commission which may be either the Point of Contract in Mexico or a transfer point on the Employer's line.

8. Any question arising out of this agreement, including any question as to the Employer's liability or rights or obligations hereunder, shall be determined in the first instance by an authorized representative of the Chairman of the War Manpower Commission in accordance with regulations prescribed by the Chairman, subject to such further review as may be provided in such regulations, and such determination shall be final and conclusive upon the Employer, the Worker, and the United States of America.

9. Nothing herein contained shall be construed to interfere with the right of any Worker under the Railway Labor Act, as amended.

10. The Employer hereby agrees to immediately furnish the United States of America a good and sufficient departure bond in such sum and in the form and with a surety company approved by the Immigration and Naturalization Service of the Department of Justice, conditioned upon its performance of the obligations imposed upon the Employer by such agency with respect to the return of the Worker to the Point of Contract.

11. All rights, privileges, and powers of the United States of America conferred herein shall be exercised in its behalf by the Chairman of the War Manpower Commission, or by a duly authorized representative of the Chairman.

IN WITNESS WHEREOF the United States of America and the Employer have executed this agreement as of the date first above mentioned.

UNITED STATES OF AMERICA

WITNESSES: for the United States of America

By _____

_____
(Official Title)

_____

_____

WITNESSES: for /Employer/

/Employer/

_____

By _____

_____

_____
(Official Title)

AMENDMENT OF CONTRACT TO EMPLOY
AND TRANSPORTATION AGREEMENT

THIS SUPPLEMENTAL AGREEMENT, made this _____ day of _____, 1943, at Washington, D. C., between the United States of America, acting through the Chairman of the War Manpower Commission, or his authorized representative, and _____ of _____, hereinafter called the "Employer,"

WHEREAS, the United States of America and the Employer entered into a contract to employ and transportation agreement under date of the _____ day of _____, (as amended and extended by a supplemental agreement entered into on the _____ day of _____, 1943), pertaining to the importation and employment of workers from the Republic of Mexico in railroad maintenance of way labor for the Employer, and

WHEREAS, said contract of the _____ day of _____, reads in part as follows:

"WHEREAS, the United States of America and the Employer wish to cooperate in making workers available to alleviate the present shortage of maintenance of way labor needed to keep the railroad lines of the Employer in suitable and safe condition for operation and thus to aid in the successful prosecution of the war,

NOW, THEREFORE, in furtherance of a general plan approved by the Chairman of the War Manpower Commission for alleviating the maintenance of way labor shortage on railroads and in consideration of the undertakings hereinafter stated, the United States of America and the Employer agree as follows:

1. The United States of America shall use its best efforts to obtain workers in the Republic of Mexico for employment by the Employer in railroad maintenance of way labor as provided in this agreement, and"

WHEREAS, the United States of America and the Employer wish to make provisions for the employment of workers covered by the aforesaid contract in railroad work other than track labor, pursuant to section 909.8 of the Code of Federal Regulations (Title 29, Chapter VII, Part 909).

NOW, THEREFORE, the above quoted paragraphs of said contract of the _____ day of _____, are hereby amended to read as follows:

I. "WHEREAS, the United States of America and the Employer wish to cooperate in making workers available to alleviate any shortage of railroad track and other unskilled and semi-skilled labor needed to keep the railroad lines, rolling stock and properties of the Employer in suitable and safe condition for operation and thus to aid in the successful prosecution of the war,

NOW, THEREFORE, in furtherance of a general plan approved by the Chairman of the War Manpower Commission for alleviating any railroad track and other unskilled and semi-skilled labor shortage on railroads and in consideration of the undertakings hereinafter stated the United States of America and the Employer agree as follows:

1. The United States of America shall use its best efforts to obtain workers in the Republic of Mexico for employment by the Employer in railroad track and other unskilled and semi-skilled labor as provided in this agreement."

II. Paragraph 4 (a) of said contract is hereby amended to read as follows:

"The Employer shall employ each Worker on the date following that on which he reports at the Destination Point for work and thereafter, all in accordance with the provisions of this agreement and with the terms and conditions of employment set forth on the Selection Card for such Worker. The Employer shall employ each Worker only in those States and portions of States specified on the Selection Card, provided that a Worker may be employed elsewhere in the United States for periods of not to exceed fourteen consecutive days in the event of [illegible] emergencies requiring such employment; provided further that the United States of America may, with or without the consent of the Employer, extend or further limit the [illegible] of States within which a Worker may be [illegible] Agreement; and provided further that [illegible] Workers covered by this agreement in [illegible]

labor only upon the approval (which may be withdrawn after 15 days prior notice thereof) by a duly authorized representative of the Chairman of the War Manpower Commission, of the occupations in which such employment is to be performed and the maximum number of workers to be so employed."

