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# FOREWORD: FROM THE ST. LOUIS TO THE GOLDEN VENTURE

Marvin H. Morse<sup>1</sup>

Our culture and history are full of doomed and wandering ships. There is the awful example of the St. Louis, a ship of Jews trying to flee Hitler's Germany in the 1930s, which went from port to port only to be told that no one wanted them, only to be returned to Europe, where the Holocaust awaited. There are the gimcrack boats of Haitians, lost at sea with their passengers drowned in the attempt . . . to find sanctuary from chaos and violence. Every so often there are small craft exoduses from Cuba bent on escape that wash up on our shores. And one remembers the wandering ships of the Vietnamese boat people: adrift in the China seas, the flotsam of a lost war. Then there are the slavers of past centuries: ships of even more misery, overcrowding and death that brought a whole race of people to the New World against their will.

*Elusive Haven* (editorial), BOSTON GLOBE,  
May 15, 1996, at 6.

For those who *voluntarily* set sail, the torch held aloft by the Statue of Liberty is a beacon of hope, its promise made explicit by the poem inscribed at Liberty's base. Facing the Old World, Liberty commands:

Give me your tired, your poor,  
Your huddled masses yearning to breathe free,  
The wretched refuse of your teeming shore,  
Send these, the homeless, tempest-tost to me:  
I lift my lamp beside the golden door.

EMMA LAZARUS (1849-1887), *The New Colossus*:  
*Inscription for the Statue of Liberty, New York Harbor* (1883).<sup>2</sup>

Drawn by this beacon, immigrants who were to become American legends passed through the portals of Ellis Island: in 1893, Knute Rockne and Irving Berlin; in 1903, Frank Capra; in 1908, Bob Hope; in 1921, Bela Lugosi.<sup>3</sup> The lofty promise of an open Golden Door, however, was often as honored in the breach as in the observance, reflecting tensions between those favoring admissionist policies and interpretations on the one hand and on the other hand those favoring restrictionist approaches to immigration.

Originally planned for New York harbor's Bedloe Island, to commemorate the 1876 Centennial, the Statue

unveiled in 1886 by President Grover Cleveland was a perfect symbol for a century in which with rare exception this nation "was a haven for runaways — for people who refused to endure persecution or tyranny."<sup>4</sup> Among the exceptions, the Naturalization Act of 1790 reflected the Founding Fathers' vision of the new Republic, a society in which citizenship whether by birth or naturalization was limited to "whites,"<sup>5</sup> and the Chinese Exclusion law of 1882, the first law prohibiting *entry* on the basis of nationality.

As described by Pulitzer Prize-winning historian Daniel J. Boorstin (Librarian of Congress, 1974-1987),

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<sup>2</sup> BARTLETT'S FAMILIAR QUOTATIONS 558 (16th ed. 1992).

<sup>3</sup> Jeanne K. Pettenati, *Coming to America: Ellis Island First Stop for Many*, THE BLOOMINGTON, ILL. PANTAGRAPH, Nov. 19, 1995, at B1.

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<sup>4</sup> Daniel J. Boorstin, *Introduction: The Immigrants' Vision*, in Cynthia Jaffee McCabe, *THE GOLDEN DOOR: ARTIST-IMMIGRANTS OF AMERICA, 1876-1976* (1976), at 14.

<sup>5</sup> RONALD TAKAKI, *A DIFFERENT MIRROR: A HISTORY OF MULTICULTURAL AMERICA* 79-80 (1993). It was not until enactment in 1952 of the McCarran-Walter Act that "Congress nullified the racial restriction of the 1790 Naturalization Law." *Id.* at 400.

The historic American Open Door policy was, of course a by-product of continental vastness, emptiness and remoteness . . . It expressed a novel principle — the American belief in the right of voluntary expatriation, the right to leave one's country and settle elsewhere, a right asserted in the Declaration of Independence.<sup>6</sup>

At the same time, as the nation expanded, so too did its need for labor. But by the century's end the warm humanism expressed by Emma Lazarus was replaced by wary exclusionism, reflecting the political response to labor unrest, often attributed to foreign "anarchists," and to the "closing" of the American frontier. For example, powerful establishment figures, politicians and academics, drew distinctions between "good" and "bad" immigrants, from northern and western as compared to southern and eastern Europe.<sup>7</sup> After three U.S. presidents — Cleveland, William Howard Taft, and Woodrow Wilson — vetoed English literacy tests as preconditions for naturalization, Congress in 1917 overrode still another Wilson veto, enacting such a test for the first time. Despite post-World War I prosperity, but in an era of heightening labor unrest, the first absolute numerical immigration limits were enacted in 1921 and 1924.<sup>8</sup> The trial for murders in Braintree, Massachusetts of alleged anarchists Sacco and Vanzetti, culminating in their execution in 1927, did nothing to return this nation to admissionist policies.<sup>9</sup>

