Entry: What Mama Never Told You About Being There

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As I was going up the stair
I met a man who wasn't there;
He wasn't there again today!
I wish, I *wish* he'd stay away.[1]

This article analyzes the development of entry as an immigration concept, with special attention to those factors which affect entry analysis. In addition to the legal status of the individual, the purpose for finding an entry, Congressional intent, other laws, and public policy play a large part in entry law analysis.

Quite often, governments and government officials wish people who are here would quietly go away. Their wish may focus on criminals, but increasingly their wish is leveled against aliens who are physically present in the United States. This is not to say that the government wishes to get rid of all aliens; some, such as outstanding scientists and researchers, are encouraged. However, the government, like many individuals, often seeks a scapegoat for all problems. Throughout history, whenever the economy has faltered, aliens tend to be blamed. This often leads Congress, which has authority over immigration, to make sweeping pronouncements about the kinds of people who should be allowed to remain in the United

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1. Hughes Means, *The Little Man Who Wasn't There*, *in* FAVORITE POEMS OLD & NEW 362 (Helen Ferris ed., 1957).

States. These pronouncements often have harsh and unforeseen consequences which courts and agencies are required to enforce. These harsh consequences are one reason why the simple, five-letter word entry has such a complex and historical meaning. Courts have looked to the concept of entry and its absence as a tool to mitigate harsh consequences, leading to a morass of apparently contradictory holdings.

One of the complexities of entry law is that there are three classes of aliens considered to be physically present in the United States:[2] those who are here legally,[3] those who are here illegally,[4] and those who are "not here at all."[5] The seeming contradiction of having someone here physically, but legally "knocking at the gates," is one of the results of a long and convoluted interplay of laws, treaties, and policies that have turned the simple word "entry" into a term of art.[6] Determining whether an alien has "entered" or "departed" the United States can have a profound affect on his or her fate. It can affect whether the alien is deportable,[7] excludable,[8] has a right to a bond hearing and release from custody,[9] or is able to apply for other immigration benefits.[10]

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2. There are, of course, many people who are outside the United States. These individuals are not discussed in this article because, for the most part, the Constitution and laws of the United States do not grant them access to our courts and justice system. *See, e.g., In re* Cenatice, 16 I. & N. Dec. 162 (BIA 1977) (holding that aliens not admitted to the United States have no constitutional right to due process, equal protection, or counsel); *President Orders Payment to Mexico for Help in Repatriating Chinese Nationals*, 70 INTERPRETER RELEASES 1448 (1993) (discussing payments to Mexico to deport Chinese nationals stranded in international waters); *INS Revises Policy for Screening Haitians Interdicted at Sea*, 68 INTERPRETER RELEASES 793, 794 (1991) (discussing the history of high-seas interdiction of Haitians and noting that between 1981 and 1990, of 22,940 Haitians picked up at sea, only 11 were allowed to apply for asylum).

3. This class includes those here temporarily, pursuant to the Immigration and Nationality Act (INA) § 214, 8 U.S.C. § 1184 (1988), as well as those here as immigrants, as provided by INA § 204, 8 U.S.C. § 1154 (1988).

4. This class includes those who have entered the United States illegally by sneaking across the border or lying about their status on entry, and also includes those who have entered the United States legally, but have since violated the terms of their status. INA § 212(a), 8 U.S.C. § 1182(a) (1988).

5. This means those who have been paroled into the United States pursuant to INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A) (1988). As discussed in this article, the parole status granted an alien has a unique interplay with both legal and illegal status.

6. *See* Barber v. Gonzales, 347 U.S. 637, 641 (1954).

7. Pursuant to INA § 241, 8 U.S.C. § 1251 (1988).

8. Pursuant to INA § 212, 8 U.S.C. § 1182 (1988).

9. Only aliens in deportation proceedings have a right to have their detention bond reviewed by an immigration judge. Aliens have remained in custody for years because they have not entered the United States. *See, e.g.*, Shaughnessy v. United States *ex rel.* Mezei, 345 U.S. 206 (1953) (involving an alien trapped on Ellis Island); Barrera-Echavarria v. Rison, 21 F.3d 314 (9th Cir. 1994) (discussing a Cuban who entered the United States in 1980 as part of the Mariel boatlift and who has been in INS custody since 1985).

10. For example, suspension of deportation as provided in INA § 244, 8 U.S.C.

As the first step affecting an alien's immigration status, the legal history of the term "entry" provides a fascinating microcosm of the very political world of immigration law. As the political nature of immigration is not likely to change in the foreseeable future, it behooves the immigration practitioner to be aware of "entry" analysis so that future issues may not pass unnoticed. As a careful study of the case law makes clear, there are three elements that must be considered in every potential entry: the legal status of the alien; the purpose for finding an entry; and the congressional intent behind the statutes involved. Without understanding these factors, immigration practitioners often are confused by seemingly contradictory holdings. This article will explore the fascinating legal history of the term "entry," and illustrate the interaction of the three factors listed above.

An analysis of the term "entry" should start with the statutory definition. Excluding, for the moment, an exception relating to permanent residents,[11] an entry is defined as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise."[12] This definition, like an onion, has many layers that are not obvious at first glance. These layers do not lend themselves to a simplistic categorization for analysis. Hence, this article will take an anecdotal approach, pointing out trends and themes where possible and leaving details to the footnotes. With luck, this will increase reading enjoyment while proving a useful resource for immigration practitioners.

I. EARLY HISTORY AND OVERVIEW

Until 1875, there were no entry requirements for aliens coming to the United States.[13] At that time, the entry of an alien was not an

§ 1254 (1988), is only available to aliens in deportation proceedings. Aliens have no constitutional right to challenge exclusion or parole decisions. Amanullah v. Nelson, 811 F.2d 1 (1st Cir. 1987).

11. This exception is the codified version of the *Fleuti* doctrine. *See infra* text accompanying notes 31-33, 236-63.

12. INA § 101(a)(13), 8 U.S.C. § 1101(a)(13) (1988).

13. Prior to 1875, the only requirement to be a legal resident of the United States was physical presence. In effect, if you could get off the boat, you were a permanent resident. *See* JOYCE C. VIALET, CONGRESSIONAL RESEARCH SERV., CRS REPORT FOR CONGRESS: A BRIEF HISTORY OF U.S. IMMIGRATION POLICY (No. 91-141 EPW, Supp. 1991), *reprinted in* HOUSE COMM. ON THE JUDICIARY, 102D CONG., 2D SESS., IMMIGRATION AND NATIONALITY ACT 548, 550-53 (Comm. Print 1992) [hereinafter BRIEF HISTORY].

issue because there were no grounds for exclusion.[14] In 1875[15] and again in subsequent years,[16] Congress chose to exclude various classes of aliens and passed laws relating to their deportation.[17] At the cost of simplicity, grounds for deportation and exclusion did not always overlap. Thus, throughout the history of entry law, an alien could be excludable but not deportable. Until the early part of the twentieth century,[18] this conflict between grounds for exclusion and deportation was not as evident, because exclusion grounds applied only to the initial entry of an alien as an immigrant, and not to subsequent "reentries."[19]

In 1907, Congress made most grounds of excludability applicable to "aliens" as opposed to "alien immigrants."[20] This change required the courts to determine which entry counted for purposes of the alien's qualifications to be in the United States: the first entry as an immigrant (as in the law of 1875[21]) or a subsequent entry.[22] Analyzing congressional intent, the courts eventually took the latter view.[23] This meant that, although unforeseeable at the time, an alien's brief trip outside the United States, whether for pleasure or for business, might later trigger severe consequences.

The harsh consequences of applying exclusion grounds to *any* entry of an alien were not lost on the courts. They began stretching exceptions contained in the statute[24] and thus created new concepts

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14. Grounds for exclusion are conditions which render an alien ineligible for admission to the United States. They are codified in INA § 212, 8 U.S.C. § 1182 (1988).

15. The law of 1875 declared prostitutes and criminals to be excludable. *See* Act of March 3, 1875, ch. 141, 18 Stat. 477.

16. Congress has amended or added to the grounds for exclusion many times, including major revisions in 1924, 1952, and 1990. *See* BRIEF HISTORY, *supra* note 13, at 548.

17. Grounds for deportation are conditions which arise or become known after an alien has entered the United States. They are codified in INA § 241, 8 U.S.C. § 1251 (1988).

18. *See infra* notes 35-46 and accompanying text.

19. *See* Lapina v. Williams, 232 U.S. 78 (1914). A reentry is an entry after admission as a permanent resident. This term became virtually obsolete after the 1920s, when the term "entry" was held to mean any entry. Immigration Act of Feb. 20, 1907, ch. 1134, 34 Stat. 898.

20. See the discussion of the statutory and legislative history contained in *Lapina*, 232 U.S. at 83-88. Earlier cases analyzing the law of 1891 include: *In re* Panzara, 51 F. 275 (E.D.N.Y. 1892); *In re* Martorelli, 63 F. 437 (C.C.S.D.N.Y. 1894); *In re* Maiola, 67 F. 114 (C.C.S.D.N.Y. 1895); Moffitt v. United States, 128 F. 375 (9th Cir. 1904). *See also* Act of Mar. 3, 1891, ch. 551, 26 Stat. 1084.

21. *See supra* note 15.

22. *See Lapina*, 232 U.S. at 78; United States *ex rel.* Ueberall v. Williams, 187 F. 470 (S.D.N.Y. 1911); Taylor v. United States, 152 F. 1 (2d Cir. 1907), *rev'd on other grounds*, 207 U.S. 120 (1907); Sibray v. United States, 185 F. 401 (3d Cir. 1911); United States *ex rel.* Barlin v. Rodgers, 191 F. 970 (3d Cir. 1915).

23. *See Lapina*, 232 U.S. at 78; United States *ex rel.* Manzella v. Zimmerman, 71 F. Supp. 534 (E.D. Pa. 1947).

24. *See infra* notes 47-57 and accompanying text for examples.

and law. The most important concept for our purposes is that of "departure." Courts quickly realized that, if they could find that an alien had not "departed" the United States, no new entry need be found, and grounds for exclusion could be avoided. Although never statutorily defined,[25] the concept of departure plays a small but nonetheless important role in the law of entry.

Along with the concept of entry came the concept of parole.[26] Unlike its criminal law cousin, an alien requesting parole wishes to be let in (the United States), not let out (of jail). A parole allows an alien to remain in the United States, usually for a temporary period of time,[27] but without most rights granted under the immigration laws.[28] While an alien granted parole status is physically here, legally the alien is considered to be still outside the border.[29]

Federal courts could not avoid the harsh consequences of entry in all situations, however.[30] In 1963, the Supreme Court created a generous exception to entry law for legal residents of the United States.[31] Where a legal resident makes a trip that is "innocent, casual, and brief,"[32] and not foreseeable as meaningfully interruptive of his or her residency, no entry is made. This exception is known as the *Fleuti* doctrine and has been codified.[33] Similar concepts have been adopted for various immigration programs.[34]

II. BASIC ENTRY

A common sense definition would hold that an entry is *any* crossing of a United States border from a foreign place. At certain times

25. A departure is generally held to be a knowing and voluntary leaving of U.S. territory. *See In re* T-, 6 I. & N. Dec. 778 (BIA 1955). However, a specific exception was created for permanent residents in Rosenberg v. Fleuti, 374 U.S. 449 (1963), and has been codified in the definition of entry. INA § 101(a)(13), 8 U.S.C. § 1101(a)(13) (1988). The concept of departure is discussed *infra* notes 72-91 and accompanying text.

26. INA § 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A) (1988).

27. Some aliens remain in the United States in parole status for years. *See, e.g.*, United States *ex rel.* Lue Chow Yee v. Shaughnessy, 146 F. Supp. 3 (S.D.N.Y. 1956), *aff'd*, 245 F.2d 874 (2d Cir. 1957) (finding that the status of aliens originally paroled into the United States in 1949 remained unchanged seven years later). *See also* discussion of parole *infra* notes 183-95 and accompanying text.

28. Congress has provided that aliens paroled into the United States are eligible for certain benefits. *See infra* notes 183-88 and accompanying text.

29. *See, e.g.*, United States v. Ju Toy, 198 U.S. 253, 263 (1905).

30. *See infra* notes 36-46 and accompanying text.

31. Rosenberg v. Fleuti, 374 U.S. 449 (1963).

32. *Id.* at 461.