III. All provisions of said contract of the _____ day of _____, (as amended and extended by a supplemental agreement entered into on the _____ day of _____, 1943), as hereinbefore amended shall continue in full force and effect.

IN WITNESS WHEREOF, the United States of America and the Employer have executed this supplemental agreement as of the date first above mentioned.

WITNESSES: For the United States of America

UNITED STATES OF AMERICA

_____ By _____

_____ _____
(Official Title)

WITNESSES:

_____

_____ By _____

_____ _____
(Official Title)

SUPPLEMENTAL CONTRACT
TO EMPLOY AND TRANSPORTATION AGREEMENT

THIS SUPPLEMENTAL AGREEMENT, made this _____ day of _____ 1943, at Washington, D. C., by the United States of America, acting through the Chairman of the War Manpower Commission or his authorized representative, and _____ of _____ hereinafter called the Employer,

WHEREAS, the United States of America and the Employer wish to amend and extend, as so amended, the terms and conditions of a Contract to Employ and Transportation Agreement, which relates to the employment and transportation of certain Mexican workers and which was entered into between the War Manpower Commission and the Employer on the _____ day of _____, 1943, (and amended on the _____ day of _____, 1943), to provide for

(i) The continued employment by the Employer of Mexican workers with respect to whom Selection Cards have been executed by the Employer, and with whom Individual Work Agreements have been renewed, and

(ii) The employment by the Employer of similarly situated Mexican Workers who were originally employed by another railroad employer and who may be transferred to employment for the Employer,

NOW, THEREFORE, the United States of America and the Employer agree as follows:

1. The United States of America shall use its best efforts to renew Individual Work Agreements entered into between the United States of America

and Mexican Workers presently employed by the Employer; and the Employer shall continue to employ each Worker presently employed by the Employer who renews his Individual Work Agreement, pursuant to the terms and conditions set forth in the above referred to Contract to Employ and Transportation Agreement.

2. The Employer shall execute with respect to each Mexican Worker transferred from employment for another railroad employer to employment for the Employer, a Selection Card in the form attached hereto as exhibit A; and all provisions of the above referred to Contract to Employ and Transportation Agreement shall be applicable to any such Worker, except that paragraphs 3 and 4 (b) of said contract are modified, with respect to each such Worker, as follows:

> "3. The Employer shall pay the cost of transportation of each Worker (including adequate subsistence during travel), and his personal effects (limited to 77 pounds), from the place of employment for another railroad employer to the place of employment for the Employer, and shall pay return transportation to the Point of Contract in Mexico, all in accordance with regulations prescribed by the Chairman of the War Manpower Commission, unless relieved of the obligation to pay return transportation by other provisions of this agreement.
>
> "4 (b). The Employer shall afford each Worker an opportunity for employment for at least the period beginning with the termination of the Worker's employment with another railroad employer and ending on the date of expiration of the Worker's Individual Work Agreement, unless relieved of such obligation by other provisions of this agreement. In each pay period the Employer shall afford each Worker an opportunity to work not less than the number of hours equal to the product of eight times 75 percent of the number of working days (all days except Sundays and legal holidays) in such pay period. During the period of employment for the Employer, the Employer shall afford each Worker an opportunity to work not less than the number of hours equal to the product of eight times 90 percent of the number of working days (all days except Sundays and legal holidays) in such period. If the Worker is afforded an opportunity to work but is unable or unwilling to work, the

Employer shall be relieved with respect to the above guarantees to the extent of the Worker's unwillingness or inability to work during the periods covered by the guarantees. The number of hours worked shall be calculated solely on a time basis whether the Worker is paid at straight time or overtime rates."

3. In the event that the Employer is requested, pursuant to the provisions of paragraph 4 (i) of said Contract to Employ and Transportation Agreement, to release any Worker covered by this Supplemental Agreement, with respect to such Worker, the "contract period" referred to in paragraph 4 (i) of said contract shall be construed to mean the initial 180 day period of employment of the Worker, whether such employment was afforded by the Employer or by another railroad employer.