Most notoriously, on May 13, 1939, the eve of World War II, with the free world's leaders no longer blissfully unaware of the Holocaust, the SS *St. Louis* embarked on her ill-starred voyage from Hamburg, Germany.<sup>10</sup> Among

936 passengers, 930 were Jews fleeing the Nazis, all with Cuban visas.<sup>11</sup> When Cuba refused to let them disembark in Havana,<sup>12</sup> the ship's German captain sought permission to land his human cargo in Florida.<sup>13</sup> Citing restrictive immigration laws, the U.S. Coast Guard refused permission.<sup>14</sup> Although in sight of Miami,<sup>15</sup> the *St. Louis* was obliged to return to Germany. En route, the British accepted 288 passengers.<sup>16</sup> Remaining passengers were seized by the Gestapo.<sup>17</sup> Most perished in death camps.<sup>18</sup>

Who can gauge what artistic, literary, and scientific contributions these 648 lost souls and their progeny unborn would have made had the Golden Door opened to them? Successive immigrant waves, depositing their rich cultural silt on our shores, have continuously enriched and immeasurably expanded the American experience. Witness the intellectual and aesthetic achievements of painter Josef Albers (1888-1976), born in Bottrop, Germany; the oeuvre of legendary LIFE photojournalist Alfred Eisenstaedt (1898-1995), born in Dirschau (Tczew), Poland; the cinematic artistry of Academy Award-winning director Billy Wilder, born in Vienna in 1906; the theoretical and applied physics of Albert Einstein (1879-1955), born in Ulm, Germany, and of Enrico Fermi (1901-1954), born in Rome, to cite but a few creative geniuses, who, like Oskar Schindler's Jews, escaped or survived Hitler's race-based fascism.<sup>19</sup>

Fully one third of Nobel Prizes awarded to Americans have gone to naturalized citizens,<sup>20</sup> among them former Secretary of State Henry A. Kissinger, awarded the 1973 Peace prize, born Furth, Germany, 1923; author Elie Wiesel, awarded the 1986 Peace prize, born Signet, Romania, 1938; novelist Isaac Bashevis Singer (1904-1991), native of Radzymin, Poland, winner of the

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<sup>6</sup> Boorstin, *Introduction: The Immigrants' Vision*, THE GOLDEN DOOR at 14.

<sup>7</sup> *Id.* at 15.

<sup>8</sup> *Id.* at 17-19.

<sup>9</sup> *Id.* at 18-19.

<sup>10</sup> Bert Emke, *The Holocaust's Enduring Horrors*, THE LOUISVILLE COURIER-JOURNAL, Jan. 27, 1995.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Scott Williams, *Roosevelt Institute Campaigns Against Documentary*, DAYTON DAILY NEWS, Apr. 8, 1994, at 9B; James A. Haight, *The Horror and Guilt of the Holocaust*, CHARLESTOWN W. VA. GAZETTE & DAILY MAIL, Apr. 22, 1994, at 8A. For an insightful discussion of historic factors culminating in United States rejection of German-Jewish asylum seekers, see DAVID WEISSBRODT, IMMIGRATION LAW AND PROCEDURE 13-14 (3rd ed. 1992) (observing that "[o]ne of the most tragic consequences of the U.S. restrictive immigration policy fell upon refugees trying to flee Europe before World War II. In 1939, Congress defeated a bill that would have accommodated 20,000 children fleeing from Nazi Germany — despite the availability of willing sponsor families — because the number of children would have exceeded the quota allocated to German nationals").

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<sup>15</sup> James Vincent Brady, *World War II Offers Lessons for Today*, THE FORT WORTH STAR-TELEGRAM, June 5, 1994.

