

Case Caption

1a

APPENDIX

SUPREME COURT OF THE UNITED STATES
October Term, 1970

No. 727

WILLIAM P. SAILER, et al.,
Appellants

v.

ELSIE MARY JANE LEGER and BERYL JERVIS,
Appellees

*Appeal from the United States District Court for the
Eastern District of Pennsylvania*

Filed September 21, 1970

Probable Jurisdiction Noted December 14, 1970

IN THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DIS-
TRICT OF PENNSYLVANIA

Civil Action No. 69-2869

Elsie Mary Jane Leger, 716 North Broad Street, Phila-
delphia, Pennsylvania on behalf of herself and all
others similarly situated,

Plaintiffs

v.

William P. Sailer, individually and as the Executive
Director of the Philadelphia County Board of Assist-
ance, 1400 Spring Garden Street Philadelphia, Penn-
sylvania, Stanley A. Miller, Secretary of the Depart-
ment of Public Welfare of the Commonwealth of
Pennsylvania Health and Welfare Building Harris-
burgh, Pennsylvania,

Defendants

I.

CIVIL DOCKET
UNITED STATES DISTRICT COURT

Attorneys:

For plaintiff: Jonathan M. Stein, Barry S. Kohn, 313
So. Juniper Street 19107.

For defendant: William C. Sennett, Attorney General,
Joseph P. Work, De. Atty. General, State Capitol,
Harrisburg, Pa.

Date, 1969

Dec. 9, Plff's. application to proceed in forma pauperis and Order granting same, without prepayment of any fees, costs or security thereof, filed.
HKW

Dec. 9, Complaint filed.

Dec. 9, Summons exit.

Dec. 9, Motion and Order granting temporary restraining Order that defts. are restrained from denying General Assistance to plff. solely because she is not a citizen of the U. S., filed.
HKW.

Dec. 9, Plff's. memorandum in support of motion for temporary restraining order, filed.

Dec. 29, Answer filed.

Dec. 29, Case listed for trial.

1970

Jan. 13, Order, Wood, J., continuing hearing of 1/15/70 to a date to be fixed by the Court subsequent to 2/16/70, filed. HKW. Entered and copies mailed 1/13/70.

Jan. 30, Order that application to refer this case to a three-judge court will be heard on 3/3/70 at 10:00 a.m., filed. HKW. Entered and copies mailed 1/31/70.

- Mar. 3, Argument sur: Plff's. motion for three-judge court and for a class action. HKW.
- Mar. 6, Plff's. motion for leave to amend complaint to add a party and for a temporary restraining order, filed.
- Mar. 10, Motion to amend complaint and notice of same, filed.
- Mar. 12, Order, designating Arlin M. Adams, C.J.; C. William Kraft, D.J.; and Harold K. Wood, D.J.; as members of three-judge court, filed. Entered and copies mailed 3/13/70. Hastie.
- Mar. 13, Memorandum and Order that motion for temporary restraining order directing the Commonwealth of Pa. to pay welfare to Beryl Jervis is denied without prejudice, filed. HKW. Entered 3/16/70, copies mailed 3/13/70.
- Mar. 13, Plff's. motion for determination of class action, and memorandum in support of same, filed.
- Mar. 13, Plff's. motion to amend complaint and notice of same, filed.
- Mar. 16, Plff's. memorandum of law for convening three-judge court, filed.
- Mar. 16, Order fixing hearing before three-judge court on 4/6/70 at 10:00 a.m., filed. Entered and notice mailed 3/17/70. HKW.
- Mar. 18, Transcript of 3/3/70, filed.
- Mar. 23, Summons returned "on 1/13/70 as to Stanley A. Miller" and "on 3/17/70 as to Wm. P. Sailer" served and filed.

- Mar. 31, Stipulation as to certain facts, filed.
- Mar. 31, Memorandum of law in support of plff's. motion for declaratory judgment and preliminary and final injunction, filed.
- Apr. 2, Memorandum of law in opposition to plff's motion for declaratory judgment and preliminary and final injunction, filed. Adams, C.J., HKW.
- Apr. 6, Hearing sur: Preliminary and Final Injunction—CAV.
- Apr. 16, Supplemental stipulation as to certain facts, filed.
- Apr. 16, Suppl. memorandum of law in support of plff's. motion for declaratory and preliminary and final injunction, filed.
- Apr. 21, Transcript of 4/6/70, filed.
- Jul. 13, Opinion and Order, Adams, C. J. and Kraft, D. J., that defts. are enjoined from enforcing that portion of the Penna. Statute which denies general assistance to persons because of alienage, with Dissenting Opinion by Wood, J., filed. Entered and notice mailed 7/13/70.
- Aug. 6, Notice of appeal to the Supreme Court of the United States by W. P. Sailer, et al., and certificate of service, filed.
- Sep. 28, Record transmitted to U. S. Supreme Court.

II.
COMPLAINT

(For declaratory judgment and to enjoin preliminarily and permanently the denial of General Assistance to plaintiffs the United States, in derogation of their rights under the laws and the Constitution of the United States.)

1. The jurisdiction of this Court is invoked under Title 28, U.S.C. Sec. 1343 (3) and (4), 42 U.S.C. Sec. 1983, U.S.C. Secs. 2281, 2284 and 28 U.S.C. Secs. 2201, 2202, this being an action for declaratory judgment and preliminary and permanent injunction to redress the deprivation under color of state law of rights, privileges and immunities secured to plaintiffs by the laws and the Constitution of the United States.

2. Plaintiffs are:

(a) Elsie Jane Leger, an alien continuously residing in the United States for four and half years, presently residing at 716 North Broad Street, Philadelphia, Pennsylvania;

(b) All other residents of the Commonwealth of Pennsylvania, who are subject by the laws and policies complained of herein to denial of General Assistance, regardless of need therefor, solely because they are not citizens of the United States.

3. Named plaintiff will fairly and adequately represent the interests of the class of Pennsylvania residents described in Paragraph 2(b) above, on whose behalf she sues; the persons constituting said class are so numerous as to make it impractical to join them all before this Court; the claims of named plaintiff are typical of the claims of said class; and there are herein questions of law and fact common to said class. Named plaintiff has requested relief for said class and will prosecute this action with a vigor commensurate with its importance to all members of said class.

4. Defendants are:

(a) William P. Sailer, Executive Director of the Philadelphia County Board of Assistance and a resident of the Commonwealth of Pennsylvania and a resident thereof.

(b) Stanley A. Miller, Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania and a resident thereof.

The foregoing public officers are charged under the Public Welfare Code of the Commonwealth of Pennsylvania with the enforcement, operation and execution of the provisions thereof. The County Board of Assistance Executive Director is particularly charged with the administration of public assistance and determination of the eligibility of persons receiving assistance in accordance with said law. The Public Welfare Code of the Commonwealth of Pennsylvania, a codification of public assistance laws

adopted since June 24, 1937, was enacted on June 13, 1967, P. L. , 62 Purd. Stat. Secs. 401 et seq. The provisions of the Public Welfare Code here at issue are attached hereto as Exhibit "A".

5. The Public Welfare Code, Sec. 432, 62 Purd. Stat. Sec. 432, provides that public assistance shall be granted to needy persons for whose assistance federal financial contributions are available, i.e., those persons eligible for "old-age assistance", "aid to the blind", "aid to families with dependent children", "aid to the permanently and totally disabled", and to other needy persons not so eligible but who are citizens of the United States. The latter category of public assistance is called "General Assistance".

6. Plaintiff Leger was born in Alford, Scotland on March 7, 1937.

7. On May 17, 1965 at the age of twenty-eight, plaintiff came to the United States to undertake domestic work under contract with a family in Haver-town, Pennsylvania. Plaintiff has resided continuously in Pennsylvania since 1965 and has been a tax-paying resident of Pennsylvania for the past Four (4) years.

8. Plaintiff's father and mother are both citizens and residents of Scotland.

9. Plaintiff Leger worked as a domestic in Haver-town at Twenty-Five (\$25.00) Dollars per week until 1967 during which year she left her employment to obtain a higher paying job at Sixty (\$60.00) Dollars

per week with Physicians Clinical Laboratory in Philadelphia.

10. During this period plaintiff entered into a common law marriage with one, Alex J. Leger, who was employed at the time at The Toddle House at wages of One Hundred (\$100.00) Dollars per week, but who was forced to give up such employment in March 1969 due to a hiatal hernia and a serious gastro-intestinal condition.

11. Plaintiff was forced to give up her employment in September 1969 because of severe chest pains for which she was and is being treated at St. Joseph's Hospital Clinic. Plaintiff had no history of this ailment prior to September 1969.

12. Faced with the threat of eviction in September 1969 plaintiff and Mr. Leger were compelled to leave their apartment and slept overnight for two (2) nights at the Trailway Terminal in Philadelphia.

13. Soon thereafter, on or about October 3, 1969 plaintiff and Mr. Leger applied for public assistance from the Girard District of the Philadelphia County Board of Assistance.

14. Mr. Leger was granted assistance of One Hundred and Twenty-One (\$121.00) Dollars monthly for himself, and plaintiff was denied any assistance on the grounds that she was not a citizen. Thus plaintiff and Mr. Leger must attempt to subsist on a total income of One Hundred and Twenty-One (\$121.00) Dollars per month, ninety (90%) percent of the amount determined necessary by the Department of Public Welfare of the Commonwealth of

Pennsylvania, in 1957, to sustain the life of one (1) person at a minimum standard of health and decency.

15. Plaintiff and Mr. Leger's total current income of One Hundred and Twenty-One (\$121.00) Dollars per month from public assistance falls Sixty-Three (\$63.00) Dollars per month below the amount, One Hundred and Eighty-Four (\$184.00) Dollars per month, determined necessary by the Department of Public Welfare, in 1957, to sustain a family of two (2) at ninety (90%) percent of a minimum standard of health and decency. Such sum of One Hundred and Eighty-Four (\$184.00) Dollars monthly is itself, according to the United States Department of Labor, Bureau of Labor Statistics, only sixty (60%) percent of what a family of two (2) requires for a minimal standard of living in Philadelphia.

16. Plaintiff continues to suffer from severe chest pains has had a weight loss of seventeen (17) pounds in the past few months. She is continuing to lose weight.

17. It is medically necessary for plaintiff to have a nutritious diet and for Mr. Leger to have a special, costly high protein diet for his gastro-intestinal condition.

18. Plaintiff and Mr. Leger have not had sufficient funds to purchase a minimal diet even after selling their belongings in order to get money to purchase food. They have not had a complete meal for any day in the past week.

19. Plaintiff is overdue by at least a week's rent and will soon face eviction from the landlord.

20. Plaintiff and Mr. Leger do not have access to most of their clothing and personal belongings which remains in a Trailways Bus Terminal locker. Plaintiff and Mr. Leger do not have the Fifteen (\$15.00) Dollars to pay the storage charges to retrieve their belongings.

21. Plaintiff is suffering and will suffer immediate and irreparable injury because General Assistance has been wrongfully denied. Monetary damages are inadequate and accordingly, injunctive relief is necessary.

22. The Public Welfare Code of the Commonwealth of Pennsylvania Sec. 432(2), 62 Purd. Stat. Sec. 432(2), requiring as a condition of eligibility for general assistance that plaintiff be a citizen of the United States, is contrary to the laws and constitution of the United States in that:

(a) said requirement imposes upon the residence of aliens lawfully within the United States, discriminatory burdens beyond those contemplated by the laws of the United States regulating immigration and naturalization, in violation of the Supremacy Clause, Article VI of the United States Constitution;

(b) said requirement denies to plaintiff and other needy residents of Pennsylvania who are not citizens of the United States the equal protection of the laws in violation of the Fourteenth Amendment of the United States Constitution;

(c) said requirement denies plaintiff and other needy residents of Pennsylvania who are not citizens of the United States due process of the law by arbitrarily and unreasonably withholding assistance from

them in violation of the Fourteenth Amendment of the United States Constitution; and

(d) said requirement denies plaintiff and other needy residents of Pennsylvania who are not citizens of the United States the rights of freedom of association and of travel in violation of the First and Fourteenth Amendments of the United States Constitution.

Wherefore, plaintiff respectfully pray that:

1. That a three-judge court be convened as required by Title 28, U.S.C. Secs. 2281 and 2284;
2. The Court declare the Public Welfare Code of the Commonwealth of Pennsylvania, Sec. 432(2) 62 Purd. Stat. Sec. 432 (2), and any enforcement thereof unconstitutional;
3. The Court preliminarily enjoin and, after full hearing, permanently enjoin defendants from enforcing the Public Welfare Code of the Commonwealth of Pennsylvania, Sec. 432(2), Purd. Stat. Sec. 432 (2);
4. The Court order back payments to plaintiff in the amount of assistance wrongfully withheld; and
5. The Court grant such further relief as shall be necessary and proper.

Jonathan M. Stein
Barry S. Kohn
Douglas G. Dye
Harvey N. Schmidt

Attorneys for Plaintiffs

Community Legal Services,
Inc. 313 South Juniper
Street Philadelphia, Pennsyl-
vania 19107

Of Counsel:

Jonathan A. Weiss, Esq.

Exhibit "A"

POOR PERSONS AND PUBLIC ASSISTANCE

62 §432

§426. Employment of credit rating agencies

As need may require each county board may employ the services of commercial credit rating agencies for the purpose of determining eligibility for general assistance.

1967, June 13, P. L. , No. 21, art. 4, §426.

