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## The Vietnamese Shrimpers of Texas: Salvaging a Sinking Industry.

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## THE VIETNAMESE SHRIMPERS OF TEXAS: SALVAGING A SINKING INDUSTRY

STEPHEN L. BENNETT, JR.†

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### I. INTRODUCTION

Vietnamese shrimpers working in Texas fear that the recent implementation of maritime security laws will force them to abandon their livelihoods.<sup>1</sup> At issue are laws that require the captains of U.S. flagships, and 75 percent of their crew, be American citizens.<sup>2</sup> Because shrimp boat crews often consist of less than four people, the laws ultimately deny the

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† St. Mary's University School of Law, Candidate for J.D., May 2004; Ohio University, B.A. Philosophy & Classical Greek, May 1996. I wish to thank Armando Román and Patricia Viera for their time and diligence spent editing this comment. I would additionally like to recognize those artists, activists and prophets who exhort Justice. The creativity and conviction of Amos, Woody Guthrie, Ralph Nader, Sinead O'Connor, Julie Pfrommer, and countless others, inspire me to persist in the struggle to create a more equitable society. Finally, I want to thank my family, especially my wife Emiko, for their love and confidence.

1. See Chau Nguyen, *New Law May Shut Out Vietnamese Shrimpers*, Sept. 2, 2003, at [http://www.khou.com/news/local/galveston/stories/khou030902\\_dl\\_shrimpers.696d1e65.html](http://www.khou.com/news/local/galveston/stories/khou030902_dl_shrimpers.696d1e65.html) (visited Feb. 11, 2004) (discussing the impact of new regulations).

2. 46 U.S.C. § 8103(b)(1) (2000); Nguyen, *supra* note 1.

Vietnamese any chance to legally participate in trawling.<sup>3</sup> Despite the federal regulations, local fishermen say they will continue to trawl because they have no alternative.<sup>4</sup>

The shrimpers face other challenges, including increased environmental regulations that restrict when and where they can trawl.<sup>5</sup> Additionally, a flood of low-priced, farm raised, foreign shrimp has glutted the American market, dropping the price for shrimp to record lows making the turning of profit ever more difficult.<sup>6</sup> Critics are already singing dirges to the industry.<sup>7</sup>

Despite the bleak forecast, the Vietnamese have endured numerous challenges throughout their 30 year history trawling Texas waters. I argue that the Texas shrimping industry is worth salvaging. As a gateway industry for unskilled immigrants, shrimping in Texas provides a reputable starting position in the quest for the American dream. Both the federal and state governments can help by addressing the most pressing issues through legislation.

## II. HISTORY

### A. *Arrival of the Vietnamese in Texas*

Following the fall of Saigon to the Communists in 1975, thousands of Vietnamese refugees flooded into neighboring countries.<sup>8</sup> Many escaped in small boats, often unseaworthy, on voyages that lasted from days to weeks.<sup>9</sup> That year, the first wave of 130,000 Southeast Asian refugees

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3. Jessica Rocha, *Captain Requirement Threatening Business*, THE MONITOR, Aug. 31, 2003, at <http://216.239.37.104/search?q=cache:w6hNbOprVJ0J:www.themonitor.com/News/Pub/News/Stories/2003/08/31/10623830012.shtml+%22Captain+Requirement+Threatening+Business%22&hl=EN&ie=UTF-8> (visited Mar. 4, 2004) [hereinafter *Captain Requirements*].

4. *Id.*

5. Karisa King, *Texas Fleet Slowly Sinking*, SAN ANTONIO EXPRESS-NEWS, Sept. 14, 2003, at 18A [hereinafter *Texas Fleet*].

6. Bonnie Pfister, *Made in Brazil*, SAN ANTONIO EXPRESS-NEWS, Sept. 17, 2003, at 10A.

7. *Id.*

8. Andrew Chin, *The KKK and Vietnamese Fishermen*, at <http://www.unclaw.com/chin/scholarship/fishermen.htm> (visited Feb. 11, 2004); ROBERT LEE MARIL, TEXAS SHRIMPERS: COMMUNITY, CAPITALISM, AND THE SEA 183 (1983) [hereinafter TEXAS SHRIMPERS].

9. JAMES M. FREEMAN, CHANGING IDENTITIES: VIETNAMESE AMERICANS, 1975-1995 5 (Nancy Foner ed. 1995).

entered the United States authorized by President Gerald Ford.<sup>10</sup> Vietnamese soon appeared in Texas shrimping communities.<sup>11</sup>

The United Nations took action in June 1979 by holding a conference where the United States, Canada, Australia, and France agreed to relocate nearly 700,000 refugees.<sup>12</sup> Nearly half of the “boat people” came to the United States.<sup>13</sup> While most Vietnamese arriving in the United States were sent to California, approximately 20,000 relocated to Texas.<sup>14</sup> At this point, tension between Vietnamese and Texans was palpable. Texans charged Vietnamese shrimpers higher premiums for boats and boycotted the sale of bait to the newcomers in their shops.<sup>15</sup>

By the 1990 census, the number of Vietnamese residing in Texas was 69,636 or 11.3 percent of the nation’s Vietnamese population.<sup>16</sup> Texas placed second to California, which maintained the highest density of the Vietnamese population, 45.6 percent or 280,223 people.<sup>17</sup>

### B. *Social Assimilation and Conflict*

The Vietnamese aggressively sought employment once they arrived in the United States.<sup>18</sup> In Vietnamese culture, employment is the key to respectability which is crucial in developing the close interpersonal relationships needed to maintain harmony among the extended family and tight-knit community.<sup>19</sup> Despite the high value placed on employment, many found work difficult to come by.<sup>20</sup>

The first two waves of Vietnamese refugees to arrive in the United States after 1975 have distinct demographics.<sup>21</sup> The first wave that arrived shortly after the fall of Saigon on April 30, 1975 was politically well

10. Karisa King, *Another Fight for Survival*, SAN ANTONIO EXPRESS-NEWS, Sept. 15, 2003 at 7A [hereinafter *Another Fight*].

11. TEXAS SHRIMPERS, *supra* note 8, at 183; Chin, *supra* note 8.

12. Chin, *supra* note 8.

13. *Horizons: When Cultures Clash*, National Public Radio (1984).

14. ROBERT LEE MARIL, *THE BAY SHRIMPERS OF TEXAS: RURAL FISHERMEN IN A GLOBAL ECONOMY 202* (Hal S. Barron et al. eds., 1995) [hereinafter *BAY SHRIMPERS*]; see generally SHERRY GARLAND, *MY FATHER’S BOAT* (1998) (illustrating how shrimping creates a continuity between Vietnamese settling in Texas and the lifestyle they left in Vietnam).

15. Chin, *supra* note 8.

16. FREEMAN, *supra* note 9, at 11.

17. *Id.*

18. PAUL JAMES RUTLEDGE, *THE VIETNAMESE EXPERIENCE IN AMERICA 78* (Warren F. Kimball & David Edwin Harrell, Jr. eds., 1992).

19. See *id.* (noting the importance of employment in Vietnamese families).

20. *Id.* at 79.

21. ANNA B. MADAMBA, *UNDEREMPLOYMENT AMONG ASIANS IN THE UNITED STATES: ASIAN INDIAN, FILIPINO, AND VIETNAMESE WORKERS 26* (Stuart Bruchey ed. 1998).

connected to the United States.<sup>22</sup> These immigrants were relatively wealthy and well educated with some English ability.<sup>23</sup> Many even had family in America with whom they could settle.<sup>24</sup> Succeeding waves of refugees were greatly disadvantaged. They were less educated, poorer, had no familial connection with the United States and had no English ability.<sup>25</sup> These later refugees had a more difficult time breaking into the American labor market.<sup>26</sup> In 1999, 25.1 percent of Vietnamese American households lived below the federal poverty line,<sup>27</sup> compared to 12.4 percent of the total United States population<sup>28</sup> and 12.6 percent of the total Asian American population.<sup>29</sup>

Many Vietnamese shrimpers were completely unaware of the citizenship requirement necessary to operate fishing vessels over five tons in the Gulf.<sup>30</sup> Not many of them had given much thought to acquiring citizenship due to the time investment.<sup>31</sup> But once they realized the effect such an oversight might have on their career, they made time.<sup>32</sup> In the Vietnamese neighborhood of Bethany Park, twenty Vietnamese shrimpers acquired citizenship so that they could attain the commercial operator's license.<sup>33</sup>

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22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* at 27.

