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How Voluntary Abandonment of Permanent Resident Status and Coercion Don't Mix

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I. INTRODUCTION

The Aziz brothers, just 21 and 19, arrived at an international airport in Virginia after a long, grueling flight from Djibouti.[1] After fleeing a bloody civil war in their home country of Yemen, the brothers managed to obtain green cards at the United States Embassy in Dijibouti.[2] Despite the brothers' status as lawful permanent residents ("LPRs"), United States Customs and Border Protection ("CBP") agents denied them entry into the country and told them if they refused to sign a Form-I-407, they would be unable to enter the country for five years.[3] The Form I-407 is a voluntary abandonment of permanent resident status.[4] The brothers, confused and exhausted, signed the forms without understanding its repercussions.[5] They were then deported from the United States.[6]

This story is not unique.[7] Following President Trump's executive order banning travel from Muslim-majority countries, media outlets reported that CBP agents coerced LPRs living in San Diego to sign Form I-407s.[8] Reports suggest the United States deported as many as sixty permanent residents after CBP agents coerced LPRs into giving up his or her green cards upon arrival to the United States.[9] Other LPRs claimed the same thing that happened to the Aziz brothers happened to them at Los Angeles International Airport ("LAX"), leaving them

1. Oliver Laughland & Joanna Walters, *Immigration Officials Coerced Yemenis to Sign Away Green Cards, Suit Claims*, THE GUARDIAN (Jan. 30, 2017, 10:48 AM), https://www.theguardian.com/us-news/2017/jan/30/trump-travel-ban-yemenis-coerced-relinquish-green-card (on file with *The University of the Pacific Law Review*).

2. *Id.*

3. *Id.*

4. *Instructions for Record of Abandonment of Lawful Permanent Resident Status*, USCIS 2 (Mar. 31, 2017), *available at* https://www.uscis.gov/sites/default/files/files/form/i-407instr.pdf (on file with *The University of the Pacific Law Review*).

5. Laughland & Walters, *supra* note 1.

6. *Id.*

7. *See* Gaby Rodriguez, *Some Legal United States Residents Forced to Forfeit Green Card: Attorney*, NBC SAN DIEGO (Jan. 31, 2017, 6:26 AM), https://www.nbcsandiego.com/news/local/Some-Legal-Residents-Forced-Forfeit-Green-Card-Attorney-412360613.html (on file with *The University of the Pacific Law Review*) (explaining how San Diego legal permanent residents were affected by the executive order); *see also* Natasha Bertrand, *Lawsuit: Dozens of Immigrants Trying to Enter the US Coerced into Giving up Visas and Green Cards After Trump Travel Ban*, BUS. INSIDER (Feb. 3, 2017, 9:39 AM), https://www.businessinsider.com/trump-immigration-ban-travel-ban-2017-1 (on file with *The University of the Pacific Law Review*) (noting that as many as sixty foreign nationals had been deported the weekend following the executive order); *see e.g.*, Leslie Berestein Rojas, *LAX Immigration Agents Asked Detainees to Sign Away Their Legal Residency Status, Attorneys Say*, KPCC (Jan. 30, 2017), https://www.kqed.org/news/11293631/lax-immigration-agents-asked-detainees-to-sign-away-their-legal-residency-status-attorneys-say (on file with *The University of the Pacific Law Review*) (describing how immigration attorneys went to Los Angeles International Airport to render aid to legal permanent residents after the executive order).

8. Rodriguez, *supra* note 7.

9. Bertrand, *supra* note 7.

outside of the United States, without status, and completely befuddled.[10]

On January 27, 2017, President Trump issued the Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States ("Executive Order"), banning nearly all travel to the United States from seven countries (Syria, Sudan, Somalia, Iran, Iraq, Libya, and Yemen).[11] Although the Executive Order still allowed LPRs, the ensuing havoc resulted in confusion among CBP agents and thus numerous individuals came forward asserting that the agents had similarly coerced the LPRs to sign the Form I-407 while seeking entry at an international airport.[12] CBP agents detained individuals for many hours at multiple ports of entry who "voluntarily abandoned" their permanent resident status, and then deported them to their home countries.[13]

Obtaining a green card can take years, but to many individuals, it is worth it for a ticket to the American dream.[14] The process of immigrating to the United States often separates families, so a green card can mean reuniting with families, sometimes even after decades.[15] Accordingly, there are only a few circumstances under which immigrants would decide to give up their permanent resident status in America.[16]

A Form I-407 is a valid means of abandoning lawful permanent resident status, as long as it is voluntary.[17] If an LPR disagrees with a Department of Homeland Security ("DHS") allegation that he or she has abandoned his permanent resident status, the form specifies that LPRs can request a hearing before an immigration judge.[18] Although the Form I-407 has legitimate purposes, including granting a fiscal break from United States taxes to LPRs who no longer wish to live in the United States, it becomes problematic when CBP agents coerce permanent residents to abandon their status.[19]

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10. Rojas, *supra* note 7.

11. Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017).

12. Bertrand, *supra* note 7; Ida Keir, *Alert! Don't Sign Form I-407 Giving Up Your Green Card!*, IDA KEIR LAW (Feb. 2, 2017), http://idakeirlaw.com/alert-dont-sign-form-407-giving-green-card/ (on file with *The University of the Pacific Law Review*); Rodriguez, *supra* note 7.

13. Bertrand, *supra* note 7. This Comment refers to *aliens* as that term is used in 8 U.S.C. 1101(a)(3). "The term 'alien' means any person not a citizen or national of the United States."

14. *Green Card Processing Time*, VISA GUIDE (2018), https://visaguide.world/us-visa/green-card/processing-time/ (last visited July 21, 2019) (on file with *The University of the Pacific Law Review*).

15. Stokely Baksh, *How Long Do Immigrant Families "Wait in Line"? Sometimes Decades*, COLORLINES (July 25, 2011, 12:28 PM), https://www.colorlines.com/content/how-long-do-immigrant-families-wait-line-sometimes-decades (on file with *The University of the Pacific Law Review*).

16. *Why Voluntarily Abandon Your Green Card? I-407 FAQ*, ALLLAW, http://www.alllaw.com/articles/nolo/us-immigration/why-voluntarily-abandon-green-card-i-407.html (last visited July 21, 2019) (on file with *The University of the Pacific Law Review*).

17. *I-407 Abandonment of Permanent Resident Card/Green Card*, U.S. EMBASSY IN AUSTRIA, https://at.usembassy.gov/visas/immigrant-visas/i-407/ (last visited July 21, 2019) (on file with *The University of the Pacific Law Review*).

18. U.S. CITIZENSHIP AND IMMIGRATION SERVS., FORM I-407: RECORD OF ABANDONMENT OF LAWFUL PERMANENT RESIDENT STATUS (2019) (on file with *The University of the Pacific Law Review*) [hereinafter FORM I-407].