<sup>16</sup> Emke, *The Holocaust's Enduring Horrors*.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> INFORMATION PLEASE ALMANAC ATLAS & YEARBOOK: 1997, at 681-709 (50th ed. 1997). For a fascinating juxtaposition between denigration by a totalitarian regime of 20th century artists whose religion, ethnicity and product were in political disfavor in contrast to acceptance of diversity in the United States at the time of our Bicentennial, compare the catalogues of two shows held at the Smithsonian Institution's Hirshhorn Museum and Sculpture Garden, i.e., Stephanie Barron, "DEGENERATE ART" — THE FATE OF THE AVANT-GARDE IN NAZI GERMANY (1991) (exhibiting, to the extent artworks survived, and replicating the infamous *Entarte Kunst* (Degenerate Art) show of disfavored art from museums throughout Germany as seen by 30 million people in Germany and Austria from July 1937 to 1941), with Cynthia Jaffee McCabe, THE GOLDEN DOOR: ARTIST-IMMIGRANTS OF AMERICA (1976) (displaying works by, among others, refugees from Nazi terror).

<sup>20</sup> Dan Lynch, *Immigrants Can Only Help This Country*, ALBANY TIMES-UNION, Jan. 7, 1996, at C1.

1978 Literature prize; poet Joseph Brodsky (1940-1996), born St. Petersburg, Russia, winner of the 1987 Literature prize; numerous physicists, including Eugene Paul Wigner (1903-1995), a Hungarian immigrant awarded the 1963 Physics prize, and Subrahmanyam Chandrasekhar (1911-1995), an Indian immigrant awarded the 1983 Physics prize for work on black holes; chemists, and physicians.<sup>21</sup>

Despite such stellar achievements, however, successive immigrant waves continue to be greeted with distrust. Legislation often reflects xenophobic preconceptions. For example, California's Proposition 187 precludes public education for the children of illegal immigrants, while requiring police, school officials, and health care workers "to report to authorities anyone they believe might be an illegal immigrant."<sup>22</sup> Evoking memories of Nazi and totalitarian "selection," Proposition 187 was opposed by a coalition of Jewish groups in California.<sup>23</sup> Speaking for the coalition, Rabbi Harold M. Schulweiss of Encino described Proposition 187 as "a vicious and cruel proposition . . . [which] makes informants of us all."<sup>24</sup> Schulweiss said that "The same argument used by supporters of 187 — that illegal immigration is solely a legal issue, that there is no more room or money — was used when U.S. authorities refused port entry to the *St. Louis*."<sup>25</sup>

Early on June 3, 1993, fifty-four years after the doomed passengers of the *SS St. Louis* were denied sanctuary, the freighter *Golden Venture* ran aground on a sandbar in the Rockaways, Queens County, New York.<sup>26</sup> Her cargo of 282 men and women from China's Fujian province began their odyssey over a year before.<sup>27</sup> The passengers were packed tightly in the cargo hold, with little

food and no sanitary facilities.<sup>28</sup> Off New York, six passengers drowned attempting the half-hour swim to shore.<sup>29</sup> Except for six who eluded capture, survivors were promptly apprehended and detained in York, Pa., Winchester, Va., Bakersfield, Ca., New Orleans, La., and Florida, for up to three years and eight months.<sup>30</sup> On February 27, 1997, President Clinton ordered their release.<sup>31</sup> Ninety-nine returned to China; thirty-five were granted asylum; twelve were sent to Latin American countries; fourteen juveniles were released; three were granted artists' visas; one was granted humanitarian parole; the rest claim "asylum on the grounds of China's one-child rule or because they fear religious or political persecution if they return."<sup>32</sup> Among those seeking asylum is Li Zhi Guan, who "claims he fled China after fighting with officials who tried to force him or his wife to be sterilized when they had a second child."<sup>33</sup>

While passengers from the *Golden Venture* were in their third year of detention, Dr. David Ho, an immigrant physician, was named *TIME* magazine's 1996 "Man of the Year" for his ground-breaking combination drug AIDS therapy.<sup>34</sup> Hailing Dr. Ho's achievement, *NEWSDAY* commented on the complex ironies of recent welfare "reforms":

because of the new welfare law, Congress will soon allow states to deny Medicaid to legal immigrants. HIV-positive immigrants who are now getting combination therapy could suddenly lose it. If that happens — if therapy is ended prematurely — these patients might transmit a drug-resistant strain of the deadly virus. . . . In its misbegotten effort to punish immigrants, Congress may inadvertently create a

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*Eludes Many Chinese Detainees*, THE HARRISBURG SUNDAY PATRIOT-NEWS, Mar. 2, 1997, at A12; Michael Raphael, *Detainees' Release Not Applauded in York*, THE HARRISBURG PATRIOT, Mar. 3, 1997, at B1. For a discussion of politics impacting law in the case of the *Golden Venture*, see Wesley L. Hsu, *The Tragedy of the Golden Venture*, 10 GEO. IMMIGR. L.J. 317 (1996).