26. MADAMBA, *supra* note 21, at 27.

27. HEIN DUC DO, THE VIETNAMESE AMERICANS 122 (Ronald H. Bayor ed. 1999).

28. ALEMAYEHU BISHAW AND JOHN ICELAND, U.S. DEPT. OF COMMERCE, POVERTY: 1999 1 (2003), <http://www.census.gov/prod/2003pubs/c2kbr-19.pdf>

29. *Id.* at 5; DUC DO, *supra* note 27, at 122; *see also* MARY PIPHER, THE MIDDLE OF EVERYWHERE: HELPING REFUGEES ENTER THE AMERICAN COMMUNITY 68 (2002). Maintaining family duties and fulfilling cultural expectations is particularly trying for Vietnamese living in the United States. A young woman named Linh moved from a small village in Vietnam to attend an American college. In an interview with Mary Pipher, the author of *The Middle of Everywhere*, Linh explained that balancing the freedom America provides with her responsibilities to family is the source of much anxiety. After living in the United States for five years, the acculturation sometimes left her feeling "like hollow bamboo, Asian on the outside, empty within." She is unable to express herself fluently in any language. The loyalty toward her family prevents her from fully adopting American culture, yet she persists by adjusting as well as she can. *Id.* at 65-68.

30. BAY SHRIMPERS, *supra* note 14, at 229.

31. *Id.*

32. *Id.*

33. *Id.*

### C. *Blood in the Bay*

The rapid influx of “outsiders” into Texas created great, and sometimes violent, controversy.<sup>34</sup> Texas shrimpers felt threatened by the Vietnamese, fearing they would destabilize an already burdened industry.<sup>35</sup> Shrimping was already competitive when the Vietnamese arrived.<sup>36</sup> Some Texans accused the Vietnamese of dirty tricks and unfair tactics to get an edge in the market.<sup>37</sup> These accusations created local hostility causing local members of the Ku Klux Klan to burn the immigrants’ shrimp boats and threaten families.<sup>38</sup>

A common trait of political refugees is their significant mistrust of the government, especially police, which results in the tendency to take the law into their own hands.<sup>39</sup> Tensions reached a climax in 1979 with the fatal shooting of a Caucasian crabber, Billy Joe Aplin.<sup>40</sup> For two years, Vietnamese shrimpers reported that Aplin had stolen their crab traps, had threatened them, and assaulted them.<sup>41</sup> No arrest was ever made.<sup>42</sup> The two Vietnamese individuals were tried for murder and acquitted based on a claim of self-defense.<sup>43</sup>

Two years later, an association of Vietnamese shrimpers filed a lawsuit against the Ku Klux Klan in the United States District Court.<sup>44</sup> The court determined that the Ku Klux Klan violated the shrimpers’ civil rights and permanently enjoined the Ku Klux Klan’s “self help tactics of threats of violence and intimidation.”<sup>45</sup> In the years following the lawsuit against

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34. *Id.* at 202.

35. BAY SHRIMPERS, *supra* note 14, at 202.

36. *Id.*

37. *Id.* at 206.

38. *See* Chin, *supra* note 8 (detailing accounts of the Ku Klux Klan’s efforts to scare the Vietnamese fishermen off the bays).

39. *Horizons*, *supra* note 13.

40. Irwin A. Tang, *Still Shrimping: Vietnamese American Shrimpers 25 Years After the Second Wave*, ASIAN WEEK.COM, Aug. 29, 2003, at [http://news.asianweek.com/news/view\\_article.html?article\\_id=8f3bffe189a16998e5b7555b45oaca](http://news.asianweek.com/news/view_article.html?article_id=8f3bffe189a16998e5b7555b45oaca) (visited Feb. 20, 2004).

41. *Id.*

42. *Id.*

43. *See generally* ALAMO BAY (Tri-Star Pictures 1985) (illustrating through film the violent conflicts between Vietnamese and Anglo shrimpers on the Texas bays).

44. Chin, *supra* note 8.

45. Vietnamese Fishermen’s Ass’n v. KKK, 518 F. Supp. 993, 1017 (S. D. Tex., 1981). “Upon consideration of all the evidence adduced at the hearing, it is the opinion of this court that the plaintiffs have met their burden of proving a substantial likelihood of success on the merits with respect to the following causes of action: 42 U.S.C. §§ 1985(3) and 1986; 15 U.S.C. § 1; and the Texas common law tort of tortious interference with contractual relationships.” *Id.* at 1016; *see also* Chin, *supra* note 8.

the Ku Klux Klan, hostilities significantly subsided.<sup>46</sup> But tensions continue to exist.<sup>47</sup>

#### D. *Assimilation*

The language and culture of the Vietnamese remain an enigma to most of their neighbors.<sup>48</sup> Few Texans attempt to seriously learn about the Vietnamese.<sup>49</sup> As a result, some Texans continue to resent the benefits resulting from the Vietnamese values of frugal living and communal financial assistance.<sup>50</sup> Nonetheless, most Texans have accepted the fact that the Vietnamese are now a permanent fixture in their communities.<sup>51</sup> Blatant harassment and housing segregation are becoming issues of the past<sup>52</sup> and Vietnamese and Anglo shrimpers are finding unifying interests.<sup>53</sup>

In 2000, two hundred Vietnamese shrimpers took an important step into the world of American politics when they marched on the state capital in Austin in protest of state shrimping regulations, including restrictions on the number of shrimp boats allowed to trawl in the bays.<sup>54</sup> White shrimpers appreciated this act and believe in the likelihood of future cooperation.<sup>55</sup>

### III. GOVERNMENT REGULATION AND THE SHRIMPING INDUSTRY

#### A. *Citizenship Requirements for Captain and Crew*

Citizenship requirements for masters of registered United States ships were created by the First Congress, in 1789, when it ratified “An Act for Registering and Clearing Vessels, Regulating the Coasting Trade, and for other purposes”.<sup>56</sup> Today, the Jones Act requires that, “[o]nly a citizen of the United States may serve as master. . . on a documented vessel.”<sup>57</sup> The law further states:

[E]ach unlicensed seaman on a fishing. . . vessel that is engaged in the fisheries in the navigable waters of the United States or the exclusive

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46. See Tang, *supra* note 40.

47. *Id.*

48. BAY SHRIMPERS, *supra* note 14, at 231.

49. *Id.* at 232.

50. *Id.* at 234.

51. *Id.* at 235.

