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U. S. DEPARTMENT OF LABOR
IMMIGRATION SERVICE

DISTRICT HEADQUARTERS
913-922 MILLS BLDG.

OFFICE OF SUPERVISING INSPECTOR
MEXICAN BORDER DISTRICT
(TEX., N. MEX., ARIZ., AND SO. CAL.)
EL PASO, TEXAS

IN ANSWERING REFER TO

No. 5002/800-29

November 29, 1918.

DEC 4 1918

Commissioner-General of Immigration,
Washington, D. C.

There is enclosed, in duplicate, memorandum prepared by this office for the information of the Bureau and that of the Foreign Permits Office, outlining a procedure the adoption of which would without question greatly curtail the number of aliens held by this Service in detention, with a view to deportation following release on complaints charging entries in violation of the passport law and proclamation thereunder. Every immigration station on the border is seriously congested with this class of cases, so much so, in fact, that it has been found necessary to hold the overflow in local jails even after criminal proceedings have been concluded or complaints dismissed, until warrants of deportation could issue, for the reason that the issuance of a warrant of deportation is acceptable, under the rules of the State Department, in lieu of a formal permit to depart and obviates the necessity for the issuance of the latter. It is highly desirable in view of the situation described that some procedure be adopted which will serve to ameliorate the conditions referred to and the following recommendations are respectfully submitted:

1. In those cases where the alien enters without inspection and there exists no substantial ground, under the Immigration Act, for deportation, other than said entry, the alien should be permitted to voluntarily return to Mexico immediately upon receipt of advices from the United States Attorney's office having jurisdiction, if criminal

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prosecution for violation of the passport act is, for any reason, deemed inadvisable.

2. In cases of the character described in the preceding paragraph, where the decision of the United States Attorney's office is unduly delayed for any reason, it would seem that the institution of deportation proceedings is the only course practicable to legalize the continued custody of the alien.

3. In those cases of the character described in paragraph 1, where advices to prosecute are received with reasonable promptness from the U. S. District Attorney's Office, no legal difficulty will ordinarily intervene in the detention of the alien by immigration officers until complaint is filed and arrest thereunder consummated. In such cases, however, it seems that following the dismissal of the complaint or the termination of any sentence imposed, ~~that~~ the alien involved might in the discretion of immigration officers be permitted voluntarily to depart without recourse to formal deportation proceedings, having for their object merely to obviate the necessity of securing formal permits to depart from the State Department; - deportation proceedings to be instituted, however, if the alien does not elect voluntarily to depart.

4. In cases of the general character hereinabove described, where the decision to prosecute is delayed beyond a reasonable period, the institution of deportation proceedings will seemingly be necessary to legalize detention.

After two months' experience with the enforcement of the criminal provisions of the passport law and proclamation, this office is inclined to question the wisdom of the practice of filing complaints in cases of the character hereinabove discussed, to be thereafter dismissed following short periods of imprisonment. Federal Judge Bledsoe seriously objects to this practice and has given orders to the District Attorneys in California within his jurisdiction to discontinue it as being wholly irregular and without warrant in law. This office also seriously questions the regularity of the practice of dismissing complaint after the alien has been committed by a U. S. Commissioner for the action of the Grand Jury. Some District Attorneys permit this, in fact, instruct U. S. Commissioners to dismiss cases after commitment. Others, however, order dismissal of complaints before preliminary hearing is had before U. S. Commissioners. In cases of the latter character, the preliminary hearing is, as a rule postponed a week or ten days, thus insuring a nominal punishment. The writer feels that uniformity at least should mark the procedure in handling criminal violations of the passport law and regulations and would respectfully suggest for the consideration of the Bureau and the State Department that criminal proceedings be not instituted in any case unless it is intended to prosecute the same to a finish and to this end that criminal prosecution be instituted only in flagrant cases.

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This office is immediately concerned with the dangerous congestion of the detention quarters of this Service all along the border and trusts that the Bureau, in conjunction with the State Department, will take steps immediately to relieve the situation.

Telegraphic advices are requested.

J. T. Burdick
Supervising Inspector.

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Incl. 38514