33. INA § 101(a)(13), 8 U.S.C. § 1101(a)(13) (1988).

34. *See* INA § 245A(a)(3)(B), 8 U.S.C. § 1255a(a)(3)(B) (1988) (amnesty program); INA § 244(b)(2), 8 U.S.C. § 1254(b)(2) (1988) (suspension of deportation).

and in certain circumstances, that is exactly what courts have held "entry" to mean.[35] This is the simplest definition, yet it can have the harshest consequences. An example of these consequences is shown in *Zurbrick v. Woodhead*.[36]

Mrs. Woodhead immigrated to the United States in 1924 from Scotland. All of the members of her family either were citizens or permanent residents of the United States. Mrs. Woodhead was gainfully employed in the United States until 1934, when she contracted tuberculosis.[37] Two months before she was hospitalized, Mrs. Woodhead decided to take a brief shopping trip to Canada. She was gone only for a few hours but the trip had severe implications. The court, against its sense of justice,[38] found that she had "entered," and thus was deportable.[39] Similar cases have involved a taxi driver who took a fare to Canada,[40] immigrants taking day trips to Mexico,[41] a trip to Canada for gonorrhea treatment,[42] and brief trips to Canada[43] and elsewhere.[44] As with *Woodhead*, many of these opinions recognized the injustice of the unintended consequences of determining

35. In addition to the cases discussed in this section, see also Podolski v. Baird, 94 F. Supp. 294 (E.D. Mich. 1950) (finding a resident who made a short trip to Poland made a new entry such that he could be charged with being a Socialist prior to entry). *But see* Del Guercio v. Gabot, 161 F.2d 559 (9th Cir. 1947) (finding a U.S. national who made a four-hour trip to Mexico prior to Philippine independence did not make a new entry). *See also* cases relating to Philippine nationals discussed *infra* notes 158-63 and accompanying text.

36. 90 F.2d 991 (6th Cir. 1937).

37. Active tuberculosis was a ground for exclusion as was the likelihood of becoming a public charge. *Woodhead*, 90 F.2d at 991-92. These remain grounds for exclusion today. *See* 42 C.F.R. § 34.2(b) (1993).

38. *Woodhead*, 90 F.2d at 992.

39. Mrs. Woodhead was deportable because she was within an excludable class at the time of entry. *Id.* This remains a ground for deportation. INA § 242(a)(1), 8 U.S.C. § 1252(a) (1988).

40. United States *ex rel.* Medich v. Burmaster, 24 F.2d 57 (8th Cir. 1928).

41. Schoeps v. Carmichael, 177 F.2d 391 (9th Cir. 1949), *cert. denied*, 339 U.S. 914 (1950); Cahan v. Carr, 47 F.2d 604 (9th Cir.), *cert. denied sub nom.* Cahan v. United States, 283 U.S. 862 (1931); *Ex parte* Parianos, 23 F.2d 918 (9th Cir. 1928); Del Castillo v. Carr, 100 F.2d 338 (9th Cir. 1938) (last day trip to Mexico counts for deportation purposes).

42. United States *ex rel.* Doukas v. Wiley, 160 F.2d 92 (7th Cir. 1947). At that time, gonorrhea was one of the grounds for excluding an alien from entering the United States. *See* Immigration Act of Feb. 5, 1917, ch. 29, 39 Stat. 874. By admitting that he had entered Canada for treatment of gonorrhea, Doukas was admitting he was excludable when he returned. His only argument was that he had made no entry.

43. Jackson v. Zurbrick, 59 F.2d 937 (6th Cir. 1932) (few hours visit to Canada); *Woodhead*, 90 F.2d at 991; Guimond v. Howes, 9 F.2d 412 (D. Me. 1925) (attempt to smuggle liquor on return from brief trip to Canada); United States *ex rel.* Siegel v. Reimer, 23 F. Supp. 643 (S.D.N.Y.), *aff'd sub nom.* United States *ex rel.* Fisk v. Reimer, 97 F.2d 1020 (2d Cir. 1938); United States *ex rel.* Ueberall v. Williams, 187 F. 470 (S.D.N.Y. 1911) (brief trip across Niagara Falls); United States *ex rel.* Manzella v. Zimmerman, 71 F. Supp. 534 (E.D. Pa. 1947) (trip to island in the Detroit River); Lewis v. Frick, 233 U.S. 291 (1914) (brief trip to bring back a woman for an immoral purpose).

44. *See* Guarneri v. Kessler, 98 F.2d 580 (5th Cir.), *cert. denied*, 305 U.S. 648

there had been an entry.[45] Similarly, aliens who were illegally in the United States received no benefit from their stay if they left the United States.[46]

A. Simple Exceptions

Courts have used or created exceptions to the simple entry concept whenever possible. Minors[47] under the care and control of adults are traditionally held not to have the necessary will to depart and reenter the United States. This policy leads to minors escaping what their parents cannot. A prime example of this occurred in *United States ex rel. Valenti v. Karmuth.*[48] Valenti entered the United States legally in 1914. In 1924, at age sixteen, Valenti accompanied his school class from New York on a graduation picnic to Canada. Although his teacher made all the arrangements, Valenti had advance knowledge of the picnic location and was asked to contribute to the cost.[49] The court, in finding there had not been an entry, held that a schoolboy "is not possessed of freedom of action to decide whether or not he will go. . . . He is under compulsion as if he were in the school room."[50]

The compulsion to attend a celebratory, non-instructional picnic is difficult to envision.[51] However, the courts have used the element of control inherent in the concept of minors and legal responsibility to

(1938) (holding a two to three day trip to Cuba sufficient to find an entry).

45. *See, e.g., Woodhead*, 90 F.2d at 991. The court strongly urged the Attorney General to use his discretionary authority not to deport Mrs. Woodhead. *Id.* at 992. *See also Jackson*, 59 F.2d at 937 ("The case is a hard one for the appellant."); *Guimond*, 9 F.2d at 414 ("I am compelled to decide the case of these unfortunate petitioners under the rules which Congress has provided.").

46. Madokoro v. Del Guercio, 160 F.2d 164 (9th Cir.), *cert. denied*, 332 U.S. 764 (1947) (subsequent illegal entries are not excused by illegal presence); Ali v. Hoff, 114 F.2d 369 (9th Cir. 1940) (for purpose of effective date of law, last entry counts); United States *ex rel.* Gagliardo v. Karnuth, 156 F.2d 867 (2d Cir. 1946); *In re* S-, 5 I. & N. Dec. 668 (BIA 1954) (Philippine national who returned to the United States after 1934 made an entry in spite of initial status). *But see* Yukio Chai v. Bonham, 165 F.2d 207 (9th Cir. 1947); *see also infra* notes 196-220 and accompanying text.

47. These are normally held to be children who are unmarried and under age 21. INA § 101(c)(1), 8 U.S.C. § 1101(c)(1) (1988).

48. 1 F. Supp. 370 (N.D.N.Y. 1932).

49. *Id.* at 372.

50. *Id.* at 373.

51. However, the court found the compulsion sufficient to distinguish Valenti's situation from that contained in a decision by the Western District Court of New York. United States *ex rel.* Kowalenski v. Flynn, 17 F.2d 524 (W.D.N.Y. 1927), involved a 16 year-old boy who, with friends, went to Canada for a picnic. The court found a new entry was made upon Kowalenski's return.

find no entry or other mitigating factors when the alien is sent abroad by or with parents.[52] Unemancipated minors do not have carte blanche to enter the United States, however. Other factors in addition to entry or non-entry must be established by the minor alien.[53]

Courts also have stretched statutory exceptions to protect legal residents of the United States from the consequences of entries. For example, a legal permanent resident who regularly drove from Detroit to Buffalo and made a twenty-five minute trip from Detroit to Canada and back to Detroit was found not to have entered or departed the United States.[54] The court applied an exception that held that legal residents traveling from one U.S. port to another did not depart or reenter,[55] thus finding that neither trip resulted in an entry.[56] Other examples of courts declining to find an entry are rare.[57]

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52. *See In re* Bauer, 10 I. & N. Dec. 304 (BIA 1963). A minor stepson accompanied his parents on a military assignment to Germany and returned to the United States at age 19. The court decided the stepson was an unemancipated minor who lacked the volition necessary for the court to find an entry. *See also* Serpico v. Trudell, 46 F.2d 669 (D. Vt. 1928). Serpico entered the United States legally in 1908. In 1914, at age 14, Serpico was sent back to Italy to complete his education. He studied full time, except for 11 months of service at the front during World War I. He was supported by his family. After completing his medical degree in 1924, Serpico returned to the United States. The court held that he was admissible as a returning resident. *See also* Toon-Ming Wong v. INS, 363 F.2d 234 (9th Cir. 1966). At the instruction of adoptive parents, a minor entered the United States on a relative's documents. Again, at the instruction of his adoptive parents, the minor made a six-month visit to Canada to assist a family member. The court held that the minor was not barred from applying for suspension of deportation [INA § 244, 8 U.S.C. § 1254 (1988)] and remanded to the INS for a weighing of the factors involved.

53. *See Toon-Ming Wong*, 363 F.2d at 234; *In re* Sias, 11 I. & N. Dec. 171 (BIA 1965). In *Sias*, a seven-year-old U.S. permanent resident was sent to Mexico by her father. At age 17, she wished to live in El Paso, Texas. The BIA held that irrespective of whether or not she had departed and abandoned her U.S. residency, she did not have an unrelinquished domicile in the United States to which she could return. *Cf. Serpico*, 46 F.2d at 669. Interestingly, the intent of parents to abandon their legal residency is imputed to minors. *In re* Winkens, 15 I. & N. Dec. 451 (BIA 1975); *In re* Zamora, 17 I. & N. Dec. 395 (BIA 1980). In addition, the parent's knowledge of ineligibility to immigrate has been imputed to children. Senica v. INS, 16 F.3d 1013 (9th Cir. 1994).

54. Annello *ex rel.* Annello v. Ward, 8 F. Supp. 797 (D. Mass. 1934).

55. As quoted in *Annello*, the exception in the Immigration Act of 1924 allowed legal permanent residents to travel from one port in the United States to another through a contiguous territory without making an entry. *Id.* at 798. Immigration Act of May 26, 1924, ch. 190, § 3, 43 Stat. 154.

56. *Annello*, 8 F. Supp. at 797.

57. *See, e.g., Ex parte* Piazzola, 18 F.2d 114 (W.D.N.Y. 1926). The court refused to apply the law of 1917 to a 1916 entry. *See also* Browne v. Zurbrick, 45 F.2d 931 (6th Cir. 1930). The court interpreted the immigration laws and another law relating to judicial recommendations against deportation to find no congressional intent to have a 10-day trip to Canada make an individual deportable.

B. Inadvertent Departures

For legal residents of the United States, inadvertent departures and reentries were quite problematic prior to 1947. In most instances, the inadvertency did not excuse the departure.[58] That policy began to change when the Second Circuit decided *Di Pasquale v. Karnuth*.[59]

Di Pasquale, a legal permanent resident, purchased a train ticket from Buffalo to Detroit. Unknown to Di Pasquale, during the night while he slept, the train traveled through Canada. Judge Learned Hand, speaking for the court, found it to be a capricious and cruel game of chance to find an entry when Di Pasquale had no intention of leaving nor any knowledge that he had left the United States.[60]

The Supreme Court affirmed this position in *Delgadillo v. Carmichael*.[61] Delgadillo was admitted to the United States as a permanent resident in 1923. In 1942, he was a seaman on a ship controlled by the U.S. War Shipping Administration.[62] In July of that year, his ship was torpedoed and he was rescued and taken to Cuba, where he remained for one week.[63] He was readmitted to the United States in transit.[64] Two years later, he was convicted of second-degree burglary and charged with being deportable as an alien who was convicted of a crime involving moral turpitude within five years of his entry.[65] The Ninth Circuit, reading the words of the statute, found that there was a coming from a foreign port or place, and thus an

58. *See, e.g.*, United States *ex rel.* Medich v. Burmaster, 24 F.2d 57 (8th Cir. 1928) (taxi driver ordered to take a fare to Canada made a new entry); United States *ex rel.* Schlimmgen v. Jordan, 164 F.2d 633 (7th Cir. 1947) (seaman who made a four-hour stop in Havana made an entry when he landed in the United States). *See supra* notes 35-46 and accompanying text.

59. 158 F.2d 878 (2d Cir. 1947).

60. *Id.* at 879.

61. 332 U.S. 388 (1947).

62. Del Guercio v. Delgadillo, 159 F.2d 130, 131 (9th Cir.), *rev'd sub nom.* Delgadillo v. Carmichael, 332 U.S. 388 (1947). The War Shipping Administration controlled the U.S. Merchant Fleet and was concerned with the transportation of supplies to military outposts.

63. *Del Guercio*, 159 F.2d at 131.

64. *Id.* It is unclear why this was done since the facts do not indicate that he was inadmissible as an immigrant at that time. A transit visa is provided to aliens whose main purpose is to travel through the United States. INA § 101(a)(15)(C), 8 U.S.C. § 1101(a)(15)(C) (1988).

65. INA § 241(a)(4), 8 U.S.C. § 1251(a)(4) (1952). This law has been recodified by the Immigration and Nationality Act of 1990 as INA § 241(a)(2)(A)(i)(I); 8 U.S.C. § 1251(a)(2)(A)(i)(I) (1990).

entry.[66] The Supreme Court reversed, finding that Delgadillo's landing in Cuba, and thus his "entry" into the United States, was unintentional, and thus did not count as an entry.[67] Delgadillo was not deportable.