52. *Id.*

53. Tang, *supra* note 40.

54. *Id.*

55. *Id.*

56. Act of Sept. 1, 1789, 1st Sess., ch. 11, 1 Stat. 55.

57. 46 U.S.C. § 8103(a) (2000).

economic zone must be— (A) a citizen of the United States; (B) an alien lawfully admitted to the United States for permanent residence; [or] (C) any other alien allowed to be employed under the Immigration and Nationality Act (8 U.S.C. § 1101 *et seq.*).<sup>58</sup>

However, the unlicensed crew may not consist of more than 25 percent of the “aliens referred to in clause (C).”<sup>59</sup>

The Secretary of Transportation, through the Coast Guard, is responsible for implementing these rules.<sup>60</sup> If the Secretary determines that American citizens are not available, he has the discretion to waive the citizenship requirement with regard to unlicensed seamen.<sup>61</sup> While the requirement for American captains is strictly enforced,<sup>62</sup> the Coast Guard will issue exemptions allowing for a greater ratio of foreign crew.<sup>63</sup>

Although the Jones Act and its amendments have existed in the federal statutes for years, their enforcement has been sporadic.<sup>64</sup> In 1989, the Coast Guard increased its enforcement of the law off the coast of California, threatening to confiscate boat registrations from Vietnamese fishermen.<sup>65</sup> An association of Vietnamese fishermen filed a civil suit in the United States District Court in California<sup>66</sup> and was granted an emergency injunction pending a full hearing by the U.S. Court of Appeals for the Ninth Circuit.<sup>67</sup> The fishermen would allege that the citizenship restrictions were discriminatory against their alienage, thus violating their Fifth Amendment rights to equal protection and due process.<sup>68</sup> But their own lawyer later admitted that no fundamental rights were at stake, and a

58. 46 U.S.C. § 8103(i)(1) (2000).

59. 46 U.S.C. § 8103(i)(2) (2000).

60. 46 U.S.C. § 8103(b)(3) (2000). The Historical and Revision Notes to this section provides “that the investigation and percentage reduction authority is the sole responsibility of the Secretary of Transportation. . .” *Id.* *Captain Requirement, supra* note 3.

61. 46 U.S.C. § 8103(b)(3)(C) (2000).

62. 46 U.S.C. § 8103(b)(3) (2000).

63. *Captain Requirement, supra* note 3.

64. *Allowing Legal Aliens to Work and Operate Commercial Fishing Vessels*, 136 CONG. REC. H12841 (1990).

65. *Congress Approves Immigration-Related Legislation*, 67 No. 43 Interpreter Releases 1303 (Nov. 12, 1990), WL 60 No. 43 Interrel 1303.

66. *Vietnamese Fishermen Ass’n. of America v. Yost*, No. C89-3522 (9th Cir., Nov. 7, 1989); Katherine Bishop, *For Vietnamese-Americans, a Victory in Congress*, THE N.Y. TIMES, Oct. 31, 1990 at A26.

67. *Vietnamese Fishermen Association of America v. Yost*, No. 89-16334 (9th Cir., Nov. 7, 1989); *Court of Appeals Stays Enforcement of 200-Year-Old Citizenship Requirement*, 66 No. 45 Interpreter Releases 1292 (Nov. 20, 1989), WL 66 No. Interrel 1292; Bishop, *supra* note 66.

68. *Court of Appeals Stays Enforcement of 200-Year-Old Citizenship Requirement*, 66 No. 45 Interpreter Releases 1292, WL 60 No. 45 Interrel 1292; Bishop, *supra* note 66.



win in court was improbable.<sup>69</sup> Fortunately for the fishermen, congressmen in Washington, D.C. recognized their plight and fashioned legislation that allowed the fishermen to withdraw their suit.<sup>70</sup>

The United States Congress codified Section 317 of H.R. 4009, which allowed permanent residents to operate fishing vessels off the California coast as if they were United States citizens.<sup>71</sup> U.S. Rep. Norman Mineta sponsored the legislation and expressed his reasoning to the Senate:

I introduced this bill to assist legal permanent residents who have been adversely impacted by a 200-year-old law. In 1989, the Coast Guard, for the first time in recent memory, began to enforce this law in the San Francisco Bay area. The only individuals impacted by the Coast Guard Actions were Vietnamese fishermen who applied for citizenship but have not yet had their applications approved or who are not yet eligible to apply.

As a result, the Vietnamese fishermen were faced with the dilemma of giving up their professions and living on welfare to support their families or trying to continue fishing while facing fines of \$500 each time they were cited, and being threatened by the Coast Guard with the loss of their boats and licenses. A permanent resident must wait 5 years before applying for citizenship, and because it takes approximately 2 years to process a citizenship application, the fishermen would essentially be unable to earn a living for 7 years.<sup>72</sup>

The bill's scope was not only limited geographically, but temporally. It expired October 1, 2000.<sup>73</sup> The ten-year sunset provision was drafted to prevent leaving "loopholes in U.S. maritime law for future foreign competition or labor."<sup>74</sup>

The Vietnamese of Texas were excluded because the shrimp boats they used were typically less than five tons and were not under the jurisdiction of the Jones Act.<sup>75</sup> However, in recent years many Gulf shrimpers have

69. Bishop, *supra* note 66.

70. *Id.*

71. 46 U.S.C. § 8103 (2000). The Historical and Revision Notes that follow this section states that "Section 8103 sets forth the requirements for citizenship and Naval Reserve Membership for the complement on a vessel documented under the laws of the United States." *Id.*

72. *Allowing Legal Aliens to Work and Operate Commercial Fishing Vessels*, 136 CONG. REC. H12841 (1990).

73. *Congress Approves Immigration-Related Legislation*, 67 No. 43 Interpreter Releases 1303, (Nov. 12, 1990), WL 67 No. 43 Interrel 1303.

74. *Allowing Legal Aliens to Work and Operate Commercial Fishing Vessels*, 136 CONG. REC. H12841 (1990).

75. 46 U.S.C. § 12102 (2000); Bishop, *supra* note 66.

purchased larger trawlers to compensate for time and area restrictions. Most of these boats are large enough to be affected by the Jones Act.<sup>76</sup>

One tactic the Vietnamese continue to employ to usurp the Jones Act is to hire “paper captains.”<sup>77</sup> United States citizens are hired to “pretend they are masters of the boat,”<sup>78</sup> when in fact they “sit on board and read magazines.”<sup>79</sup> Until recently, crew members were not required to carry documentation proving their citizenship.<sup>80</sup> Mike White, commercial fishing vessel safety coordinator with the Eighth Coast Guard District, said “If a guy says he’s the captain, we believe that he’s the captain unless we have reason to believe he is not the captain.”<sup>81</sup>

Once domestic security issues captured the attention of the 107th Congress following the September 11th terrorist attacks, they enacted the Maritime Transportation Security Act of 2002 (“MTSA”).<sup>82</sup> The MTSA contains new requirements that crewmembers of vessels calling at U.S. ports carry credentials and present them on demand.<sup>83</sup> Vietnamese shrimpers fear this marks the end of the lenient policies that have allowed them to continue trawling. The Coast Guard released a clarification of the regulation, explaining the purpose and process of the new credentials.<sup>84</sup> The Commandment, found under 33 CFR 125.09(f), intends to establish a uniform maritime credentialing document.<sup>85</sup> Because of the complexity involved in creating a standardized document, the implementation will take some time.

The clarification, made effective on September 6, 2002, states that in the interim, valid credentials “can be laminated (or otherwise secure against tampering), contain the full name and current photograph of the person, and bear the name of the issuing authority.”<sup>86</sup> Examples of acceptable credentials include: “a driver’s license or official identification

76. 46 U.S.C. § 12102 (2000); Texas Fleet, *supra* note 5.

77. Ashley Dunn, *Bucking the Tide*, L.A. TIMES, Nov. 12, 1989, at 6A.

78. *Id.*

79. *Id.*

80. *Captain Requirements*, *supra* note 3.

81. *Id.*

82. Maritime Transportation Security Act of 2002, Pub. L. No. 107-295, 116 Stat. 2064 (2002).

83. 46 U.S.C.A. § 70111(a) (West Supp. 2003). “The Secretary, in consultation with the Attorney General and the Secretary of State, shall require crewmembers on vessels calling at United States ports to carry and present on demand any identification that the Secretary decides is necessary.” *Id.* See also Constantine G. Papavizas & Lawrence I. Kiern, *2001-2002 U.S. Maritime Legislative Developments*, 34 J. MAR. L. & COM. 451, 456 (2003).