§427. Receipt and expenditure of contributions

Each county board may receive and spend contributions from any source for purposes related to assistance, or to the work of the department.

1967, June 13, P. L. , No. 21, art. 4, §427.

(e) Assistance other than medical assistance for the aged and purchased Hospital and Post Hospital Care

§431. Application.

Except as provided in section 446(1)¹ every person applying for public assistance shall be required to sign a statement setting forth his financial status and such other facts as may be required by the department, in order to determine whether such person is entitled to public assistance, and shall also be required to sign, as part of his written application, his own bond to the Commonwealth without surety, containing a warrant of attorney to confess judgment in

¹ Section 446(1) of this title.

the penal sum of five hundred dollars (\$500), which bond shall be conditioned on the truth and lack of fraud and misrepresentation in any of the statements made by such applicant in his written application. Every such applicant shall make affidavit that the facts set forth in such statement are true and correct. Every person employed in the administration of public assistance shall have power to administer oaths for the purpose of carrying into effect the provisions of this section.

1967, June 13, P. L. , No. 21, art. 4, §431.

§432. Eligibility

Except as hereinafter otherwise provided, and subject to the rules, regulations, and standards established by the department, both as to eligibility for assistance and as to its nature and extent, needy persons of the classes defined in clauses (1) and (2) of this section shall be eligible for assistance:

(1) Persons for whose assistance Federal financial participation is available to the Commonwealth as old-age assistance, aid to the blind, aid to families with dependent children, aid to the permanently and totally disabled, or as other assistance, and which assistance is not precluded by other provisions of law.

(2) Other persons who are citizens of the United States, or who, during the period January 1, 1938 to December 31, 1939, filed their declaration of intention to become citizens.

(3) Assistance other than Federal-State blind pension shall not be granted (i) to or in behalf of any

person who disposed of his real or personal property, of the value of five hundred dollars (\$500), or more without fair consideration, within two years immediately preceding the date of application for assistance; (ii) to an inmate of a public institution; or, (iii) in behalf of an inmate of a public institution, unless he is a patient in a medical institution who is eligible for aid to the permanently and totally disabled.

(4) Federal-State blind pension shall be granted only to or in behalf of any person who (i) is twenty-one years of age or older and meets the requirement as to residence prescribed in clause (6) of this section; (ii) has three-sixtieths or ten-two hundredths, or less, normal vision; (iii) is not an inmate of a public institution (except as a patient in a medical institution), a penal institution, or a hospital for mental disease; . . .

Commonwealth of Pennsylvania
County of Philadelphia, ss:

I, Elsie Mary Jane Leger, being duly sworn according to law, deposes and says that she is the plaintiff in the foregoing pleadings and that the facts set forth therein are true and correct to the best of her knowledge, information and belief.

Elsie Mary Jane Leger

Sworn to and subscribed before me this _____
 day of _____, 1969.

Notary Public

16a

Answer

III.
ANSWER
[Caption Omitted]

First Defense

The complaint fails to state a claim against defendants upon which relief can be granted.

Second Defense

Defendants admit the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 and deny the allegations contained in paragraphs 21 and 22 of the complaint.

Respectfully submitted,

Joseph P. Work

Deputy Attorney General

William C. Sennett

Attorney General

Certificate of Service

I hereby certify that a copy of the foregoing Answer has been furnished by mail to the following on the 29th day of December, 1969.

Jonathan M. Stein, Esquire

Community Legal Services, Inc.

313 South Juniper Street

Philadelphia, Pennsylvania 19107

Barry S. Kohn, Esquire

Community Legal Services, Inc.

313 South Juniper Street

Philadelphia, Pennsylvania 19107

Joseph P. Work

Deputy Attorney General

IV.
STIPULATION
[Caption Omitted]

And now, this day of March, 1970, it is hereby stipulated and agreed by and between counsel for plaintiffs and defendants in the above titled action, as follows:

1. That plaintiffs are:

(a) Elsie Mary Jane Leger, a resident alien, presently residing at 716 North Broad Street, Philadelphia, Pennsylvania;

(b) Beryl Jarvis, a resident alien, presently residing at 1800 Orthodox Street in Philadelphia, Pennsylvania; and

(c) All other residents of the Commonwealth of Pennsylvania who are indigent and otherwise eligible for General Assistance but who are subject to denial of General Assistance solely because they are not citizens of the United States.

2. That the class of persons plaintiffs seek to represent numbers approximately sixty-five (65) to seventy (70) cases annually, according to the average rate of rejection of public assistance applications on grounds of lack of United States citizenship over the past five fiscal years. That such class is so numerous as to make it impractical to join them all before this court.

3. That the named plaintiffs will fairly and adequately represent the interests of the above described class, that the claims of named plaintiffs are typical of the claims of the class, and that there are questions of law and fact common to said class.

4. That defendants are:

(a) William P. Sailer, sued individually and as Executive Director of the Philadelphia County Board of Assistance; and

(b) Stanley A. Miller, sued individually and as Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania.

5. That the defendants are public officers charged under the Pennsylvania Public Welfare Code, 62 Purd. Stat. Section 401, *et seq*, with the enforcement, operation and execution of the public assistance program.

6. That the Public Welfare Code Section 432, 62 Purd. Stat. Section 432, provides that public assistance shall be granted to all needy persons for whose assistance federal financial contributions are available, i.e. those eligible for "old-age assistance" (OAA), "aid to the blind" (AB), "aid to families with dependent children" (AFDC), and "aid to the permanently and totally disabled" (APTD), and that public assistance shall be granted to all other needy persons not so eligible who are citizens of the United States (General Assistance).

7. That pursuant to Section 432 defendants provide public assistance, funded in part by the Com-

monwealth of Pennsylvania, to needy resident aliens eligible under the above listed federally-aided categories, but deny public assistance to needy resident aliens not so eligible.

8. That plaintiff Leger was born in Alford, Scotland on March 7, 1937. Plaintiff's father and mother are both citizens and residents of Scotland.

9. That on May 18, 1965, at the age of twenty-eight, plaintiff came to the United States to undertake domestic work under contract with a family in Havertown, Pennsylvania. Plaintiff has resided continuously in Pennsylvania since 1965 and has been a taxpaying resident of Pennsylvania for the past four (4) years.

10. That plaintiff Leger worked as a domestic in Havertown until 1967, during which year she left her employment to obtain a higher paying job at Physicians Clinical Laboratory in Philadelphia.

11. That during this period plaintiff entered into a common law marriage with one, Alex J. Leger, who was employed at the time but who was forced to give up such employment in March 1969, due to a hiatal hernia and a serious gastro-intestinal condition.

12. That plaintiff was forced to give up her employment in September, 1969, because of severe chest pains for which she was treated at St. Joseph's Hospital Clinic and for which she is now being treated at Pennsylvania Hospital for this condition and also a kidney infection. Plaintiff had no history of this ailment prior to September, 1969.

13. That plaintiff and her husband were faced with the threat of eviction in September, 1969, and were compelled to leave their apartment for nonpayment of rent. They slept overnight for two (2) nights at the Trailways Bus Terminal in Philadelphia.

14. That on or about October 3, 1969, plaintiff and Mr. Leger applied for public assistance from the Girard District of the Philadelphia County Board of Assistance.

15. That Mr. Leger was granted assistance of one hundred and twenty-one (\$121.00) dollars monthly for himself, but plaintiff was denied any assistance on the grounds that she was not a citizen.

16. That plaintiff and Mr. Leger attempted to subsist on a total income of one hundred and twenty-one (\$121.00) dollars per month, ninety (90%) percent of the amount determined necessary by the Department of Public Welfare of the Commonwealth of Pennsylvania, in 1957, to sustain the life of one (1) person at a minimum standard of health and decency.

17. The plaintiff and Mr. Leger's income of one hundred and twenty-one (\$121.00) dollars per month from public assistance fell sixty-three (\$63.00) dollars per month below the amount, one hundred and eighty-four (\$184.00) dollars per month, determined necessary by the Department of Public Welfare, in 1957, to sustain a family of two (2) at ninety (90%) percent of a minimum standard of health and decency. Such sum of one hundred and eighty-four (\$184.00) dollars monthly was itself, according to the United States Department of Labor, Bureau of Labor Sta-

tistics, only sixty (60%) percent of what a family of two (2) requires for a minimal standard of living in Philadelphia.

18. That from October 3, 1969, to December 9, 1969, plaintiff Leger and her husband had insufficient funds to purchase a minimally adequate diet, to maintain rental payments, or to retrieve their clothing and personal belongings then in storage at the Trailway Bus Terminal.

19. That on December 9, 1969; plaintiff Leger commenced this action and was granted a Temporary Restraining Order preventing the defendants from continuing to deny her public assistance on grounds of lack of United States citizenship. Plaintiff Leger commenced receiving, and continues to receive, with her husband a public assistance grant semi-monthly.

20. That plaintiff Beryl Jarvis was born in Panama on December 10, 1912, and is a citizen thereof.

21. That on March 1, 1969, at the age of fifty-five, plaintiff Jarvis came to the United States to undertake domestic work under contract in Philadelphia, Pennsylvania. Plaintiff has resided continuously in Pennsylvania since March 1, 1968, and has been a taxpaying resident of Pennsylvania for the past two (2) years.

22. That plaintiff Jarvis worked as a domestic in Philadelphia for approximately one year, then obtained a higher paying job operating pressing machines at Kline's Laundry, Frankford and Adams Avenues in Philadelphia.

23. That in mid-February, 1970, plaintiff Jervis was forced to give up her employment due to influenza. Plaintiff is currently under a doctor's care.

24. That plaintiff Jervis must seek less strenuous employment and wishes to obtain such employment, but is currently without even the funds minimally needed to search for employment.

25. That plaintiff Jervis, on or about February 26, 1970, applied for public assistance at the North District office of the Philadelphia County Board of Assistance, and was denied public assistance solely on the ground that she is not a citizen of the United States.

26. That plaintiff Jervis is currently without sufficient funds to purchase food and is subsisting solely on the uncertain charity of friends and church. Plaintiff is also without funds to pay past due rent and faces imminent constable's action and eviction.

27. That on March 3, 1970, plaintiff Jervis was added as a party plaintiff in this action, but her motion for a Temporary Restraining Order to prevent defendants from continuing to deny her assistance on grounds of lack of United States citizenship was denied without prejudice.

(s) Joseph P. Work
Deputy Attorney General

(s) Jonathan M. Stein
Douglas G. Dye
Harvey N. Schmidt
Attorneys for Plaintiffs

Dated: March , 1970

V.

SUPPLEMENTAL STIPULATION
[Caption Omitted]

And Now, this day of April, 1970, it is hereby stipulated and agreed by and between counsel for plaintiffs and defendants in the above titled action, as follows:

1. That the denial of General Assistance to aliens otherwise eligible for such assistance causes undue hardship to them by depriving them of the means to secure the necessities of life, including food, clothing and shelter.

2. That the citizenship bar to the receipt of General Assistance in Pennsylvania discourages continued residence in Pennsylvania of indigent resident aliens and causes such needy persons to remove to other States which will meet their needs.

3. That the first clause of Paragraph 21 of the original Stipulation is amended to read that "on March 1, 1968" plaintiff Jervis came to the United States.

Joseph P. Work

Deputy Attorney General

Attorney for Defendants

(s) Jonathan M. Stein

Douglas G. Dye

Harvey N. Schmidt

Attorneys for Plaintiffs

Dated: April , 1970

VI.
MOTION
[Caption Omitted]

Pursuant to Title 28, U.S.C. Sec. 2284(3) and Rule 65(b), Fed. R. Civil P., and based upon the verified complaint herein, and the affidavit and certification of counsel attached hereto, plaintiffs move the Court for a temporary restraining order restraining defendants from denying General Assistance to plaintiff, and in support thereof state as follows:

1. Defendants denied General Assistance to plaintiff, Elsie Mary Jane Leger, on October 3, 1969.

2. Said denial was made because plaintiff, a Pennsylvania resident for four and a half (4½) years, is not a citizen of the United States, as required under the Public Welfare Code, Sec. 432, 62 Purd. Stat. Sec. 432, although she met all other requirements for General Assistance.

3. Plaintiff was forced to give up her employment in September, 1969 because of severe chest pains for which she was and is being treated at St. Joseph's Hospital Clinic.

4. Plaintiff's husband, Alex Leger, was forced to give up his employment in March, 1969 due to a hiatal hernia and a serious gastro-intestinal condition.

5. Mr. Leger was granted assistance of One Hundred and Twenty-One (\$121.00) Dollars monthly

for himself, and plaintiff was denied any assistance on the grounds that she was not a citizen. Thus plaintiff and Mr. Leger must attempt to subsist on a total income of One Hundred and Twenty-One (\$121.00) Dollars per month, ninety (90%) percent of the amount determined necessary by the Department of Public Welfare of the Commonwealth of Pennsylvania, in 1957, to sustain the life of one (1) person at a minimum standard of health and decency.

6. Absent the denial of assistance to plaintiff, plaintiff and Mr. Leger would be entitled to receive and would be receiving One Hundred and Eighty-Four (\$184.00) Dollars monthly.

7. Plaintiff continues to suffer from severe chest pains and has had a weight loss of seventeen (17) pounds in the past few months. She is continuing to lose weight.

8. It is medically necessary for plaintiff to have a nutritious diet and for Mr. Leger to have a special, costly high protein diet for his gastro-intestinal condition.

