

IMMIGRATION AGENCY CURBED IN SEARCHES FOR ALIENS

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Byline: By NATHANIEL SHEPPARD Jr., Special to the New York Times

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Body

A Federal district judge here has permanently enjoined the Immigration and Naturalization Service from surrounding or invading factories and homes and then forcibly interrogating Hispanic Americans on the status of their citizenship.

But the judge, Prentice Marshall, refused to enjoin the Federal agency from randomly stopping and interrogating Hispanic Americans on the street, saying the legality of this practice would have to be resolved at trial. Judge Marshall said a trial date would be set on Jan. 27.

The judge's actions Wednesday grew out of an eight-year-old lawsuit filed by the Illinois Migrant Council, a private, nonprofit corporation, and eight defendants who said they had been harassed, abused and in some instances improperly arrested by immigration agents looking for illegal aliens.

Federal district judge in Chicago (Ill) permanently enjoins Immigration and Naturalization Service from forcibly interrogating Hispanic Americans

In 1975 a preliminary injunction was issued prohibiting the service from entering residences of Mexicans or Spanish-surnamed people without valid warrants to search or arrest them or without probable cause to enter without such warrants unless the occupants voluntarily let them in.

Other Provisions of Injunction

The injunction also enjoined the agents from arresting, stopping, detaining or interrogating Hispanic Americans by force, without valid search or arrest warrants, or without reasonable suspicion based on specific facts that they were illegal aliens unlawfully in the United States. The injunction allows the agents to question Hispanic Americans publicly about their citizenship if they volunteer to be questioned and are not coerced. The ruling covers the Northern District of Illinois, which is served by Judge Marshall.

The case has dragged on largely because of appeals by the immigration service. The permanent injunction binds the service to the same restrictions as the preliminary injunction with the exception of street searches. The plaintiffs and defendants dispute whether the street interrogations are conducted as a result of voluntary cooperation or detention and coercion.

Judge Marshall said both sides had presented evidence to support their contentions but that neither had been convincing and therefore the issue must be resolved at trial.

Edward J. Moran, an Assistant United States Attorney, and Theodore L. Giorgetti, assistant district director for the immigration service, refused comment on Judge Marshall's ruling.

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Voluntary Cooperation Disputed

In its efforts to justify its "area control" sweeps of homes and factories, the immigration service contended that the operations were conducted only with the voluntary cooperation of those at the premises and that its agents did not force anyone to remain on the premises.

Judge Marshall said he found this assertion "inherently incredible" and without "support in the stipulated facts" in the case.

He said, however, that there existed "a genuine issue of material fact" on the issue of street interrogations. "Each side has submitted evidence which supports its view of what the I.N.S. policy and practice actually are; neither side's evidence is conclusive. Since the evidence is in conflict, this question must be resolved at trial."

The plaintiffs alleged that they and other Hispanic Americans "have been subjected to numerous interrogations" by immigration agents "on public streets, in their work places, and in their homes" and that many of these incidents "led to detentions and arrests although they were citizens or permanent residents of the U.S."

Two years ago, a Federal judge in California issued an injunction against the agency similar to the injunction issued in Chicago Tuesday. But the legality of the agency's policy of random street interrogations of persons who appear to be of Hispanic descent, which has become a heated issue in Hispanic American communities around the country, has not been reviewed by a Federal court. The forthcoming trial on the issue here would provide the first test of what the agency considers an important tool in identifying illegal aliens.

The immigration agency temporarily halted the street encounters in 1980 at the request of the Bureau of the Census, whose officials argued that the interrogations made it even more difficult for census takers to get an accurate count of Hispanic-Americans. The street interrogations have now resumed.

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