84. Maritime Identification Credentials, 67 Fed. Reg. 51082, 51083 (Aug. 7, 2002).

85. 33 CFR § 125.09(f) (2003).

86. Maritime Identification Credentials, 67 Fed. Reg. 51082 (Aug. 7, 2002).

card issued by a Department of Motor Vehicles or a Motor-Vehicle Administration within the U.S.," a valid passport, or "an identification credential issued by a company, union, or trade association."<sup>87</sup>

Petty Officer Brandon Ortega claims that Coast Guard inspections in South Mississippi reveal most Vietnamese shrimpers are naturalized citizens and are operating legally.<sup>88</sup> He said, "We check for driver's licenses and documentation on the vessel."<sup>89</sup>

#### IV. CURRENT ISSUES AFFECTING TEXAS SHRIMPERS

##### A. *Anti-Dumping*

Approximately 80 percent of the shrimp consumed in the United States is imported.<sup>90</sup> The majority of Texas shrimpers surveyed maintain that shrimp imports depress dockside prices they receive from harvests.<sup>91</sup> To combat this growing concern, shrimp fishery representatives for eight states met in New Orleans, Louisiana from October 21-22, 2002, to create the Southern Shrimp Alliance ("SSA").<sup>92</sup> The SSA initially organized to explore the measures needed to boost shrimp prices, which include "fair trade investigations, legal action, legislation, petitions, lobbying, and even marketing designed to distinguish wild-caught American shrimp from pond-raised imports. . . ."<sup>93</sup>

The establishment of the SSA's Board of Directors is in itself significant. In addition to appointing two members from each of the eight participating states, two seats were assigned to represent the Vietnamese shrimping communities at large.<sup>94</sup> This inclusion is an important step toward including the Vietnamese-American voice when establishing industry policy.<sup>95</sup> But the two Vietnamese representatives, Gary Nguyen and

87. *Id.*

88. Patrick Peterson, *Citizenship Law No Problem for Mississippi Coast Shrimpers*, THE SUN HERALD, Sept. 5, 2003, 2003 WL 56832176.

89. *Id.*

90. TEX. PARKS & WILD. DEPT., THE TEXAS SHRIMP FISHERY: A REPORT TO THE GOVERNOR AND THE 77TH LEGISLATURE OF TEXAS 44 (2002).

91. *Id.* at 47.

92. *Shrimp Tales*, Nov. 5, 2002, (mailout from Shrimp Fishery Roundtable meeting to the Texas Shrimp Association membership) at <http://users.wcnet.net/ssa> (visited Feb. 17, 2004).

93. Lynne Langley, *Shrimpers to Battle Imports*, THE POST AND COURIER, Jan. 24, 2003, at [http://charleston.net/stories/012403/loc\\_24shrimp.shtml](http://charleston.net/stories/012403/loc_24shrimp.shtml) (visited Sept. 23, 2003) (on file with author).

94. *Shrimp Tales*, *supra* note 92.

95. See John DeSantis, THE HOUMA COURIER, Oct. 23, 2002, (discussing the benefits of the eight-state shrimp industry coalition) at <http://www.vietnamese-american.org/102802.html> (visited Feb. 23, 2004) [hereinafter DeSantis].

Calvin Nguyen, are in an uneasy position.<sup>96</sup> Their inclusion on the SSA Board of Directors has raised the suspicion in some among the Vietnamese-American community that the appointments were politically motivated.<sup>97</sup>

The SSA voted in August of 2003 to pursue an anti-dumping suit against Vietnam and eleven other shrimp exporting countries.<sup>98</sup> Vietnam is the second leading exporter of shrimp to the United States.<sup>99</sup> In 2002, the United States imported \$467.3 million worth of shrimp from Vietnam.<sup>100</sup> Tuan Tran, a teacher in Seattle, claims that “Global trade. . .has been good for Vietnam.”<sup>101</sup> He is one of many Vietnamese-Americans facing the uncomfortable predicament of either siding with shrimpers stateside, or supporting shrimpers back in the homeland.<sup>102</sup>

The decision is particularly trying for Calvin Nguyen. He received a phone message in Vietnamese from an unidentified caller asking him, “[W]hat do you want, what do you need?”<sup>103</sup> Nguyen claims that the tone of the caller’s voice carried a threat toward Nguyen’s family members still living in Vietnam.<sup>104</sup> On August 6, 2003, Nguyen reported to the SSA that he had received a second message to “sit down and negotiate.”<sup>105</sup> The SSA’s attorneys were alerted on both occasions.

Despite Nguyen’s vote in support of pursuing anti-dumping litigation, rumors spread of his complicity with business interests in Vietnam.<sup>106</sup> Members of the Louisiana Shrimp Association (LSA) fanned the rumors.<sup>107</sup> Two days before the SSA was to announce their intention to file

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96. *Id.*

97. *Id.*

98. *Shrimp Alliance Preparing to Sue Nations Over Dumping*, COLUMBIA LEDGER-ENQUIRER, Sept. 12, 2003, <http://www.ledger-enquirer.com/mld/ledgerenquirer/news/local/6751730.htm> (visited Sept. 23, 2003) (on file with author).

99. Margie Mason, *Vietnam Worried about Shrimp Sanctions*, THE ASSOCIATED PRESS, Jul. 24, 2003, <http://perso.wanadoo.fr/patrick.guenin/can Tho/vnnews/sanction.htm> (visited Mar. 4, 2004).

100. *Id.*

101. DeSantis, *supra* note 95.

102. *Id.*

103. John DeSantis, *Vietnamese Fishermen Caught in Trade Crossfire*, THE HOUMA COURIER, Sept. 3, 2003, at <http://www.usvtc.org/Shrimp/shrimp%20article%204sep03.pdf> (visited Mar. 4, 2004) [hereinafter *Vietnamese Fishermen*]. .

104. *Id.*

105. *Id.*

106. *Id.*

107. *See Id.* (describing the feud between the LSA and SSA).

a trade action, a renegade group of Louisiana shrimpers announced that they were going to petition for tariffs on shrimp imports.<sup>108</sup>

The Louisiana contingent blamed slow progress and lack of urgency at the SSA for their decision to break ranks.<sup>109</sup> The row between the two associations developed over the course of a year as a leadership struggle.<sup>110</sup> In September 2003, the LSA estimated that they had roughly 1,000 members, roughly half the size of the SSA.<sup>111</sup> The SSA had hired the Washington, D.C. law firm of Dewey Ballantine to represent them and to investigate whether their complaints were sufficient to seek relief under U.S. trade laws.<sup>112</sup> If successful, importers would pay tariffs on foreign shrimp raising the prices enough that U.S. shrimpers could remain competitive.<sup>113</sup>

Such overt signs of chaos between the two associations gave little comfort to target nations. One Vietnamese paper reported that, "If SSA decides not to press the suit, the Louisiana Shrimp Association will pick up the gauntlet."<sup>114</sup> Nonetheless, others recognized the disunity as an Achilles' heel. India, another shrimp exporting nation, emphasized the standing rules of the U.S. Commerce Department.<sup>115</sup> Visiting Indian Commerce and Industry Minister Arun Jaitley stated, "We believe, the Southern Shrimp Alliance, does not have the adequate standing in terms of numbers and, therefore, we think this has to be determined by the Department of Commerce."<sup>116</sup> The Department of Commerce requires 25 percent of domestic manufacturers or producers to support raising any anti-dumping issue, and in response to Jaitley, the Department of Com-

108. John DeSantis, *Louisiana Shrimpers Launch Renegade Petition*, THE HOUMA COURIER, Aug. 8, 2003, at <http://www.wwltv.com/local/Lafourche/WWL080803Shrimpers.10adae63f.html> (visited Feb. 12, 2004) [hereinafter *Louisiana Shrimpers*].