9. Plaintiff and Mr. Leger have not had sufficient funds to purchase a minimal diet even after selling their belongings in order to get money to purchase food. They have not had a complete meal for any day in the past week.

10. Plaintiff is overdue by at least a week's rent and will soon face eviction from the landlord.

11. Defendants' regulations causing injury to plaintiff Leger and members of the class are clearly on their face violative of Equal Protection Clause of

the Fourteenth Amendment and Supremacy Clause of Article VI of the United States Constitution. Courts have enjoined violations of the Equal Protection Clause by States in their public assistance programs, e.g., *Smith v. Reynolds*, 277 F. Supp. 66 (E.D. Pa., 1967) aff'd 394 U.S. 618 (1969) (Pennsylvania residency requirement held unconstitutional); *Anderson v. Schaefer*, F. Supp. (Civil No. 10443, N.D. Ga., April 5, 1968) (three-judge court); *Williams v. Dandridge*, 297 S. Supp. 450 (D. MD. 1968, supplemental opinion, 1969) (three-judge court); *Smith v. King*, 277 F. Supp. 31 (N.D. Ala. 1968), aff'd on other grds, 392 U.S. (1969); and *Dews v. Henry*, 297 F. Supp. 587 (1969) (three-judge court).

12. Courts have consistently recognized denial or reduction of welfare benefits as causing immediate and irreparable injury and have consistently ordered temporary restraining orders in class actions brought by welfare recipients. *Smith v. Reynolds*, C.A. No. 42419, Order of June 17, 1967, final opinion at 277 F. Supp. 66 (E.D. Pa. 1967) (three-judge court), aff'd 394 U.S. 618 (1969); *Williford v. Laupheimer*, C.A. No. 69-1803, Order of August 14, 1969 (Davis, J.) (class TRO), final opinion at F. Supp. (E.D. Pa. Nov. 3, 1969); *Cooper v. Laupheimer*, C.A. No. 69-2421 Order of November 5, 1969 (Wright, C.J.) (class TRO); *Kelly v. Wyman*, 294 F. Supp. 887 (S.D. N.Y., 1968); *Ramos v. Health and Social Bd.*, 276 F. Supp. 474 (E.D. Wisc., 1967); *Wheeler v. Montgomery*, C.A. No. 48303 (N.D. Calif., Dec. 6, 1967); *Van Blaricum v. Dep't of Public Welfare*, CCH Poverty Law Rep., para. 1610.58 (S.D. Ohio No. 68-78, March 8, 1968); *Miller v.*

Zoeller, CCH Poverty Law Rep., para. 9385 (N.D. Wisc., C.A. No. 69-C-2, Jan. 20, 1969); Ramos v. Health and Social Services Bd., C.A. No. 67-CO329 (E.D. Wisc., Nov. 7, 1967); and James v. Goldberg, C.A. No. 69-2448 (S.D. N.Y., June 13, 1969); Sims v. Juras, CCH Poverty Law Rep., para. 9833 (Civ. No. 69-238, D.C. Ore., April 30, 1969).

13. If this temporary restraining order be granted, the injury, if any, to defendants herein, if final judgment be in their favor, will be inconsiderable. This Court has so recognized that irreparable injury resulting from withholding of public assistance outweighs *de minimis* injury to the Commonwealth. Smith v. Reynolds, C.A. No. 42419 Order of June 17, 1967; final opinion at 277 F. Supp. 66 (E.D. Pa., 1967), *aff'd*, 394 U.S. 618 (1969).

(s) Jonathan M. Stein
Barry S. Kohn
Attorneys for Plaintiff
Community Legal Services, Inc.
313 South Juniper Street
Philadelphia, Pennsylvania 19107

Commonwealth of Pennsylvania
County of Philadelphia, ss:

Certification

I, Jonathan M. Stein, Attorney for Plaintiffs, in accordance with Rule 65(b), Fed. R. Civil P., hereby certify:

1. That oral notice of the above Motion for a Temporary Restraining Order was given December

8th, 1969 by telephone to Joseph P. Work, Esq., Deputy Attorney General, Department of Public Welfare, Harrisburg, Pennsylvania, Attorney for Defendants.

2. That said notice is sufficient and all that should be required because time and the immediate and irreparable harm that would accrue to plaintiff from delay pending further notice of the above Motion for a Temporary Restraining Order will permit no more.

(s) Jonathan M. Stein

Attorney for Plaintiff

Community Legal Services, Inc.

313 South Juniper Street

Philadelphia, Pennsylvania

Commonwealth of Pennsylvania

County of Philadelphia, ss:

Elsie Mary Jane Leger, being duly sworn deposes and says:

1. I make this affidavit in conjunction with the suit filed on my behalf, and other persons similarly situated, in the United States District Court against the defendants, William P. Sailer, Executive Director of the Philadelphia County Board of Assistance and Stanley A. Miller, Secretary of The Department of Public Welfare. I make it in support of the prayer therein for a temporary restraining order, declaratory judgment and for injunctive relief to prevent defendants from continuing to deny me General Assistance.

2. My name is Elsie Mary Jane Leger, and I reside at 716 North Broad Street in Philadelphia, Pennsylvania with my husband, Alex J. Leger.

3. I was born in Alford, Scotland on March 7, 1937.

4. On May 17, 1965 at the age of twenty-eight, I came to the United States to undertake domestic work under contract with a family in Havertown, Pennsylvania. I have resided continuously in Pennsylvania since 1965.

5. My father and mother are both citizens and residents of Scotland.

6. I worked as a domestic in Havertown for Twenty-Five (\$25.00) Dollars per week until 1967 during which year I left my employment to obtain a higher paying job at Sixty (\$60.00) Dollars per week with Physicians Clinical Laboratory in Philadelphia.

7. In or about February, 1967, I entered into a common law marriage with Alex J. Leger, who was employed at the time at The Toddle House at wages of One Hundred (\$100.00) Dollars per week, but who was forced to give up such employment in March, 1969, due to a hiatal hernia and a serious gastro-intestinal condition.

8. I was forced to give up my employment in September, 1969 because of severe chest pains for which I am being treated at St. Joseph's Hospital Clinic. I had no history of chest pains prior to September, 1969.

9. My husband and I had to leave our apartment in September, 1969, because we were threatened with eviction by the landlord. We slept two (2) nights at the Trailways Terminal in Philadelphia.

10. My husband and I were sent to the Centralized Relocation Bureau at 918 North Broad Street where temporary housing was arranged for us at a hotel at 1607 W. Girard Avenue. However, we were forced to leave because we fell three (3) weeks behind in our rent.

11. On or about October 3, 1969, I applied for General Assistance with my husband at the Girard District of the Philadelphia County Board of Assistance.

12. While waiting for my husband's public assistance check to arrive, we had to sleep three (3) nights in the Trailways Terminal.

13. My husband was granted assistance of One Hundred Twenty-One (\$121.00) Dollars monthly for himself, and I was denied any assistance on the grounds that I was not a citizen.

14. I have continued to suffer from severe chest pains and have lost seventeen (17) pounds in the past few months. I am continuing to lose weight.

15. I need a nutritious diet, however, due to the lack of sufficient funds, I have not had a complete meal any day in the past week.

16. My husband and I have to sell our belongings in order to obtain money to purchase food for a minimal diet.

17. We have had to go to The Salvation Army for food twice and were given milk, cereal and crackers.

Motion

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18. My husband and I are behind in our rent by two (2) weeks and again fear eviction by the landlord.

19. I do not have access to my clothing or personal belongings because I am not able to pay the Fifteen (\$15.00) Dollars storage charges.

Elsie Mary Jane Leger

Sworn to and subscribed before me this —— day
of———, 1969.

Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYL-
VANIA

Civil Action No. 69-2869

Elsie Mary Jane Leger, 716 North Broad Street
Philadelphia, Pennsylvania on behalf of herself and
all the others similarly situated,

Plaintiffs

v.

William P. Sailer, individually and as the Executive
Director of the Philadelphia County Board of Assist-
ance, 1400 Spring Garden Street Philadelphia, Penn-
sylvania, Stanley A. Miller, individually and as Sec-
retary of the Department of Public Welfare of the
Commonwealth of Pennsylvania Health and Welfare
Building, Harrisburg, Pennsylvania,

Defendants

VII.

ORDER

Whereas, in the above titled action it appears by
verified complaint, motion and affidavit that a tem-
porary restraining order, pursuant to Title 28, U.S.C.
Sec. 2284 (3) and Rule 65 (b) , Fed. R. Civ. P., should

issue because immediate and irreparable injury, loss and damage will result to plaintiff, Elsie Mary Jane Leger, before written notice can be served and a full hearing had thereon, in that defendants have denied General Assistance to plaintiff and left her without sufficient income to support and maintain herself.

Notice and a hearing before entering a temporary restraining order should not be required because time and the immediate jeopardy of plaintiff do not permit such a hearing.

Now, Therefore, on motion of the plaintiff, it is Ordered that defendants, each of them, their agents, servants and employees, and all persons acting by, through or under them or either of them or by or through their order be, and they are hereby, restrained from denying General Assistance to plaintiff, Elsie Mary Jane Leger, solely because she is not a citizen of the United States.

Issued at 12:30 o'clock p.m., this 9th day of December, 1969.

(s) Wood
J.

VIII.

TESTIMONY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Civil Action No. 69-2869

Elsie Mary Jane Leger et al.,
Plaintiffs

v.

William P. Sailer et al.,
Defendants

Philadelphia, Pa., March 3, 1970

Before Hon. Harold K. Wood, J.

Present:

Jonathan M. Stein, Esq., and Douglas Dye, Esq.,
Attorneys for Plaintiffs.

Joseph B. Work, Esq., Deputy Attorney General,
Attorney for Defendants.

(2) MR. STEIN: Your Honor, the Leger case involves the citizenship requirement in the Public Welfare Code of Pennsylvania and the sole issue now before the Court is whether a three-judge court shall be convened to hear this case on the merits.

THE COURT: That may be so, but you have been telephoning repeatedly about a class action.

MR. STEIN: Yes, Your Honor. We also have a class action motion and order with us today which we will present to the Court.

THE COURT: How do you think that should be disposed of?

MR. STEIN: Well, Your Honor, that class action order can be disposed of today or Your Honor could take that under advisement.

THE COURT: It can't be disposed of today because you haven't conformed with the rule governing class actions.

MR. STEIN: The rule requires us to file our motion within 90 days of the filing of the action.

THE COURT: That is right. And you are filing it now, today?

MR. STEIN: That is right. We are within 90 days, Your Honor. This action was filed on December 8th, I believe.

(3) THE COURT: Well, I am not going to certify this case to a three-judge court until the class action is disposed of. I don't know what your pleadings say in regard to a class action. All I know is that you are asking for one.

MR. STEIN: Yes, Your Honor.

We have with us today our class action order and motion with a memorandum of law following that. We have submitted a brief with our motion for a temporary restraining order, and we have a brief with our request for the convening of a three-judge court.

THE COURT: Well, I have granted you a restraining order. That question is moot, except that I think I am going to dissolve it today.

MR. STEIN: Well, Your Honor, we have in addition to this request for a convening of a three-judge court a motion to amend our complaint to add a second party plaintiff, a Mrs. Beryl Jervis, who was denied general assistance last Friday as a result of citizenship.

THE COURT: Well, do you want to amend your caption?

MR. STEIN: Yes, we do, Your Honor.

THE COURT: Or add an additional plaintiff?

MR. STEIN: We will amend our caption by adding Mrs. Jervis as an additional named plaintiff, and also extend (4) the temporary restraining order you granted to Mrs. Leger to both Mrs. Leger and Mrs. Jervis.

We have here with us—

THE COURT: Let's take one thing at a time. Let's get back to the class action.

Now, you are required under the rules of the class action to show some proof at least of who the

members of the class are, what right, so to speak, you have to represent them, and several other things. What do you have to say about that?

MR. STEIN: Well, Your Honor, the members of the class I think are very plainly defined in our complaint as being those applicants for general assistance, and that is a category of public assistance in Pennsylvania under the Public Welfare Code.

THE COURT: That isn't definitive enough for me.

MR. STEIN: Well, we have here, Your Honor, the Commissioner of the Office of Family Services in the courtroom today, and he can testify if that is necessary to who this class is and the fact that there is—

THE COURT: That burden is on you; it is not his burden.

MR. STEIN: We are prepared then to call Mr. Cohen to the stand, if Your Honor feels that that is necessary (5) in terms of proving this class.

THE COURT: I don't feel it is necessary; the rules say it is necessary.

Have you read the rules?

MR. STEIN: Yes, we have read the rules, Your Honor, and we have set out in our complaint, Your Honor, the definition of our class and the necessary allegations required by Rule 23(a).

THE COURT: I don't think you have. Go ahead.

MR. STEIN: Well, our allegations in our complaint set down the requirements—

THE COURT: Just a moment, Mr. Stein. You said you have read the rule?

MR. STEIN: Yes, we have.

THE COURT: Doesn't the rule say the complaint shall contain under a separate heading styled "Class Action Allegations"? Doesn't it say that?

MR. STEIN: Your Honor, those rules went into effect, did they not, in—

THE COURT: They are in effect right today.

MR. STEIN: They are, Your Honor, and we can only explain that—

THE COURT: They have been published since January 13.

(6) MR. STEIN: Right. Now, our complaint was filed on December 8, and the complaint was prepared at a time when those local rules were not in effect.