19. Virginia La Torre Jeker, *Giving up Your US Green Card – Make Sure It is Done Correctly or Pay the*

The United States Citizenship and Immigration Services ("USCIS") website explains the Form I-407 ensures that when an alien abandons their LPR status, he or she is informed that they have the right to a hearing before an immigration judge and that by signing the Form, they intelligently waived that right.[20] The Form I-407 does not serve its purpose if CBP agents coerce individuals to sign it.[21]

This Comment proposes that the government consider Form I-407s that LPRs sign at a port of entry presumptively coercive.[22] If Form I-407s were presumed coercive when LPRs signed them at the border, the government would have the burden of showing that the alien's action was clearly voluntary.[23] This would encourage CBP agents to behave according to their published practice manuals and increase accountability for their actions.[24]

Part II of this Comment will discuss the background of the Form I-407, prior to the Trump Administration.[25] Part III will explore racism in immigration laws in the United States, followed by a brief synopsis of when United States immigration law considers immigrants inside or outside the United States, and the effect this designation has on their immigration status.[26] Part IV will propose a presumption of coercion when an LPR signs a Form I-407 at a port of entry, placing the burden of proof on the party arguing that the Form I-407 should stand.[27] Part IV will conclude by considering the counterargument of possible judicial inefficiency as a result of this higher burden on border patrol.[28]

II. BACKGROUND OF IMMIGRATION ISSUES AND FORM I-407

To understand the legal implications of coercing a Form I-407 signature, it is necessary to review the concept of presumed abandonment of status upon leaving the United States for a certain time.[29] The history of the Form I-407 shows the purpose of the form, the reasons to abandon LPR status, and the difference between signing a Form I-407 voluntarily versus signing it due to CBP

Price!, ANGLOINFO (Dec. 31, 2012), https://www.angloinfo.com/blogs/global/us-tax/giving-up-your-us-green-card-make-sure-it-is-done-correctly-or-pay-the-price/ (on file with *The University of the Pacific Law Review*).

20. U.S. CITIZENSHIP AND IMMIGRATION SERVS., *supra* note 19.

21. *Id.*

22. *Infra* Part IV.

23. *Infra* Part V.

24. *Infra* Part V.

25. *Infra* Part II.

26. *Infra* Part III.

27. *Infra* Part IV.

28. *Infra* Section IV.C.

29. Jennie Guilfoyle, *How Permanent is Permanent Residence?: Abandonment of LPR Status*, CLINIC, 1 (Sept. 2009), *available at* https://cliniclegal.org/sites/default/files/Abandonment%20of%20LPR%20Status.pdf (on file with *The University of the Pacific Law Review*).

coercion.[30]

The background information of relevant immigration issues and the Form I-407 itself serves as an important starting point for this Comment's eventual proposal.[31] The background information unveils the original goals of the Form I-407.[32] This will facilitate a discussion of how immigration has since diverged from these goals and lead into the eventual proposal that if an LPR signs a Form I-407 at a port of entry, it shall be presumptively coercive.[33] Subsection A will discuss a presumption in immigration law—abandonment of permanent resident status under certain circumstances—and the background of the Form I-407.[34] Subsection B will cover the purpose and advantages of the Form I-407 when used as intended.[35] Subsection C will discuss what CBP's internal agency documents dictate on how to deal with the Form I-407.[36]

A. Presumption of Abandonment of Permanent Resident Status Upon Leaving United States for a Long Period of Time

The United States allows LPRs to travel outside of the United States, but will monitor their travel.[37] CBP agents may consider LPRs who are re-entering the United States after leaving for more than six months an applicant for admission, rather than a permanent resident.[38] The law presumes that aliens who leave for more than one year have abandoned their lawful permanent resident status.[39] As such, USCIS may issue the alien a Notice to Appear and begin removal proceedings when the alien arrives at the border following their trip.[40]

However, the amount of time an LPR spends outside of the United States is not dispositive to determine abandonment.[41] The immigration judge determines each situation based on the totality of the circumstances, and the overall guiding question is whether "the LPR had an objective intention to return to the U.S. after a relatively short trip abroad, fixed by an early event, or that the LPR intended that the trip would end after an event that would occur in a relatively short period of time."[42] Some of the factors USCIS or a court considers in determining whether the LPR abandoned his status are family ties, job, income tax returns,

30. *Infra* Section II.B.
31. *Infra* Part IV.
32. *Infra* Part IV.
33. *Infra* Part IV.
34. *Infra* Section II.B.
35. *Infra* Section II.C.
36. *Infra* Section II.D.
37. Guilfoyle, *supra* note 29.
38. 8 U.S.C.A. § 1101 (2014).
39. Guilfoyle, *supra* note 29.
40. *Id.*
41. *Id.*
42. *Id.*

community ties, and property.[43] Factors that suggest an LPR did not intend to abandon his or her status include immediate relatives in the United States or a job the LPR is eligible for and intends to return to.[44] Other factors include filing taxes in the United States, local community involvement, and owning property in the country.[45]

B. Purpose and Advantages of Form I-407

The USCIS states that the purpose of Form I-407 is to facilitate voluntary abandonment of LPR status:

Form I-407 . . . is designed to provide a simple procedure to record an alien's abandonment of status as a lawful permanent resident of the United States. Form I-407's use also ensures that an alien abandoning their LPR status is informed of the right to a hearing before an immigration judge and that the alien has knowingly, willingly, and affirmatively waived that right.[46]

There are legitimate reasons LPRs may wish to abandon their permanent resident status, such as to terminate United States tax obligations or to establish the non-immigrant intent required for a tourist visa.[47]

Normally, a person who abandons his or her green card is no longer subject to federal income tax obligations.[48] *Topsnik v. Commissioner* shows why formally signing this form is so important.[49] There, a German citizen taxpayer received his green card in 1977.[50] He filed a Form I-407 to formally abandon his permanent resident status in 2010.[51] However, he argued that he was a German and not an American resident in 2010 so the deficiency for tax years at issue in the United States did not apply to him and he should not be required to pay those taxes.[52]

He bolstered this argument with evidence of his extensive contacts to Germany, including possession of a German driver's license and passport.[53] The plaintiff used these facts to allege that he was not liable for the tax payments

43. *Id.*

44. *Id.*

45. *Id.*

46. U.S. CITIZENSHIP AND IMMIGRATION SERVS., *supra* note 19.

47. Kyle Knapp, *How to Voluntarily Abandon Lawful Permanent Residence (a Green Card)*, NOLO, https://www.nolo.com/legal-encyclopedia/how-voluntarily-abandon-lawful-permanent-residence-green-card.html (last visited July 21, 2019) (on file with *The University of the Pacific Law Review*).

48. Ali Brodie, *Abandoning lawful permanent resident status: procedure & considerations*, LEXOLOGY (Apr. 20, 2015), https://www.lexology.com/library/detail.aspx?g=abedc21a-4ca9-443f-9186-c389db7a19b4 (on file with *The University of the Pacific Law Review*).

49. Topsnik v. Comm'r, 143 T.C. 240 (2014).

50. *Id.* at 247.

51. *Id.* at 247–48.

52. *Id.* at 242–43.