109. *Id.*

110. John DeSantis, *Officials Pitch Unity as Shrimp Group Split*, THE HOUMA COURIER, Aug. 10, 2003, at <http://www.houmatoday.com/apps/pbcs.dll/artikkel?SearchID=73163382165646&Avis=HC&Dato=20030810&Kategori=NEWS&Lopenr=308100325&Ref=AR> (visited Feb. 22, 2004) [hereinafter *Officials Pitch Unity*].

111. Karisa King, *Rivalry May Swamp Shrimpers*, SAN ANTONIO EXPRESS-NEWS, Sept. 21, 2003, 2003 WL 63252666 [hereinafter *Rivalry*].

112. *Louisiana Shrimpers*, *supra* note 108.

113. See generally Greg Gallagher, *United States Shrimp Industry Fights for Survival*, AQUACULTURE MAGAZINE, Jan.-Feb. 2003, (describing the U.S. shrimp industry's setbacks and problems) at <http://www.aquaculturemag.com/siteenglish/printed/archives/issues03/03articles/GallagherFeature.pdf>

114. An Ha, *The US Prepares Shrimp Dumping Suit*, Sept. 8, 2003, at <http://English.vietnamnet.vn/bz/2003/8/13799/> (visited Feb. 12, 2004).

115. Vasantha Arora, *India Disputes Anti-Dumping Action on Shrimp Exports*, INDO-ASIAN NEWS SERVICE, June 13, 2003, at <http://in.news.yahoo.com/030613/43/255nd.html> (visited Feb. 12, 2004).

116. *Id.*

merce admitted that the SSA had not yet, as of June 2003, achieved 25 percent support.<sup>117</sup>

By October 2003, the Seafood Exporters Association of India (SEAI) was not taking chances. SEAI officials recognized, “with Dewey Ballantine representing the US shrimp trawlers, the fight against anti-dumping is expected to be a long and hard battle.”<sup>118</sup> SEAI estimates the cost for the legal confrontation will cost it over \$1.5 million.<sup>119</sup> Likewise, the Vietnam Association of Seafood Exporters and Producers’ Shrimp Committee held a course on American anti-dumping laws to prepare their exporters for the trial.<sup>120</sup>

As exporting countries undertook these prudent measures, the LSA failed to raise funds for their petition from the state. LSA’s secretary, Michael Gros, announced in late 2003 “I don’t think we’ll pursue our own petition. We’ll try to work with the SSA.”<sup>121</sup>

On December 31, 2003, the “Shrimp Trade Action Committee” filed petitions with The International Trade Commission (ITC).<sup>122</sup> In a 6-0 vote, held in February 2004, the ITC found that the shrimp imports from six countries (Vietnam, Thailand, India, Ecuador, China, and Brazil) were hurting the U.S. shrimp industry.<sup>123</sup> Holding their ground, shrimp exporting nations still considered the SSA’s allegations “baseless,”<sup>124</sup> but understood that now they would have to fight to prove it.<sup>125</sup>

## B. *Environmental Concerns*

In 1995, the Texas Department of Parks and Wildlife instituted a bay shrimping license buy-back program designed to protect shrimp breeding areas and reduce the number of shrimpers trawling the bays.<sup>126</sup> Since the institution of the program, approximately 25 percent of the bay shrimping

117. *Id.*

118. C.J. Punnathara, *US Anti-Dumping Case Against Shrimp Imports*, BUSINESS LINE (THE HINDU), Oct. 23, 2003, 2003 WL 66048300.

119. *It’s Shrimps from India, Others! Shriek US Importers*, INDIAN BUSINESS INSIGHT, Nov. 3, 2003, 2003 WL 66932256.

120. *Vietnamese Newspaper Highlights*, ASIA PULSE, Nov. 7, 2003, 2003 WL 66427828.

121. Cain Burdeau, *State’s Shrimpers Support Anti-Dumping Action*, THE BATON ROUGE ADVOCATE, Oct. 28, 2003, 2003 WL 4889818.

122. *Shrimp Industry Hurt*, THE FLORIDA TIMES-UNION, Feb. 25, 2004, 2004 WL 62402679.

123. Walter Nicholls, *Shrimp is Top Pick*, THE CINCINNATI POST, Mar. 3, 2004, 2004 WL 58453642.

124. *US Shrimpers Rock Indian Seafood Boat*, INDIAN BUSINESS INSIGHT, Oct. 7, 2003, 2003 WL 64811208.

125. Nicholls, *supra* note 123.

126. TEX. PARKS & WILD. DEPT., *supra* note 90, at 4.

licenses have been purchased back by the state.<sup>127</sup> In recent years, the number of shrimpers in both the Bays and the Gulf has been falling due to “rising costs, higher insurance rates, imports, and shrinking profits.”<sup>128</sup> The number of gulf shrimp licenses fell from 4,100 to 1,500 between 1983 and 1999.<sup>129</sup>

Additionally, stricter environmental regulations now require the use of devices to protect turtles and fin fish.<sup>130</sup> Shrimpers claim these regulations reduce each shrimp catch by up to 30 percent.<sup>131</sup> The shrimp stock of the Gulf of Mexico is regulated regionally either by the states or the federal government.<sup>132</sup> Texas controls the shrimp fishery in both its bays and the Texas Territorial Sea (TTS)—which extends approximately nine nautical miles (nm) from shore.<sup>133</sup> Beyond the TTS, out to 200 nm, the National Marine Fisheries Service (NMFS) and the Gulf of Mexico Fishery Management Council (GMFMC) hold jurisdiction.<sup>134</sup>

In 1998, the NMFS instituted a requirement that the Gulf of Mexico shrimp fleet use bycatch reduction devices (BRD) to increase the stock of red snapper in federal waters.<sup>135</sup> Texas started requiring BRDs for trawlers in state waters beginning in September 2001.<sup>136</sup> In addition to BRDs, turtle excluder devices (TED) are required on all shrimp trawlers under both federal and state law.<sup>137</sup>

The environmental impact of shrimping is of great concern to many in Austin. Shrimpers argue that the environmental impact is overstated and based on insufficient science.<sup>138</sup> Tom Hults, president of the American Shrimp Processors Association, notes that species of fish caught in bycatch “have survived decades of commercial pressure.”<sup>139</sup> Advocates claiming that the current regulations are sufficient point to the swell of

127. *Id.*

128. *Texas Fleet*, *supra* note 5.

129. *Id.*

130. *Id.*

131. *Id.*; *see also* TEX. PARKS & WILD. DEPT., *supra* note 90, at 19. The Texas Department of Parks and Wildlife places the shrimp harvest loss at 21 percent. *Id.*

132. TEX. PARKS & WILD. DEPT., *supra* note 90, at 26.

133. One nautical mile = 1.15 statute miles.

134. TEX. PARKS & WILD. DEPT., *supra* note 90, at 26.

135. *Id.* at 18.

136. *Id.*

137. *Id.* at 23.

138. *Oversight Hearings on the Magnuson-Stevens Fishery Conservation and Management Act Before the U.S. Senate Subcomm. on Oceans and Fisheries*, 104th Cong. ¶11 (1999) (statement of Wilma Anderson, Executive Director, Texas Shrimp Association), <http://commerce.senate.gov/hearings/1214and.pdf> (visited Mar. 10, 2004).