This policy has become widely accepted but is not always applied. Thus, a permanent resident who went on a fishing trip, got drunk, and was unaware that the boat anchored at Bimini due to a storm, was found not to have departed the United States.[68] On the other hand, an alien who was voluntarily drunk and unaware of his departure was found to have departed.[69] A permanent resident, whose husband bought her a one-way ticket to Italy and placed her on the plane at a time when she was mentally unbalanced, did not depart,[70] nor did a military prisoner traveling under military orders or guard.[71]

III. DEPARTURE, GENERALLY

Unlike the term "entry," there never has been a statutory definition of "departure." It has been left to courts and administrative agencies to determine what constitutes a departure. As can be seen from the previous discussion, the intent to leave, or the knowledge that a departure is likely, is one important element.[72] In addition, an alien must be physically present in a foreign port or place and have "entered" that place.

How much intent or knowledge an alien must have to depart the country is unclear. As mentioned above, an alien who was voluntarily drunk and accidentally got on a bus to Mexico departed,[73] but an alien who got drunk on a fishing trip, passed out, and whose boat was forced to anchor at Bimini did not depart.[74] It is difficult to

66. *Del Guercio*, 159 F.2d at 133.

67. *Delgadillo*, 332 U.S. at 391 ("[T]he exigencies of war, not his voluntary act, put him on foreign soil." (footnote omitted)). *See also* Yukio Chai v. Bonham, 165 F.2d 207 (9th Cir. 1947) (alien illegally in the United States who traveled from the continental United States to Alaska and made an unscheduled stop in Victoria, Canada, did not make an entry). Compare with the cases discussed *infra* part IX.

68. Savoretti v. United States *ex rel.* Pincus, 214 F.2d 314 (5th Cir. 1954) [hereinafter *Pincus*], *aff'g* 114 F. Supp. 574 (S.D. Fla. 1953).

69. *In re* P-, 4 I. & N. Dec. 235 (BIA 1951). *See also In re* P-, 5 I. & N. Dec. 220 (BIA 1953) (alien who was not concerned with the destination of a ship made a new entry upon its return from Bimini).

70. *In re* Farmer, 14 I. & N. Dec. 737 (BIA 1974).

71. *In re* J-, 3 I. & N. Dec. 536 (BIA 1949).

72. This element can be seen in the sea law cases discussed *infra* part IX. *See also Pincus*, *supra* note 68, at 314 (asserting that a departure must be knowing and voluntary); Schoeps v. Carmichael, 177 F.2d 391, 396 (9th Cir. 1949) (stating that "in order for an alien's return to this country to constitute an 'entry' . . ., his departure must have been voluntary, with knowledge that his destination is foreign" (footnote omitted)).

73. *In re* P-, 4 I. & N. Dec. 235 (BIA 1951).

74. *Pincus*, *supra* note 68.

believe that the intended distinction is the degree of intoxication.[75] In some instances, courts have taken to extremes the likelihood of entry into a foreign country. Thus, an alien sailor shipwrecked on an uninhabited Mexican island was found to have departed because he assumed the risk that he would be shipwrecked.[76]

Physical presence generally does not include presence on U.S. ships, U.S. military bases, or embassies located in other countries.[77] However, an alien may be found not to have "departed" if the alien does not leave her ship[78] or does not enter the land of the foreign country.[79]

The entry of an alien into a foreign country has thus become an interesting concept often used to reach a desired conclusion. Although aliens traveling by ship or plane who are refused entry in a foreign country and are returned to the United States do not "reenter" the United States, it is not clear how much of this result is due to legal analysis and how much is due to treaties and agreements with other countries.[80]

A more problematic question arises when an alien crosses a land border into Mexico or Canada. Although inspection stations do exist, there often are times and places where an alien can cross a border without a formal inspection.[81] If true entry analysis were applied to this situation, the alien would enter the country when she was free to

75. One distinction between *Pincus* and *In re P-* is that one is an administrative decision and the other is a federal decision.

76. Taguchi v. Carr, 62 F.2d 307 (9th Cir. 1932).

77. *See* Cunard S.S. Co. v. Mellon, 262 U.S. 100 (1923) (U.S. ships outside U.S. waters are only metaphorically part of U.S. territory). *See also* Letter from Michael D. Cronin, INS Assistant Commissioner, Inspections, to Charles H. Kuck, *in* 69 INTERPRETER RELEASES 399-400 (1992); Robert A. Mautino, *Acquisition of Citizenship*, IMMIGR. BRIEFINGS, Apr. 1990, at 1.

78. *See* United States *ex rel.* Kwong Hai Chew v. Colding, 192 F.2d 1009 (2d Cir. 1951), *rev'd sub nom.* Kwong Hai Chew v. Colding, 344 U.S. 590 (1953). The Second Circuit held that since the alien left the United States voluntarily, he made an entry upon his return. The Supreme Court found that he had not entered a foreign place, and thus did not enter on his return. *See also In re* T-, 6 I. & N. Dec. 638 (BIA 1955) (finding that an alien who was denied entry into foreign ports made no entry on his return to the United States).

79. See the discussion of an INS policy memo, *infra* notes 87-91 and accompanying text, for a description of the INS's position regarding what constitutes an entry into a foreign country.

80. The United States, for example, requires airlines to return aliens without proper documents to the country from which they left for the United States. INA § 237, 8 U.S.C. § 1227 (1988).

81. From personal experience, the author has crossed into Mexico several times and has never been formally inspected by Mexican immigration authorities. This is especially true at the busy Tijuana/San Ysidro crossing.

mingle in the foreign society.[82] The Immigration Service recently developed a policy conflicting with this position in order to respond to an interesting fact situation.

In response to human rights violations in China,[83] Congress passed and then-President Bush signed the Chinese Student Protection Act of 1992.[84] This Act allowed certain Chinese citizens and nationals to become legal residents of the United States. Certain Chinese persons could not qualify for the Act's benefits unless they left the United States and reentered in parole status.[85] Apparently, these individuals would cross the Mexican border and immediately turn around and request to be paroled into the United States.[86] In a policy memo,[87] the Immigration Service's Acting Executive Associate Commissioner opined that the individuals in question had *not* departed because they had not applied for admission to Mexico, and thus were not coming from a foreign port or place.[88] Thus, because the aliens had not departed, they could not be paroled into the United States. Instead, the Commissioner wrote, they should be allowed to reenter the United States in whatever legal or illegal status they previously held.[89]

This is a very interesting position. In effect, it protects aliens who

82. *See infra* notes 181-82 and accompanying text.

83. Notably the Tienanmen Square massacre. *See More on the Chinese Student Protection Act*, 69 INTERPRETER RELEASES 1321 (1992); *The Chinese Student Protection Act of 1992: New Dependent and Controversial Issues*, 70 INTERPRETER RELEASES 929 (1993).

84. Pub. L. No. 102-404, 106 Stat. 1969.

85. *See* discussion of parole *infra* part VIII.

86. These individuals would request an advance parole document from the Immigration Service. This document allows an alien to reenter the United States in parole status after a brief absence. *See* INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A) (1988).

87. Memorandum from James A. Puleo, Acting Executive Associate Commissioner, INS, to Dwayne E. Peterson, Southern Regional Offices, INS (Nov. 15, 1993), *reprinted in* 13 AILA MONTHLY MAILING 35 (1994) [hereinafter INS memo].

88. The memo also indicates that if the alien were refused admission into Mexico, the alien would not have departed the United States. *Id.* at 36.

89. *Id.* at 36-37.

are illegally in the United States from inadvertent departures.[90] Because discrimination on the basis of citizenship or nationality is illegal unless authorized by Congress,[91] this policy can apply, for example, to a Danish citizen illegally in the United States who inadvertently crosses into Mexico and immediately seeks to reenter the United States. Anecdotal evidence indicates that this has not previously occurred.

IV. LEGAL STATUS AND ENTRY

Although not always determinative, an alien's legal right to live permanently in the United States is an important factor that must be considered in entry analysis. Courts have noted that the interests at stake are "momentous."[92] In the cases discussing inadvertent departure,[93] the aliens allowed back into this country were legal permanent residents of the United States. Those aliens who are in the United States illegally are afforded less deference and fewer exceptions. Thus, for example, an illegal alien who traveled between Detroit and Buffalo was found to have made a new entry.[94] Legal status is not dispositive, however. Other factors, such as being an "enemy alien,"[95] can affect entry analysis.[96]

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90. Compare this with the discussion of legal status and entry, *infra* notes 92-94 and accompanying text, and in particular Ward v. DeBarros, 75 F.2d 34 (1st Cir. 1935). Also compare this with the discussion of inadvertent departures, *supra* notes 58-71 and accompanying text. It appears that many of these cases would not have developed. Recent correspondence from the Immigration Service suggests a backing away from this position. The Service seems to suggest that the alien must not pass the foreign Port-of-Entry in order for no departure to be found. *See* Letter from Lawrence J. Weinig, Acting Associate Commissioner, Examinations, to Robert A. Mautino (Oct. 24, 1994) (on file with author). Given the physical layout of most U.S.-Mexico crossing points, which do not encourage the crossing from South to North-bound lanes, the logical conclusion is that the situation does not occur frequently.

91. Congress often has discriminated against races. *See, e.g.*, Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58 (discussed *infra* note 217). However, Congress has passed laws to prevent individuals from doing the same thing. *See, e.g.*, the employment sanctions provisions contained in INA § 274B, 8 U.S.C. § 1324b (1988).

92. Di Pasquale v. Karnuth, 158 F.2d 878, 879 (2d Cir. 1947). *See also* Delgadillo v. Carmichael, 332 U.S. 388, 391 (1947) (stating that "[t]he stakes are indeed high and momentous for the alien who has acquired his residence here").

93. *See supra* part II.B.

94. Zurbrick v. Borg, 47 F.2d 690 (6th Cir. 1931). A similar case and holding involved an unknowing train trip through Mexico. Ward v. De Barros, 75 F.2d 34 (1st Cir. 1935). *See also In re* A-, 7 I. & N. Dec. 128 (BIA 1956) (finding an alien who traveled to the U.S. trust territory Kwajalein Island departed the United States, even though such departure was unknowing).

95. An enemy alien is defined by Congress during time of war. *See infra* note 118.

96. United States *ex rel.* Schlimmgen v. Jordan, 164 F.2d 633 (7th Cir. 1947)

V. MILITARY SERVICE AND ENTRY

Policies other than those surrounding legal status often affect entry analysis. Those persons who are found to be assisting the United States by performing military service are likely to be protected from entry regardless of their immigration status. For example, although not officially part of the military, Delgadillo's activities on behalf of the War Shipping Administration may have encouraged the court to find there had been no entry.[97]

A more specific example is found in *Ex parte Delaney*.[98] Delaney, who claimed to be a United States citizen[99] and was beyond the draft age, enlisted in the Merchant Maritime Service during World War II.[100] He was shipped abroad, saw military action in the Pacific, and then returned to Long Beach, California. There was conflicting testimony about whether Delaney had physically entered the United States before the Immigration Service notified him that he was being excluded.[101] The district court held, reluctantly, that Delaney had made an entry.[102] The circuit court reversed, holding that the physical entry of Delaney was immaterial.[103] As part of the Merchant Maritime Service, Delaney was under military orders.[104] Delaney had no choice but to obey orders and leave the United States or be subject to other punishment.[105] Thus, Delaney did not have the free will necessary to depart the United States and could not be held to enter it on his return.[106] The circuit court held that "[t]he element of volition is lacking in this instance."[107]

Ex parte Delaney is interesting in part because Delaney arguably had no legal status in the United States.[108] While travel pursuant to

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(finding that an alien enemy who traveled from San Francisco to Mexico and Havana and who left the ship in Havana, made a new entry upon return to the United States).

97. *See supra* notes 61-67 and accompanying text.

98. 72 F. Supp. 312 (S.D. Cal. 1947), *aff'd sub nom.* Carmichael v. Delaney, 170 F.2d 239 (9th Cir. 1948).

99. *Ex parte* Delaney, 72 F. Supp. at 313-14. The INS denied that Delaney was a U.S. citizen.

100. Carmichael v. Delaney, 170 F.2d at 241.

101. Delaney testified that he spent the night in Long Beach, California, before reporting to the INS inspection shed the next day. *Ex parte* Delaney, 72 F. Supp. at 316.

102. *Id.* at 322. The court complained bitterly about the lack of justice in the decision it was forced to reach. *Id.* at 321-22.

103. Carmichael v. Delaney, 170 F.2d at 239.

104. Delaney was assigned to his ship by the U.S. Coast Guard and received government pay. *Ex parte* Delaney, 72 F. Supp. at 315.