53. *Id.* at 248.

because he was a German resident who had expatriated.[54] The court nonetheless found that he had officially abandoned his LPR status only by signing the Form I-407 in 2010.[55] Although many objective factors may point towards an individual having abandoned their green card, if a person wishes to abandon the status for tax purposes, the individual needs to take affirmative steps to abandon LPR status through the Form I-407.[56]

The purpose of signing the Form I-407 is to demonstrate a clear intent to relinquish LPR status.[57] This could prove beneficial later if the individual would like to visit the United States on a tourist B-2 visa or any non-immigrant visa.[58] The benefit would arise when applying for a visitor visa, because one of the requirements is "non-immigrant intent," or a demonstration that the alien plans to return home when he or she finishes a program or activity in the United States.[59] By filing a Form I-407, it is clear that the individual no longer intends to stay in the United States.[60] When applying for future visas to enter the United States, this abandonment intent can serve as evidence of the non-immigrant intent required for a tourist visa.[61]

C. Internal Agency Documents and Manuals Regarding Form I-407

The CBP Manual details the procedure agents must employ when dealing with cases involving abandonment of lawful permanent resident status.[62] The manual states that an alien seeking admission to the United States may wish to voluntarily abandon his or her green card and either enter as a nonimmigrant or depart from the United States immediately before entering.[63] The manual is explicit that the inspecting agent "must never coax or coerce an alien to surrender his or her alien registration document in lieu of a removal hearing."[64]

The procedure further states what to do in situations where the LPR

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54. *Id.* at 242–43.

55. *Id.* at 261.

56. Edward Tanenbaum, *Abandoning 'Lawful Permanent Resident' Status*, BLOOMBERG TAX (Jan. 12, 2015), https://www.bna.com/abandoning-lawful-permanent-n17179922026/ (on file with *The University of the Pacific Law Review*).

57. Brodie, *supra* note 48.

58. *See* United States Visas: Visitor Visas, U.S. DEP'T OF STATE, https://travel.state.gov/content/dam/visas/PDF-other/VisaFlyer_B1B2_March_2015.pdf (on file with *The University of the Pacific Law Review*) (explaining the requirement for entering the U.S. on a non-immigrant visa that the trip's purpose must be for business or pleasure).

59. *Nonimmigrant intent*, UNIV. OF ROCHESTER, https://www.iso.rochester.edu/travel/visas/intent.html (on file with *The University of the Pacific Law Review*).

60. Brodie, *supra* note 48.

61. *Id.*

62. U.S. CUSTOMS AND BORDER PATROL, U.S. DEP'T OF HOMELAND SECURITY, INSPECTOR'S FIELD MANUAL 110, *available at* http://gani.com/public/immigration/forms/fieldman.pdf (on file with *The University of the Pacific Law Review*) [hereinafter INSPECTOR'S FIELD MANUAL].

63. *Id.*

64. *Id.*

voluntarily relinquished his or her green card.[65] In those cases, the manual instructs the agents to ensure the alien signs the Form I-407 to acknowledge the action is completely voluntary.[66] If the alien is surrendering his or her Form I-551—or green card—then the agent must complete a Form I-89, which is a data collection card to capture biometric data.[67] The manual instructs the agent differently regarding whether the alien wishes to immediately depart the United States or enter as a tourist.[68] In the first case, the manual tells the agent to advise the individual that he or she may still have the right to a temporary alien registration card and for reentry and a removal hearing.[69] In the second case, the manual instructs the agent to proceed normally with the alien as if the alien had entered initially with a nonimmigrant visa.[70] The CBP Manual highlights exactly why it is so integral Form I-407s be presumptively coercive for LPRs that sign at a port of entry.[71]

Returning to the story of the Aziz brothers, Tareq and Ammar allegedly signed the Form I-407s because agents or employees at the border misrepresented the law to them.[72] The CBP agents allegedly threatened to send the brothers to Yemen and impose a bar to entry into the United States for a period of five years if they refused to sign the Form I-407.[73] The brothers remarked they felt confused and pressured by the agents' representations, which prompted them to sign the forms, and a CBP agent subsequently stamped "Cancelled" over their visas.[74]

As mentioned above, the CBP Manual emphasizes an agent must never coax or coerce an alien into abandoning their permanent resident status.[75] The Executive Order did not explicitly override the practice manual's clear statement that an agent shall never coax or coerce an alien into signing the Form I-407 since it did not specifically mention the Form I-407 procedure in its text.[76] CBP agents performed contrary to the instructions in their practice manual in at least this case, and reportedly in many others.[77] If CBP agents presumed that Form I-407s were coercive when LPRs signed them at a port of entry, the burden of proof would be on border patrol to show that an immigrant's action was clearly

65. *Id.*

66. *Id.*

67. Adjustment of Status of Refugees and Asylees: Processing Under Direct Mail Program, 63 Fed. Reg. 30,105 (June 3, 1998) (to be codified at 8 C.F.R pt. 103 & 209), *supra* note 63.

68. INSPECTOR'S FIELD MANUAL, *supra* note 62.

69. *Id.*

70. *Id.*

71. *Id.*

72. Aziz v. Trump, 231 F. Supp. 3d 23, 27 (2017).

73. *Id.*

74. *Id.*

75. INSPECTOR'S FIELD MANUAL, *supra* note 62.

76. Exec. Order No. 13,780, *supra* note 11.

77. Rodriguez, *supra* note 7; Guilfoyle, *supra* note 29; Bertrand, *supra* note 7; Rojas, *supra* note 7.

voluntary.[78] This would encourage agents to act in accordance with their published practice manuals due to an increased responsibility for their actions.[79]

III. HOW DO WE KNOW IF AN IMMIGRANT IS INSIDE OR OUTSIDE THE COUNTRY AND WHY IS IT IMPORTANT?

A prevalent issue in immigration law is whether an immigrant is inside or outside of the United States. An immigrant's location carries consequences for their status.[80] Subsection A will first provide a primer of historic racism and anti-immigrant sentiment in the United States.[81] Subsection B will then discuss *Chae Chan Ping v. United States*, which helps illustrate the plenary power doctrine and shows the amount of discretion Congress has regarding immigration matters.[82] Subsection C will then look at the case *Rosenberg v. Fleuti* against a provision of the Immigration and Nationality Act ("INA") to determine whether the United States will regard lawful permanent residents returning from a trip abroad as seeking admission.[83] Subsection C will also consider why pro-immigrant groups appreciated *Rosenberg*.[84] Finally, Subsection D will analyze how the CBP agents' statements to LPRs following the Executive Order misrepresented the law.[85]

A. History of Racism Against Immigrants in the United States

It is helpful to dive deeper into the United States' history of racism against immigrants to understand a possible motive for coercing LPRs to sign the Form I-407.[86] The Fourteenth Amendment extended some citizenship rights to former slaves who were born on United States soil.[87] Still, United States laws continued to forbid Native Americans from having citizenship or its benefits until late in the 1880s.[88]

In the early 1800s, Irish immigrants came to the United States to escape the

78. *Infra* Part V.

79. *Infra* Part V.

80. *Infra* Part III.