139. Christopher Anderson, *Sea's Hidden Scars*, SAN ANTONIO EXPRESS-NEWS, Sept. 16, 2003, at 6A.

Kemp's Ridley Sea Turtle nests found on northern Mexican beaches.<sup>140</sup> Nesting sites of this endangered species increased from 6,436 in 2002 to more than 9,000 in 2003.<sup>141</sup>

More than three years ago, the state increased area closures and net restrictions.<sup>142</sup> Restricted bay waters expanded from 12 percent to 17 percent and the trawling season was cut from 180 days to 165 days.<sup>143</sup> Further, Gulf shrimpers may no longer use more than two nets within three miles of shore.<sup>144</sup>

Despite environmental improvements, efforts by well funded environmentalist and outdoor recreationist lobbies continue to oppose the shrimpers' presence.<sup>145</sup> In 2003, Sen. Jeff Wentworth of San Antonio proposed legislation that "would ban most commercial shrimping along the Texas coast."<sup>146</sup> The measure failed, but Wentworth plans to resubmit the bill in two years.<sup>147</sup>

Shrimpers work longer days because of stiffer competition and shrimpers "complain that overly strict regulations hurt them more than overfishing."<sup>148</sup> Shrimpers also compensate by using larger boats.<sup>149</sup> "Between 1986 and 1999, the number of Texas trawlers larger than 70 feet rose from 7 percent to 23 percent of the offshore fleet."<sup>150</sup> The larger boats are required to meet the crew restrictions provided for under the Jones Act.<sup>151</sup>

Many bay shrimpers resent the limited entry and buyback program and claim that they have no political support as opposed to the Gulf shrimpers, who are viewed in Austin as a more viable industry.<sup>152</sup> Bay shrimpers are concerned that the government undervalues the toll such regulations have on their communities and their families. Shrimper Jeff Noel expressed his opinion, "It's an important part of our culture. It's a place for people who aren't fortunate to have an education to go to work."<sup>153</sup>

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140. *Id.*

141. *Id.*

142. *Id.* at 7A.

143. *Id.*

144. Anderson, *supra* note 139, at 7A.

145. *Id.*

146. *Id.* at 6A.

147. *Id.*

148. *Texas Fleet*, *supra* note 5.

149. *Id.*

150. *Id.*

151. 46 U.S.C. § 12102 (2000).

152. *TEXAS SHRIMPERS*, *supra* note 8, at 181.

153. *Texas Fleet*, *supra* note 5 at 19A.



While gulf and bay shrimpers continue to struggle, commercial shrimp farming has increased dramatically in the United States since its beginning in the early 1980s. Texas is the clear leader in the domestic production of saltwater shrimp through aquaculture.<sup>154</sup> According to a 2002 report by the Texas Department of Parks and Wildlife, “[f]or the last five years, Texas produced over 80% of the U.S. farm raised saltwater shrimp. Texas production has increased from around 1 million pounds in 1987 to near 7 million pounds in 2001.”<sup>155</sup> That still pales to the shrimp landings of Texas gulf shrimpers who harvested approximately 46.5 million pounds of shrimp in 2002.<sup>156</sup> “The shrimp fishery is the most important commercial fishery in Texas in terms of both amount landed and ex-vessel value.”<sup>157</sup>

### C. *The Arrival of the Amerasians*

Until the mid-1980s almost all Vietnamese shrimpers in Texas worked the bays.<sup>158</sup> As the Vietnamese gained U.S. citizenship through naturalization, they qualified to own and operate Gulf boats.<sup>159</sup> According to the Texas Refugee Study conducted in 1993 by the Texas Office of Immigration & Refugee Affairs, 77 percent of Vietnamese refugees who have resided in the United States for the requisite five year period have become U.S. citizens.<sup>160</sup> The study also found that Vietnamese who have not yet naturalized normally intend to do so.<sup>161</sup> However, there are those who have had difficulty acquiring U.S. citizenship.

One of the more recent waves of immigrants from Vietnam are the Amerasians.<sup>162</sup> The Amerasians are the children of U.S. soldiers born to Vietnamese mothers during the war.<sup>163</sup> For years, the United States government treated them as any other Vietnamese national.<sup>164</sup> But in 1982,

154. TEX. PARKS & WILD. DEPT., *supra* note 90, at 42.

155. *Id.* at 43.

156. *Texas Fleet*, *supra* note 5, at 16A.

157. TEX. PARKS & WILD. DEPT., *supra* note 90, at 44.

158. *See* TEXAS SHRIMPERS, *supra* note 8, at 78 (explaining that in the early 1980s there were no Vietnamese gulf shrimpers and a growing number of Vietnamese bay shrimpers).

159. *Id.*

160. DEPT. HUM. SERV., OFFICE OF IMMIGRATION & REFUGEE AFFAIRS, VIETNAMESE, LAOTIAN, ETHIOPIAN, & FORMER SOVIET UNION REFUGEES IN TEXAS: FINDINGS FROM THE TEXAS REFUGEE STUDY 43 (1994).

161. *Id.*

162. Edward Hegstrom, *Relocated Amerasians Find Opportunity in Port Arthur*, HOUSTON CHRON., Oct. 13, 2003, 2003 WL 57449612.

163. Mary Kim DeMonico, *Disorderly Departure: An Analysis of the United States Policy Toward Amerasian Immigration*, 15 BROOK. J. INT'L L. 641, 642 (1989).

164. *Id.* at 643.

Congress amended the Immigration and Nationality Act to provide preferential treatment in the admission of children that were “born in Korea, Vietnam, Laos, Kampuchea, or Thailand after 1950 and fathered by a United States citizen.”<sup>165</sup> This amendment was the first public expression by the United States government that Amerasian children were to be provided special consideration when applying for admission to the United States.<sup>166</sup> Since the passage of the Amerasian Homecoming Act of 1987,<sup>167</sup> about 25,000 Amerasians have immigrated to the United States.<sup>168</sup> However, admittance to the United States under the Act did not necessarily grant citizenship status.<sup>169</sup>

Estimates of the number of children born in Vietnam to Americans during the war are as high as 50,000.<sup>170</sup> In Vietnam, the Amerasians were discriminated against.<sup>171</sup> Many were raised as street orphans and had no access to basic education.<sup>172</sup> Their mixed blood was an abomination that many viewed as a symbol of “disunity and a dissolution of the national blood.”<sup>173</sup> They are often referred to in derogatory terms, such as “*con lai*” (half-breed)<sup>174</sup> or “*bui doi*” (Dust of Life).<sup>175</sup> Amerasians do not share in the same rights “to food, housing, education, and employment” conferred upon the racially “pure” Vietnamese.<sup>176</sup> Many are illiterate resulting in their inability to pass the written U.S. citizenship exam.<sup>177</sup>

The Immigration and Nationality Act (“INA”) authorizes programs for domestic resettlement and assistance with refugees.<sup>178</sup> The statute appropriates federal funds to “make available sufficient resources for employment training and placement in order to achieve economic self-

165. Pub. L. No. 97-359, 96 Stat. 1716 (1982) (codified at 8 U.S.C. § 1154(f) (1994)).

166. DeMonico, *supra* note 163, at 643.

167. Pub. L. No. 100-202, § 584, 101 Stat. 1329-1383 (codified at 8 U.S.C. § 1101, *et seq.*, (1994)).

168. Hegstrom, *supra* note 162. Stories of individual migrations can often be dramatic. *See generally* Han Kwak, *Reunion After 36 Years*, THE PRESS-ENTERPRISE, Sept. 25, 2003, 2003 WL 61975912 (detailing the reunion of a U.S. serviceman and his son after 36 years); *see also* REDWOOD CURTAIN (Hallmark Home Entm’t. 1995) (portraying the identity struggle of a Vietnamese girl adopted by an American family).

169. *Chau v. I.N.S.*, 247 F.3d 1026, 1031 (9th Cir. 2001).

170. Indira A. R. Lakshmanan, *The Children They Left Behind Three Decades After the Vietnam War*, THE BOSTON GLOBE, Oct. 26, 2003, 2003 WL 66474155.