THE COURT: Well, they are in effect now.

MR. STEIN: Yes, you are right, Your Honor, and we would—

THE COURT: Now, if you wish to amend you will have to do it in accordance with this rule.

MR. STEIN: Your Honor, we will be prepared to amend.

THE COURT: That is the first hurdle we have, and if you have read it—there is no use me reading

it to you again—but it says: “Under separate allegations the size and definition of the class, the basis upon which the plaintiff claims to be representative of the class; that the class is comprised of defendants, that their names as parties are adequate representatives of the class; the alleged questions of law and fact claimed to be common to the class, in actions claimed to be maintainable as class actions” and so forth.

MR. STEIN: Yes, Your Honor. We shall amend our complaint along those lines, but I just might point out that your decision as to convening a three-judge court is not dependent on the condition precedent of establishing the class.

(7) THE COURT: There is where we disagree, Mr. Stein, vehemently. If I certify this case, I don’t intend to certify it with this tail on the kite, so to speak, as to who the plaintiffs in the case are. Now, it would be utterly ridiculous to send this case to a three-judge court and when they get it down there they don’t know who the parties are and whether it is a class action or not.

Now, that is going to be determined first, since you want to make it a class action, which you could have done for months. You are just doing it today. If you wanted to make it a class action, you have had ample time to have that passed on long before now. Now you are coming in here today and asking that it be made a class action, which is your right and duty to do if you think so, but before it is certified that procedural step has to be determined and passed upon, because I will not send it down there until it has been.

MR. STEIN: Well, Your Honor, we are prepared to amend our complaint by specifying those details required by the Local Rules under Class Action. I can only say that we did go by our former practice in another three-judge matter, *Williford v. Laupheimer*, where the question of finding that it was a proper class action was taken under advisement for the three judges. This was Judge Davis who convened the three-judge court, and the three-judge court later found it was a (8) class action, but we are prepared to do this now.

THE COURT: If that was done I am not aware of it, and I certainly don't question what you are saying, but as far as I am concerned—and I am surprised that the record went down there in that shape—it certainly isn't the obligation or duty of a three-judge court to determine what should and what should not be a class action. You are aware of that, I am sure.

MR. STEIN: Well, yes, Your Honor, but the three-judge court, of course, in deciding questions on the merits, one of those questions would undoubtedly be the matter of a class action.

THE COURT: Well, there is nothing in the Act or anywhere else that says the three-judge court should determine what is or what is not a class action. There is only one thing there to decide, and that is whether there is a constitutional question which raises a substantial federal question.

MR. STEIN: Exactly.

THE COURT: That is the only thing it is convened for, except in Interstate Commerce matters.

MR. STEIN: Well, Your Honor, we are prepared at this moment to argue the question of whether a three-judge court can be convened.

(9) THE COURT: Well, as long as you are here I will hear it, but I will not pass upon it until I have determined whether or not this is a proper class action. If you wish to argue it, since you are here, on the three-judge court, why, I will hear it.

MR. STEIN: Thank you, Your Honor.

THE COURT: Incidentally, you didn't file any brief, nor did the Commonwealth, in regard to this three-judge court.

MR. STEIN: Well, I believe within two days following our filing of the complaint we submitted a brief.

THE COURT: You submitted a memorandum of law in support of the motion for a three-judge court.

MR. STEIN: That is right.

THE COURT: The Commonwealth hasn't filed anything.

Go ahead.

MR. STEIN: Well, Your Honor, the standards set out for convening a three-judge court as defined in Section 2281 of the Judicial Code, and under the leading Supreme Court case, *Idlewild Liquor Corporation*, really set down two requirements: One, that a statute that is the subject of a suit which is seeking to be enjoined in terms of its unconstitutionality, and

two, that the question raised in the complaint is a substantial constitutional question.

On the first point, Your Honor, I think it is quite clear that we are challenging a statutory provision of the Public Welfare Code, Section 423, which requires as a condition precedent to someone receiving general assistance that that person be a citizen of the United States.

On the second point, the Supreme Court has in looking to this standard of the substantiality of the constitutional question, has said that only where the question is plainly insubstantial or clearly without merit or foreclosed by former cases of the Supreme Court should a judge not convene this three-judge court.

Now, in our case I think the Supreme Court case law is clearly in support of plaintiff's contention. On the first ground that we raise, the equal protection claim, that this citizenship requirement is an invidious discrimination against resident aliens lawfully in Pennsylvania, we have first the line of cases beginning with *Yick Wo v. Hopkins*, which holds that the Fourteenth Amendment is applicable to aliens. No person shall be denied equal protection of the law, and *Yick Wo* and cases since then in the Supreme Court have held that that is applicable to aliens, the equal protection clause, the due process clause.

That line of cases is supplemented by the *Shapiro (11) v. Thompson* case decided by the Supreme Court one year ago, which struck down residency requirements in public assistance. The Supreme Court there affirmed actually an Eastern District opinion,

Smith v. Reynolds, which struck down the Pennsylvania residency requirement for public assistance, and this latter case is quite on point, because Justice Brennan says there very clearly that a state cannot really fence out indigents from the state, and in going down the various possible state interests, he found really no compelling interest to justify this kind of barrier at the borders of a state.

That, Your Honor, is really our main contention. That is an equal protection claim that plaintiffs present.

The second ground is that the supremacy clause, Article 6 of the Constitution, prevents states from placing discriminatory burdens upon aliens. The regulation of aliens is of course a matter for the federal government to regulate, and there is a substantial law passed by Congress to regulate aliens' admission into the country and their conditions of entry here.

The Supreme Court has on a number of occasions struck down state statutes which put burdens upon resident aliens lawfully in the United States. *Truax v. Raich* and *Takahashi v. Fish & Game Commission*, to cite two examples.

What the citizenship requirement of public (12) assistance is is tantamount to really Pennsylvania saying who can in effect be here and live here with a minimal amount of subsistence and a minimal level of subsistence, and they are in a sense asserting the right of who can abide in Pennsylvania. The result of this is that people lawfully admitted under Act of Congress to Pennsylvania are in effect denied the

right to live here and are in fact forced to live in other states that are more hospitable to that individual.

That is really the reasoning set down in the Truax cases and the other cases holding that state attempts to regulate aliens in the state must fall under the preemption doctrine, under the supremacy clause.

The Pennsylvania Alien Registration law was one of these laws struck down in *Hines v. Davidowitz*, and this is set down in our brief.

Finally, we just wish to point out that three-judge courts have been convened on matters like this. Probably the best example in this District is the residency case itself, *Smith v. Reynolds*, which was affirmed in *Shapiro v. Thompson*.

For these reasons we feel that a three-judge court should be convened, and this argument is set down in more detail in our brief.

I wish, though, to bring to the Court's (13) attention today a request for a restraining order for a Mrs. Beryl Jervis, an alien denied public assistance, general assistance, on Friday. Our order reads that the original order for Mrs. Leger should be enlarged to include Mrs. Jervis, who is a 57-year-old woman, unemployed, was very seriously ill and has really absolutely no resources and no income to depend on. She is destitute in the literal meaning of that word, and we just asked the Court today for an order to restrain the Department from denying assistance to her until the issue can be heard on its merits in terms of the constitutionality of this requirement.

Our order also includes our motion to amend our caption to include Mrs. Jervis along with Mrs.

Leger as two named plaintiffs in the suit. Our motion is followed by an affidavit from Mrs. Jervis setting down the facts in her case and certification from counsel as to the notice we provided the Department of Public Welfare on this matter.

THE COURT: Well, I will of course hear from the Commonwealth, but in regard to the restraining order, I am a little disturbed about it because whether the record shows it or not, I recall distinctly that when I issued the restraining order in the case of Elsie Mary Jane Leger I did so because there was little or no opposition to it and because, more importantly, it was de minimis. Now, this case through no (14) fault of the Court, obviously, has been here since December 9, 1969—at least that is the date of the first order which I signed; so it is at least December 9th.

Let me see when the complaint was filed.

MR. STEIN: I think, Your Honor, December 9th was probably the filing date, too.

THE COURT: As I say, I issued that restraining order because I thought it was de minimis and I thought that this matter was of such apparent importance it would be disposed of within a reasonable length of time, and I don't call this a reasonable length of time. We are into March now and we are here to dispose of the matter and you come in here today with an amendment, and not only an amendment as to the other woman, but also as to the class action.

Now, this matter appears to me to be dragging out unnecessarily, and unless the Commonwealth

agrees—and it is up to them to make the decision—I am going to dissolve the restraining order.

MR. STEIN: Your Honor, if I might just speak to the de minimis point that you raised?

THE COURT: To say nothing of entering another one.

MR. STEIN: May I speak to the de minimis injury point that you did raise? The amount of money (15) involved I believe for Mrs. Jervis does not amount to any more than \$180 a month. I believe for Mrs. Leger it may have involved perhaps \$130 a month. We are now prepared to move as expeditiously as possible.

THE COURT: You are not prepared. You could have been prepared to move expeditiously. We could have disposed of this today. You are not prepared to proceed expeditiously when you come in here on March 3rd and tell me that you want to amend your complaint and that you want to raise the question of whether or not you have a class action. That isn't being expeditious.

We could have heard this on quite a few occasions. My law clerk called you or my secretary called you and told you that we were prepared to proceed to dispose of this, but it was just put off and put off.

MR. STEIN: Your Honor, that is precisely the issue. By disposing of it, our point earlier in our conversations with your clerk—and initially, in fact, we raised this in chambers with you—that this issue being in the case, it could not be disposed of by a single judge because it is a three-judge court matter.

Now, we were prepared sometime earlier to argue this case initially on the three-judge court question, and I think—

THE COURT: You weren't, though. Read my last (16) order. That followed another request for a continuance. I told you then—and the order so states—that it would be listed sometime after the 16th. There was no other time to list it until then.

MR. STEIN: Your Honor, the only request we made for a continuance went to Adens, the second case on the list for today.

THE COURT: This matter could have been argued a week after you filed it. That is why I considered it de minimis. I don't call from December 9th to March 1st de minimis. You could come back with that same argument six months from now and say, "It is de minimis because of the small amount involved in money". It is a legal principle, it isn't the money.

MR. STEIN: Well, Your Honor, on the hearing you set for January 16th we were prepared to have our argument on the three-judge question. That is just a matter of weeks after filing the action, and we greeted with some surprise your order continuing this matter, the Leger matter, to another date, because our letter to you only made a request for a continuance as to Adens.

THE COURT: Well, I won't argue with you on that. I know in my own mind very definitely—and I am sure the record will disclose it—that you haven't been prepared (17) to proceed until today, and now

that you are prepared to proceed, as I say again, you are in here with amendments to be ruled upon, particularly a class action to be ruled upon, and certainly the delay, if there has been any, has not been the responsibility, or the blame can't be placed on the Court, because I have been prepared to hear this from the day you filed it, and I told you that.

MR. STEIN: Your Honor, our only explanation is that we did rely upon prior practice and we can only express our regrets for the lapse.

THE COURT: I am not being critical. I am not saying you haven't done the best you could. We are back to this question of de minimis. You know a restraining order is a very, very extreme remedy. It is only available in very few cases and situations out of hundreds. I allowed it because I considered then it was de minimis in view of the short time that would elapse before the matter was adjudicated.

MR. STEIN: Yes, Your Honor, and I believe that the harm is still de minimis precisely because of the small amount of money involved, weighed on the other side from the real irreparable harm which would come to someone who must go without food, who as our affidavit and motion show may soon get evicted by a constable.

THE COURT: Well, in addition, if I am not (18) mistaken—you tell me if I am—in addition to your request for a three-judge court you also asked for a restraining order and a preliminary injunction, didn't you?

MR. STEIN: Yes, Your Honor.

THE COURT: Then why didn't we have a hearing on the preliminary injunction?

MR. STEIN: Because, Your Honor, only a three-judge court in our opinion can hear the question.

THE COURT: Then why do you ask me for one if only a three-judge court can decide that?

MR. STEIN: I think we did ask you initially for the convening of the three-judge court.

THE COURT: You asked more than that. You asked for a restraining order and a preliminary injunction.

MR. STEIN: Precisely, Your Honor, because the statute, 2284, the three-judge court statute, empowers the single judge to grant whatever temporary relief is required up until the convening and the hearing on the merits on the question.

THE COURT: And I did grant temporary relief, didn't I?

MR. STEIN: Yes, you did grant temporary relief.

THE COURT: Now there is the question how long (19) is temporary?

MR. STEIN: Exactly, Your Honor, and the statute, 2284, sets no 10-day or other time limit, other than the limit that temporary relief can be granted up to the hearing on the merits by the three-judge court on the issues.

THE COURT: I have no evidence before me, Mr. Stein; I have no evidence before me on which I could base either a continued restraining order or a preliminary injunction pending the decision of the three-judge court.

Now, you know and I know that assuming I certify this, before a three-judge court is convened and hears argument and files an opinion it is likely that a year may go by, quite likely, because we are flooded with three-judge courts and we are flooded with all kinds of other work.

MR. STEIN: Yes, Your Honor.

In terms of the evidence as to harm to Mrs. Jervis, I think her affidavit taken under oath of course sets out the facts and gives you the factual basis for deciding whether there is irreparable harm in her case.

In terms of the time of the three-judge court reaching a decision, again we can only point to our prior experience here where a three-judge court has heard matters and decided the cases completely, public assistance cases, in this District in a matter of one, two or three months.