81. *Infra* Section III.A.

82. *Infra* Section III.B; Chae Chan Ping v. United States, 130 U.S. 581 (1889).

83. *Infra* Section III.C; Rosenberg v. Fleuti, 374 U.S. 449 (1963).

84. *Infra* Section III.C.

85. *Infra* Section III.D.

86. *See generally* Patricia I. Folan Sebben, *United States Immigration Law, Irish Immigration and Diversity: Cead Mile Failte (A Thousand Times Welcome)?*, 6 GEO. IMMIGR. L.J. 745, 750 (1992) (discussing Irish immigration and racist sentiment against Irish in America).

87. U.S. CONST. amend. XIV.

88. Elk v. Wilkins, 112 U.S. 94, 109 (1884) (holding that the Fourteenth Amendment was not applicable to Native Americans born in the United States because they were not considered to have been born "subject to the jurisdiction" of the United States).

Irish potato famine.[89] When the United States started keeping track of arriving immigrants in 1820, many Americans worried that Irish-Catholic immigrants would dilute English-Protestant culture.[90] United States citizens had racist sentiments against Irish immigrants who were mostly Irish Catholic; the United States was very Protestant and had been "settled by sectarians who prided themselves on their independence from kings' and popes' authority".[91] Nativist sentiments increased and included concerns that the coming of Irish Catholics would dilute the English-Protestant population.[92] Although this cultivated strong anti-Irish feelings, and several states enacted laws against Irish immigrants, the United States did not enact a federal racist immigration law to address this popular anti-Irish sentiment.[93]

The first blatantly racist immigration law the United States passed was the Chinese Exclusion Act.[94] The United States likely passed this Act due to an increase of unemployment that caused fear among Americans, as well as a general lack of sympathy for these culturally different people.[95]

During World War II, the government put in place numerous efforts to stop Japanese immigration, including the Gentlemen's Agreement of 1908 and an eventual ban on Japanese immigration after 1924.[96] The anti-Japanese fears came from economic factors coupled with jealousy because many of the Japanese farmers had become successful at farming on soil Americans considered infertile.[97] Similar fears regarding the Japanese military power and Asian conquest also motivated these racist immigration laws.[98]

Robert S. Chang, a professor of law at Seattle University School of Law, compared these instances of blatant racism against immigrants throughout our country's history to whitewashing, and drew parallels to the Muslim Travel Ban cases.[99] The United States Supreme Court upheld President Trump's ban on

89. KERBY A. MILLER, EMIGRANTS AND EXILES: IRELAND AND THE IRISH EXODUS TO NORTH AMERICA 193 (1985).

90. Folan Sebben, *supra* note 86, at 747–51.

91. *Id.* at 750.

92. *Id.*

93. *Id.*

94. Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 645 (2005).

95. *Id.*

96. *See* RAYMOND LESLIE BUELL, THE DEVELOPMENT OF THE ANTI-JAPANESE AGITATION IN THE UNITED STATES 631 (1922) (discussing anti-Japanese sentiment in America during the World War II era); Immigration Act of 1924, ch. 190, 43 Stat. 153 (1924) (repealed 1952).

97. J. Burton, M. Farrell, F. Lord, & R. Lord, *A Brief History of Japanese American Relocation During World War II*, NAT'L PARK SERV. (Apr. 1, 2016), https://www.nps.gov/articles/historyinternment.htm (on file with *The University of the Pacific Law Review*).

98. *Id.*

99. *See generally* Robert S. Chang, *Whitewashing Precedent: From the Chinese Exclusion Case to Korematsu to the Muslim Travel Ban Cases*, 68 CASE W. L. REV. 1202 (2018) (discussing whitewashing efforts historically in the United States).

travel from predominantly Muslim countries.[100] "Mr. Trump's history of incendiary statements about the dangers he said Muslims pose to the United States" do not undermine the presidential power to secure the United States borders that Congress delegated through immigration lawmaking.[101] The New York mayor's commissioner of immigrant affairs, Bitta Mostofi, "called the ruling an 'institutionalization of Islamophobia and racism.'"[102]

From slavery to a ban on travel from predominantly Muslim countries, racist and nativist sentiments have marked a significant portion of United States history.[103] This background aids the argument for requiring a higher showing of voluntariness when an LPR wishes to voluntarily abandon LPR status.[104]

B. Chae Chan Ping v. United States *and its Repercussions for Immigrants*

Chae Chan Ping v. United States detailed the plenary power doctrine for Congress, which effectively grants Congress supreme power over everything relating to immigration law.[105] *Ping* is the famous Chinese exclusion case that often starts immigration law casebooks.[106] The plaintiff in the case was a Chinese laborer who resided and worked in San Francisco for twelve years.[107] He left the United States to visit China, but in order to ensure United States immigration would allow him to reenter upon his return, he obtained and held a certificate that entitled him to return to the United States.[108] When he presented the certificate to a customs agent upon his return, the agent refused his entry because while he had been away, Congress approved an act that annulled the certificate.[109] This prohibited him from entering the United States.[110] This exclusion was largely fueled by racism and rampant nativist sentiment in the United States.[111] The Court upheld Ping's exclusion and reaffirmed Congress' ample power in immigration.[112] The Chinese Exclusion Act of 1882 sought to, as indicated by its

100. Adam Liptak & Michael D. Shear, *Trump's Travel Ban Is Upheld by Supreme Court*, N.Y. TIMES (June 26, 2018), https://www.nytimes.com/2018/06/26/us/politics/supreme-court-trump-travel-ban.html (on file with *The University of the Pacific Law Review*).

101. *Id.*

102. *Id.*

103. Chang, *supra* note 99, at 1202.

104. Section IV.B.

105. Garrett Epps, *The Ghost of Chae Chan Ping*, THE ATLANTIC (Jan. 20, 2018), https://www.theatlantic.com/politics/archive/2018/01/ghost-haunting-immigration/551015/ (on file with *The University of the Pacific Law Review*).

106. *Id.*

107. Chae Chan Ping v. United States,130 U.S. 581, 582 (1889).

108. *Id.* at 582.

109. *Id.*

110. *Id.*

111. Stuart Chinn, *Trump and Chinese Exclusion: Contemporary Parallels with Legislative Debates over the Chinese Exclusion Act of 1882*, 84 TENN. L. REV. 681, 685–86 (2017); *Chae Chan Ping*, 130 U.S. at 582.