171. ROBERT S. MCKELVEY, *THE DUST OF LIFE: AMERICA’S CHILDREN ABANDONED IN VIETNAM* 36 (1999).

172. Hegstrom, *supra* note 162.

173. DeMonico, *supra* note 163, at 649.

174. *Id.*

175. MCKELVEY, *supra* note 171, at 5.

176. DeMonico, *supra* note 163, 651.

177. Hegstrom, *supra* note 162.

178. 8 U.S.C. § 1522 (1994).

sufficiency. . .as quickly as possible. . .[and] provide refugees with the opportunity to acquire sufficient English language training to enable them to become effectively resettled as quickly as possible.”<sup>179</sup> The wording of the statute emphasizes expedience.<sup>180</sup> However, a truer picture of how the programs are implemented can be garnered from a recent solicitation for grant applications for Employment Subsidy Projects for Refugees.<sup>181</sup> The solicitation states that the federally funded projects target refugees “who have experienced long-term difficulties with assimilation.”<sup>182</sup> These grants are intended for localities with concentrations of refugees who have experienced difficulty integrating economically and socially into local communities.”<sup>183</sup> Assimilation takes time; meanwhile the latest wave of refugee immigrants is arriving. For fiscal year 2004, President Bush authorized the admission of “up to 70,000 refugees.”<sup>184</sup> Of that number, East Asia was allocated 6,500 and an unallocated reserve set at 20,000.<sup>185</sup>

To further complicate the situation, reports of fraud and illegal trafficking have arisen recently.<sup>186</sup> Amerasians in Vietnam are approached by brokers who introduce them to people who act as family members and pay a premium to “piggyback” their way to America.<sup>187</sup> Despite the potential for abuse, others argue that the Act’s requirements for demonstrating paternity are too difficult to meet and many Amerasian children are denied admission to the United States based solely on the subjective opinions of a few government workers.<sup>188</sup>

Now in their 30s, most illiterate Amerasians have lost hope that they will ever acquire the ability to read or write.<sup>189</sup> Since the passage of the Amerasian Homecoming Act of 1987, more than 60 percent have yet to

179. 8 U.S.C. § 1522(a)(1)(A)(i-ii) (1994); *see also* 45 C.F.R. § 400.43 (2003).

180. 8 U.S.C. § 1522(a)(1)(A)(i-ii) (1994).

181. *Department of Health and Human Services Administration for Children and Families Employment Subsidy Program for Refugees with Assimilation Difficulties*, FEDNET GOVERNMENT NEWS, July 10, 2003, 2003 WL 55327418.

182. *Id.*

183. *Id.*

184. Press Release, White House, Memorandum for the Secretary of State, Presidential Determination on FY 2004 Refugee Admissions, No. 2004-06, (Oct. 22, 2003), 2003 WL 7518382.

185. *Id.*

186. *See* Kay Johnson, *Children of the Dust*, TIME ASIA, May 20, 2002, <http://www.time.com/time/asia/magazine/printout/0,13675,501020520-237115,00.html> (visited Feb. 18, 2004) (describing the trafficking of Vietnamese into the United States).

187. *Id.*

188. THOMAS A. BASS, VIETNAMERICA 2 (1996).

189. Hegstrom, *supra* note 162.

acquire U.S. citizenship.<sup>190</sup> In contrast, according to a report by the Urban Institute, “nearly half of the nation’s legal immigrants had become citizens by 2002.”<sup>191</sup> According to the Vietnamese service organization Boat People S.O.S., 29 percent of Asian Pacific Islander households in Virginia, “ha[d] no adult who speaks English well.”<sup>192</sup> The organization claims that the problem is similar elsewhere and contributes to the “high proportion of eligible immigrants who have not applied for naturalization and indicates an area of acute need.”<sup>193</sup>

In September 2003, U.S. Rep. Nick Lampson met with a group of approximately 100 Amerasians to discuss the problem.<sup>194</sup> More than one-half of the group raised their hands when asked whether they were illiterate.<sup>195</sup> U.S. Rep. Sheila Jackson Lee introduced a bill on October 21, 2003 that would allow Amerasians to forego the written citizenship exam.<sup>196</sup> In the meantime, the Amerasians are legally constrained from pursuing their livelihood as shrimpers.<sup>197</sup>

#### D. Solutions

Finding affordable labor is a struggle.<sup>198</sup> With aging fleets, many captains are over 60 and approaching retirement, and lower dockside prices.<sup>199</sup> As a result, boat owners are having difficulty finding captains and crews.<sup>200</sup> “The average Texas shrimper is 52 years old. . . [and] the number of Texans working on shrimp boats drops every year, from 8,032 in 1990 to 4,571 in 1999. About 83 percent of shrimpers say they would not encourage younger generations to enter the business.”<sup>201</sup>

The effects of the slump are affecting processing plants, distributors, and other dependent industries.<sup>202</sup> Other industries have simply packed

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190. Gaiutra Bahadur, *A Legacy in Vietnam, Lost in Translation*, THE PHILADELPHIA INQUIRER, Oct. 22, 2003, 2003 WL 63798631.

191. Sergio Bustos, *More Immigrants Choosing U.S. Citizenship*, GANNETT NEWS SERVICE, Sept. 16, 2003, 2003 WL 5603220.

192. *Legal Immigrants to Naturalized Citizens*, at <http://www.bpsos.org/LINC/linc.html> (visited Feb. 18, 2004).

193. *Id.*

194. Hegstrom, *supra* note 162.

195. *Id.*

196. *Id.*

197. *Id.*

198. Jessica Rocha, *Crew Shortages Prove Costly*, THE VALLEY MORNING STAR, Aug. 31, 2003, [http://www.valleystar.com/localnews\\_comments.php?id=49662\\_0\\_19\\_0\\_c](http://www.valleystar.com/localnews_comments.php?id=49662_0_19_0_c) (visited Feb. 18, 2004) [hereinafter *Crew Shortages*].

199. *Id.*

200. *Id.*

201. *Texas Fleet*, *supra* note 5, at 18A.

202. *Id.* at 19A.

up and moved to areas in Central America where the stocks are still in ample supply and labor is less expensive.<sup>203</sup>

A typical shrimp boat crew consists of a captain, rigger, and one or two headers.<sup>204</sup> One captain described the difficulty in finding good help. He said most headers are “come-and-go people” and you are never quite sure what kind of personality problems he’ll have.<sup>205</sup> Many owners moved to South Texas simply to hire hardworking Mexican, Central American, and Mexican-American crews.<sup>206</sup> Foreign crewmembers tend to endure the long hours and isolation better than most Americans, because the salaries are relatively high compared to the opportunities available in their home countries.<sup>207</sup> Some captains interviewed said, “it was unfortunate that citizenship was required for captain’s papers because they had Mexican-born riggers who would make good captains.”<sup>208</sup> With a workforce of eager new immigrants willing to work hard, shrimping in Texas has potential. Affordable labor is necessary to keep the industry afloat.

Some have lobbied to market “Gulf of Mexico Shrimp” to attract consumers and steer them away from the farm-raised imports.<sup>209</sup> Ralph Rayburn, head of outreach for Texas Sea Grant stated the following:

[Gulf Coast States] need to come together to develop standards as far as how shrimp is handled, packed and processed so they can ensure buyers are getting a good quality. Then you start marketing that identity so that people walk into a restaurant and ask for the Gulf of Mexico shrimp. You want the consumer to choose your product over your competitor.<sup>210</sup>

Such ideas have not escaped from detractors. George Barisich, a Louisiana shrimper and one of the founding members of the SSA says, “They’re telling me I should spend millions to niche-market my product because it’s been bastardized by imports. I don’t think I should have to do that. It’s an insult.”<sup>211</sup> But with the flood of inexpensive imported shrimp hitting the American market, the Texas Gulf shrimp price per pound was the lowest in 36 years. Texas shrimpers could make \$4.50 per

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203. *See id.* at 18A (detailing the hardships faced by U.S. fisheries in the struggle to compete in the global market).