<sup>21</sup> Mae M. Cheng, *Bittersweet Fate*, *NEWSDAY*, Mar. 2, 1997, at A05.

<sup>22</sup> Caryl Clarke, *Chinese Family Finds Not-So-Scary Snakehead*, *YORK DAILY RECORD*, Mar. 1, 1997, at 1.

<sup>23</sup> Mae M. Cheng, *Bittersweet Fate*, *NEWSDAY*, Mar. 2, 1997, at A05.

<sup>24</sup> Mae M. Cheng, *New Life, New Fears*, *NEWSDAY*, Feb. 18, 1997, at A08; Mae M. Cheng, *Bittersweet Fate*, *NEWSDAY*, Mar. 2, 1997, at A05; Wes Allison, *Chinese Pair Due Release Today*, *RICHMOND TIMES-DISPATCH*, Feb. 28, 1997, at B4.

<sup>25</sup> Mae M. Cheng, *New Life, New Fears*, *NEWSDAY*, Feb. 28, 1997, at A08.

<sup>26</sup> Mae M. Cheng, *Bittersweet Fate*, *NEWSDAY*, Mar. 2, 1997, at A05.

<sup>27</sup> Wes Allison, *Chinese Pair Due Release Today*, *RICHMOND TIMES-DISPATCH*, Feb. 28, 1997, at B4.

<sup>28</sup> Hillary J. Johnson, *Dr. David Ho: The Lazarus Equation*, *ROLLING STONE*, Mar. 6, 1997, at 49-58, 84-89; *Man of the Year*, *TIME*, Dec. 30, 1996.

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<sup>21</sup> INFORMATION PLEASE ALMANAC ATLAS & YEARBOOK: 1997, at 710-716.

<sup>22</sup> Sam Enriquez, *Jewish Coalition Opposes Proposition 187*, *L.A. TIMES*, Oct. 19, 1994, at 2. See CAL. PENAL CODE §§ 113, 114, 834b (West 1997); CAL. WELF. & INST. CODE § 10001.5; CAL. EDUC. CODE §§ 48215, 66010.8. On November 20, 1995, U.S. District Judge Mariana R. Pfaelzer ruled that sections of Proposition 187 barring children of illegal immigrants to attend school, and requiring health and education officials to report suspected illegals were without Constitutional authority. See *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755 (C.D.Ca. 1995), *aff'd*, No.96-70690 (9th Cir. 1996) (unpublished). See also *Gregorio T. v. Wilson*, 59 F.3d 1002 (9th Cir. 1995); *Gregorio T. v. Wilson*, 54 F.3d 599 (9th Cir. 1995); *Wilson v. City of San Jose*, 1995 WL 241452 (N.D.Ca. 1995) (unpublished).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Mary Warner, *Golden Venture: Fate of Immigrants Yet To Be Determined*, THE HARRISBURG SUNDAY PATRIOT-NEWS, Feb. 18, 1996, at J1; Caryl Clarke, *Chinese Family Finds Not-So-Scary Snakehead*, *YORK DAILY RECORD*, Mar. 1, 1997, at 1; Mae M. Cheng, *Bittersweet Fate: Though Free, Grim Future for Detainees*, *NEWSDAY*, Mar. 2, 1997, at A05; Julie Chao, *Freedom Still*

new public-health risk. And not even the talents of David Ho — who emigrated to America from Taiwan at age 12 — can save us from that kind of stupidity.<sup>35</sup>

This issue of the DIGEST contains cases related to the struggle of immigrants from richly diverse ethnic roots to become first generation citizens and to avail themselves of the promise of “Equal Justice Under Law” emblazoned on the lintel of the Supreme Court.<sup>36</sup> Although results vary, these cases reflect the bright hopes of Nigerian, Chinese, Iranian, Palestinian, and Cuban immigrants that this nation’s Golden Door and majestic legal system might be open to them:

\* *Egbuna v. Time-Life Libraries, Inc.*, 95 F.3d 353 (4th Cir. 1996) (current unauthorized work status of alien held not to bar establishing a *prima facie* case of discriminatory retaliation against former employer), *reh’g en banc granted and opinion vacated* (4th Cir. 1996), re-argued March 1997;