112. *Id.*

colloquial name, exclude Chinese immigrants from the United States.[113] Justice Gray summarized why in *Fong Yu Ting v. United States*,

After some years' experience under that treaty, the Government of the United States was brought to the opinion that the presence within our territory of large numbers of Chinese laborers, of a distinct race and religion, remaining strangers in the land, residing apart by themselves, tenaciously adhering to the customs and usages of their own country, unfamiliar with our institutions, and apparently incapable of assimilating with our people, might endanger good order, and be injurious to the public interests, and therefore requested and obtained from China a modification of the treaty.[114]

Justice Gray's analysis of the perceived lack of Chinese assimilation in the United States is an unambiguous indication that anti-Chinese sentiment had become extremely widespread.[115]

The Supreme Court held that while the Chinese Exclusion Act violated existing treaties with China, it had no impact on the Act's validity because of the plenary power of Congress.[116] The court reasoned that "[t]he power of the government to exclude foreigners from the country whenever, in its judgment, the public interests require such exclusion, has been asserted in repeated instances, and never denied by the executive or legislative departments."[117]

The plenary power doctrine from *Ping* states congressional immigration categorizations are not entitled to judicial review.[118] This is because the legislative power of Congress is the most complete over the admission of aliens, and as a result, Congress has full discretion in such matters.[119] The Court mentioned in multiple cases that Congress has the power to discriminate on the basis of race.[120] Professor Stephen Legomsky from Washington University School of Law explains that under the plenary power doctrine, Congress may discriminate on the basis of race, gender, and sexual legitimacy when confronting immigrant questions; it may also restrict political speech and ignore due process when regulating immigration.[121] The plenary power doctrine grants Congress a considerable amount of power.[122]

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113. M.J. Farrelly, *The United States Chinese Exclusion Act*, 28 AM. L. REV. 734, 734 (1894).

114. Fong Yu Ting v. United States, 149 U.S. 698, 717 (1893).

115. *Id.*

116. *Chae Chan Ping*, 130 U.S. at 603.

117. *Id.* at 606–07.

118. Gabriel J. Chin, *Is There a Plenary Power Doctrine? A Tentative Apology and Prediction for our Strange but Unexceptional Constitutional Immigration Law*, 14 GEO. IMMIGR. L.J. 257, 257 (2000).

119. *Id.* at 260.

120. Yamataya v. Fisher, 189 U.S. 86, 97 (1903); Harisiades v. Shaughnessy, 342 U.S. 580, 596–97 (1952) (Frankfurter, J., concurring); Wong Wing v. United States, 163 U.S. 228, 237 (1896).

121. Kerry Abrams, *Plenary Power Preemption*, 99 VA. L. REV. 601, 616 (2013) (citing STEPHEN H. LEGOMSKY, IMMIGRATION AND THE JUDICIARY: LAW AND POLITICS IN BRITAIN AND AMERICA 178 (1987).

122. Maureen Callahan VanderMay, *The Misunderstood Origins of the Plenary Power Doctrine*, 35 WILLAMETTE L. REV. 147, 150 (1999).

Returning to *Ping*, the fact that the appellant was outside the United States was a significant factor for both Congress and the Supreme Court's decision.[123] If Chae Chan Ping had not left the United States, immigration would have allowed him to stay, so the action of him leaving the country's borders deemed him *outside* and triggered the ban on his reentry.[124] The author of the majority opinion, Justice Field, was later faced with a similar issue in *Fong Yue Ting v. United States*. In that case, Justice Field considered deportation to be a cruel and unusual punishment, a sharp turn from his harsh decision in *Ping*.[125]

Justice Field came back as a dissenter in *Fong Yue Ting v. United States* and acknowledged the power of Congress to set conditions on residence.[126] However, he held deportation to a stricter standard, arguing that it was a cruel and unusual punishment that was worthy of due process.[127]

Ping created Congress's plenary power doctrine over immigration, which we still recognize today.[128] This broad power has legally justified almost any action in response to immigration issues because "[i]n an undeviating line of cases spanning almost one hundred years, the Court has declared itself powerless to review even those immigration provisions that explicitly classify on such disfavored bases as race, gender, and legitimacy."[129] The large amount of power the government possesses in the sphere of immigration is important when considering viable solutions for the issue of CPB agents coercing LPRs into signing the Form I-407.[130]

C. Rosenberg[131] *and INA §101(a)(13)(C)*

Rosenberg provides a helpful illustration of a case attempting to define "admission" in terms of immigration law.[132] Congress reacted to this case by amending the Immigration and Nationality Act ("INA") to reflect a definition of "admission" different from that used in the case.[133] These materials clarify the difference between a departure and an admission: admission turns upon a lawful entry to the United States.[134]

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123. Chae Chan Ping v. United States, 130 U.S. 581, 582 (1889).

124. *Id.*

125. Fong Yue Ting v. United States, 149 U.S. 698, 756 (1893) (Field, J., dissenting).

126. *Id.*

127. *Id.* at 759.

128. *Chae Chan Ping*, 130 U.S. at 603.

129. Stephen H. Legomsky, *Immigration Law and the Principle of Plenary Congressional Power*, IMMIGR. & NAT'LITY L. REV. 81, 81 (1986).

130. *Id.* at 255.

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

132. *Id.*

133. *Infra* Section III.B.

134. *See generally* 8 U.S.C.A. § 1225(a)(1) (2009) (claiming that immigration deems non-citizens applicants for admission when they arrive at a port of entry to the United States and when they are present in the United States but have yet to be lawfully admitted).

Rosenberg is a case in which CBP agents admitted a Swiss national to the United States as a permanent resident, where he continuously resided except for a couple hours' visit to Ensenada, Mexico.[135] The Court decided "that one does not really intend to leave the country unless he plans a long trip, or his journey is for an illegal purpose, or he needs travel documents in order to make the trip."[136]

The INA section at issue in *Rosenberg* stated a lawful permanent resident "shall not be regarded as making an entry . . . if the alien proves . . . that his departure . . . was not intended or reasonably to be expected by him."[137] A resident alien's casual and brief departure outside the United States borders cannot show that the LPR "intended" it as a departure disruptive of the resident alien status.[138] To hold so would be inconsistent with the disputed INA provision, according to the *Rosenberg* court.[139] The Supreme Court thus held that a casual and brief departure does not subject an LPR to the consequences of an "entry" upon returning to the country.[140]

Later, Congress reacted to *Rosenberg* by amending the Immigration and Nationality Act to define "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigrant officer."[141] Commentators allege this INA provision superseded *Rosenberg* and, as a result of the Act, LPRs returning from a trip abroad are now regarded by border officials as seeking admission if they have been absent from the United States for a continuous period amounting to more than 180 days.[142] This is more clear-cut than Justice Goldberg's opinion in *Rosenberg*, which created a standard of intent to leave the country only under certain scenarios, such as planning a long trip or journeying for illegal purposes.[143]

On the other hand, *Rosenberg* was positive for immigrants in that the doctrine allowed permanent residents to avoid border officials regarding the LPRs as making an entry to the United States if they were simply returning from a casual and innocent trip out of the country.[144] Mr. Fleuti, a LPR from Sweden, had traveled to Mexico for four hours and border officials deemed him "excludable" when he returned.[145] The court eventually held if a person's intent when departing were merely to make a brief and casual excursion outside of the United States, there would be no legal basis to subject the LPR to the legal

135. 374 U.S. at 450.
136. *Id.* at 468.
137. *Id.* at 452.
138. *Id.*
139. *Id.*
140. *Id.* at 468.
141. 8 U.S.C.A. § 1101 (2014).
142. AILA InfoNet Doc. No. 07092671 1–2 (Sept. 26, 2007); 8 U.S.C.A. § 1101 (2014).
143. 374 U.S. at 468.
144. *Id.* at 461.
145. *Id.* at 450.