204. *See* TEXAS SHRIMPERS, *supra* note 8, at 9 (discussing the role of a shrimp boat captain).

205. *Id.* at 39.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Texas Fleet*, *supra* note 5, at 19A.

210. *Id.*

211. *Id.*

pound in the early 1980s, whereas in 2002, the price was a mere \$1.50 per pound.<sup>212</sup>

The price for shrimp is particularly insulting when one takes into account the demand on the product. “In 2001, shrimp became the most popular seafood in the country, with 850 million pounds eaten, according to the National Fisheries Institute in Virginia. The average American devoured 3.4 pounds a year, outpacing tuna, the next most popular seafood.”<sup>213</sup> Despite the demand, most Texas shrimpers are not turning a profit because they can’t compete with exports. According to George Chamberlain, president of the international Global Aquaculture Alliance, highly efficient international farms are producing small shrimp at nearly \$1 per pound.<sup>214</sup> The publisher of the trade journal *Shrimp News International*, Bob Rosenberry expresses little sympathy for the Texas shrimpers.<sup>215</sup> He says in today’s global economy, those who produce for the least will win the market.<sup>216</sup> “Ten thousand years ago, we began to make the transition from the hunter-gatherer to row-crop farming. Twenty-five years ago, we began to make the transition to shrimp farming. It’s just more efficient.”<sup>217</sup> He further attacks the SSA’s anti-dumping suit, “I think it’s the dumbest thing in the world. I don’t think anyone is dumping. I think the shrimp farmers are producing at costs so much lower, the fishermen just can’t believe it. I think it is the end of the day for Gulf Coast fishermen, and all fishermen in the Southeast.”<sup>218</sup>

Despite the inexpensive imported shrimp glutting the market, the savings are not reaching consumers.<sup>219</sup> According to the Wall Street Journal, “grocery shoppers still pay anywhere from \$5.99 to \$10.99 a pound for typical medium-size uncooked white shrimp. Yet a grocer buying that same shrimp at the wholesale level shells out about \$3 per pound, less than half of what it was paying three years ago.”<sup>220</sup> Meanwhile, shrimp exporting countries have no qualms warning of the danger of price increases consumers would face if the anti-dumping suit succeeds.<sup>221</sup>

With the free-marketers ringing the death knell for the domestic shrimping industry, detractors of the state’s marketing regime are swal-

212. *Id.* Graph, at 19A.

213. Pfister, *supra* note 6, at 10A.

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. Pfister, *supra* note 6, at 10A.

219. Michelle Higgins, *Getting Skewered by Shrimp Prices*, WALL ST. J., Oct. 16, 2003, 2003 WL-WSJ 3982818.

220. *Id.*

221. *Now It’s Shrimp Wars*, INT’L HERALD TRIB., Oct. 7, 2003, 2003 WL 64829331.

lowing their pride as the Texas Department of Agriculture prepares to launch a three year, \$150,000 marketing campaign.<sup>222</sup> The money is from \$5.5 million of federal aid earmarked for Texas in a \$35 million package designed to alleviate the financial burdens of gulf and Atlantic Coast shrimpers.<sup>223</sup> Shrimpers will also receive, on average, \$1,500 to \$2,500 in direct subsidies.<sup>224</sup>

While the funds are welcomed, shrimpers know the money they receive is only temporary relief. The marketing scheme is a worthwhile investment, but in the face of global competition it will be important to make all reasonable actions to preserve their way of life. For that reason, Louisiana Governor Mike Foster intends to spend at least \$300,000 of his state's share of the federal monies to help fund the anti-dumping suit.<sup>225</sup> The Florida legislature, on the other hand, still had not decided how to distribute \$7 million of its share eight months after the announcement of the grant.<sup>226</sup> While the shrimpers in Florida still awaited their share in November 2003, Senators from Louisiana and South Carolina had already requested \$4 million for their states in the latest appropriations bill.<sup>227</sup> Other legislators are less inclined to subsidize shrimpers. U.S. Rep. Nick Lampson is one who disagrees with additional subsidies, but would consider imposing tariffs or quotas on imported shrimp.<sup>228</sup> The unlikelihood of future subsidies leaves shrimpers evermore dependent on the success of their anti-dumping suit.<sup>229</sup>

## V. CONCLUSION

In 2002, the Texas Parks and Wildlife Department commissioned the Social and Economic Study of the Texas Shrimp Fishery.<sup>230</sup> Questionnaires were sent to 2,309 Texas shrimp fishermen, of those only 326 were returned usable.<sup>231</sup> The researchers expressed disappointment at the low

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222. *Texas Fleet*, *supra* note 5, at 19A.

223. *Id.*

224. *Id.*

225. *Foster Looks to Use Federal Funds for Suit*, BATON ROUGE ADVOC., Nov. 13, 2003, 2003 WL 4891574.

226. Mark Holan, *Aid for Shrimpers Trapped in Capitol*, TAMPA TRIB., Oct. 28, 2003, 2003 WL 6151602.

227. *Shrimpers Ask Congress for Millions*, BATON ROUGE ADVOC., Nov. 8, 2003, 2003 WL 4891055.

228. *Rivalry*, *supra* note 111.

229. *Id.*

230. *See generally* DAVID K. ANDERSON AND ROBERT B. DITTON, A SOCIAL AND ECONOMIC STUDY OF THE TEXAS SHRIMP INDUSTRY (TEX. PARKS AND WILD. DEPT. 2002). The purpose of the study was to "focus on the status of shrimp populations, marine resources, habitat, and conservation measures. . . ." *Id.* at i.

231. *Id.* at i.

response rate and sought answers.<sup>232</sup> Although they drafted a “user-friendly” questionnaire, they met with strong resistance from the study group.<sup>233</sup> The following is a standard response that the researchers encountered: “The more we talk to people like you (University and government researchers) and provide you with information and data, the more rules and regulations that affect shrimping get put in place.”<sup>234</sup> The researchers concluded, based on a consistent low response rate over the years, that the mistrust between shrimpers and various government agencies may make it impossible to determine the economic health of the industry.<sup>235</sup>

The Texas shrimp industry is without a doubt at a critical juncture. Environmental regulations, increased competition from foreign exporters, and national security have each played a part in creating a bleak forecast for the Texas shrimper. Despite record demand by American consumers, American shrimpers can not turn a profit.

Shrimping has been a gateway industry for many Vietnamese refugees. The first waves of these refugees are now well underway in their assimilation to America. They have proven to be a resilient and motivated group. The second and third generations are finding success through higher education and moving into professional sectors. Sustaining the Texas shrimping fleet will ensure that unskilled refugees, who continue to immigrate to this state, can find employment and position themselves for social advancement. A healthy shrimping industry would not only provide them a sense of purpose, but also financial independence creating less of a burden on the state.

One should question whether the free market is in fact benefiting American consumers with respect to the shrimping industry. If the savings from inexpensive shrimp imports does not trickle down to the average restaurant patron, then why do we allow them to flood our markets? While critics argue that shrimp trawling should be let to peacefully slip away into the footnotes of history,<sup>236</sup> one must be cognizant of the benefits the industry has to offer our nation. We must maintain reputable positions from which new immigrants can launch their American dream. Exempting shrimpers from the citizenship requirement of the Jones Act would be a simple step to help keep the Texas shrimping industry afloat in the wake of the global economy.

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232. *Id.* at 18.

233. *Id.*

234. ANDERSON & DITTON, *supra* note 230, at 18.

235. *Id.*

236. Pfister, *supra* note 6, at 10A.



Shrimpers are the quintessential rugged individualists. They are difficult to organize and distrust government. Governmental solutions must be crafted with sensitivity and with the will of the shrimping community in mind. Further, because shrimpers are already working to their capacity, solutions must not be burdensome and they should be grounded in common sense.