\* *Yang v. Maugans*, 68 F.3d 1540 (3rd Cir. 1995), *reh’g en banc denied* (3rd Cir. 1995) (six Golden Venture alien passengers held not to have “entered” the United States within the meaning of 8 U.S.C. § 1101, hence protection of deportation hearings denied);

\* *American-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1052 (9th Cir. 1995) (affirming preliminary injunction against INS deportation proceedings, granting permanent injunction precluding INS from using undisclosed classified information in legalization proceedings, and holding district court to have subject matter jurisdiction over selective enforcement claims);

\* *San Pedro v. United States*, 79 F.3d 1065 (11th Cir. 1996) (invalidating portion of governmental promise of transactional immunity which included promise of nondeportation);

\* *United States v. Yian*, 905 F. Supp. 160, 163

(S.D.N.Y. 1995) (Fifth Amendment due process protections are available even to aliens unlawfully in the U.S., but alienage classification in Hostage Taking Act, 18 U.S.C. § 924(c), is a proper exercise of Congressional power serving legitimate foreign policy objective, not violative of Fifth Amendment equal protection guarantee with respect to alienage classification);

\* *Chai v. Carroll*, 48 F.3d 1331 (4th Cir. 1995) (Executive Order instructing Attorney General to provide enhanced consideration of asylum claims not privately enforceable; alien severely disciplined in country of origin for violating that country’s population control policy failed to show persecution for political opinion);

\* *Safaie v. INS*, 25 F.3d 636 (8th Cir. 1994) (female Iranian not entitled to asylum because of retaliatory actions taken against her for opposing Khomeni regime’s treatment of women).<sup>37</sup>

The commentaries in this issue of the DIGEST, however, must be understood in light of profound changes in immigration law recently enacted by The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1986).<sup>38</sup>

Heightened political attention to illegal immigration culminated after lengthy bipartisan efforts in the Immigration and Reform Control Act of 1986 (IRCA), initiating a brief window of opportunity for qualifying resident illegals to come forward and apply for legalization as a first step toward naturalization. Theorizing that the legalization opportunity would reduce the population of unauthorized aliens who remained underground to a more manageable law enforcement number, IRCA enacted a concomitant initiative, the first-ever national employer sanctions law.

IRCA introduced employer civil and criminal liability for knowingly employing aliens not authorized to be employed in the United States, with civil money penal-

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<sup>35</sup> *An End to AIDS?: Hopes for a Promising HIV Treatment Could Be Dashed by Shortsighted Federal Policy*, NEWSDAY, Dec. 28, 1996, at A20. *But see* Rep. Lamar Smith, Chairman, U.S. House of Representatives Subcommittee on Immigrations and Claims, *Immigration Reform: Can We Be Rational?*, THE WALL STREET JOURNAL, Jan. 13, 1997 (letter to editor arguing that “overall immigration policy can no more be set by the single example of Dr. Ho than by the misdeeds of those immigrants who have abused our hospitality by committing serious crimes”).

<sup>36</sup> For a seminal, provocative study of the impact of immigration on diversity in the United States, recounting American history through the experiences of non-Anglo populations, *see* RONALD TAKAKI, *A DIFFERENT MIRROR: A HISTORY OF MULTICULTURAL AMERICA* (1993). Professor Takaki, Chair of the Ethnic Studies Department, University of California, Berkeley, comments that “African Americans have been the central minority throughout our country’s history,” notes that “they were initially brought here on a slave ship in 1619,” speculates

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that “these first twenty Africans might not have been slaves; rather, like most of the white laborers, they were probably indentured servants,” and suggests that “[t]he transformation of Africans into slaves is the story of the ‘hidden’ origins of slavery.” *Id.* at A7. Takaki notes, too, that Asian-Americans have been in this country for over 150 years, “before many European immigrant groups. But as ‘strangers’ coming from a ‘different shore,’ they have been stereotyped as ‘heathen,’ exotic, and unassimilable.”

<sup>37</sup> *But see Matter of Kasinga*, Interim Decision 3278 (BIA 1996) (holding practice of female genital mutilation potential basis for claim of persecution, and holding female members of the Tchamba-Kunsuntu Tribe of northern Togo not subjected to but opposed to this procedure, are recognized as members of a “particular social group” as qualifying within definition of the term “refugee” under 8 U.S.C. § 1101(a)(42)(A) (1994)).