105. *Id.*

106. Carmichael v. Delaney, 170 F.2d at 242.

107. *Id.*

108. At the time of entry, the burden is on the individual to prove a right to enter the United States either as a citizen or as an alien. INA § 211, 8 U.S.C. § 1181 (1988); INA § 215, 8 U.S.C. § 1185 (1988).

military orders may protect an illegal alien from making a new entry,[109] military service in other situations has not provided similar protection. Travel to Mexico while on an authorized furlough[110] as well as lying about U.S. citizenship status[111] receive no apparent ameliorative effect from compliance with the draft laws, especially in connection with other violations of federal law.[112]

VI. INVOLUNTARY ENTRY

To this point, we have discussed the status of those who reenter the United States after a brief departure. However, much of entry law involves initial approaches to U.S. borders. Usually, the alien wishes to enter the United States; occasionally, the alien is here involuntarily. These involuntary visitors bring with them policy concerns that courts are willing to take into account.

A good example of this (as well as an interesting historical note) is *United States ex rel. Bradley v. Watkins*.[113] *Bradley* involved a Norwegian member of the Quisling party[114] seized by the U.S. Coast Guard in Greenland almost three months before the United States

109. *See In re* J-, 3 I. & N. Dec. 536 (BIA 1949) (finding that a military prisoner who travelled under orders or custody had not departed or entered the United States since both were involuntary).

110. *See* United States *ex rel.* Rubio v. Jordan, 190 F.2d 573 (7th Cir. 1951) (holding that an illegal alien who was inducted into the army and given a military furlough to visit family in Mexico made a new entry into the United States upon his return); *In re* C- R-, 4 I. & N. Dec. 126 (BIA 1950) (holding that a permanent resident granted a military furlough to attend a funeral in Mexico made an entry on his return).

111. *See* Werblow v. United States, 134 F.2d 791 (2d Cir. 1943). In *Werblow*, an alien, who became a permanent resident in 1923 and served in World War I, sought naturalization benefits under the Alien Veterans Naturalization Act. He was found not to have established two years continuous residence as a permanent resident because his last entry was on a fraudulently-obtained U.S. passport and not as a permanent resident. *See also* Ng Lin Chong v. McGrath, 202 F.2d 316 (D.C. Cir. 1952). In *McGrath*, an illegal alien falsely claimed U.S. citizenship when he registered for the draft in 1942. He later obtained a U.S. passport and was paroled into the United States for prosecution upon his return from abroad. The case discusses deportability, not excludability, thus an entry was assumed to be made.

112. It is a federal crime to make a false claim to U.S. citizenship. INA § 275, 8 U.S.C. § 1325 (1988); 18 U.S.C. § 911 (1988). However, non-immigrant status is preserved during military service. *In re* A- I- C-, 4 I. & N. Dec. 630 (BIA 1952) (holding that an alien student must be given reasonable time to return to school after completion of military service).

113. 163 F.2d 328 (2d Cir. 1947).

114. The Nasjonal Samling Party is known outside of Norway by the name of the puppet prime minister, Quisling, empowered by Nazi Germany after its occupation of Norway in 1939. *See, e.g.*, HALVDAN KOHT, NORWAY, NEUTRAL AND INVADED 16, 78-79 (1941).

was officially at war with Germany and German-installed governments.[115] During the war, Bradley was interned as an enemy alien. At the end of the war, the government sought to deport Bradley to Norway. The government claimed that he was an applicant for admission without proper documents. At that time, an immigrant (*i.e.*, an applicant for admission) was defined as "any alien departing from any place outside the United States destined for the United States."[116] The court interpreted the statutory language to include an element of volition on the part of the alien and found no congressional intent that the immigration laws cover involuntary entries.[117] Bradley was not brought to the United States as an alien enemy.[118] Thus, the government could not use the regulations governing alien enemies to secure his return to Norway.

A different situation existed in *United States ex rel. Ludwig v. Watkins*.[119] In that case, Ludwig, a German citizen, was sent to the United States under guard by the government of Nicaragua.[120] The government sought to deport Ludwig to Germany at the end of World War II. The Second Circuit found even fewer compelling reasons to apply the immigration laws to Ludwig than it did to Bradley. Ludwig was subject to the alien enemy provisions, which included procedures for the removal of alien enemies found in the Western Hemisphere to their native countries.[121]

Later, the Second Circuit, following the precedents set forth in *Bradley* and *Ludwig*, found that aliens expelled and forced on to a United States-bound plane,[122] or brought into the United States by U.S. Immigration Service officers,[123] also were not subject to deportation. The court began creating law, however. First in dicta,[124] and then in a specific holding,[125] the Second Circuit allowed an entry to

115. War was officially declared on December 7, 1941; Bradley was seized on September 14, 1941. *Bradley*, 163 F.2d at 329.

116. 8 U.S.C.A. § 203 (1945), *quoted in Bradley*, 163 F.2d at 330. Bradley's reluctance to return to Norway probably resulted from likely war crimes prosecution in Norway.

117. *Bradley*, 163 F.2d at 330.

118. By presidential proclamation, alien enemies found in the Western Hemisphere could be brought to the United States for internment during World War II. The proclamation provided for the aliens' removal at the end of the war. See the discussion of the Enemy Aliens Act of 1798 and the presidential proclamation in Ludecke v. Watkins, 335 U.S. 160 (1948).

119. 164 F.2d 456 (2d Cir. 1947).

120. *Id.* at 457. See *supra* note 118 for a discussion of alien enemy provisions.

121. *Ludwig*, 164 F.2d at 457. The court stated that "[s]ince Ludwig was brought in as an enemy alien the United States should treat him as such for purposes of removal." *Id.*

122. United States *ex rel.* Paetau v. Watkins, 164 F.2d 457 (2d Cir. 1947).

123. United States *ex rel.* Schirrmeister v. Watkins, 171 F.2d 858 (2d Cir.), *cert. denied*, 337 U.S. 942 (1949).

124. *Paetau*, 164 F.2d at 458.

125. *Schirrmeister*, 171 F.2d at 860.

be found after an alien had been provided an opportunity to leave the United States.[126] Further development of this interesting approach was curtailed by passage of the Immigration and Nationality Act of 1952,[127] which expanded the definition of entry to include any coming to the United States "voluntarily or otherwise."[128]

Interestingly, courts have applied similar standards to aliens and citizens forced to remain abroad during World War II.[129] It must be noted, however, that the laws involved are not the same laws that govern entry into the United States, and thus the analysis involved has a completely different character.

The analysis of these and other cases finding an entry of enemy aliens is very fact-specific. The concern seems to be with the activity of U.S. agents abroad. Whenever there exists the least hint of volition on the part of the alien, courts have found an entry,[130] even in the face of questionable United States conduct.[131]

Generally speaking, involuntary entry has not been an issue since 1952.[132] Recent cases involving individuals brought to the United

126. *Id.* There was a strong dissent filed by Judge Swan, pointing out the incongruity of finding an entry based on actions of a third party at a later date. *Id.*

127. Immigration and Nationality Act of 1952, ch. 477, 66 Stat. 163.

128. INA § 101(a)(13), 8 U.S.C. § 1101(a)(13) (1988). *See also* D'Agostino v. Sahli, 230 F.2d 668 (5th Cir. 1956) (holding that an alien kidnapped by U.S. narcotics agents, who were assisted by Mexican officials in Mexico City, made an entry when he was brought to the United States).

129. *See* Nagano v. Brownell, 212 F.2d 262 (7th Cir. 1954) (deciding that a legal resident who went to Japan to arrange marriages for her daughters and who could not return due to the war was a returning resident, and therefore was able to regain property confiscated pursuant to the Trading with the Enemy Act); Mendelsohn v. Dulles, 207 F.2d 37 (D.C. Cir. 1953) (holding that a naturalized U.S. citizen who remained outside the United States in Palestine due to World War II, family illness, and financial inability to purchase a ticket had a cause of action to sue under section 503 of the Nationality Act of 1940, despite being out of the country for five years).

130. *See* United States *ex rel.* Schlimmgen v. Jordan, 164 F.2d 633 (7th Cir. 1947). In *Schlimmgen*, a legal permanent resident, also a registered enemy alien, worked as a seaman. In 1939 or 1940, he left by ship for ports in Mexico and Cuba. He spent approximately four hours in Havana. The court noted that prior to 1938, he spent more time in Germany than in the United States and held that his next landing in the United States was an entry.

131. *See* United States *ex rel.* Von Kleczkowsky v. Watkins, 71 F. Supp. 429 (S.D.N.Y. 1947). In *Von Kleczkowsky*, an Austrian husband and wife who spied for the United States in Istanbul claimed that they had been promised new homes in the United States. When their activities were discovered by the Germans, they were flown by U.S. military aircraft to the United States where they were placed in an internment camp. The court found their arguments that they were involuntarily brought to the United States insufficient to find no entry had occurred. The court found them to be deportable as aliens without visas.

132. The definition of entry now includes trips into the United States that are made "voluntarily or otherwise." INA § 101(a)(13), 8 U.S.C. § 1101(a)(13) (1988).

States by foreign agents[133] or by the U.S. military[134] have not dealt with entry. However, even today, not all involuntary entries are entries for immigration purposes. Treaties, especially extradition treaties, may govern the status of the alien while in the United States. Thus, an alien who is extradited to Canada makes a new entry upon his return only on the condition that he is accepted into this country as though he never left[135] because of an agreement between the two countries.[136] However, while an individual who is extradited to the United States from Great Britain has made an entry,[137] an individual extradited from Australia has not.[138]

VII. Physical Components of Entry

Up to this point, we have analyzed various policy factors that may affect whether an entry is found. Now we examine the guidelines developed to determine when an alien physically within the United States has entered this country.

The current accepted definition pivots on physical presence plus either inspection and admission by an immigration officer or actual and intentional evasion of the nearest inspection point.[139] Although not always described in those exact words, the definition has existed for some time.[140]

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133. *See, e.g.*, Steven A. Holmes, *U.S. Gives Mexico Abduction Pledge*, N.Y. Times, June 22, 1993, at A11; *No End to the Mexican Kidnap Case*, N Y. Times, Jan. 2, 1993, § 1, at 20. These articles discuss the kidnapping of the killers of DEA agent Enrique Camarena and note that other sovereignty issues are involved. The Mexican government does not take kindly to the kidnapping of its citizens without its knowledge and consent.

134. *See, e.g., Manuel Noriega, Prisoner of War*, N.Y. Times, Dec. 12, 1992, § 1, at 22. Regarding the Manuel Noriega case, Noriega argues that he is a prisoner of war, not that he has not made an entry. Should criminal prosecution fail, it would be interesting to see if deportation or exclusion proceedings are brought.

135. United States *ex rel.* Consola v. Karnuth, 27 F. Supp. 461 (W.D.N.Y.), *aff'd*, 108 F.2d 178 (2d Cir. 1939). The government tried to deport the returned alien as an immigrant without a visa, based upon a new entry.

136. However, Consola was deportable on other grounds. *Id.* at 462.

137. Blumen v. Haff, 78 F.2d 833 (9th Cir.), *cert. denied*, 296 U.S. 644 (1935). *See also* Rasmussen v. Robinson, 68 F. Supp. 930 (D.V.I. 1946), *rev'd*, 163 F.2d 732 (3d Cir. 1947) (holding that a legal resident who was returned to the Virgin Islands by the police made an entry).

138. Schuldreich v. INS, No. B-93-93 (S.D. Tex. Aug. 9, 1993), *reported in Extradition Treaty Affords Alien Right to Depart Voluntarily, Court Holds*, 70 Interpreter Releases 1562 (1993). Note that the alien was officially paroled into the United States. *See also In re* O'D-, 3 I. & N. Dec. 632 (BIA 1949) (finding that an illegal alien extradited from Puerto Rico to New York made an entry under the Immigration Act of 1917).

139. *In re* Pierre, 14 I. & N. Dec. 467 (BIA 1973).

140. *See, e.g.*, Lew Moy v. United States, 237 F. 50 (8th Cir. 1916) (entry is actual and intentional evasion of inspection); United States v. Vasilatos, 209 F.2d 195 (3d Cir. 1954) (entry is inspection and admission); *In re* Dubbiosi, 191 F. Supp. 65 (E.D. Va. 1961) (entry is freedom from official restraint and physical presence).

Physical presence is the simplest of the definition's elements: one is considered to be physically within the United States[141] or one is not. Other elements do not come into the analysis without physical presence. Thus, an alien who was inspected in Canada,[142] but whose visa was revoked before she traveled to the United States, did not enter.[143] In contrast, an alien crossing a land border who was told to "go ahead" but stopped after a few feet, had entered because she was physically within the United States after her inspection.[144]

Inspection and admission are normally defined as communication, in a tangible manner, that the alien is free to continue his or her journey.[145] This definition has been interpreted as requiring freedom from official restraint, even if it lasts only momentarily.[146] Thus, aliens who are physically in the United States but still in the port of entry[147] normally will not be found to have entered.[148] Similarly, aliens in the custody of ship owners,[149] the U.S. Marshal,[150] or other agencies[151] have not entered the United States. Official restraint

141. The United States is currently defined, with exceptions, as the continental U.S., Alaska, Hawaii, Puerto Rico, Guam, and the U.S. Virgin Islands. INA § 101(a)(36), 8 U.S.C. § 1101(a)(36) (1988).