(20) THE COURT: Well, maybe so in public assistance cases. I wouldn't quarrel with you because I don't know, but I have sat on a great many three-judge courts and that hasn't been my experience.

MR. STEIN: Right. I just have referred to the Williford and Caldwell cases, but, Your Honor, I just might make a further point that we are not seeking at this point class relief, temporary class relief.

We are only seeking it for two named individuals at this point, and in the *Smith v. Reynolds* case, that was the Pennsylvania residency case, the Court in ordering a preliminary injunction against the state welfare statute found de minimis injury to the state where the total number of people involved there was undoubtedly much greater than the number of resident aliens to be affected here.

In fact, we have really two now before the Court, and when the Supreme Court decided that case in *Shapiro v. Thompson*, they said very clearly that the saving of welfare costs is not a justifiable state interest to base an invidious classification upon.

So I think in terms of cost to the state—and perhaps the Attorney General's office and the Attorney General's representative here can address himself to that—I don't think the cost to the state really is great, particularly (21) compared to the harm which these two individuals, Mrs. Leger and Mrs. Jervis, would suffer without any funds.

THE COURT: Well, how long have they been getting funds?

MR. STEIN: Well, Mrs. Leger of course has just been getting assistance since your order of last December, so she has received assistance for approximately two or three months.

Mrs. Jervis hasn't received anything from public assistance. She became unemployed a number of weeks ago and just exhausted all of her resources, in fact. She wants to get back to work. Right now she is just too sick. She doesn't even have carfare to look

for a job. So conceivably this lady could be employed and get back into the employment market if she had enough money to maintain her health and to allow her to look for work. So I don't think that this is particularly the type of person who would be on assistance for any great length of time.

THE COURT: Are those statements supported by the record?

MR. STEIN: Yes, in the affidavit, Your Honor, we set that out.

THE COURT: Well, let me hear from Mr. Work. First address yourself to this restraining order.

(22) MR. WORK: I beg your pardon, Your Honor? I didn't hear you.

THE COURT: First of all address yourself to the status of this restraining order.

MR. WORK: Well, Your Honor, first of all let me make it quite clear that with respect to the story which counsel for the plaintiff tells, my heart is as big as anybody's. I appreciate that many cases which plaintiff's counsel brings before this Court and other Courts, there is hardship involved. Unfortunately, Your Honor, the Commonwealth appears any more to be viewed as a bastion of unlimited funds. Any time that any hardship is involved the Commonwealth is called upon to respond through the method or device of a temporary restraining order which then usually goes on into a motion for a continuation of the preliminary injunction until we get to a final hearing.

Maybe it is fine to say that in one case we are talking about an individual and we are talking about

\$184. However, over the course of the last six months, Your Honor, we have been talking about thousands of people and we have been talking about millions of dollars.

Therefore, on the part of the Commonwealth, quite frankly, Your Honor, as Your Honor is well aware, the granting of a temporary restraining order has the effect of (23) a mandatory injunction and the Courts have consistently held that they should not be granted unless it appears that the question is free from doubt.

Frankly, Your Honor, I have read the affidavit, I appreciate that the facts set forth in the affidavit may or may not constitute undue hardship.

THE COURT: I want to get a meeting of the minds with you on one thing. I don't think the law is that the case should be free from doubt. I think the terminology is that there is a likelihood they may succeed at the final hearing.

MR. WORK: I subscribe to Your Honor's statement. I put it in the wrong context, Your Honor.

THE COURT: That is all right.

MR. WORK: On the continuation of the temporary restraining order which is already in effect, Your Honor, I have grave doubts about that as well, because as Your Honor has already pointed out, we have been treating this case from its inception, at least as far as I was concerned, as being a case in which the plaintiffs had made reference to class action in one paragraph of their complaint, we had been treating it from its inception as a case involving

Mrs. Leger in which a decision would eventually be reached with respect to the validity of the Commonwealth's position under the statute.

(24) THE COURT: So have I, Mr. Work, until last week.

MR. WORK: We are now faced with a motion for such a class action without any proof whatsoever that such a class exists outside of the existence of one more plaintiff. We are faced with a motion for a new restraining order with respect to the added plaintiff. There is nothing in my mind which prevents plaintiff from coming back two months from now and saying, "Let's grant the TRO for the entire class if it exists."

This, Your Honor, quite frankly on behalf of the Commonwealth, I can't subscribe to. The decision is Your Honor's, but the Commonwealth cannot agree to either course of action.

THE COURT: Well, you used the term "mandatory injunction". That is about as near as I could describe it. What your opponent in fact is asking me to do, particularly in the case of the second plaintiff whose name escapes me, but in that case what he is practically telling me to do is to order you to put her on the assistance rolls and again to pay assistance to her, notwithstanding at this moment that is contrary to the law.

MR. WORK: That is correct, Your Honor. As Your Honor recalls, I pointed this out to Your Honor at the (25) time that the TRO was granted in the Leger case but advised Your Honor at that time that

because of the unique circumstances that I was not going to vehemently oppose the Court's granting of the temporary restraining order.

THE COURT: I recall that, and that is why I granted it, because I thought this issue would be resolved very soon and I didn't want that woman to suffer unnecessarily, but there is a limit to what I can do. I don't feel that I have the right to tell the Commonwealth to do something contrary to existing law, which is about what I am doing.

Well, then, in summary on the restraining order, do I understand that you oppose a continuation of the restraining order as to Mrs. Leger?

MR. WORK: Yes, Your Honor, I do.

THE COURT: I will rule right now that I will allow this other plaintiff to be added. I am not passing on the class action, obviously, but as an individual she can be added as a plaintiff. In that regard the pleadings are amended.

This poses quite a problem. What was the status of Mrs. Leger when this complaint was filed?

MR. WORK: As I understand, Your Honor, your court was advised at that time that there was an eviction (26) notice to be served the next morning, as I recall, and the fact that she had for some period of time been without funds, although at that time, as Your Honor recalls, her husband I believe was receiving public assistance.

THE COURT: But she was not on the relief rolls.

MR. WORK: She was not on the relief rolls at that time, Your Honor.

THE COURT: So that as of that time she was in precisely the same status as the added plaintiff is now.

MR. WORK: That is correct, Your Honor.

THE COURT: Well, I am inclined to think I was wrong then. I don't want to compound the felony.

Let me hear from Mr. Stein on this restraining order, and then I want to hear you on the class action.

Do you have anything you want to add, Mr. Stein? I am really disturbed about this.

MR. STEIN: Well, Your Honor, I would like to address myself to the point that you stated earlier, that you felt that in making this decision it would be contrary to law.

I think we have established in our argument and brief that in effect there is a very strong likelihood of our succeeding on the merits in this case. I think the argument is in terms of the equal protection clause (27) invalidating discrimination against aliens and the supremacy clause preventing states from putting burdens on aliens, and this is the Supreme Court case law running to the entire Twentieth Century, back to *Yick Wo v. Hopkins* over a hundred years ago. That law is very clearly established and I think would contemplate a court here in the Eastern District striking down the citizenship requirement in general assistance.

Now, one must remember that—

THE COURT: You think you are going to be successful, but I don't know whether you are or not.

MR. STEIN: Your Honor, I think Judge Joseph Lord was put in a similar position when the residency case was filed. The Pennsylvania residency case was filed in 1967 in this District and he did grant a temporary restraining order on behalf of named plaintiffs before, of course, the case was heard on its merits, and in light of the very specific statutory provision which said—

THE COURT: Judge Lord was in a little better position than I am. I recall the case. Judge Lord had a lot of facts before him and he could, perhaps, look to the future and conclude, and not only that—that raises another question—but if I am not mistaken, Judge Lord decided that case himself. Now here you are asking for something different. I don't know why you didn't want it then and (28) apparently you don't want it now, but this matter could have been disposed of by me. You don't have to have a three-judge court to determine this question.

MR. STEIN: To determine the question of a temporary restraining order, you are right, Your Honor, a three-judge court is not necessary.

THE COURT: I can determine that the Act is unconstitutional, too.

MR. STEIN: But I believe that the three-judge court Statute, 281, prevents you from enjoining it on the basis of its unconstitutionality.

THE COURT: I don't agree with you on that. Almost weekly it seems to me an individual judge on this court can declare an Act unconstitutional.

MR. STEIN: But declaring might be different from enjoining. Enjoining is the express language.

THE COURT: He can enjoin, he can enter a permanent injunction, he can declare the Act unconstitutional. There is nothing mandatory about submitting an issue of constitutionality to a three-judge court. It is optional.

MR. STEIN: Your Honor, the very clear language of 2281 is that an interlocutory or permanent injunction restraining the enforcement operation or execution of any state statute by restraining the action of any officer of such (29) state in the execution or enforcement of such statute shall not be granted by any district court or judge upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under Section 2284.

THE COURT: That may be so; I don't question that, I don't question that at all. What I am saying is that our Court repeatedly declares Acts unconstitutional, a single judge, repeatedly.

MR. STEIN: Well, Your Honor, this is particularly—

THE COURT: As a matter of fact, didn't Judge Lord do exactly that?

MR. STEIN: No, Your Honor. In the residency case Judge Lord as a single judge granted temporary

relief, really the exact same temporary relief we are seeking here, and then had applied to the Chief Judge of the Third Circuit for the convening of a three-judge court, and it was the three-judge court which granted a preliminary injunction in that case, the Pennsylvania residency case, affirmed by the U. S. Supreme Court two years later.

Now, Your Honor may be correct, though, in saying that perhaps you can hear our request for a preliminary injunction and the hearing itself may be presided by a single (30) judge, but the actual decision on the merits enjoining the statewide statute must be a decision of the three-judge court, and we are prepared, Your Honor, to present evidence as soon as Your Honor wishes to schedule the hearing, either a hearing for—

THE COURT: All right, we will get to that, but I will look back on it and I am sure you have a better recollection of it than I do, but it seems to me that Judge Lord himself stated that the Act requiring that citizens or persons had to be a resident of this state for a certain length of time before they could receive assistance was unconstitutional, and that was Judge Lord's own opinion, if I am not mistaken.

MR. STEIN: Yes, he did write the opinion of the three-judge court, but he was joined by at least one other judge in that majority opinion. He also may well have in granting the temporary restraining order found that threshold question that there was a good chance that the plaintiffs would succeed, at least they had a meritorious claim, and I might direct myself to that at this moment.

Federal courts throughout this country have granted, and particularly in this Eastern District, have granted temporary restraining orders for public assistance plaintiffs pending the determination of the case on the merits.

(31) THE COURT: I am aware of that, but there are a number of cases which aren't quite as strong in convening a three-judge court as the case you are citing. I also know from personal practical experience that our Third Circuit Court of Appeals looks very much askance at our judges, my colleagues, certifying cases down there willy-nilly, on the bare statement of the plaintiff's attorney that a substantial federal question is involved. I know they do because they told me more than once.

MR. STEIN: Right. And often in terms of, for example, our experience with Judge Davis, who convened a three-judge court in the Caldwell matter and the Williford case, a hearing was held like this with briefs submitted on the three-judge question, and in those cases Judge Davis did seek the convening of a three-judge court.

THE COURT: Well, sure, we have three-judge courts all the time. I am involved in two. We must have ten of them here right this moment.

MR. STEIN: Right, but these were cases—

THE COURT: But each case is different. Now, why Judge Davis ordered it might have some bearing on this case or it might not, I don't know.

MR. STEIN: Well, the issues raised there were equal protection issues very similar to the one before this (32) Court.

THE COURT: Equal protection, you always put that in. Don't stress it too much. You could say that in practically any case you bring in here.

MR. STEIN: We have in particular in mind the residency case, Your Honor, as the standard here. That is really our main source of law in this area.

If I might just direct myself very briefly to the class action question you had raised earlier, we still feel that our allegations in our complaint meet the requirements of Rule 23, the Federal Rules of Civil Procedure, and as Your Honor did point out, the local rules changed after we filed our complaint and I don't think there was any kind of retroactive provision in those local rules which said that complaints filed before the rules would conform.

THE COURT: Mr. Stein, we won't waste much time on that. That rule was adopted sometime prior to January 13. I just don't know the date, but at least it was published on January 13, and that rule of our court is effective today insofar as I am concerned, and if you want to make this a class action you will have to comply with the strict provisions of that rule and I will expect an answer from the Commonwealth, and if I can determine it on the basis of what you have filed, I will. If I can't you will have to come in and substantiate (33) your allegations by testimony.

MR. STEIN: Your Honor, that is perfectly acceptable to us.

I think the last question really is the question of the temporary restraining order for Mrs. Jervis.

THE COURT: That is what is disturbing me. I want to look at the record in Judge Lord's case, but

as I understand it, you are telling me that Judge Lord issued a restraining order and/or a preliminary injunction?

MR. STEIN: Well, I believe he issued a restraining order. The preliminary injunction came later.

THE COURT: Did he issue a preliminary injunction, or did the three-judge court issue it?

MR. STEIN: The three-judge court issued the preliminary injunction.

THE COURT: And all Judge Lord did was issue a restraining order and allowed it to continue until the case was disposed of by the three-judge court?

MR. STEIN: Exactly.

THE COURT: I remember reading Judge Lord's opinion very carefully, and the opinion that I am referring to must be a different opinion than the one you are referring to, because that was his own opinion, as I recall it.

MR. STEIN: Yes, you are right, it was his own.