4. The Contract to Employ and Transportation Agreement dated the _____ day of _____, 1943, (as amended on the _____ day of _____ 1943), entered into between the parties to this agreement shall continue in full force and effect.

IN WITNESS WHEREOF the United States of America and the Employer have executed this agreement as of the date first above mentioned.

WITNESSES: For the United States of America

_____

_____

UNITED STATES OF AMERICA

By _____

_____
(Official Title)

WITNESSES:

_____

_____

_____

By _____

_____
(Official Title)

SELECTION CARD

(Transferred Worker)

EXHIBIT A

Date _____

Work Agreement And Bank Account Number _____

Worker's Name _____

Worker's Residence Address _____

Point of Contract in Mexico _____

Place of Last Employment for Another Railroad Employer _____

Place of Employment for the Undersigned Employer (Any point on the Employer's Lines in the States or Portions of States Shown Below):

_____

Minimum Rate of Pay Including Overtime Rate _____

Date of Termination of Employment for Another Railroad Employer _____

Date of Expiration of Individual Work Agreement _____

Other _____

April 8, 1944

Mr. DuBois

Mr. Marks

Re: Waiver of Restrictions authority under Immigration and Related Legislation

The statutory authority to waive the requirements of a visa, a reentry permit or border-crossing identification card under Section 30 of the Alien Registration Act of 1940 is expressly delegated by the statute to the Secretary of State. The second paragraph of Section 30 provides as follows:

> "Any alien seeking to enter the United States who does not present a visa (except in emergency cases defined by the Secretary of State), a reentry permit, or a border-crossing identification card shall be excluded from admission to the United States. (54 Stat. 673; 8 U.S.C. 451)"

Therefore, it would seem that the President lacks statutory authority to waive certain of the restrictions mentioned in Mr. Hains' and my memorandum and that such restrictions would have to be waived by the Secretary of State.

cc: Mr. Friedman
Mr. Hains

MJM:in 4/8/44

January 18, 1944

Mr. Lesser

O. F. Brown

Subject: Notes on Laws of Emigration

Erratum - for "emigrant," read "immigrant."

Aliens who seek to come into the United States are devisable into two classes, emigrants and non-emigrants. With respect to the former there are detailed and extensive statutory provisions covering all steps involved in entry into the United States. With respect to the latter class, subject to certain limits which are equally applicable to emigrants, the controls are not spelled out in detail unless they are so spelled out in regulations which do not appear in the Code of Federal Regulations. Non-emigrants are defined as aliens (an alien being a non-native or naturalized citizen of the United States) who is visiting in the United States "as a tourist or temporarily for business or pleasure", an official of the foreign government of his family. An alien in continuous transit through the United States and certain other classes of aliens which are here irrelevant. (8 U.S.C. 204).

Normally, an alien in order to enter the United States must have an unexpired passport or document in the nature of a passport and a visa. By Section 217 a, title 22, U.S. Code, the validity of a visa is limited to two years unless a shorter period is provided by the Secretary of the State. No other provisions appear concerning issuance of visas to non-emigrants in the statutes. There are, however, certain qualifications applicable to all aliens except provision for a visa fee which, naturally, include non-emigrants. These are grounds for exclusion of any aliens and are among others, persons likely to become public charges, persons whose transportation is paid for by another, children under sixteen unaccompanied

by parents and not coming to parents, although such children may be admitted, if, in the discretion of the Attorney General, they are not likely to become public charges, (8 USC 136). A considerable body of case law has grown up over the interpretation of these particular three grounds for exclusion. It may be stated that in spite of the apparent absoluteness of their language, the provision concerning a person whose passage was paid for by another and a provision concerning children unaccompanied by parents, are not sufficient grounds to exclude unless he would be excludable also on other grounds. It has also been held that it is necessary to show affirmatively that a person is likely to be a public charge and it is sufficient to rebutt this if a relative or some other person who is financially responsible assumes responsibility for the support of such person. (See U.S. ex rel. Berman v. Curran, 13 F (2d) 96 C.C.A. (3d) 1926, U.S. v. Day, 22 F (2d) 472 C.C.A. 2 1927, Gegiow v. Uhl, 239 U.S. 3, see also exparte Orzechowska, 23 F.2. 426). In addition, the Commissioner of Emigration is to make rules and regulations governing terms and conditions of admission and return of otherwise inadmissible aliens. All aliens are to be examined on arrival and before debarkation by medical officers of the Public Health Service pursuant to regulations issued by the Attorney General and also be examined by immigration inspectors pursuant to regulations issued by the Attorney General. (8 U.S.C. 151 152). In addition, there are several controls placed on the private persons. For example, it is unlawful to solicit, invite or encourage any alien to come to the United States (8 U.S.C. 143). It is unlawful for any person to transport into the United States any physically or mentally defected person or any person afflicted with a loathesome or dangerously contagious disease which could have been discovered by medical examination before embarkation. (Section 148). All alien passages must be listed in a "manifest" which must be supported by a statement under oath by the captain or mates to the effect that the ship's surgeon has made a physical