142. At certain airports, the Immigration Service has established "pre-inspection" stations, allowing aliens entering the United States to avoid the inconvenience of inspection at a busy airport or other port of entry. 8 C.F.R. § 238.4 (1993).

143. *In re* Barreto, 15 I. & N. Dec. 498 (BIA 1975).

144. *In re* V- Q-, 9 I. & N. Dec. 78, 79 (BIA 1960). *See also IJ Terminates Exclusion Proceedings Against Chinese Man*, 70 INTERPRETER RELEASES 1133 (1993) (discussing the entry of a Chinese national who escaped from a boat but was captured moments later).

145. *See In re* V- Q-, 9 I. & N. Dec. at 79.

146. *See In re* Dubbiosi, 191 F. Supp. 65 (E.D. Va. 1961).

147. The port of entry is an inspection point, usually at a land border. INA §§ 238, 239, 8 U.S.C. §§ 1228, 1229 (1988).

148. Correa v. Thornburgh, 901 F.2d 1166 (2d Cir. 1990) (holding that an alien who had completed INS inspection but was detained in a customs enclosure of Houston Intercontinental Airport did not enter); United States v. Oscar, 496 F.2d 492 (9th Cir. 1974) (holding that an alien directed to the port of entry's secondary inspection unit, located within the United States, had not made an entry). *But see* United States v. Martin-Plascencia, 532 F.2d 1316 (9th Cir.), *cert. denied*, 429 U.S. 894 (1976) (holding that an alien who avoided detection for 50 yards across the border had entered even though he was still within the port of entry facility).

149. *See* Case of the Chinese Cabin Waiter, 13 F. 286 (C.C.D. Cal. 1882); Edmond v. Nelson, 575 F. Supp. 532 (E.D. La. 1983) (finding Haitians who were rescued by a U.S. ship and held for INS inspections did not enter); *In re* Pierre, 14 I. & N. Dec. 467 (BIA 1973) (finding aliens who were held by a ship owner did not make an entry).

150. Klapholz v. Esperdy, 201 F. Supp. 294 (S.D.N.Y. 1961), *aff'd*, 302 F.2d 928 (2d Cir.), *cert. denied*, 371 U.S. 891 (1962).

151. *In re* Accardi, 14 I. & N. Dec. 367, 370 (BIA 1973) (U.S. narcotics agents); United States *ex rel.* Camezon [Camazon] v. District Director of Immigration and Naturalization at Port of New York, 105 F. Supp. 32 (S.D.N.Y. 1952) (finding that an alien

means no opportunity to leave. Thus, an alien involuntarily held on board a ship while a search for stowaways takes place has not entered,[152] but an alien granted a visa and free to leave the ship has entered, whether or not he leaves the ship.[153]

Although citizens[154] and nationals[155] are inspected and admitted when they return to the United States,[156] the immigration laws apply only to aliens.[157] Because some nationals have become aliens, another exception to the general entry law exists. Consider, for example, the status of Philippine citizens. The Philippine Islands were part of the United States until 1934, and citizens of the Philippines were nationals of the United States.[158] In 1934, President Roosevelt signed the Philippine Independence Act.[159] Among other things, it stated that Philippine citizens were to be treated as aliens for purposes of the immigration laws.[160] Although silent on the issue, courts

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being held by INS District Director did not make an entry); United States *ex rel.* Pantano v. Corsi, 65 F.2d 322 (2d Cir. 1933) (deciding that an alien who was brought to the United States in INS custody, was released on a criminal bond, served 30 days in jail, and then was returned to INS custody, did not make an entry).

152. *In re* Dubbiosi, 191 F. Supp. 65 (E.D. Va. 1961).

153. *See* United States v. Vasilatos, 209 F.2d 195 (3d Cir. 1954); Lazarescu v. United States, 199 F.2d 898 (4th Cir. 1952). For venue purposes, the port where a person is free to leave a ship is where entry occurs.

154. Citizens are those born in the United States or those who meet the requirements of INA §§ 301-348, 8 U.S.C. §§ 1401-1459 (1988). For an in-depth discussion of citizenship, see Mautino, *supra* note 77, at 1.

155. Nationals are non-citizen individuals who owe allegiance to the United States. INA § 101(a)(22), 8 U.S.C. § 1101(a)(22) (1988).

156. The burden is on the individual wishing to enter the United States to prove that she has a right to enter (*e.g.*, a citizen) or is qualified to enter (*e.g.*, an alien with a proper visa). *See* INA § 212, 8 U.S.C. § 1182 (1988).

157. Aliens are those who are not citizens or nationals of the United States. INA § 101(a)(3), 8 U.S.C. § 1101(a)(3) (1988). *See also* United States *ex rel.* Polymeris v. Trudell, 284 U.S. 279 (1932), *aff'g* 49 F.2d 730 (2d Cir. 1931) (finding that the burden is on the alien to establish admissibility); United States *ex rel.* Brancato v. Lehmann, 239 F.2d 663 (6th Cir. 1956) (deciding that where a naturalized citizen took a trip to Italy and was later convicted of perjury and denaturalized, his entry as a citizen does not count for immigration purposes). *But see* United States *ex rel.* Eichenlaub v. Shaughnessy, 338 U.S. 521 (1950) (involving a naturalized citizen who took a short trip and was then convicted of conspiracy and denaturalized, and holding that there is no requirement in the Act that the criminal conviction occur when the person is an alien); Stacher v. Rosenberg, 216 F. Supp. 511 (S.D. Cal. 1963) (finding an alien who was a legal resident for 50 years was nevertheless excludable after a short trip). *Stacher* was decided shortly before Rosenberg v. Fleuti, 374 U.S. 449 (1963).

158. The Philippine Islands became a territory of the United States after the Spanish-American War in 1898. People born in the Philippines were nationals, not citizens of the United States. See Gonzales v. Williams, 192 U.S. 1 (1904), for a discussion of the Treaty of Paris. The status of Philippine natives as nationals of the United States was recently challenged in Rabang v. INS, 35 F.3d 1449 (9th Cir. 1994). The case was dismissed over a strong dissent by Judge Pregerson.

159. Philippine Independence Act, ch. 84, 48 Stat. 456 (1934). The Act provided for the independence of the Philippines by July 4, 1941. This, however, was delayed by the Japanese invasion. The Philippine Islands became an independent nation on July 4, 1946. Proclamation No. 2645, 60 Stat. 1352 (1946).

160. *See* Barber v. Gonzales, 347 U.S. 637, 639 (1954).

later held that Philippine citizens who came to the continental United States prior to the signing of the Act had not entered,[161] and thus were immune from deportation on certain grounds.[162] Interestingly, courts also held that Philippine citizens traveling to the United States when the law went into effect did not enter.[163]

As one would assume, an alien is not normally considered to be entering the United States when he or she travels from one part of the United States to another.[164] However, difficulty may arise because the boundaries of the United States are defined by statute and change from time to time[165] and purpose to purpose.[166] In addition, the federal government can place different restrictions and requirements on travel to U.S. territories[167] than on travel to locations within U.S. national boundaries. The effect of such control over a territory can have interesting consequences when the territory in question later becomes a state. For example, in 1907, a presidential

161. *See* Gonzales v. Barber, 207 F.2d 398 (9th Cir. 1953), *aff'd*, 347 U.S. 637 (1954) (holding that an alien convicted of two crimes of moral turpitude after "entry" was not deportable because there was in fact no entry); Mangaoang v. Boyd, 205 F.2d 553 (9th Cir.), *cert. denied*, 346 U.S. 876 (1953) (holding that an alien who joined the communist party after "entry" was not deportable because there was no entry); Del Guercio v. Gabot, 161 F.2d 559 (9th Cir. 1947) (holding that a four-hour trip to Mexico in 1934 was not an entry).

162. Some grounds did not require an entry, and Philippine citizens were not immune from these grounds. *See* Rabang v. Boyd, 353 U.S. 427 (1957). Deportability based upon a narcotics conviction applies to "any alien." Justice Douglass dissented, believing that entry must be read into the statute. Act of Feb. 18, 1931, ch. 224, 46 Stat. 1171, *amended by* Alien Registration Act of 1940, ch. 439, tit. II, § 21, 54 Stat. 670 (current version at 8 U.S.C. § 1251(a)(11) (1988)). *Accord* Tugade v. Hoy, 265 F.2d 63 (9th Cir. 1959) (holding that narcotic drug conviction is grounds for deportation when a former U.S. national is now classified as an alien); Resurreccion-Talavera v. Barber, 231 F.2d 524 (9th Cir. 1956) (holding that conviction for a crime involving moral turpitude while a U.S. national is grounds for deportation if the convicted person makes an entry to the United States after he is classified as an alien).

163. Vallejos v. Barber, 146 F. Supp. 781 (N.D. Cal. 1956). The court found that the person was not coming from a foreign port or place.

164. *See* United States *ex rel.* Alcantra v. Boyd, 222 F.2d 445 (9th Cir. 1955) (traveling from the continental United States to Alaska is not an entry); United States v. Paquet, 131 F. Supp. 32 (D. Haw. 1955) (traveling from Wake Island to Hawaii is not an entry); *In re* T-, 7 I. & N. Dec. 201 (BIA 1956) (traveling from Hawaii to San Francisco is normally not an entry, but the government has the power to control travel of Philippinos in 1946).

165. *See supra* note 141.

166. Compare provisions relating to residency for naturalization, INA § 316, 8 U.S.C. § 1427 (1988) and INA § 101(a)(23), 8 U.S.C. § 1101(a)(23) (1988), with the definition of entry, INA § 101(a)(13), 8 U.S.C. § 1101(a)(13) (1988).

167. *Compare* 8 C.F.R. § 212.1(e) (1994) (providing for less restrictive visa requirements for citizens of certain neighboring countries visiting Guam than those required for visiting the rest of the United States) *with* 8 C.F.R. § 217 (1994) (Visa Waiver Pilot Program).

proclamation prohibited the entry of Japanese and Korean laborers from Hawaii.[168] In 1924, Hawaii became part of the United States for entry purposes.[169] In spite of this, the courts held that an alien resident of Hawaii could be prosecuted for an illegal entry into San Francisco[170] or for overstaying a visa in California.[171]

The preceding discussion is but one example of how arbitrary the laws relating to aliens may be. It also is an example of how different treaties relating to different territories may affect entry analysis. Travel from Puerto Rico to New York is not an entry,[172] although travel to some trust territories may be considered a departure.[173] And, of course, travel from Ellis Island[174] to the mainland normally was considered an entry.[175]

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168. Exec. Orders No. 1907-E0-589 (March 14, 1907) and No. 1913-EO-1712 (Feb. 24, 1913), authorized by the Act of February 20, 1907, ch. 1134, 34 Stat. 898, *repealed by* Act of Feb. 5, 1917, ch. 29, 39 Stat. 874.

169. *See* Immigration Act of 1924, ch. 190, 43 Stat. 153; *see also* Haymes v. Brownell, 131 F. Supp. 784 (D.D.C. 1955) (traveling to Hawaii is not an entry).

170. Sugimoto v. Nagle, 38 F.2d 207 (9th Cir.), *cert. denied*, 281 U.S. 745 (1930). Sugimoto legally entered Hawaii in 1907. Later that year he was smuggled into San Francisco. In 1928, he left the United States, and was denied reentry because he had no legal status in the United States. *But see* Del Guercio v. Gabot, 161 F.2d 559 (9th Cir. 1947) (having entered Hawaii legally in 1927, a four-hour trip to Mexico in 1934 did not make his return to California an entry).

171. Matsuda v. Burnett, 68 F.2d 272 (9th Cir. 1933). A husband and wife first entered Hawaii when it was an independent nation. They reentered, however, in 1916, and the law in effect at that time was controlling. *Id.* at 274. Thus, when they came to California in 1928, they were covered by the proclamation.

172. Gonzales v. Williams, 192 U.S. 1 (1904) (holding that a native of Puerto Rico in 1899, the year that the Treaty of Paris transferred Puerto Rico to the United States, was not an alien, thus the immigration laws did not apply); Savoretti v. Voiler, 214 F.2d 425 (5th Cir. 1954) (holding that there was no entry when an individual travelled from Puerto Rico to the United States); United States *ex rel.* Leon v. Murff, 250 F.2d 436 (2d Cir. 1957) (holding that travel to Puerto Rico was not an entry); *In re* A-, 5 I. & N. Dec. 441 (BIA 1953) (holding that permission to travel from Puerto Rico to New York was not necessary). The Virgin Islands are also part of the United States for entry purposes. Rasmussen v. Robinson, 68 F. Supp. 930 (D.V.I. 1946) (holding that travel from St. Martin, French West Indies to the U.S. Virgin Islands was an entry), *rev'd on other grounds*, 163 F.2d 732 (3d Cir. 1947).