(34) THE COURT: It wasn't the opinion of a three-judge court. He said that the Act was unconstitutional, fixing a definite time within which a person had to be a resident of this state before they could obtain relief. I could be wrong, but my recollection is that that was his own personal opinion.

MR. STEIN: Well, yes, Your Honor, but perhaps, irrespective of that, as I say, we are just seeking temporary relief today on behalf of Mrs. Jer-

vis, and if Your Honor feels that a hearing is necessary on the question of granting temporary relief, we would be prepared as soon as a hearing can be scheduled to submit all the testimony.

THE COURT: I don't know what a hearing would do, because there is no disagreement on any facts. Mr. Work doesn't attack your affidavit. We all seem to agree on the facts, that she is an alien, she is not getting relief and she needs relief. What else could you prove factually?

MR. STEIN: Right. I think I am in agreement with you there, Your Honor.

The other question is whether we have shown in our complaint and in our brief, the earlier brief for the temporary restraining order which we submitted initially when we filed our complaint, whether on the face of that there is a likelihood that we will succeed on the merits (35) ultimately.

THE COURT: That is one thing. You know maybe better than I do that there are three or four criteria. One is that there is a likelihood that you may succeed eventually. Another one is whether the person is suffering irreparable harm, and there are one or two others, but those are the most important.

MR. STEIN: Right.

THE COURT: What is disturbing me is that what I am doing in effect, as Mr. Work says, it is practically a mandatory injunction and the result of it is that I am directing the Commonwealth of Pennsylvania to put a person on the relief rolls, pay them relief, when as the law stands as of now that is contrary to the law, the existing law.

MR. STEIN: Right, Your Honor, but as one must point out, a temporary restraining order does not decide the issue on its merits. It can lapse at a later point, it cannot be used as precedent that this is an unconstitutional statute. It can be read very, very narrowly, that just at this point irreparable harm was shown and there was a colorable basis both upon argument and the pleadings that plaintiffs might succeed when the case is heard further on its merits.

THE COURT: All right. We will get over those two hurdles, perhaps, but supposing you kept coming in here (36) every day for the next six months—and this isn't beyond belief the way these papers are filed, some of them—you could come in here almost every day and add another plaintiff. You want to add a whole class. Supposing you came in here tomorrow with Mrs. Jones and asked for a restraining order and the next day with Mrs. Smith and asked for a restraining order?

MR. STEIN: I don't think that the class is that large, but I would—

THE COURT: No, I am talking about the individual. You have added one this morning, and this may be illogical, or maybe I am dreaming or something, but you could come in tomorrow and ask for another alien, you could come in the next day and ask for another one, and if it applies to Mrs. Leger and the other lady, why wouldn't it apply to them?

MR. STEIN: Well, Your Honor, that was precisely Judge Hannum's concern in the *Lennox v. Schwab* case, the confession of judgment case which is now before a three-judge court, and although I

think that case is different just in terms of the class being that much larger and many more people being affected by confession of judgments than the aliens, and I think they number quite a few who would be eligible for public assistance, there Judge Hannum established the procedure, and we have submitted in our papers as Exhibit 1 to our motion (37) to amend the caption his order which establishes that upon certification of counsel that a particular individual is a proper member of the class and falls within that action, that that named individual without having formal intervention papers or another motion to amend can be certified to the Court and filed with the clerk's office and have that individual fall within the original order.

We are as anxious as Your Honor is to hear the case on the merits, get to a final decision, and we sincerely believe that this case can be heard on the merits in a very short time.

THE COURT: By a three-judge court?

MR. STEIN: That, of course, as Your Honor knows, is dependent upon the timing schedules of two other judges.

THE COURT: I know very well from my experience here for more years than I like to think about that you are not going to get a three-judge court overnight, even though I certify it, with the work that they have to do down in the Third Circuit and the calendars that we have now, particularly on the individual calendar systems. I would think you would be lucky if you had it heard in three months.

MR. STEIN: Your Honor, in that case, then, Your Honor may decide that you wish to hear the testimony and hold the hearing yourself, and then we can submit briefs or (38) schedule oral argument for the three-judge court.

THE COURT: What testimony would you think I should hear in order to determine whether it should be certified?

MR. STEIN: Your Honor, we really would call perhaps just two or three witnesses. I think one would be a spokesman for the Department to perhaps explain what state interest is involved in having a citizenship requirement and perhaps describing to the Court the kinds of people affected by this requirement, and then perhaps just another witness who might testify that there are just no other resources available for an alien other than public assistance.

THE COURT: Now you are talking about the certification.

MR. STEIN: Well, I am talking now about an evidentiary hearing which Your Honor as a single judge could hold pending the final decision on the merits by the three-judge court. That is perhaps one way of expediting the entire case.

We would of course use as much discovery as we can to further expedite the matter, but in terms of the length of the temporary restraining order, I think that is part of the judge's concern, and I don't think that the restraining order would have to go in to any long duration. I can assure you that we are prepared—

(39) THE COURT: Now, another thing. I want some sort of a record here so we can dispose of this thing. If these people are entitled to relief they should have had it before now. If they aren't, this thing ought to be terminated. But supposing you came in here a week from now, we will say; supposing I determine that there is a class action here and you brought it properly, you have amended it, and you come within the rule and Section 23, but in any event you have complied with all of that and I determine that it is a proper class action. Would you come in then and ask for a mandatory injunction or restraining order compelling the Commonwealth to pay all the members of that class?

MR. STEIN: No, we would not seek class relief.

THE COURT: They are all in the same category. Why would they be any different than the two you have here now?

MR. STEIN: Well, Your Honor, in fact we did make an initial request for class relief based upon existing precedent of class—

THE COURT: It is in the body of your complaint?

MR. STEIN: Right. And that in fact Judge Davis just a few months ago did grant a class temporary restraining order. He held a hearing as a single judge in a three-judge matter, granted a temporary restraining order—this is in (40) *Williford v. Laupheimer*—pending the three-judge court hearing on the merits.

I don't really think that it is particularly crucial to seek a class temporary relief restraining order in the Leger case, because I don't think that our class is really all that large. I don't think there are hundreds and hundreds of recipients across the state, but we cannot foreclose the possibility that there will be perhaps a couple of individuals who may find themselves out of work suddenly or deserted by a husband—

THE COURT: That is just the point. That is what disturbs me. That is just what I said a few minutes ago. If every time you find somebody else who doesn't have a job and you come in and ask me for a restraining order, I can't treat one any differently than the other.

In effect what you are asking me to do is to be prepared any time you come in here and ask for relief for Mrs. Smith and Mrs. Jones or the entire class, that I am faced with the fact as to whether or not I should rule that they are entitled to immediate relief. I can't say no when I have already done it for Mrs. Leger.

MR. STEIN: Well, Judge Hannum, as I said, established the procedure of having counsel certify to the Court as to the facts of the particular named plaintiff. That (41) forecloses the necessity of having a motion to intervene or a motion to amend or a hearing.

THE COURT: That is very acceptable, very reasonable.

MR. STEIN: Right, but I think we might be able to just expedite this whole matter so that we are not faced with the situation of having—

THE COURT: You could expedite it very quickly if I would say, "I will grant a restraining order to every person in Pennsylvania that is in the same category as Mrs. Leger," but I can't bring myself to do that. That is what Mr. Work is pointing out. He said that this is not Fort Knox, there has to be a limit some place as to what the state can do.

MR. STEIN: Right, but as we have noted earlier, I believe, we are just seeking relief which we consider the U. S. Constitution requires, and we are not seeking the Legislature to appropriate more money, necessarily.

THE COURT: Of course, that isn't sensible. If you are asking them to increase their relief rolls by any number from 1 to 5,000, 10,000, 20,000, that increases the expense to the state. You can't avoid that.

MR. STEIN: Yes, Your Honor, right, but I can only point out again to the language in Justice Brennan's (42) opinion *Shapiro v. Thompson*. He says very clearly that the saving of welfare costs—

THE COURT: Oh, ultimately, of course. Ultimately it isn't a question of expense, but it is a question right now as to whether the single judge on a restraining order should say to the Commonwealth of Pennsylvania, "Increase your relief rolls by whatever number are in this class."

I don't know how many it is, but let's assume there are 5,000; whether I should do that in view of the fact that the law as I sit here says otherwise.

MR. STEIN: Well, Your Honor, as I said, we just have one individual now in addition to Mrs. Leger, Mrs. Jervis.

THE COURT: I know. We have two now.

MR. STEIN: We have two, right?

THE COURT: There is no use in your repeating it because we are not getting very far, but you have two now. My problem is that maybe in a week you will have 2,000, I don't know.

MR. STEIN: I can assure you that that is a hypothetical which just will not arise here in Pennsylvania.

THE COURT: Do you have anything you would like to say, Mr. Work? I would like to hear you briefly on this class action business. Do you have anything more to say about (43) restraining order?

MR. WORK: No, Your Honor, I have nothing further on the restraining order. I would be repeating myself.

THE COURT: All right. I will hold it under advisement. My decision will be based largely on what develops in the future regarding the class action. As I say, the class action has to be determined before I consider whether or not I will certify this case. I haven't decided that by any means, and I haven't decided that I won't, but I am not going to decide either way until this question of the class action is

determined. You gentlemen better get together and work on that and let me know whether you want to have me decide it on the record or whether you want to present testimony. In the meantime I will hold these two restraining orders, the one now in effect, and the one requested, under advisement.

Now is there anything further in the Leger case?

MR. STEIN: No, Your Honor.

THE COURT: Are we all clear now on future procedure?

MR. STEIN: Yes, Your Honor. We will submit an amendment to our complaint.

THE COURT: All right. You discuss with Mr. Work the question of how you want the class action disposed of, whether on the record or by oral testimony. If you want (43-A) to present testimony, why, I will have to hear it and then make a decision.

If there is nothing further now in the Leger case and there is no misunderstanding, why, we will take a recess for 15 minutes and then we will hear the Adens case.

[Caption Omitted]

Philadelphia, Pa., April 6, 1970

Before:

Hon. Arlin M. Adams, Circuit Judge.

Hon. Harold K. Wood, District Judge.

Hon. C. William Kraft, Jr., District Judge.

Appearances:

Jonathan M. Stein, Esq., and Douglas G. Dye, Esq.,
Attorneys for plaintiffs.

Joseph P. Work, Esq., Deputy Attorney General,
Attorney for defendants.

(3) JUDGE ADAMS: These are the cases of
Elsie Mary Jane Leger and Beryl Jervis versus Wil-
liam P. Sailer, et al.

Are counsel ready on both sides?

MR. STEIN: Yes, Your Honor.

MR. WORK: Yes, Your Honor.

MR. STEIN: May it please the Court, I am
Jonathan Stein, counsel for plaintiffs in this matter.
Before the Court are motions for Declaratory Judg-
ment and Preliminary and Final Injunction.

I might add that we have submitted a draft order
pursuant to Rule 65 (a) (2) to consolidate the applica-
tion for preliminary injunction and the trial on the

merits. Counsel for the Commonwealth has agreed to that and we have submitted the draft orders to the Court.

JUDGE ADAMS: Is that correct, Mr. Work?

MR. WORK: That is correct, Your Honor.

MR. STEIN: Before the Court today is a class of claimants for general assistance in Pennsylvania who meet all of the eligibility requirements for general assistance except for citizenship, and the citizenship requirement is a statutory one passed in 1939 by the Legislature. It was a product of war hysteria and it remains with us today as a statutory requirement of the (4) Public Welfare Code.

Our legal arguments are set out in our brief in some detail.

JUDGE KRAFT: What in the record supports your statement that it was enacted because of war hysteria?

MR. STEIN: We shall prove that through one of the witnesses whom we shall be calling today; our first witness.

Our legal arguments are set out at length in our brief, and if I might just briefly summarize them at this moment: There are three separate and independent claims on which plaintiffs seek relief. The first rests with the fact that this general assistance citizenship requirement poses an unreasonable burden upon the right of aliens to interstate travel, to interstate movement. This right to travel is one basic to our Federal Union, as the case of *U. S. v. Guest*—

JUDGE KRAFT: Don't you think that argument is a little far fetched, Counsel? How does it affect possibly the right to travel qua right? If it affects anything, does it not affect possibly the inclination or disinclination of persons to exercise that right?

MR. STEIN: Well, Your Honor, where there is a penalty or a chilling effect upon one's exercise of a right, in this case the right to travel, the Shapiro (5) v. Thompson case of the U. S. Supreme Court this past term has said that that itself is an abridgement of that right to travel. We shall show through one of our witnesses that in fact there are aliens who travel interstate, say, from New Jersey or New York coming to Philadelphia—

JUDGE KRAFT: Might it not have a warming effect on aliens in the state to exercise their right by going elsewhere, where there is no such provision in the statute?

MR. STEIN: Well, the penalty and chilling effect is the analysis which the Supreme Court in Shapiro gave.

THE COURT: I know, but counsel in the courts have seized upon this chilling effect expression almost like motherhood in my boyhood days, as if it were something new, strange and startling as a doctrine in the law. I have some grave doubts whether it is a chilling effect on the right to travel or whether it is on careful analysis a little something different.

MR. STEIN: Well, Your Honor, the Supreme Court did pose it on those terms. They also posed it on the deterrence to travel.

JUDGE KRAFT: Yes, I know, but because the Supreme Court did so doesn't make it the word of God. (6) There were earlier decisions by Justices of the Supreme Court of equal ability when Justices of the Supreme Court in later eras disregarded despite the fact that it was an utterance of the Supreme Court.