examination of each alien and that from such examination and from his own examination none of the aliens are such as to be excludable under Section 136. If the ship does not carry a surgeon then such examination may be by a surgeon employed by the owners and the manifest shall be verified before a United States consular officer or other officer authorized to administer oaths. (Section 139)

The regulations governing non-emigrant aliens are very brief indeed. The State Department regulations state that consular officers have certain duties in the enforcement of the emigration laws and in general should assist in their enforcement. They then outline provisions of the Quarantine Act, February 15, 1893, (27 Stat. 449), which concern the formalities of issuing a Bill of Health concerning the sanitary of each ship clearing for the United States. (22 Code Federal Regulations, Part 69). In the same regulation the Secretary of State gives himself authority to "waive passport and visa requirements in cases of emergency for non-emigrant aliens and in other cases under such conditions as may by regulations be prescribed by him". (22 C.F.R. 53.8). No instructions are given as to visas for such persons.

With respect to emigrants the statute is specific. The same grounds for exclusion mentioned above in connection with non-emigrants, namely, Section 136 of Title 8 of the U.S. Code, apply here. Likewise the above described provisions for inspections of aliens by medical officers and emigration inspectors and ship's manifest apply equally as in the case of non-emigrants. Emigrants are of two classes, quota and non-quota. Non-quota emigrants are a small class composed of unmarried minor children or spouses of United States' citizens. Previously admitted aliens, nationals of Mexico, Cuba, Canada and a few other Western Hemisphere countries and students over fifteen years of age who are entering in order to study at some institution. (8 U.S.C. 204). The Commissioner of Emigration and Naturalization is given the administration of all laws concerning emigration

of aliens as to prescribe rules for entry and inspection of aliens coming from Canada and Mexico in order to facilitate intercourse between the United States and those countries. He is also authorized with the approval of the Attorney General to send abroad emigration officers and medical officers of the Public Health Service as well as inspectors and matrons to travel on ships carrying emigrants. (Section 103). The visas for emigrants are spelled out in great detail, they are to be issued on application by consular officers to any emigrant subject to quota limitations. (Section 202). What each visa must specify is stated in detail. A visa is valid for the period specified therein, not exceeding four months and it is provided that no visa shall be issued if it appears to the consular officer, from statements in the application or from papers submitted therewith, or if the officer has reason to believe that the emigrant would not be admissible to the United States under the emigration laws. (Section 209). By Section 198, the Attorney General has given discretionary regulations to admit aliens who are likely to become public charges or who are afflicted with physical disabilities other than tuberculosis or a leathesome or dangerously contagious disease if they would be otherwise admissible. On the grant of a bond or a deposit in cash by regulation, the Secretary of State has authority to waive the passport requirements under regulations issued by him relative to any emigrant [illegible] an emigration visa is necessary except that it may be waived in the case of aliens entering. (22 C.F.R. 61.2 61.8).