173. Aradanas v. Hogan, 155 F. Supp. 546 (D. Haw. 1957) (holding that travel to Kwajalein Island as a contractor for the U.S. Navy was a departure); *In re* Reyes, 140 F. Supp. 130 (D. Haw. 1956) (holding that trip to Kwajalein Island broke residency for naturalization purposes). *But see* United States v. Paquet, 131 F. Supp. 32 (D. Haw. 1955) (holding that travel from Wake Island was not an entry because Wake Island is part of the United States).

174. In effect, Ellis Island is a very large port of entry. *See supra* note 147.

175. *See* Shaughnessy v. United States *ex rel.* Mezei, 345 U.S. 206 (1953) (holding that an alien kept on Ellis Island had not made an entry). *But see* United States *ex rel.* La Barbera v. Commissioner of Immigration, 61 F.2d 573 (2d Cir. 1932) (holding that an alien who escaped from Ellis Island entered the United States). Parole will be discussed *infra* part VIII.

An alien also may enter the United States if he or she intentionally and actually evades the nearest inspection point.[176] It is important to note that an alien must *intend* to evade inspection. Thus, an alien who crossed the Canadian border and sought the nearest immigration post did not enter the United States without inspection.[177] Similarly, aliens who hid in the woods but did not run from immigration officers did not enter the United States.[178] Also, an alien who was found unconscious in a river did not have the necessary intent to enter.[179]

In addition, the alien must *actually* evade inspection, if only for brief moments. Thus, a Chinese national escaping a ship in Long Island entered, even though he was caught a short time later.[180] However, an alien also must be free to mingle in society.[181] Thus, Chinese nationals who entered the United States under observation did not enter.[182]

VIII. PAROLE

When an immigration officer believes that an alien is excludable, the officer may parole the alien into the United States for further

176. *In re* Pierre, 14 I. & N. Dec. 467 (BIA 1973).

177. Thack v. Zurbrick, 51 F.2d 634 (6th Cir. 1931). The court stated, "if the alien merely follows the ordinary path from the international line to the nearest inspection point and presents himself for inspection, his action in doing so cannot be an offense for which Congress intended he should be sent to his former foreign residence and forbidden ever to try to return to this country." *Id.* at 635. The court did suggest that if the alien blundered on the inspection point, the result would be different. *Id.* at 636. *Cf. In re* Rina, 15 I. & N. Dec. 453 (BIA 1975) (finding that aliens who were observed passing the last clear sign of an inspection station could be prosecuted for illegal entry); *In re* Estrada-Betancourt, 12 I. & N. Dec. 191 (BIA 1967) (deciding that an alien found on what was not the reasonable route to an inspection point did enter).

178. Pierre v. Rivkind, 643 F. Supp. 669 (S.D. Fla. 1986), *rev'd on other grounds*, 825 F.2d 1501 (11th Cir. 1987). *See also In re* Phelisna, 551 F. Supp. 960 (E.D.N.Y. 1983) (stating that the government had the burden of showing the alien did not intend to make an entry where the alien had no idea where she was when she was picked up).

179. *In re* Yam, 16 I. & N. Dec. 535 (BIA 1978).

180. *In re* Chen, No. A72-763-158, Int. Dec. 3104 (July 20, 1993), *reported in IJ Terminates Exclusion Proceedings Against Chinese Man*, 70 INTERPRETER RELEASES 1133 (1993). *But see In re* G-, No. A72-761-974, Int. Dec. 3215 (Dec. 8, 1993), *reported in BIA Reaffirms Its View on Chinese Family Planning Asylum Issue*, 71 INTERPRETER RELEASES 155 (1994) (finding no evidence that the Chinese national involved was ever free from official restraint).

181. *Ex parte* Chow Chok, 161 F. 627 (C.C.N.D.N.Y.), *aff'd sub nom.* Chow Chok v. United States, 163 F. 1021 (2d Cir. 1908).

182. "In short, from the moment when they crossed the border, they were in the actual, though not formal, custody of the inspectors." *Id.* at 630.

examination of the matter, criminal prosecution, or other public interest reasons.[183] Under the immigration laws, that person has not made an entry and is not within the United States. Unless a specific law is passed allowing parolees to remain in the United States,[184] the parolee must leave the United States once the purpose of his parole is complete.[185] This holds true no matter how long the parolee physically remains in the United States.[186] In addition, the parolee can receive no benefit from his presence in the United States unless specifically provided by statute. Thus, an alien could not derive citizenship[187] or apply for relief available in deportation proceedings.[188] An alien can be paroled into the United States for a particular purpose or for a specific length of time.[189]

Although there is little case law on the matter, it is unlikely that

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183. *See* INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A) (1988).

184. For example, the Chinese Student Adjustment Act of 1992, Pub. L. No. 102-404, 106 Stat. 1969, allows Chinese nationals paroled into the United States to apply for certain immigration benefits and remain in the United States permanently.

185. There are certain exceptions contained within the law. For example, a parolee who marries a U.S. citizen may be eligible to remain permanently in the United States. *See* INA § 245(a), (c), (d), 8 U.S.C. § 1255(a), (d), (e) (1988).

186. The prime modern examples are those cases involving the so-called Marielito Cubans who were deemed excludable due to criminal convictions in Cuba. Most of these individuals entered in the early 1980s and are still on parolee status. As Cuba refuses to accept these individuals, it seems unlikely that their status problem will be solved soon. As criminally excludable aliens, many of these individuals are in custody and have no likely chance of release. *See supra* note 27. There are also other examples. *See* Kaplan v. Tod, 267 U.S. 228 (1925) (holding that a girl found feeble-minded in 1914 was still excludable in 1923 in spite of naturalization of her father in 1920); United States *ex rel.* Lue Chow Yee v. Shaughnessy, 146 F. Supp. 3 (S.D.N.Y. 1957), *aff'd*, 245 F.2d 874 (2d Cir. 1957) (finding aliens who attempted entry in 1949 were not within the United States so they could apply for relief from deportation in 1957); United States *ex rel.* Tom We Shung v. Murff, 176 F. Supp. 253 (S.D.N.Y. 1959), *aff'd per curiam*, 274 F.2d 667 (2d Cir. 1960) (holding that there was no entry where an alien was paroled in to the U.S. to determine qualifications for a World War II Act and remained here through 11 years of litigation); *In re* Cenatice, 16 I. & N. Dec. 162 (BIA 1977) (holding that an alien in custody from time of landing did not enter).

187. *Kaplan*, 267 U.S. at 228; Zartarian v. Billings, 204 U.S. 170 (1907) (holding that a child with trachoma whose father was naturalized was not "dwelling in the United States" such that he could obtain derivative benefits); United States *ex rel.* Patton v. Tod, 297 F. 385 (2d Cir. 1924), *cert. dismissed*, 267 U.S. 607 (1925) (holding that a child found feeble-minded in 1914 had no domicile in United States and could not benefit from father's naturalization); United States *ex rel.* De Rienzo v. Rodgers, 185 F. 334 (3d Cir. 1911) (holding that a feeble-minded child could not derive benefit from father's naturalization); United States *ex rel.* Fink v. Tod, 1 F.2d 246 (2d Cir. 1924), *rev'd*, 267 U.S. 571 (1925) (holding that a deaf and feeble-minded child who came to the United States in 1914 derived no benefit from her long stay in the United States).

188. *Compare* INA § 236, 8 U.S.C. § 1226 (1988) (regarding the exclusion of aliens) *with* INA § 242, 8 U.S.C. § 1252 (1988) (regarding the deportation of aliens). *See also Lue Chow Yee*, 146 F. Supp. at 3; Leng May Ma v. Barber, 357 U.S. 185 (1958) (holding that a paroled alien was not eligible to apply for relief under INA § 243(h), 8 U.S.C. § 1253(h) (1988)).

189. A common example of an alien paroled in for a purpose is an alien paroled into the United States to be prosecuted for a crime and serve a prison sentence. *See* Schuldreich v. INS, No. B-93-93, (S.D. Tex. Aug. 9, 1993), *reported in Extradition*

an alien paroled into the United States can make an entry by violating his or her status.[190] The courts seem reluctant to grant an alien more rights by violating the law.[191] Thus, an alien who remains in the United States beyond the expiration of his or her parole has not entered the United States and remains in parole status.[192]

Parole and entry often are only a razor's edge apart. For example, an alien who was inspected but escaped from a non-Immigration and Naturalization Service (INS) waiting area was found to have entered,[193] yet an alien who absconded from an INS detention facility did not enter.[194] The distinction relies upon the status of the alien before the escape. In the first instance, the alien's inspection had

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Treaty Affords Alien Right to Depart Voluntarily, Court Holds, 70 INTERPRETER RELEASES 1562 (1993) (paroled in from Australia for criminal prosecution); *In re* Badalamenti, 19 I. & N. Dec. 623 (BIA 1988) (paroled in for criminal prosecution from Spain). Occasionally, if an alien does not appear eligible to enter the United States, but the officer reasonably believes that the alien can gather the necessary evidence, the alien will be paroled for a length of time and required to appear at an immigration office with the proof of qualification for admission. Usually parole is granted for a specific purpose and for a specific time.

190. An alien can be "admitted" by her local Immigration Service inspection unit without leaving the United States.

191. This is an intriguing position of the courts which ignores the fact that the immigration laws provide legal benefits to those who enter the country illegally. *See supra* notes 7-10 and accompanying text. The cases suggest that the courts confuse immigration parole with its more commonly known cousin, parole from jail. The position has been widely accepted by the Attorney General and Board of Immigration Appeals. *See supra* note 189.

192. *In re* L- Y- Y-, 9 I. & N. Dec. 70 (BIA, A.G. 1960); Siu Fung Luk v. Rosenberg, 409 F.2d 555 (9th Cir.), *cert. dismissed*, 396 U.S. 801 (1969). The court in *Siu Fung Luk* suggests that an alien must be admitted by the Immigration Service in some way. The court's analysis is not very strong, relying on the moral imperative that an alien should not be rewarded for violating his status. *Id.* at 558. Note that termination of parole status may not be enough to create an entry. *In re* Badalamenti, 19 I. & N. Dec. 623 (BIA 1988) (holding that an alien paroled in for prosecution, acquitted, and given seven days to depart had not entered in spite of the completion of the object of parole); Schuldriech v. INS, No. B-93-93 (S.D. Tex. Aug. 9, 1993), *reported in Extradition Treaty Affords Alien Right to Depart Voluntarily, Court Holds*, 70 INTERPRETER RELEASES 1562 (1993) (holding that an alien who had his parole formally terminated in front of an immigration judge was still properly in exclusion proceedings). *But see In re* Barragan-Garibay, 15 I. & N. Dec. 77 (BIA 1974) (holding that where an alien was paroled in but tried for illegal entry, the government was estopped from holding that there was no entry).

193. *In re* Ching & Chen, 19 I. & N. Dec. 203 (BIA 1984). *See also In re* A-, 9 I. & N. Dec. 356 (BIA 1961) (holding that an alien detained on a ship but who escaped had entered).

194. *In re* Lin, 18 I. & N. Dec. 219 (BIA 1982). The alien was deemed to be in the same position as if he had been paroled into the United States and then escaped custody.

been completed. In the second, he was deemed paroled into the United States.[195]

IX. Traditional Sea Law and Entry

One of the most complex areas of entry law analysis has involved aliens who served aboard ships. Courts found the immigration laws had to interact with traditional sea law[196] as well as with other treaties, policies, and concerns.

An example of this interplay of interests can be found in *Weedin v. Banzo Okada.*[197] Okada entered the United States unlawfully in 1917.[198] In 1921, Okada joined the crew of a U.S. ship and landed briefly in a foreign port.[199] Upon his return to the United States, the government argued that Okada had made a new entry and was subject to deportation as an alien without documents.[200] However, the court, looking at traditional sea law, found that Okada had not left the United States because the U.S. ship was considered to be on U.S. soil for residency and other purposes.[201] Since the statute of limitations[202] ran from the date of the prohibited entry, Okada was not deportable.[203] This reasoning was applied to other cases involving aliens who had been fishing in foreign waters.[204]

The Supreme Court affirmed the use of traditional sea law to find that there had been no entry in *United States ex rel. Claussen v. Day.*[205] The case involved a Danish seaman who sailed to South America. Upon his return to the United States, he pled guilty to

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195. Again, this seems to ignore the benefits given to those making illegal entries into the United States. *See supra* notes 7-10 and accompanying text.