<sup>38</sup> *See* Richard J. Douglas, *Criminal Alien Amendments Mean Spotting Immigration Issues*, MD. BAR BULLETIN 8 (Jan. 1997).

ties also for failing to satisfy the paperwork regimen established by the Immigration and Naturalization Service (INS) as the means to audit compliance. Responding to the concern that the employer response, whether well-intended or malicious, would lead to workplace discrimination against those who looked foreign or sounded foreign, IRCA created a new cause of action for immigration-related unfair employment practices, establishing a new venue for claims of citizenship status discrimination and for national origin discrimination by employers not covered by Title VII of the Civil Rights Act of 1964, as amended.<sup>39</sup>

Having the good fortune to serve as the first IRCA administrative law judge, I contributed to establishing trial norms for employer sanctions, e.g., *U. S. v. Mester Mfg. Co.*, 1 OCAHO 18 (1988), *aff'd*, *Mester Mfg. Co. v. INS*, 879 F.2d 561 (9th Cir. 1989), and discrimination cases, e.g., *United States v. Mesa Airlines*, 1 OCAHO 74 (1989), *appeal dismissed*, *Mesa Airlines v. U.S.*, 951 F.2d 1186 (10th Cir. 1991). An early IRCA review co-authored by Doris Meissner, now INS Commissioner, noted that

When enacted, employer sanctions were perceived as labor-related immigration law. In retrospect, it is increasingly clear that they are, and should be treated as, immigration-related labor law. The distinction is important because it suggests the time-frame and methods that are realistic to achieve effectiveness.<sup>40</sup>

Although animated principally by the effort to address illegal immigration, IRCA can be seen — at least in terms of unintended consequences — as the precursor of recent state and federal initiatives to restrict ac-

cess to public assistance even by lawful immigrants. At the moment, xenophobia has joined forces with tax reduction as guiding principles of U.S. politics. It is perceived that there is a powerful demand for tax relief, as well as fierce competition for jobs, housing, medical, social services, and political recognition.<sup>41</sup> That reality suggests that our traditional commitment to social justice may be comprised by newly ascendent national selfishness.

We must hope that courts will play a constructive role in ameliorating increased burdens imposed on the immigrant underclass both by state and federal governments. However, the emergence of revisionist federalism in the form of new found judicial respect for the Eleventh Amendment at the expense of other constitutional underpinnings for salutary federal intervention does not augur well. *Seminole Tribe of Florida v. Florida*, 116 S. Ct. 1114 (1996), instructs that state sovereign immunity embodied in the Eleventh Amendment trumps both the Indian Clause and the Commerce Clause of the U.S. Constitution.

Although there has been little doubt for many years that federal immigration power across state lines is exclusive, even beyond the express constitutional authorization to Congress to make naturalization law,<sup>42</sup> in light of *Seminole* can federal preemption survive? Those in the legal community concerned with race and ethnic ancestry will be professionally challenged to face up to this emerging trend in federal jurisprudence. This *Digest* will assist in understanding the tensions in the immigration policy and legal debate between admissionists and restrictionists as we prepare for the year 2000 and beyond.

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<sup>39</sup> Pub. L. 99-603, 100 Stat. 3359 (Nov. 6, 1986), as amended by The Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), and as amended further by IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1986). Note that not until the Supreme Court's decision in *Espinoza v. Farah Mfg. Co., Inc.*, 414 U.S. 86 (1973) was it clear that the prohibition against national origin discrimination in Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et. seq.*, did not protect against alienage [i.e., citizenship status] discrimination. See, e.g., *Romo v. Todd Corp.*, 1 OCAHO 74 (1989), *aff'd*, *United States v. Todd Corp.*, 900 F.2d 164 (9th Cir. 1990).

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<sup>40</sup> Robert L. Bach and Doris Meissner, EMPLOYMENT AND IMMIGRATION REFORM: EMPLOYER SANCTIONS FOUR YEARS LATER 24 n.30 (1990) (graciously crediting me with the insight that IRCA implicates immigration-related labor law). See also Andrew Strojny, *Developments Concerning IRCA's Antidiscrimination Provision*, 10 GEO. IMMIGR. L.J. 371 (1996).

<sup>41</sup> Thomas Muller, IMMIGRANTS AND THE AMERICAN CITY (1993).

<sup>42</sup> Article I, section 8, clause 4 grants to Congress the power to establish a "uniform Rule of Naturalization." See *De Canas v. Bica*, 96 S. Ct. 933, (1976) (holding that "Power to regulate immigration is unquestionably exclusively a federal power").