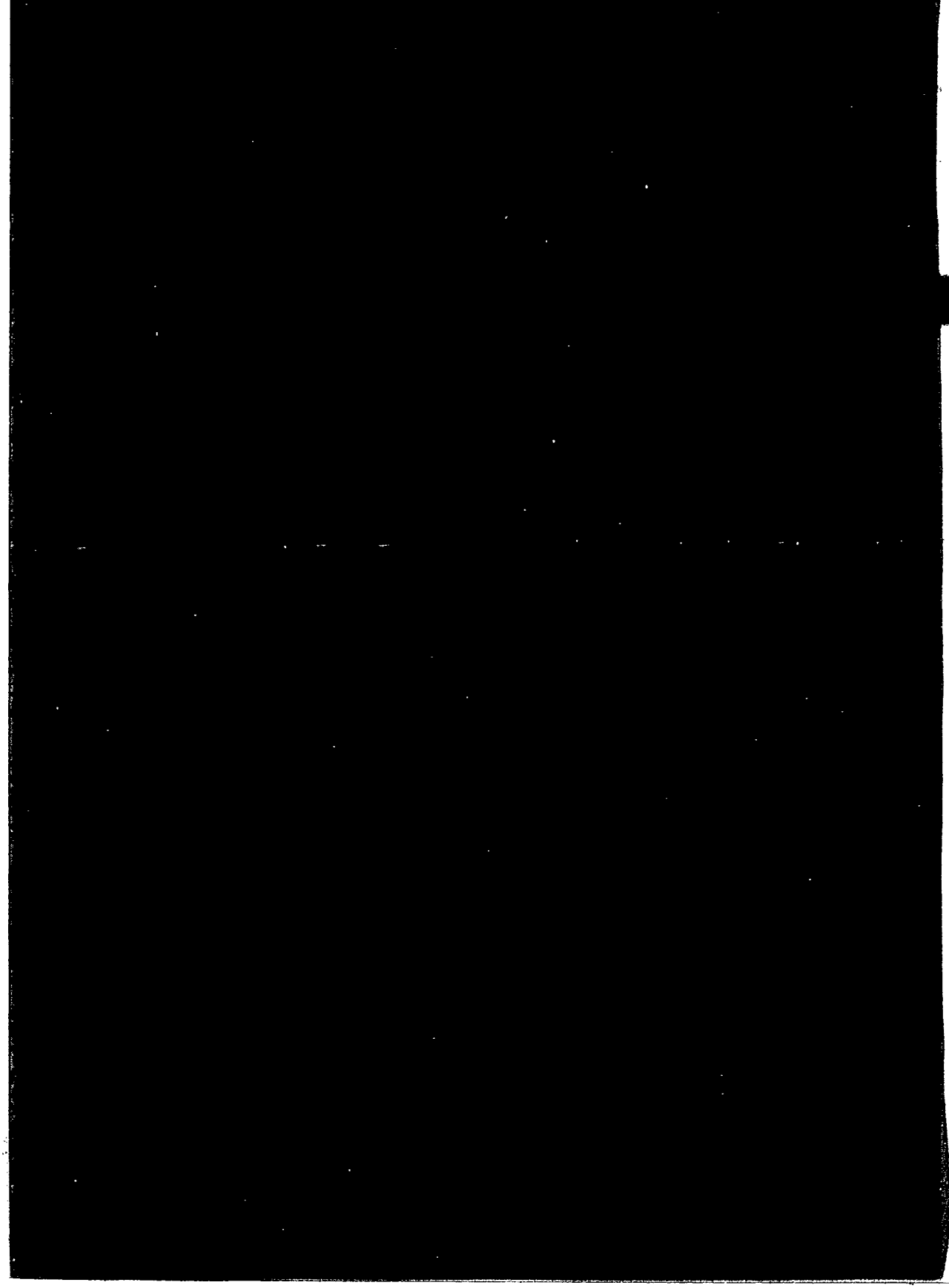
The above statements concern statutory and other provisions effective during normal peace time. By Section 233 of Title 22 of the U.S. Code, President during the time of the national emergency is given authority to impose by proclamation all additional restrictions on entry and departure of any persons into or from the United States. A proclamation was issued by the President on November 14, 1941, No. 2523, providing that no alien shall enter the United

States without a permit issued by the State Department unless exempt from such permit under regulations issued by the Secretary of State with the approval of the Attorney General and no alien may be permitted to enter if the Secretary of State is satisfied that such entry is prejudicial to the interests of the United States. (Section 3). It is further provided that the period of validity of an entry permit issued to an alien may be terminated by the permit issuing authority or the Secretary if satisfied that such entry would be prejudicial to the interests of the United States. Pursuant to this proclamation, regulations were issued concerning entry of aliens which regulations are dated November 19, 1941, and amended, January 14, 1942. (6 F.R. 5979 7 F.R. 381, 8 Code of Federal Regulations, Part 58). These regulations define "permit to enter" as being any emigration visa, entry permitting transport visa, transit certificate, limited entry certificate or any other document required. Certain exceptions to the requirement for entry permits under this proclamation are made which are immaterial here. Requirements relative to non-emigrants may be waived among other cases in " special cases of unforeseen emergency in which the Secretary of State is satisfied that the aliens concerned are entering temporarily and have had no reasonable opportunity to procure appropriate documents". (Section 58.45 p.) Certain individuals are deemed to make the entry of those individuals prejudicial to the interests of the United States and, in addition, this same Section provides such persons shall include "enemy aliens" as the term may be defined by the President. (58.47). With respect to the preceding Section, it is provided that the fact that an applicant would leave a relative of the first degree of consanguinity within the control of the government opposed to measures of the United States Government relative to current source may be considered as evidence in determining that the entry of that alien would be prejudicial to the interests of the United States. (Section 58.48). Section 58.51 states that applications for the