196. As a non-admiralty law attorney, I beg forgiveness for any incorrect terminology used in this section.

197. 2 F.2d 321 (9th Cir. 1924).

198. At the time, an alien could be deported for unlawful entry only within five years of that entry. Immigration Act of 1917, ch. 29, 39 Stat. 874. The alien had no official status, however, and could be deported for other reasons.

199. *Banzo Okada*, 2 F.2d at 321.

200. *Id.*

201. *Id.* at 322. *See also* Kwong Hai Chew v. Colding, 344 U.S. 590 (1953) (deciding that a permanent resident who was screened and passed by the Coast Guard to serve on a ship could not be excluded without the due process available in deportation proceedings).

202. See the discussion of statute of limitations in Lewis v. Frick, 233 U.S. 291, 297 (1914).

203. *Banzo Okada*, 2 F.2d at 322. *See also Ex parte* Kogi Saito, 18 F.2d 116 (W.D. Wa. 1927) (holding that an illegal alien on a U.S. ship was a resident of that ship's home port, and, as such, could not have "departed" the United States).

204. *Ex parte* Nagata, 11 F.2d 178 (S.D. Cal. 1926) (fishing in Mexican waters); *Ex parte* Kogi Saito, 18 F.2d at 116 (cook on trips between Washington and British Columbia); Matsutaka v. Carr, 47 F.2d 601 (9th Cir. 1931) (fishing in foreign waters).

205. 279 U.S. 398 (1929).

manslaughter and was charged with having committed a crime involving moral turpitude within five years of entry.[206] The Court held that there had been no entry,[207] but also narrowed the grounds in which a seaman could ship out safely.[208]

The Supreme Court also attempted to clarify the definition of entry in *United States ex rel. Volpe v. Smith*.[209] *Volpe* involved a permanent resident alien who pled guilty to counterfeiting in 1925. He visited Cuba briefly in 1928. Volpe was then charged with being an alien who, prior to entry, had been convicted of a crime involving moral turpitude.[210] Volpe argued that the immigration laws referred to his first entry as a permanent resident. The Court disagreed, stating that an entry "includes any coming of an alien from a foreign country into the United States whether such coming be the first or any subsequent one."[211]

The combination of the *Volpe* and *Claussen* decisions led to some strange decisions regarding seamen. Suddenly, it became important that the alien not leave the ship.[212] Even unintentional landings could cause problems.[213] Eventually, even remaining on a ship was

206. *Id.* at 400. The manslaughter charge would not fall within this five-year period if the trip to South America was not considered a departure from and entry to the United States.

207. "There is no such entry where one goes to sea on an American vessel from a port of the United States and returns to the same or another port of this country without having been in any foreign port or place." *Id.* at 401. *See also* United States *ex rel.* Alcantra v. Boyd, 222 F.2d 445 (9th Cir. 1955) (traveling from continental United States to Alaska is not an entry).

208. *Claussen*, 279 U.S. at 401. Lower courts were quick to find that an alien could not land at any foreign port or place and still be found not to have made an entry. *See* United States *ex rel.* Schlimmgen v. Jordan, 164 F.2d 633 (7th Cir. 1947); *see also* United States *ex rel.* Stapf v. Corsi, 287 U.S. 129 (1932) (finding an illegal alien sailor who spent less than three days in Germany entered the United States on his return).

209. 289 U.S. 422 (1933).

210. *Id.* at 423-24.

211. *Id.* at 425. The Court was responding to the controversy over the change in the immigration laws from applying most grounds of excludability to "aliens" instead of to "alien immigrants." *See supra* notes 18-23 and accompanying text.

212. *See, e.g.*, United States *ex rel.* Schlimmgen v. Jordan, 164 F.2d 633 (7th Cir. 1947) (holding that a four-hour visit to Havana was sufficient for entry). *But see* Matsutaka v. Carr, 47 F.2d 601 (9th Cir. 1931) (holding that an illegal alien who shipped out on an American vessel may reenter the United States in spite of *Claussen*).

213. *See, e.g.*, Taguchi v. Carr, 62 F.2d 307 (9th Cir. 1932). In *Taguchi*, an alien illegally in the United States signed aboard a fishing vessel. While in Mexican waters, a storm caused the ship to hit another vessel and sink. Taguchi was stranded on an uninhabited Mexican island but was soon picked up by a U.S. tug. Taguchi had no intention of landing in Mexico. The court found that Taguchi assumed the risk that he might be shipwrecked. Thus, he had sufficient volition for the court to find a departure and entry.

no guarantee that a new entry would not be found.[214]

As with other entry analysis, specific treaties and laws could affect the status of returning seamen. Two early cases are interesting. Both *Case of the Chinese Cabin Waiter*[215] and its companion *Case of the Chinese Laborers on Shipboard*[216] involved Chinese citizens who shipped out on U.S. vessels. In *Cabin Waiter*, the aliens did not leave the ship when it reached foreign ports; in *Laborers*, the aliens spent a few hours in Sydney, Australia. In both cases, the question presented was whether the Chinese Exclusion Act of 1882[217] barred the reentry of these individuals. The court examined sea law, which required a ship to return its seamen to the port where they signed on,[218] and considered the congressional intent behind the Exclusion Act[219] to determine that these aliens could, in fact, reenter the United States.[220]

X. Communists and Entry

In 1952, Congress passed laws providing for the exclusion and deportation of aliens who, after an entry, had been members of the Communist Party.[221] Generally, the courts were very willing to find the entry necessary to deport the alien,[222] although a few aliens were

214. United States *ex rel.* Roovers v. Kessler, 90 F.2d 327 (5th Cir. 1937) (holding that an alien who shipped out on advice of an INS officer made a new entry although he did not leave the ship).

215. 13 F. 286 (C.C.D. Cal. 1882).

216. 13 F. 291 (C.C.D. Cal. 1882).

217. Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, *repealed by* Act of Dec. 17, 1943, ch. 344, 57 Stat. 600 (*quoted in Cabin Waiter*, 13 F. at 286-87). It barred the importation of Chinese laborers to the United States. See Paul R. Ehrlich et al., The Golden Door: International Migration, Mexico, and the United States 55-58 (1974), for a discussion of the various exclusion acts.

218. *Cabin Waiter*, 13 F. at 289.

219. According to the court, the congressional intent was to prevent race wars. The Chinese already in the United States were a small enough number that they could settle into the community. *Id.*

220. *Id.* at 290; *Laborers*, 13 F. at 295.

221. This was later changed to include aliens who at any time had been a Communist. *See* Klig v. Brownell, 244 F.2d 742 (D.C. Cir. 1957), *vacated as moot sub nom.* Klig v. Rogers, 355 U.S. 605 (1958). See also constitutional cases on this issue: Harisiades v. Shaughnessy, 342 U.S. 580 (1952); Galvan v. Press, 347 U.S. 522 (1954).

222. *See* Fougherouse v. Brownell, 163 F. Supp. 580 (D. Or. 1958) (holding that an alien's illegal entry in 1924 was sufficient to properly place him in deportation proceedings where he became a member of the Communist Party during his U.S. residency, then departed the United States, and subsequently immigrated in 1940); United States *ex rel.* Belfrage v. Kenton, 131 F. Supp. 576 (S.D.N.Y. 1955), *aff'd*, 224 F.2d 803 (2d Cir. 1955) (holding first entry into United States was controlling for purposes of deportation proceedings where the alien was a member of the Communist Party subsequent to first entry but was not a member of the Communist Party subsequent to last entry). *But see* Kessler v. Strecker, 307 U.S. 22 (1939) (holding deportation of an alien invalid when the alien joined a Communist Party after entry).

saved by treaty rights.[223] In a very interesting case, however, the Supreme Court avoided the deportation of one such alien.[224]

Mr. Bonetti entered the United States as a permanent resident in 1923. He was an active member of the Communist Party between 1932 and 1936.[225] In 1937, Bonetti travelled to Spain to fight in the Spanish Civil War[226] as a member of the Abraham Lincoln Brigade,[227] giving up his permanent residency in the process. He returned to the United States in 1938, reimmigrated, and made a one-day trip to Mexico in 1939.[228] The lower court held that, for purposes of the statute, entry did not mean last entry,[229] but *any* entry.[230] Thus, Bonetti was deportable.

The Supreme Court held that the 1923 entry was a legal entry, but not the controlling entry for purposes of the statute.[231] Instead, the last lawful entry was the governing one.[232] The dissent complained that the majority's decision crippled the effectiveness of the statute.[233]

What is interesting about the Supreme Court's decision is that the majority was clearly impressed with Bonetti's motivation to travel to Spain. The majority noted that Bonetti fought in Spain because he thought that if the Rome-Berlin Axis was not stopped it would lead to world war.[234] Thus, again, we see the influence of outside considerations on entry law analysis.[235]

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223. *Cf.* Philippine cases discussed *supra* notes 158-63 and accompanying text. *See also Kessler*, 307 U.S. at 22. *But see In re* M-, 4 I. & N. Dec. 569 (BIA 1951) (finding entry in 1926 is entry under Act of 1918 Communist provisions).

224. Bonetti v. Rogers, 356 U.S. 691 (1958). *Cf. Belfrage*, 131 F. Supp. at 576.

225. Bonetti v. Rogers, 356 U.S. at 692.

226. *Id.* The Spanish Civil War was fought between the Fascists (who were supported by Nazi Germany and Italy) and the Republicans. *See generally* GERALD BRENAN, THE SPANISH LABYRINTH, AN ACCOUNT OF THE SOCIAL AND POLITICAL BACKGROUND OF THE CIVIL WAR (1960).

227. Bonetti v. Brownell, 240 F.2d 624 (D.C. Cir. 1956), *rev'd sub. nom.* Bonetti v. Rogers, 356 U.S. 691 (1958). The Abraham Lincoln Brigade supported the Republican forces. Both were romanticized in Ernest Hemingway's book *For Whom the Bell Tolls* (1940). *See generally* CECIL EBY, BETWEEN THE BULLET AND THE LIE: AMERICAN VOLUNTEERS IN THE SPANISH CIVIL WAR (1969). Interestingly, the brigade was founded by the Communist Party of the United States. *Id.* at 5.

228. Bonetti v. Rogers, 356 U.S. at 693.

229. *See supra* notes 35-46 for contrary holdings.

230. Bonetti v. Brownell, 240 F.2d at 625.

231. Bonetti v. Rogers, 356 U.S. at 697.

232. *Id.*

233. *Id.* at 702.

234. *Id.* at 692 n.2.

235. The law was later changed to make deportable aliens who at any time were Communists. *See supra* note 221.

XI. *FLEUTI* DOCTRINE

Prior to the Supreme Court's decision in *Rosenberg v. Fleuti*,[236] a permanent resident who traveled abroad was subject to virtually all the same risks of deportation as a nonimmigrant.[237] After *Fleuti*, permanent residents could be found not to have entered the United States if they could establish that their trip abroad was "innocent, casual, and brief."[238] *Fleuti* involved a permanent resident who traveled to Mexico for a few hours. Upon his return, he was ordered deported as an alien with a "psychopathic personality," the term then used to describe homosexuals.[239] The Supreme Court found it a violation of due process to subject a permanent resident to deportation after a trip that could not reasonably be expected to interrupt the alien's residence in the United States.[240] The *Fleuti* doctrine has since been codified,[241] and similar language has been applied to various benefit programs.[242] However, courts have been unwilling to extend *Fleuti* to situations Congress has not specifically addressed.[243]

Application of the *Fleuti* doctrine has been broken down by the courts into an analysis of whether the foreign trip was innocent, casual, and brief, and whether the trip was intended to be meaningfully interruptive of an alien's residency. The courts have been very busy interpreting these simple sounding words.