consequence of an "entry."[146]

Many people have favored *Rosenberg* for other reasons, such as allowing LPRs with criminal convictions to travel without worry.[147] The Supreme Court revisited *Rosenberg* in *Vartelas v. Holder* in 2012.[148] Prior to 1996, LPRs with criminal convictions who traveled abroad did not face inadmissibility upon return as long as their trip was brief, casual, and innocent.[149] The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), however, caused the Board of Immigration Appeals to determine that the new law eliminated this exception for LPRs who had previously committed a crime meriting inadmissibility.[150] The Supreme Court held in *Vartelas v. Holder* that the doctrine still applies to LPRs with pre-IIRIRA convictions that travel out of the United States.[151] This highlights another positive accomplishment of *Rosenberg*.[152]

According to the INA, CBP agents should not question the status of any permanent resident who is returning to the United States to seek admission unless he or she has been out of the country for more than 180 days.[153] Even if the LPR was absent from the United States for less time, officials should not consider him to have abandoned his status without a determination by an immigration judge.[154]

The incidents of CBP agents coercing LPRs into signing the Form I-407 is even more egregious of an error in light of the foregoing.[155] CBP agents coercing LPRs who had not been outside of the country for over six months to sign the Form I-407 is a clear disregard for the presumption of seeking admission only upon spending more than 180 days outside of the United States.[156] Even if an immigrant was outside of the United States for over 180 days, only an immigration judge can make the determination that an LPR has abandoned permanent resident status.[157]

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146. *Id.* at 461.

147. Vartelas v. Holder: *Implications for LPRs Who Take Brief Trips Abroad and Other Potential Favorable Impacts*, AM. IMM. COUNCIL (Apr. 5, 2012), https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/vartelas_practice_advisory_fin.pdf (on file with *The University of the Pacific Law Review*).

148. Vartelas v. Holder, 566 U.S. 257, 261–62 (2012).

149. *Id.* at 262.

150. Vartelas v. Holder: *Implications for LPRs Who Take Brief Trips Abroad and Other Potential Favorable Impacts*, *supra* note 147.

151. *Id.*

152. Rosenberg v. Fleuti, 374 U.S. 449, 468 (1963).

153. 8 U.S.C.A. § 1101 (2014).

154. Guilfoyle, *supra* note 29.

155. *Instructions for Record of Abandonment of Lawful Permanent Resident Status*, *supra* note 4.

156. 8 U.S.C.A. § 1101 (2014).

157. FORM I-407, *supra* note 18.

D. Why CBP Agents' Statements Following Executive Order Were Misrepresentations.

As detailed above, only an immigration judge can make a finding of abandonment.[158] However, following the Executive Order, CBP agents coerced the Aziz brothers and many other victims to abandon their status in order to gain entry to the United States.[159] The CBP agents do not have the final say about whether an individual has shown sufficient voluntariness to have successfully abandoned his legal permanent resident status.[160] The law as it stands today allows LPRs of the United States to travel freely, but after 180 days away from the United States a presumption of abandonment of LPR status arises.[161] However, even if there is a presumption of abandonment due to 180 days away from the United States as a permanent resident, an immigration judge is the only one authorized to make the final determination about whether an individual has abandoned their status.[162]

In an ideal situation, CBP agents would advise LPRs that only an immigration judge can make a finding of abandonment and prove deportability from the United States by "clear, unequivocal, and convincing evidence."[163] The Form I-407 states that using the Form ensures that an individual is aware of their right to have appointed counsel, to challenge any evidence the DHS may present, to present evidence in favor of the alien, and the right to appeal any decision with which the alien disagrees.[164]

In immigration law, an individual at a United States border is excludable if the alien has accrued over 180 days of unlawful presence and later seeks admission.[165] During the mayhem following the Executive Order, it is likely CBP agents assumed that the permanent residents were inadmissible because they had spent too much time outside the United States.[166] The agents likely coerced them into signing the Form I-407 because the requirements for entry as a permanent resident are stricter than for a tourist.[167] As such, applying for a tourist visa might result in prompt entry to the United States whereas entering as an LPR would

158. Guilfoyle, *supra* note 29.

159. Laughland & Walters, *supra* note 1.

160. Guilfoyle, *supra* note 29.

161. *International Travel as a Permanent Resident*, USCIS (Jan. 11, 2018), https://www.uscis.gov/green-card/after-green-card-granted/international-travel-permanent-resident (on file with *The University of the Pacific Law Review*); 8 U.S.C.A. § 1101 (2014).

162. *Instructions for Record of Abandonment of Lawful Permanent Resident Status*, *supra* note 4.

163. *Id.*

164. *Id.*

165. 8 U.S.C.A. § 1182(A)(9)(B)(i)(1) (2009).

166. *See* Laughland & Walters, *supra* note 1 (illustrating the sense of havoc following the executive order).

167. *Id.*; 8 U.S.C.A. § 1182(A)(9)(B)(i)(1) (2009).

require a longer wait.[168]

The USCIS website states that although LPRs can travel in and out of the United States freely, a permanent resident risks border officials considering him to have abandoned his status if the officials conclude that he did not intend to make the United States his permanent residence.[169] If immigration officials immediately put an alien into deportation proceedings upon arrival to the United States, the alien becomes inadmissible for at least five years from the date of removal and CBP will bar their entry to the United States during this time.[170] The agents likely had this inadmissibility consequence in mind when telling permanent residents they would be unable to travel to the United States for five years unless they abandoned status.[171] However, because only an immigration judge has the power to make the final determination about whether an individual has voluntarily abandoned their immigration status, this statement was inaccurate.[172] Because an immigration judge did not determine that the immigrant had successfully abandoned LPR status in the cases that media reported following the Executive Order, CBP agents very likely erred in telling green card holders that they would be subject to a five-year bar if they failed to sign the Form I-407.[173]

In conclusion, the CBP agents' coercive behavior regarding the Form I-407 in the various cases following the Executive Order was illegal and the information prompting the agents' behavior was misleading.[174]

IV. PROPOSAL: I-407 NEEDS A HIGHER SHOWING OF *VOLUNTARY* REQUIREMENT

Currently, the only failsafe against inappropriate "voluntary" findings for a Form I-407 lies in the interview process.[175] Subsection A will first discuss issues with this interview system.[176] Subsection B will present this Comment's ultimate proposal, that Congress should require a higher showing of the voluntary

168. *See How to Enter the US*, USA.GOV (last updated Aug. 23, 2019), https://www.usa.gov/enter-us (on file with *The University of the Pacific Law Review*) (stating that tourists need a passport whereas legal permanent residents may need more to enter the United States).

169. *International Travel as a Permanent Resident*, *supra* note 161.

170. Alison Siskin, *Alien Removals and Returns: Overview and Trends*, CONG. RES. SERV. 1, 5 (Feb. 3, 2015), https://fas.org/sgp/crs/homesec/R43892.pdf (on file with *The University of the Pacific Law Review*).