various documents are to be made according to regulations which concern such documents and that, with exceptions thereinafter named, no entry permit shall be issued until the permit issuing authority shall have received advisory opinion from the Secretary of State recommending such issuance. Among the exceptions are cases covered by special instructions to the permit issuing authority. (58.56 (16)). Applicants for entry permits who do not fall within any of the exceptions must be sponsored by a United States citizen or an alien admitted to permanent residence in the United States and, in addition, that application must go before an inter-departmental advisory committee before a recommendation will issue from the Secretary of State.

It should be kept in mind that the above treatment of emigration laws is based upon a hurried reading of the U.S. Code and of the Code of Federal Regulations with great reliance being placed on indexes. It is apparent, therefore, that this treatment is not necessarily complete. It should be stated that on July 4, 1936, a "Provisional Arrangement Concerning the Status of Refugees Coming From Germany" was signed at Geneva. No evidence has been discovered that the United States signed this arrangement. On February 10, 1938, a convention bearing the same title was opened for signature under the auspices of the League of Nations, as of November, 1938, this convention had been signed by Belgium, Britain, Spain and a couple of other countries not including Switzerland. In this case also it appears that the United States did not sign this convention.

CMBrown:lsf 1/19/44



EXECUTIVE OFFICE OF THE PRESIDENT
WAR REFUGEE BOARD

INTER OFFICE COMMUNICATION

DATE March 17, 1944

March 20, 1944.

Dear Mr. Baruch:

You asked me to ascertain the number of persons in the United States on visitors' visas. The best information obtainable from the Bureau of Immigration and Naturalization is that on June 30, 1943 there were in the United States 14,502 persons on visitors' visas who entered the United States between June 30, 1939 and June 30, 1943. There are no figures available as to the breakdown of the group along religious or other lines.

Very sincerely yours,

(Signed J. W. Pehle

Mr. Bernard Baruch,
1055 - 5th Avenue,
New York, New York.

JWP:lhh 3/20/44

EXECUTIVE OFFICE OF THE PRESIDENT
WAR REFUGEE BOARD

INTER-OFFICE COMMUNICATION

DATE March 17, 1944

TO : Mr. Pehle

FROM : Lawrence F. Lesser

The best information I could secure from the Bureau of Immigration and Naturalization is that on June 30, 1943, there were in the United States 14,502 persons on visitors visas who entered the United States between June 30, 1939, and June 30, 1943. During the same period a total of 130,607 non-immigrants of all classes entered this country and 185,722 non-immigrants admitted to this country departed therefrom. The over-all non-immigrant figures do not include Canadians or Mexicans admitted to the United States for periods less than a year.

LL

March 17, 1944

: Mr. Pehle

: Lawrence S. Lesser

The best information I could secure from the Bureau of Immigration and Naturalization is that on June 30, 1943, there were in the United States 14,502 persons on visitors visas who entered the United States between June 30, 1939, and June 30, 1943. During the same period a total of 180,607 non-immigrants of all classes entered this country and 185,722 non-immigrants admitted to this country departed therefrom. The over-all non-immigrant figures do not include Canadians or Mexicans admitted to the United States for periods less than a year.

L.S.L.

LSLesser:dh 3/17/44

EXECUTIVE OFFICE OF THE PRESIDENT
WAR REFUGEE BOARD

INTER-OFFICE COMMUNICATION

DATE March 17, 1944

TO Mr. Lesser

FROM J. W. Pehle

I would appreciate your ascertaining the approximate number of persons who are now in the United States on visitor's visas. If such information is available it would also be helpful to know the number of such persons who are Jews.

J. W. Pehle