MR. STEIN: Well, Your Honor, our point is very simply that the effect of the requirement, and in fact its intent resting with the distrust of foreigners, a dislike for foreigners similar to the residency requirement, that that purpose, that effect, is contrary to the constitutional right of travel, that being our first argument, and is separable from the other two.

The second argument rests with this requirement being a denial of equal protection to aliens, and one must first begin here by stating that a special scrutiny is required, particularly in this case, because of the suspect criterion of alienage which the Supreme Court in *Takahashi* and other cases has established requires Courts to give particular scrutiny and impose a particularly high burden on states to justify such requirements.

In addition, you have, as some Courts have pointed out, a class that is disenfranchised, a concrete and insular minority, to use Justice Stone's language in the *Carlene Products* case, and that also requires this Court to look particularly at the justification for this requirement. That this is an invidious discrimination, (7) this class of aliens, the authority for that rests again with *Shapiro v. Thompson*, which established that states not only must show a rational relationship to the requirement to justify it, but a compelling state interest.

JUDGE KRAFT: But wasn't Takahashi somewhat different? That didn't apply to all aliens, it applied only to aliens, if I remember the case, who were ineligible for United States citizenship, which immediately, under the law as it then existed, if my recollection serves me correctly, restricted it to certain of the oriental people, including the Japanese, but was inapplicable to the other classes of aliens. Isn't that true?

MR. STEIN: Well, it is true that the class of aliens was somewhat narrower, but at least the principles established in Takahashi I think carry over into this case as they have carried over into other cases decided since Takahashi, that is, that when aliens do come into this country they are admitted to this country lawfully and after that fact they are here to enter and abide and live here on a basis of equality with other people, and that that equality extends to privileges and rights extended to citizens.

JUDGE KRAFT: Then why shouldn't they have the right to vote, if you carry that position to its extreme?

(8) MR. STEIN: There are some very few exceptions, the right to vote being one, which have an historical and constitutional history which just doesn't come through with a welfare requirement such as this, or a requirement for public employment. Voting is one of those few exceptions which don't carry over.

JUDGE KRAFT: Would you put the right to hold public office in the same category?

MR. STEIN: That may be. The limitations, Your Honor, which have been set out go to some job

classifications where citizenship has been a requirement, and some of them may still today be valid, but it seems clear, particularly with the Takahashi opinion, that some of that old case law is very much suspect today, that is, the right of states to set up citizenship requirements for a variety of occupations. Public office may be one which still has validity today, but in terms of the compelling state interest test, which the *Shapiro v. Thompson* establishes, I think the only state interest involved here is the one of really at best saving welfare costs of the state.

There is a small saving of funds obviously from not providing assistance to aliens, and the *Shapiro v. Thompson* case holds very clearly that the saving of welfare (9) costs by itself cannot be the basis for an invidious discrimination. It can't be a valid independent basis for that discrimination.

JUDGE KRAFT: What would you think if a state of war happened to exist between the nation whose national the alien was and the United States? Would you think that the state would have no right to refrain from making payments? Would you think the state would have to make the payments or that the Federal Government could enact some provision to prevent transmission of the funds or to have them seized during the duration of the war by an alien enemy property custodian?

MR. STEIN: That power does lie, Your Honor, true, with the Federal Government. I mean, that brings us really to our third point, our preemption argument.

The Federal Government is really the sole regulator in this area and the Federal Government could

set those standards, but I would like to make it very clear that we are dealing with a totally state program. General assistance has no Federal funds in it and it is a total state requirement. Very true there is a substantial scheme of regulation of aliens in the Immigration and Naturalization Law, Title 8 of the United States Code in (10) this area, and the Courts have consistently held that states cannot not only interfere with the Federal law or refrain, rather, from entering into the area of regulating entrance of aliens or the conditions after entry, and we set this out at length in our brief, and I think this is our third claim, that pre-eminent Federal law in this area refrains Pennsylvania from regulating in this area.

I might point out just at this moment that the *Hines v. Davidowitz* case, one of the leading authorities, dealt with the Pennsylvania Alien Registration Act. That was struck down in 1941. That Act was passed within five days of the general assistance citizenship requirement that is before the Court today, and the basis for striking that down was precisely this preemption ground. The first witness we shall be putting on the stand today will be speaking to the administration of this requirement and the State's rationale for having this requirement.

JUDGE ADAMS: Before you begin with the witnesses, do you want to dispose of the pleading and also the stipulation? Do I understand that you have stipulated certain facts?

MR. STEIN: Yes. We have entered into a stipulation which goes largely to the facts of Mrs. (11) Leger and Mrs. Jervis as the two named plaintiffs.

JUDGE ADAMS: Do we have that?

MR. STEIN: Yes, you do.

JUDGE ADAMS: I was wondering if there is any objection to that.

Can this stipulation that we have be part of the record?

MR. WORK: Your Honor, I may be a little premature here, but I think it is just the time I should call the Court's attention to the fact that I was under the impression that the principal reason for the stipulation of fact was to avoid the calling of witnesses.

JUDGE WOOD: That was my understanding. I was just about to ask why couldn't the facts that you want to present to us this morning have been the subject of a stipulation? What is so unusual about them?

MR. STEIN: Your Honor, there are factual-legal issues, which include irreparable harm which is alleged in the Commonwealth's Answer to our Complaint; there is an aspect of right to travel, and this penalty or deterrent aspect of that, and the facts going to that coming from case records of the Nationality Service Center were not available at that time and it was impossible (12) to stipulate to that.

THE COURT: I don't know why they weren't. The reason I asked you to prepare a stipulation was so we could avoid the necessity of listening to witnesses. Personally, I think witnesses are going to be completely unnecessary. It is purely a legal question. There are no facts in dispute that I can imagine.

MR. STEIN: Your Honor, our only concern is that because there are constitutional issues here, that there is a danger of—

JUDGE WOOD: You are just going to take more of our time.

MR. STEIN: There is a danger of deciding constitutional issues in the abstract, and we would like to make every effort to at least create sufficient background for just what this requirement has been, what its rationale was, and—

JUDGE WOOD: What do you mean by its rationale? It is a statute and it is there, isn't it? We can read it.

MR. STEIN: Right, but what was the intent of the statute?

JUDGE WOOD: The intent of the Statute?

MR. STEIN: Yes. I mean, what did the (13) Legislature in 1939 have in mind? What were the circumstances of its passage?

JUDGE WOOD: That sounds amazing to me. I don't know about my colleagues, but I don't know how anybody can tell what the Legislature had in their mind in 1939.

MR. STEIN: Well, I can assure you it won't be very substantial testimony.

JUDGE ADAMS: How much time do you think you will need?

MR. STEIN: Our witnesses will probably not take more than an hour, and we just have two witnesses.

JUDGE WOOD: An hour?

MR. STEIN: It could be less than an hour if the Court deems—

JUDGE KRAFT: Before you get to the testimony, Counsel, if I may interrupt, going to your stipulation, there is an allegation here respecting Mrs. Leger, that she is someone's common law wife. What possible relevance has whether she is a common law wife or whether she is unmarried or otherwise married to the determination of these issues?

MR. STEIN: It is not particularly important.

(14) JUDGE KRAFT: Then why is it inserted in the stipulation?

MR. STEIN: Only because when both Mr. and Mrs. Leger did apply for assistance, Mr. Leger was found eligible, Mrs. Leger wasn't.

JUDGE KRAFT: Well, it is stipulated that the basis of the refusal of her, whether she is unmarried or otherwise, was because she was an alien, so what difference does it make whether he is a common law husband or whether he got it and she did not, if the basis of refusal was because she was an alien? Isn't that the issue?

MR. STEIN: Well, it only goes to casting some light on the rationality of this requirement, because it is not uncommon for a husband and wife to apply and just to have one spouse be found eligible. That has happened repeatedly in the past.

JUDGE KRAFT: It seems to me that you therefore stipulated because it is a decorative part of the scene rather than because it is germane to the issue.

MR. STEIN: Well, our only claim is that it does show in part that this is a largely arbitrary and irrational requirement.

JUDGE KRAFT: The Commonwealth concedes (15) that the sole basis of refusal was because she was an alien. That demonstrates it more clearly than anything else, but the Commonwealth in effect says that every person who is a citizen of Pennsylvania who meets the other requirements gets it; every person who meets all the requirements, except that of citizenship doesn't get it.

MR. STEIN: Yes, but the Commonwealth has not agreed that this is an irrational requirement with no compelling State interest, and I think this is a particular fact, with many other facts, which shows the statute's irrationality and lack of State interest to really justify this requirement, but I do grant you that in terms of—

JUDGE KRAFT: Has it ever occurred to you in making such a stipulation that you may cause some inquiry to be made by the Immigration Department as to whether this is a meretricious living together or whether it is in fact a common law marriage under the Pennsylvania law, and if they find that it is a meretricious relationship that she may be susceptible of removal from the country?

MR. STEIN: We have made inquiry to the extent that Mrs. Leger was lawfully admitted to this (16) country and is lawfully residing here.

JUDGE KRAFT: That is not what I said. I don't think you followed me.

MR. STEIN: Well, we were aware of this common law marriage as being an element going to legality of residing here, and we found after an inquiry that Mrs. Leger is lawfully here and is lawfully residing here.

JUDGE KRAFT: There is no dispute that she is lawfully here. My inquiry was has it not occurred to you that you may be prejudicing possibly this woman by injecting the common law marriage issue into it? A lot of people call it a common law marriage merely because they live together period. That isn't a common law marriage as I comprehend it in Pennsylvania. If this matter should become one which is the subject of investigation by the Immigration Department and they find she is living in a meretricious relationship and that it is a common law marriage, the very fact that this spectre is injected into it in what I regard as an extraneous and irrelevant issue may ultimately subject her, if they find immorality in the situation, to deportment.

MR. STEIN: Well, Your Honor, there is that conjectural possibility, but at least we are confident (17) that that won't affect her current status in the country.

JUDGE KRAFT: I don't think you have given it much thought, have you?

MR. STEIN: We have given thought to the legality of her staying here.

JUDGE KRAFT: Oh, you have given thought to the legality of one thing, whether she is legally in, and that is not disputed at all. Go ahead.

JUDGE ADAMS: Now, you have two witnesses.

Mr. Work, do you have anything at all?

MR. WORK: No, Your Honor, we have no witnesses.

JUDGE ADAMS: Can you make every effort to keep it as short as possible?

MR. STEIN: Yes, we shall, Your Honor.

JUDGE ADAMS: Because I think it is conceded—and I think Judge Wood has properly pointed out a minute or so ago—that this is pretty much going to be decided on the record that we now have plus the statutes and the previous cases.

MR. STEIN: Right. We shall try to make it as brief as possible.

MR. WORK: Your Honor, at this time may I be entered on the record as voicing an objection to the (18) introduction of testimony because of the fact that the issue is a narrow legal issue which is very clear, and that is whether or not the statute of Pennsylvania violates either the Constitution or the Federal Supremacy Clause.

The Commonwealth has agreed that it does deny to aliens general assistance. With respect to an inquiry into an intent behind the statute, the law is well settled and clear that such an inquiry may not be made. The statutory intent is set forth in the preamble to the statute and the Courts have long said that we cannot inquire behind that to determine what the legislative intent was.

JUDGE ADAMS: Your objection of course will be noted and we will watch the testimony with that objection in mind.

MR. WORK: Thank you, Your Honor.

JUDGE ADAMS: Do we all agree that this is the stipulation that you have been talking about?

MR. STEIN: Yes, sir.

MR. WORK: Yes, sir.

JUDGE ADAMS: The reporter will take it and have it available with the notes.

JUDGE KRAFT: Do I understand that we are (19) reserving decision on the motion to exclude, or the objection? Very well.

MR. STEIN: I would like to call our first witness, Miss Deborah Davis.

DEBORAH DAVIS, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. STEIN:

Q. Miss Davis, can you please state your name and address.

A. Deborah Davis; address, Camp Hill, Pennsylvania.

Q. What is your position with the Department of Public Welfare?

A. I am Director of the Bureau of Assistance, Policies and Standards in the Department of Public Welfare.

Q. And the responsibilities of that position are, very briefly?

A. Developing the rules and regulations by which assistance is granted.

Q. How long have you been working with the Welfare Department in the State?

A. I have been working with the Welfare Department for 35 years.

(20) Q. Have you been and are you familiar with the workings of the citizenship requirement in the Public Welfare Code?

A. Yes.

Q. Can you briefly describe the characteristics of this class of aliens who have been denied general assistance as a result of this 1939 requirement?

A. Well, generally they are persons who are not old enough for old age assistance, who are not married with families of children, who are not blind or disabled. This makes them generally persons between the ages of 50 and 60, or very young, unmarried, or just recently married persons.

Q. Now, you did mention characteristics, at least requirements like blindness and disability. The relevance of those three or four characteristics is what?

A. There are five categories of assistance in Pennsylvania. Four of the categories have no citizenship requirements. Those four categories have Federal financial participation in them while the general assistance is a State-funded program.

JUDGE ADAMS: Is it correct to say that if there is Federal assistance the citizenship concept is not present?

(21) THE WITNESS: That is what I was trying to say, yes.

BY MR. STEIN:

Q. Now, as to the particular population of aliens, can you speak at all to perhaps their length of stay in the country or characteristics going to their need for assistance?