171. Bertrand, *supra* note 7.

172. Guilfoyle, *supra* note 29.

173. Guilfoyle, *supra* note 29.

174. *International Travel as a Permanent Resident*, *supra* note 161.

175. *Unclassified 15 State 32978*, 2 (Mar. 26, 2015), *available at* https://travel.state.gov/content/dam/visas/policy_updates/Worldwide%20Deployment%20of%20New%20USCIS%20Form%20I-407,%20Record%20of%20Abandonment%20of%20Lawful%20Permanent%20Resident%20Status.pdf (on file with *The University of the Pacific Law Review*).

176. *Infra* Section IV.A.

requirement for Form I-407s signed at a port of entry.[177] Finally, Subsection C will discuss a judicial efficiency counterargument against imposing such a high burden on CBP agents.[178]

A. Issues with the Form I-407 Interview System

Current law only requires a consular officer to conduct an interview to determine voluntariness if there is an indication of involuntary abandonment on the statement on the actual Form I-407, or in any statement made to the consular staff who accepts the form at the intake window.[179] If there is an indication of involuntary abandonment, the consular officer must interview the individual to confirm his or her identity, ensure the abandonment is voluntary and that the individual understands the associated consequences.[180] The practice manual describes this interview as a one-on-one personal encounter with a CBP agent and an individual possibly relinquishing their permanent resident status.[181] These encounters occurred following the Executive Order and left some CBP agents speaking with green card holders to attempt to coerce them into abandoning their status.[182]

In numerous cases following the Executive Order, CBP agents engaged LPRs in the same type of interview prescribed in their practice manual.[183] However, CBP agents made misrepresentations to LPRs by claiming that the law would subject them to a five-year bar to the United States in the days following the Executive Order.[184] In light of these misrepresentations, it is dangerous to assume that an interview at the airport is ever a sufficient means of preventing an individual from involuntarily abandoning their permanent resident status by way of Form I-407.[185]

If a CBP agent had enough power in an interview to coerce the Aziz brothers to leave the United States through misrepresentations, it seems similarly probable that a CBP agent could do the same during any Form I-407 interview.[186] This

177. *Infra* Section IV.B.

178. *Infra* Section IV.C.

179. *Unclassified 15 State 32978*, *supra* note 175.

180. *Id.*

181. *See* Laughland & Walters, *supra* note 1 (describing the coercion of the Yemeni Aziz brothers upon entry with a green card to the United States).

182. *See id.* (describing the coercion of the Yemeni Aziz brothers upon entry with a green card to the United States).

183. *Unclassified 15 State 32978*, *supra* note 175.

184. Bertrand, *supra* note 7.

185. *See id.* (stating that the agents "lied to immigrants arriving after the executive order was signed, falsely telling them that if they did not sign a relinquishment of their legal rights, they would be formally ordered removed from the United States, which would bring legal consequences including a five-year bar for reentry to the United States").

186. Laughland & Walters, *supra* note 1.

brings into question the interview's viability in preventing involuntary abandonments of LPR status.[187] Interviews at the border are notoriously unfair because aliens do not have an inherent right to counsel, voyagers feel fatigued from travel, and there is an inherent power struggle between an individual requesting entrance to a country and the CBP agent controlling who enters.[188]

One difference between these scenarios is the Executive Order confused many CBP agents, which could have contributed to the offending interviews.[189] This could be a counterargument for the idea that the interview system has flaws because in normal circumstances one could argue that without the confusion created by the Executive Order, CBP agents would never have coerced these individuals.[190] However, part of a CBP agent's job description is to know the contents of CBP manuals in order to secure America's borders, so it does not seem unreasonable to require agents to not only know the law but to represent it correctly to individuals appearing for admission to the United States.[191]

Based on the foregoing, it is clear that the interview system is not the ideal way to deduce voluntariness.[192]

B. Proposal

In order to prevent the improper exercise of power by CBP agents, there needs to be an overhaul of the current Form I-407 interview process in order to safeguard the voluntary nature of the system.[193] The above discussion has shown CBP possesses internal manuals with rules for dealing with the Form I-407 in ways that seek to prohibit coercion and ensure voluntariness.[194] The fact that CBP educates its agents on ways to ensure voluntariness proves that CBP's goal in utilizing Form I-407 is to ensure that CBP authorizes only *voluntary* abandonments.[195] Any Form I-407 an LPR signs at a port of entry should be presumptively coercive to keep sight of this goal while battling with the coercive nature of the border interview at a port of entry and the cases of coercion

187. *See id.* (describing the coercion of the Yemeni Aziz brothers upon entry with a green card to the United States).

188. Emily Creighton & Robert Pauw, 32nd Annual Immigration Law Update South Beach, AM. IMM. LAWYERS ASSN. 1, 2 (2011), https://www.americanimmigrationcouncil.org/sites/default/files/right-to-counsel-before-dhs.pdf (on file with *The University of the Pacific Law Review*).

189. Bertrand, *supra* note 7.

190. *See generally President Trump's Executive Order Causes Mayhem: What Does the Ban Mean to You?*, MONA SHAH & ASSOCS. GLOBAL (Feb. 1, 2017, 12:36), http://mshahlaw.com/president-trumps-executive-order-causes-mayhem-ban-mean/ (on file with *The University of the Pacific Law Review*) (describing the sense of pandemonium caused by the Trump executive order).

191. *About CBP*, U.S. CUSTOMS & BORDER PROT. (Nov. 21, 2016), https://www.cbp.gov/about (on file with *The University of the Pacific Law Review*).

192. *Supra* Section V.A.

193. *Supra* Section V.A.

194. *Unclassified 15 State 32978*, *supra* note 175.

195. *Id.*

following the Executive Order.[196] Presuming coercion would shift the burden of proof to the CBP to rebut the presumption of coercion by "clear, unequivocal, and convincing evidence" that the Form I-407 was in fact voluntary and not coerced.[197] If an immigration judge presumed that Form I-407s were automatically coercive, it would eliminate the port of entry coercion issue that hundreds of LPRs faced following the Executive Order.[198]

Current CBP procedure risks LPRs who did not actually want to abandon their status nonetheless slipping through the cracks due to careless or ignorant CBP agents.[199] Creating a presumption of involuntariness for any Form I-407 that an LPR signs at a port of entry would motivate the CBP to ensure it meets the purpose of the Form I-407–*voluntary* abandonments of LPR status.[200]

This Comment proposes when an LPR signs a Form I-407 at a port of entry, there should automatically be a presumption of involuntariness.[201] Presuming involuntary signing by an LPR would lessen the risk of immigration officials penalizing someone for involuntarily signing the form in cases of coercion, which is unlawful since only immigration judges can make a determination of abandonment.[202]

C. Proposal's Potential Effects on Judicial Efficiency

Judicial efficiency is a possible concern with the proposal to place the burden on border patrol to prove a person's abandonment of LPR status was indeed voluntary.[203] Immigration courts today are notoriously backlogged.[204] A recent report from the Transactional Records Access Clearinghouse ("TRAC") at Syracuse University unveiled that there are over eight hundred thousand cases pending on the court's docket as of November 30, 2018.[205] The average

196. *Supra* Section V.A.