Normally, a trip is innocent and casual if it involves little or no

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236. 374 U.S. 449 (1963).
237. *See supra* notes 35-46 and accompanying text.
238. *Fleuti*, 374 U.S. at 462.
239. *Id.* at 451.
240. *Id.* at 460.
241. INA § 101(a)(13), 8 U.S.C. § 1101(a)(13) (1988).
242. *See, e.g.*, INA § 245A(a)(3)(B), 8 U.S.C. § 1255a(a)(3)(B) (1988) (relating to the eligibility of individuals for the so-called amnesty program). Litigation of this provision and others continues to the present. *See* INS v. Legalization Assistance Project of Los Angeles County Fed'n of Labor, 114 S. Ct. 594 (1993) (remanding to the Ninth Circuit for further consideration of jurisdictional and merits issues).
243. *See* Mendoza v. INS, 16 F.3d 335 (9th Cir. 1994) (holding that *Fleuti* was not applicable to illegal aliens); Castillo-Magallon v. INS, 729 F.2d 1227 (9th Cir. 1984) (holding the court had no jurisdiction to hear exclusion appeal); Kabongo v. INS, 837 F.2d 753 (6th Cir.), *cert. denied*, 488 U.S. 982 (1988) (deciding that *Fleuti* did not apply to aliens on student visas); Kasbati v. District Director of INS, 805 F. Supp. 619 (N.D. Ill. 1992) (finding that an alien involved in a class action lawsuit challenging INS administration of amnesty program was not protected by *Fleuti*); *In re* Del Rosario, 13 I. & N. Dec. 324 (BIA 1969) (finding that a nonimmigrant was not entitled to protection of *Fleuti*); *In re* Legaspi, 11 I. & N. Dec. 819 (BIA 1966) (deciding that an out-of-status alien was not entitled to protection of *Fleuti*).

planning and is for a legal purpose.[244] Thus, attending a family dinner[245] or paying a condolence call[246] in a Mexican border town are considered innocent and casual. The more planning a trip takes, however, the more likely a trip will not be innocent and casual.[247] A trip planned for five years may not be considered innocent and casual,[248] nor may business trips generally.[249] Trips to facilitate alien smuggling or other illegal purposes also are not innocent and casual.[250]

The precise length of a "brief" trip is not clear and can be affected by events occurring after departure.[251] In theory, most courts

244. *See, e.g., In re* Hoffman-Arvayo, 13 I. & N. Dec. 750 (BIA 1971) (holding that weekend trips to visit family were brief, casual, and innocent); *In re* Cardenas-Pinedo, 10 I. & N. Dec. 341 (BIA 1963) (holding that a few hours' trip to Mexico was brief, casual, and innocent). However, travel for a legal purpose may be meaningfully interruptive even if the trip is brief. Trips to sign a bond book in Mexico were meaningfully interruptive, even though they usually involved only a few hours. *In re* Caudillo-Villalobos, 11 I. & N. Dec. 15 (BIA 1965), *aff'd sub nom.* Caudillo-Villalobos v. INS, 361 F.2d 329 (5th Cir. 1966); *In re* Acosta, 14 I. & N. Dec. 666 (BIA 1974) (holding that an alien who went once a week to Mexico to sign a bond book and who was arrested and held in Mexico for six months did not have a brief trip); *In re* Wood, 12 I. & N. Dec. 170 (BIA 1967) (traveling to Canada to pursue a legal matter was meaningfully interruptive).

245. *See* Laredo-Miranda v. INS, 555 F.2d 1242 (5th Cir. 1977).

246. Vargas-Banuelos v. INS, 466 F.2d 1371 (5th Cir. 1972).

247. *See In re* Quintanilla-Quintanilla, 11 I. & N. Dec. 432 (BIA 1965) (holding that a pilgrimage trip and visit to family was brief, casual, and innocent in spite of the length of planning). Sometimes, the courts will use the term "meaningfully interruptive" instead of "innocent and casual."

248. Munoz-Casarez v. INS, 511 F.2d 947 (9th Cir. 1975); *In re* Janati-Ataie, 14 I. & N. Dec. 216 (BIA, A.G. 1972) (planning a one month trip to Iran is meaningfully interruptive).

249. Dabone v. Karn, 763 F.2d 593 (3d Cir. 1985) (holding business trips not brief, casual, and innocent); *In re* Nakoi, 14 I. & N. Dec. 208 (BIA 1972) (holding a trip to teach for nine months was not casual even though the trip in fact lasted only three months).

250. Solis-Davila v. INS, 456 F.2d 424 (5th Cir. 1972) (express purpose of trip was to smuggle aliens into U.S.); Pimental-Navarro v. Del Guercio, 256 F.2d 877 (9th Cir. 1958) (pre-*Fleuti* case holding that there was a new entry when an alien left to help smuggle aliens); *In re* Baldovinos, 14 I. & N. Dec. 438 (BIA 1973) (smuggling aliens was meaningfully interruptive); *In re* Corral-Fragoso, 11 I. & N. Dec. 478 (BIA 1966) (helping aliens after leaving United States was still meaningfully interruptive); Martin-Mendoza v. INS, 499 F.2d 918 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975) (finding multiple trips to facilitate alien smuggling was meaningfully interruptive); *In re* Leal, 15 I. & N. Dec. 477 (BIA 1975) (determining that a trip made expressly to defraud INS was meaningfully interruptive); *In re* Payan, 14 I. & N. Dec. 58 (BIA 1972) (deciding that a trip to smuggle aliens was meaningfully interruptive); *In re* Valencia-Barajas, 13 I. & N. Dec. 369 (BIA 1969) (finding a brief trip to smuggle aliens was meaningfully interruptive); *In re* Alvarez-Verduzco, 11 I. & N. Dec. 625 (BIA 1966) (smuggling heroin for own use was meaningfully interruptive).

251. Pre-*Fleuti* cases have long examined brief trips abroad. *See, e.g.*, United

hold that if the trip is of short duration,[252] or if the trip is contingent upon events reasonably expected to happen in a short period of time, the trip is brief.[253] However, no matter the reason, an absence of seventeen years was found not to be brief,[254] and there is even some question whether month-long trips are brief.[255]

Often courts will lump together their analysis of the "innocent, casual, and brief" elements with their analysis of whether the trip was " 'intended' as a departure disruptive of his resident alien status."[256] Generally, leaving the United States for the purpose of furthering or committing a crime is meaningfully interruptive.[257] Likewise, trips that take planning may be meaningfully interruptive. Thus, an alien who left to get married,[258] as well as an alien who left on business trips,[259] involved aliens found to have made new entries

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States *ex rel.* Lesto v. Day, 21 F.2d 307 (2d Cir. 1927) (holding that an alien's intent to make a temporary trip was controlling); United States *ex rel.* Alther v. McCandless, 46 F.2d 288 (3d Cir. 1931) (holding that an alien's intent prior to departure was controlling).

252. *See* Maldonado-Sandoval v. United States INS, 518 F.2d 278 (9th Cir. 1975) (holding that a two to three day trip was brief); *In re* Hoffman-Arvayo, 13 I. & N. Dec. 750 (BIA 1971) (holding that weekend trips were brief); *In re* Cardenas-Pinedo, 10 I. & N. Dec. 341 (BIA 1963) (holding that a few hours' trip was brief).

253. *See* Chavez-Ramirez v. INS, 792 F.2d 932 (9th Cir. 1986) (holding that a trip must take a short time or be contingent on events reasonably expected to occur within a short period of time); Angeles v. District Director, 729 F. Supp. 479 (D. Md. 1990) (holding that caring for parents in the Philippines between 10 and 11 months each year was not brief). *But see In re* Acosta, 14 I. & N. Dec. 666 (BIA 1974) (holding that an alien who went once a week to Mexico to sign a bond book, and who was arrested and held in Mexico for six months, did not have a brief trip).

254. Gamero v. INS, 367 F.2d 123 (9th Cir. 1966). *See also In re* Salazar, 17 I. & N. Dec. 167 (BIA 1979) (holding that five-month trip was meaningfully interruptive).

255. Munoz-Casarez v. INS, 511 F.2d 947 (9th Cir. 1975); *In re* Janati-Ataie, 14 I. & N. Dec. 216 (BIA, A.G. 1972) (holding that extensive planning for a one-month trip to Iran was meaningfully interruptive); *In re* Abi-Rached, 10 I. & N. Dec. 551 (BIA 1964) (holding that a one-month trip to Mexico was meaningfully interruptive).

256. Rosenberg v. Fleuti, 374 U.S. 449, 462 (1963).

257. Martin-Mendoza v. INS, 499 F.2d 918 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975); Maldonaldo-Sandoval v. United States INS, 518 F.2d 278 (9th Cir. 1975) (holding that when an immigration judge presiding over an exclusion hearing determines that an individual is a permanent resident and has made a brief departure, exclusion should be terminated and deportation proceedings started; and finding that illegality of the permanent residency is irrelevant to *Fleuti* analysis in that case). *Compare In re* Rangel, 15 I. & N. Dec. 789 (BIA 1976) (irrelevant for *Fleuti* analysis) *with In re* Castillo-Pineda, 15 I. & N. Dec. 274 (BIA 1975) (holding that a marriage that was the basis of immigration and that was subsequently declared void *ab initio* destroyed the basis for entry).

258. Lozano-Giron v. INS, 506 F.2d 1073 (7th Cir. 1974). The court looked at the alien's intent at the time of departure and found that the alien could have formed a domicile elsewhere. *But see* Jubilado v. United States, 819 F.2d 210 (9th Cir. 1987) (deciding that a permanent resident who traveled to the Philippines for three months in order to bring his wife and children to the United States did not intend to interrupt his residency).

259. *See* Dabone v. Karn, 763 F.2d 593 (3d Cir. 1985). *But see* Itzcovitz v. Selective Serv. Local Bd. No. 6, 447 F.2d 888 (2d Cir. 1971) (declaring that a three-week business training course was not sufficient for an entry).

when they returned to the United States.

Courts have split over whether the permanent resident in question must have formed the intent to interrupt residency before he or she leaves the United States. While most circuits hold that the time the intent is formed to do something meaningfully interruptive is irrelevant,[260] some circuits have held that the intent must be formed before departing the United States.[261] Courts have also split on whether an entry without inspection,[262] with nothing more, is sufficient to be a meaningfully interruptive act.[263]

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260. *See* Molina v. Sewell, 983 F.2d 676 (5th Cir. 1993) (holding that an alien must intend, at the time of departure, that the trip be meaningfully interruptive); Laredo-Miranda v. INS, 555 F.2d 1242 (5th Cir. 1977) (holding that an alien attending dinner in Mexico who forgot his residency card and crossed the Rio Grande twice to assist other aliens in entering the United States illegally, participated in activity that was meaningfully interruptive); Yanez-Jacquez v. INS, 440 F.2d 701 (5th Cir. 1971) (holding that where there was no intent to interrupt stay before departure, there was no entry); Palatian v. INS, 502 F.2d 1091 (9th Cir. 1974) (smuggling 55 pounds of marijuana was meaningfully interruptive, and intent to interrupt residency was irrelevant); *In re* Vargas-Banuelos, 13 I. & N. Dec. 810 (BIA 1971) (holding that condolence call was "transformed" to a meaningfully interruptive trip by assisting aliens across the border). *Cf.* Zimmerman v. Lehmann, 339 F.2d 943 (7th Cir.), *cert. denied*, 381 U.S. 925 (1965) (holding that where a permanent resident made a brief trip to Canada claiming to be a U.S. citizen by adoption, if claim was not fraudulent, there was no entry). See discussion of Jubilado v. United States, 819 F.2d 210 (9th Cir. 1987), *supra* note 258.

261. Plasencia v. Sureck, 637 F.2d 1286 (9th Cir. 1980), *rev'd sub nom.* Landon v. Plasencia, 459 U.S. 21 (1982) (holding that the issue of entry is jurisdictional, to be decided by the immigration judge — the Ninth Circuit had held that there could be an entry only if the departure was meaningfully interruptive); Vargas-Banuelos v. INS, 466 F.2d 1371 (5th Cir. 1972) (holding that an alien paying condolence call who was talked into helping his cousin enter the United States illegally had not entered, because he did not intend his trip to be meaningfully interruptive when he left the United States). *Cf. In Re* Vargas-Banuelos, 13 I. & N. Dec. 810 (BIA 1971). This conflict has yet to be resolved. *See* Rosendo-Ramirez v. INS, 32 F.3d 1085 (7th Cir. 1994) (refusing to apply Fifth Circuit law on intent issue).

262. An entry without inspection is a federal crime and is a ground for deportation. INA § 241(a), 8 U.S.C. § 1251(a) (1988). This includes making a false claim to U.S. citizenship as well as crossing a U.S. border in an unauthorized manner. *See In re* Kolk, 11 I. & N. Dec. 103 (BIA 1965) (holding that a false claim to citizenship was entry without inspection); *In re* Karl, 10 I. & N. Dec. 480 (BIA 1964) (holding that a false claim to U.S. citizenship after a 10-day vacation created a new entry). This conflict has yet to be resolved.

263. Leal-Rodriguez v. INS, 990 F.2d 939, 946 (7th Cir. 1993) (entry without inspection is a new entry); *In re* Kolk, 11 I. & N. Dec. 103 (BIA 1965) (*Fleuti* exception does not apply to entry without inspection); *In re* Rina, 15 I. & N. Dec. 346 (BIA 1975) (*Fleuti* exception does not apply to entry without inspection); Ferraro v. INS, 535 F.2d 208 (2d Cir. 1976) (remanded to BIA to determine *Fleuti* issue).

Conclusion

The definition of entry seems simple until one tries to explain it. Exceptions to the determination of entry that are based upon historical events, state of mind, age, and other policy considerations illustrate that entry analysis can be as complex and fascinating as any other area of immigration law. As a microcosm of the immigration laws, entry analysis demonstrates the very political nature of immigration and just how often historical events rather than reasoned thought can affect both statutory and case law development.