A. We haven't made any recent characteristic study. Originally what happened is they came to this country in the early 1900's to work in the coal mines and steel mills. In 1924 there was a change in the immigration laws which greatly reduced admissions to the country. Again in 1939 there began to be a movement from countries in which war was being threatened, and as a result of this legislation across the country was being passed to put controls on the services available to noncitizens.

Q. Can you tell us about what time this was done, this reaction to this—

JUDGE ADAMS: That was answered, 1939.

BY MR. STEIN:

Q. Did you say 1939?

A. Yes.

Q. Pardon me.

Miss Davis, have you brought with you as (22) directed any available legal or administrative records, reports or materials going to the rationale or purpose of this 1939 citizenship requirement?

A. Well, we have here a study that was made some years ago in the course of business of the Agency. It is reported that as war threatened—

Q. Before you read from that, was this record made in the Department, a record made in the normal course of business of your agency, and was it the normal course of business of your agency to make such studies or records as the one you have before you?

A. Yes.

MR. STEIN: I would like at this moment, then, to have marked as Plaintiff's Exhibit 1 and entered into evidence this report entitled "General Assistance and the Alien in Pennsylvania."

(Report entitled "General Assistance and the Alien in Pennsylvania" was marked Exhibit P-1.)

JUDGE ADAMS: Any objection?

MR. WORK: Yes, Your Honor. I am going to object on two grounds. First of all, this purports to be prepared by a gentleman by the name of Fielding. The source of the information contained in the said report is not stated. Therefore, I think for that reason (23) it is inadmissible.

I also object to its admission because I fail to see the relevance with respect to the issues before the Court as to the constitutionality of the present statutory section, irrespective of why it was passed, Your Honor.

JUDGE ADAMS: Would you try to find out the answer to the first point Mr. Work raised?

MR. STEIN: Yes.

BY MR. STEIN:

Q. Miss Davis, was the author of that somehow either commissioned by the Department or was that a study which was used by the Department and validated by the Department at that time as a critique or analysis of this citizenship requirement?

A. Yes. It was a study that was used by the Department. The person who made it is Field Secretary for American Service Institute, and it was done at the request of the Department, and the source of information for the sample studies was the Allegheny County Board of Assistance.

Q. And this does contain information going to the administration of this citizenship requirement and the—

JUDGE KRAFT: Counsel, may I suggest that you refrain from leading the witness. You are doing the testifying and she is saying "Yes", so you are getting (24) in on the record in precisely the language that you are very carefully choosing. Let the witness describe it, please.

MR. STEIN: Yes, Your Honor.

BY MR. STEIN:

Q. Can you briefly describe this study, this report, that you have before you?

A. I am afraid I don't know what you mean about describing it.

Q. Well, in terms of the light it casts upon the citizenship requirement before the Court today, the purpose of the requirement, the administration of it.

A. Well, the report describes the basis for the Public Assistance Law, 1939 Amendment, and these are the terms under which it is described:

“As war threatened the United States in 1939 many anti-alien bills were introduced in Congress and in State Legislatures. In our own Legislature Representative John E. VanAllsburg of Erie County introduced in 1939 an omnibus bill making a number of changes in the Public Assistance Laws. Some parts of this bill were defeated and some provisions have since been repealed, but the provision in regard to aliens still remains law.”

(25) MR. STEIN: You may stop there at that moment.

I think it is clear that this report of the Department does direct itself to the issue of legislative intent and does give light to at least the surroundings and circumstances at which time this bill was passed, and precisely that is the growing fears about war, this hostility to aliens, the latter being a fact which Courts have taken into account as a basis for looking very carefully, scrutinizing very carefully the type of legislation before the Court today.

JUDGE WOOD: Assuming that is correct, basically isn't that a problem for the Legislature? If the Legislature doesn't think this is a proper Act, that it was passed, as you intimate, because of war hysteria, which I doubt existed in 1939, but in any event, isn't that a matter for the Legislature?

Why don't you get to the point of the constitutionality of the Act?

MR. STEIN: Well, the point about this being something for the Legislature I think is a relevant point because—

JUDGE KRAFT: Isn't this actually the writer's view? Somebody was hired to make some sort of a survey. In the course of making that survey he injects (26) in it the observation that in his view these acts were brought about by what you term war hysteria.

Have you looked into whether there is any legislative record on the subject at the time these amendments were enacted?

MR. STEIN: We did look into the legislative history, Your Honor, and it is quite bare. We did ask Miss Davis to bring with her records bearing upon the legislative history, but in terms of our research—

JUDGE KRAFT: If those records are barren, whatever impression the scrivener of this report got he didn't get from the legislative record.

MR. STEIN: Well, the legislative history for state legislation is particularly bare in terms of what is on the record for Federal legislation.

JUDGE KRAFT: I say so that if it was barren, the scrivener of this report to which you now advert didn't get his information from a legislative source.

MR. STEIN: Well, in terms of legislative sources, there weren't any committee reports, but

I am certain that in at least terms of his making this detailed analysis of what the circumstances were, he was aware of the opinions of various legislators, the climate of (27) opinion at that time, and in fact I think this Court can take notice of the fact that within five days of the passage of this law Pennsylvania passed the Alien Registration Law in the Hines v. Davidowitz case.

JUDGE ADAMS: I think we are now beginning to waste time. We have this report, and it has been marked, there has been an objection, and we will eventually rule on that objection.

MR. STEIN: Right. This is only going to the relevance of this.

BY MR. STEIN:

Q. Miss Davis, I think we can just end at this moment by just asking whether you have with you any other reports or documents speaking to this question of the statutory purpose and intent of this requirement.

A. No, I have no other documents as to the statutory purpose. I do have reports that indicate that for the last seven years the Department has recommended a change in the citizenship requirement, elimination of the citizenship requirement, to the Legislature.

Q. Have those recommendations been successful?

A. No, they have not.

Q. Can you tell us why they haven't been successful?

A. No, I can't tell you why.

MR. WORK: I object, Your Honor. I think it (28) requires a conclusion of the witness.

JUDGE ADAMS: We would sustain the objection, except the witness doesn't know the answer.

MR. WORK: Very well.

MR. STEIN: I think this really is directed to Judge Wood's point, Your Honor, about the legislative process being there to really deal with this type of problem. Because this is a very small minority—65 to 70 people a year are denied general assistance—I think it is really too much to expect a legislature to really direct itself to this problem.

JUDGE WOOD: Well, it isn't up to us to tell the Legislature what to do, so I think we should pass this and get to the constitutionality of the Act.

JUDGE KRAFT: And may I suggest, Counsel, that you refrain from interpolating your own views on the social aspects and why the Legislature does or doesn't act. You are not a witness, you are an advocate. We are here interested in what are the facts and what is the law to be applied to those facts, not in your social views spread on the record or your views as to why the Legislature does or does not fail to adopt some recommendation made by one of the departments of the State Government.

MR. STEIN: Well, I only direct myself to (29) that because Judge Wood has raised the

question about the legislative process being there to resolve this matter. The *Hobson v. Hansen* case, Judge Caleb Wright directs itself directly to this problem. This is precisely the point which Judge Wright makes, that when you deal with a politically voiceless minority the Courts must have an added responsibility to give scrutiny and to require states to justify these requirements with suspect criteria such as the one before the Court today.

BY MR. STEIN:

Q. Miss Davis, finally may I ask have you been and were you familiar with the Pennsylvania residency requirement in public assistance?

A. Yes.

Q. And can you briefly state what that requirement was?

A. That was a requirement that there be one year residence in Pennsylvania as an eligibility condition for all types of assistance.

JUDGE KRAFT: You had to live here as long to get relief before this decision as you did to bring a divorce action?

THE WITNESS: Yes.

(30) BY MR. STEIN:

Q. Now, would the citizenship provision be in any way similar to the rationale of the residency provision which you just described for us?

MR. WORK: Same objection, Your Honor, if he is asking the witness for the legal effect of it.

JUDGE ADAMS: I would sustain that objection.

JUDGE KRAFT: I join in sustaining it.

JUDGE WOOD: I do, too.

BY MR. STEIN:

Q. Would the effect of the citizenship requirement in terms of how it affects people, claimants for assistance in this State, be in any way similar to the effect of the residency requirement?

MR. WORK: Same objection, Your Honor.

JUDGE ADAMS: I think you can assume at this point that we have read the Shapiro case, all three judges, we understand that it was a bar and we understand that if a person is not a citizen, under general assistance there is a bar. You can't argue that. We want testimony, and this is the period for testimony. I think you are asking the witness for legal conclusions.

MR. STEIN: Well, our second witness can perhaps speak more directly to this being a bar and a (31) penalty upon people coming to the State.

I have no further questions.

JUDGE ADAMS: Do you have any questions?

MR. WORK: Just two, Your Honor.

Cross-Examination

BY MR. WORK:

Q. Miss Davis, is it a fact that the nonalien status applying to the Federal assistance categories is the subject of regulation in Pennsylvania?

A. Yes.

Q. Would you very briefly tell the Court why the regulation denies assistance to Federal categories and does not allow assistance to the general assistance category?

A. We misread the Federal regulations. We thought that they required that we abolish the citizenship requirement. This was back in '39 when the citizenship regulations came into effect.

Q. Prior to that time you also had a citizenship requirement for Federal assistance categories?

A. Yes.

MR. WORK: Thank you.

JUDGE ADAMS: Do you have any further questions?

(32) MR. WORK: No, Your Honor.

JUDGE ADAMS: I think you may step down.

MR. STEIN: As our last witness I would like to call Miss Maia Andre.

MAIA ANDRE, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. STEIN:

Q. Miss Andre, when you speak can you please address your answers to the Court and to me in a clear, loud voice, please.

Can you please state your name and address.

A. My name is Maia Andre. I live on 4010 Balwynne Park Road, Philadelphia.

Q. And can you describe your position and the agency with which you work?

A. I work for the Nationality Service Center and I am Director of Individual Services.

Q. What has been your prior work history and qualifications for your current position?

A. I have a Master's Degree in Social Work, and before I came to this agency four years ago I was working eight years in a family agency.

(33) Q. Now, Miss Andre, what contact have you and your agency had with aliens denied general assistance in Pennsylvania?

A. Well, our agency is set up to serve people who are foreign born, who are either new in this country or haven't acquired the language well enough to act or talk in their behalf. So it seems that whenever a foreign born person is in need, our agency is one of the agencies they turn to to help them.

Q. Now, about how many cases come to your attention every year of claimants denied general assistance?

A. Maybe about 10, 15.

Q. Can you describe generally this class of aliens who are subject to this general assistance requirement, very briefly?

A. Most of them seem to be just below 65. They are not young enough any more to work, or to work consistently, and they are not old enough to be eligible for assistance if they are not citizens, so their health is starting to break down, I would say most of this category, or they are sick, temporarily sick.

Q. Can you estimate about how long generally these aliens have been in the country?

A. Most of them came as displaced persons, or at least (34) after World War II.

Q. And can you explain to us why they aren't citizens today?

A. Well, this is one of the questions we ask for our records, and usually they have been afraid that they may not be able to pass the citizenship test because they don't speak enough English to give answers to the history test.

Q. Do you have documentation with you today of representative cases of claimants who have been denied general assistance as a result of their lack of citizenship?

A. We keep records on every case, and I summarized a few of them.

Q. Are these records that you have today from records made in the normal course of business of your agency, and was it in the normal course of your business of your agency to make these records?

A. Yes.

Q. May I see them?

A. I have four.

MR. STEIN: I would like to have marked and offer as Plaintiff's Exhibit No. 2 these case summaries from Nationality Service Center.

JUDGE KRAFT: Are these original records or did I hear her say these are summaries she made of (35) the original records?

MR. STEIN: These are summaries, Your Honor. The records apparently are—well, let me ask Miss Andre.

BY MR. STEIN:

Q. Can you describe these records in terms of their length or other characteristics in your office?

A. The records are written by the social workers who see the people, and they vary in length and they vary in the way they are written up. There is certain information that we require them to have, but they are either too lengthy or not really good enough to present in this court.

JUDGE WOOD: What is your offer of proof? What are you trying to prove, irreparable harm?

MR. STEIN: Irreparable harm is one point, Your Honor. The second is the travel aspect, as I believe in a number of these cases residents have been forced to leave the state as a result of the citizenship requirement, and that is a fact in some contention, apparently.

I would like then to offer these again.

JUDGE KRAFT: Then you are not seeking to prove that their right to travel was chilled?

MR. STEIN: Well, I hesitate in using the term "chilled". I perhaps might say there was a

penalty (36) involved, or at least the fact that they were forced out of the state as a result of this requirement.

MR. WORK: If I understood the foundation which Mr. Stein laid correctly, Your Honors, the record purported to be hearsay based upon hearsay.

MR. STEIN: Your Honor, these are business records. Obviously Miss Andre could not bring down the lengthy records which she does have in her office.

JUDGE KRAFT: Counsel, I don't accept your statement that obviously she could not bring them down. You are managing this like a witness, not a lawyer. She said there are original records from which she made these summaries. Now, I gather that these summaries were prepared for use in this court, is that right?

THE WITNESS: Well, there were summaries. I think I rewrote them and they are more clear than those summaries are.

MR. STEIN: Miss Andre did prepare these, and these are accurate, as she said. They represent summaries of long case records.

JUDGE KRAFT: That is not what your adversary is pointing to.

MR. STEIN: Well, I think in terms of the (37) business records exceptions to the hearsay rule, Courts have been flexible to allow—