197. *See* Ward v. Holder, 733 F.3d 601 (6th Cir. 2013) (holding that the government must establish abandonment by "clear, unequivocal, and convincing evidence").

198. *Supra* Part I.

199. *Unclassified 15 State 32978*, *supra* note 175.

200. *Id*.

201. *Supra* Part V.

202. *Unclassified 15 State 32978*, *supra* note 175.

203. *See* Andrew R. Arthur, *Strengthening and Reforming America's Immigration Court System*, CTR. IMM. STUDIES (Apr. 18, 2018), https://cis.org/Testimony/Strengthening-and-Reforming-Americas-Immigration-Court-System (on file with *The University of the Pacific Law Review*) (outlining ways to increase efficiency in immigration courts).

204. *Empty Benches, Underfunding of Immigration Courts Undermines Justice*, AM. IMM. COUNCIL, 1 (May 2015), https://www.americanimmigrationcouncil.org/sites/default/files/research/empty_benches_underfunding_of_immigration_courts_undermines_justice.pdf (on file with *The University of the Pacific Law Review*) (discussing the link between increase of immigration enforcement recourses and the increase in immigration backlogs).

205. *Growth in the Immigration Court Backlog Continues in FY 2019*, TRAC IMM. (Dec. 18, 2018), https://trac.syr.edu/immigration/reports/542/ (on file with *The University of the Pacific Law Review*).

immigrant in the United States generally waits 726 days before an immigration judge hears their case.[206]

With such an extensive backlog in immigration courts, some may argue that the law should strive to preserve efficiency in the courts over requiring the CBP agent to carry the burden of showing that an LPR voluntarily abandoned his status through a Form I-407.[207] Already, pro-immigration groups voiced displeasure when the DOJ ignored recommendations in a 2017 report to strengthen immigration court system efficiency and effectiveness.[208] American Immigration Lawyers Association ("AILA") Executive Director Benjamin Johnson stated: "The Trump administration seems to have ignored or countermanded every recommendation in this 2017 report, to the detriment of due process and equal rights under law."[209]

By putting the burden on the government to establish that an LPR who signed a Form I-407 at a port of entry did so voluntarily, the government will need to present additional evidence to establish a new element.[210] More evidence requires more time, so naturally this would result in an increase in time of an adjudication of a Form I-407, which may add to the immigration court backlog crisis.[211]

Although judicial efficiency is important, most pro-immigrant groups favor a fair and accurate adjudication of an immigrant's case.[212] Further, this Comment's proposal would erect a safeguard to prevent CBP agents from coercing abandonment—requiring the government to establish that the LPR's abandonment was voluntary.[213] With such a safeguard, the immigration officer will be more likely to explain thoroughly the implications of abandoning one's LPR status to the immigrant to prevent the possibility of having to go to the trouble of gathering evidence establishing that the LPR had the requisite voluntary intent.[214]

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206. Immigration Court Backlog Tool, TRAC IMM. https://trac.syr.edu/phptools/immigration/court_backlog/ (last visited July 16, 2019) (on file with *The University of the Pacific Law Review*).

207. *See* Arthur, *supra* note 203 (outlining ways to increase efficiency in immigration courts).

208. *DOJ Ignores Set of Recommendations to Strengthen Immigration Court System Efficiency and Effectiveness*, AM. IMMIGR. LAW. ASS'N (Apr. 23, 2018), https://www.aila.org/infonet/doj-ignores-recommendations-imm-court-system (on file with *The University of the Pacific Law Review*).

209. *Id.*

210. In addition, the government would need to authenticate the evidence per FED. R. EVID. 901.

211. *See* Immigration Court Backlog Tool, *supra* note 206 (featuring up-to-date statistics on immigration court backlogs).

212. *See Mission and Goals*, AM. IMMIGR. LAW. ASS'N , https://www.aila.org/about/mission (on file with *The University of the Pacific Law Review*) ("The American Immigration Lawyers Association is the national association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members.").

213. *See* INSPECTOR'S FIELD MANUAL, *supra* note 62 ("The inspecting officer must never coax or coerce an alien to surrender his or her alien registration document in lieu of a removal hearing."); *Infra* Section IV.B.

214. *Infra* Section IV.B.

In addition, this practice is already featured in a Border Patrol practice manual.[215] Accordingly, CBP agents should already be taking precautions to ensure that an LPR is voluntarily abandoning his status.[216] The practice manual instructs agents that an LPR's signature on a Form I-407 serves as an acknowledgement that the action is strictly voluntary, adding that agents may never coax or coerce an LPR to sign the form "in lieu of a removal hearing."[217] Existing expectations in the manual undercut the argument that the heightened burden will negatively affect border patrol, as these precautions already exist in border patrol practices.[218]

V. CONCLUSION

LPRs are some of the select few individuals who possess a green card, which is a special feat in a political climate in which denials for all immigration benefits have increased 37% in two years.[219] The law entitles LPRs to keep their status unless immigration revokes it or the LPR voluntarily abandons it.[220] Because immigrants have historically been under fire in the United States, it is important to ensure that those individuals who do choose to voluntarily abandon their status through the use of a Form I-407 do so on their own accord and understand the consequences of their action.[221]

For these reasons, this Comment proposes that an immigration judge presumes that any Form I-407 signed by an LPR at a port of entry features coercion, placing the burden of proof on the government to rebut the presumed coercive nature of the abandonment via the Form I-407.[222] If the government was legally responsible for establishing that a LPR had voluntarily abandoned his or her status, the threat of liability would likely cause CBP to hold immigration officials to stricter standards by ensuring that a LPR at a port of entry is truly aiming to abandon their status, and not merely confused like the Aziz brothers had been.[223] Increased accountability on the government would force the officials

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. David Bier, *Immigration Application Denial Rates Jump 37% Under Trump*, CATO INST. (Nov. 15, 2018, 5:45 AM), https://www.cato.org/blog/immigration-application-denials-jump-37-percent-under-trump (on file with *The University of the Pacific Law Review*).

220. *Maintaining Permanent Residence*, USCIS (Feb. 17, 2016), https://www.uscis.gov/green-card/after-green-card-granted/maintaining-permanent-residence (on file with *The University of the Pacific Law Review*).

221. Angelica Quintero, *America's Love-Hate Relationship with Immigrants*, L.A. TIMES (Jan. 13, 2018), http://www.latimes.com/projects/la-na-immigration-trends/ (on file with *The University of the Pacific Law Review*).

222. *Supra* Part V.

223. Laughland & Walters, *supra* note 1.

to play by the rules already inscribed in their practice manuals.[224] This proposal would prevent coercive immigrant-officer encounters at ports of entry like the Aziz brothers found themselves in, and create a more equitable and just environment at our country's ports.[225]

224. INSPECTOR'S FIELD MANUAL, *supra* note 62.

225. Laughland & Walters, *supra* note 1.