

INTRODUCTION

A PRIMER ON PRIVATE BILLS AND PARDONS IN THE IMMIGRATION CONTEXT

Over the years, thousands of noncitizens with compelling stories have been deported or excluded because their cases did not fall within the four square corners of existing immigration laws. Many have lost their immigration status and have been removed because of criminal convictions, while many others have fallen between the cracks of the law. The purpose of public immigration laws is to unite families, to provide much-needed workers for the U.S. labor market, and to protect refugees. Unfortunately, many of the amendments made to the Immigration and Nationality Act since 1990 may indicate otherwise. Many of these laws either restricted or eliminated access to previously available relief from deportation or exclusion. Administrative and federal courts often interpret the laws in ways that harm rather than protect the rights of deserving immigrants, nonimmigrants, undocumented persons, and refugees. When existing immigration laws fail to provide the necessary relief to noncitizens, their only options may be to apply for a private bill in the U.S. Congress or a pardon for those with criminal issues.

Since the beginning of the republic, Congress has passed private immigration laws in order to provide much-needed remedies that public laws cannot provide. The harsher the laws on the books at any given time, the greater the need for private immigration relief.¹ Historically, an increase in the number of private immigration bills introduced in Congress has alerted senators and representatives of the need for immigration law reform. There is less need for private bills when immigration laws are fair and take into account hardship cases.

Private bills serve a two-fold purpose. On the one hand, they provide individual relief to deserving noncitizens. On the other hand, an increase in the number of private bills involving a particular issue acts as a sort of early-warning system to advise Congress and other decision makers of flaws and inequities in existing laws. The introduction of private bills has had an impact on several types of immigration legislation, including those involving national quotas, exclusion, and naturalization. There was a noticeable increase in the number of private bill requests after the passage of the Quota Act of 1921, which continued in force until 1965.² The Quota Act established a system of immigration based on national origin. Hundreds of private bills were requested during these years on behalf of nationals from countries who did not receive a large number of visas allocated to them under the law. These cases resulted in Congress recognizing a need to change the law, and the quota system was ultimately abolished in 1965 by an act that established an immigration

¹ B. Maguire, *Immigration—Public Legislation and Private Bills* (1997), at xv.

² Emergency Quota Act, ch. 8, 42 Stat. 5 (1921).

system based on skills needed in the United States, family ties to U.S. citizens and lawful permanent residents, and a reformulation of the preference system based on family relations and employment skills.³ In the area of exclusion and deportation, the large number of private bills introduced on behalf of relatives of U.S. citizens and lawful permanent residents in 1957 and in 1961 led to the passage of remedial legislation.⁴ Finally, increased numbers of private bills served to reveal inequities in the naturalization laws relating to expatriating acts resulting from long periods of residence abroad.⁵

In addition to private fixes through specific legislation, federal and state pardons serve as an important form of individual relief for deserving cases. Changes relating to grounds of inadmissibility and removal included in the Antiterrorism and Effective Death Penalty Act of 1996⁶ and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996⁷ resulted in thousands of persons with criminal convictions or past criminal activity being subject to deportation, many facing permanent expulsion. Since Congress is hesitant to provide relief through private bills in criminal cases, pardons may serve as the only alternative to removal.

This book is divided into seven chapters, with appendices. Chapter 1 addresses private bills, providing information on the history of private bills, the legal authority for private bills, and the effect of a private bill on immigration status. It also provides an overview of how private laws are made and information on how to research private immigration bills.

Chapter 2 addresses congressional rules governing private bills. It discusses the House of Representatives' rules and procedures governing private bills and the evolution of these rules during the last half of the 20th century until present. It explains the current rules and procedures in the House governing the introduction and passage of private bills in the immigration context. It also addresses the Senate's current rules and procedures governing private bills and the evolution of those rules.

Chapter 3 discusses the role of the executive branch in the private bill process. Specifically, it addresses the role of the Department of Homeland Security (DHS) and, to a lesser extent, the role of the Department of State (DOS) in the private bill process. This chapter addresses the immigration status of an applicant during the process and stays of removal. It also talks about DHS and DOS reports and responses to members of Congress. Under both the House and Senate procedures, members may request reports on the potential beneficiary or beneficiaries of private bills.

Chapter 4 provides an overview of private bill precedents in order to give the reader a better idea of the types of cases toward which Congress is favorable. As

³ Immigration Act of 1965, Pub. L. No. 89-236, 79 Stat. 911.

⁴ B. Maguire, *supra* note 1, at 71; Act of September 11, 1957, 71 Stat. 639 (providing for waivers of certain grounds of exclusion).

⁵ B. Maguire, *supra* note 1, at 71.

⁶ Pub. L. No. 104-132, 110 Stat. 1214.

⁷ Pub. L. No. 104-208, div. C, 110 Stat. 3009, 3009-546 to 3009-724.

noted in the House rules, it is the policy of the Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law to act favorably on only those private bills that meet certain precedents.⁸ The term “precedent” throughout this book refers to private laws that were passed by the U.S. Congress and became law. Therefore, an understanding of those precedents is vital in order to prepare and present a request for a private bill to a member of Congress. This chapter also discusses strategies to be used by practitioners in advocating for a private bill on behalf of a client.

Chapter 5 provides an overview on the use of pardons to provide immigration relief to noncitizens with criminal convictions. It will explain what crimes may be forgiven, for immigration purposes, by a pardon. It also discusses the requirements for a pardon to be effective in resolving an immigration problem. Finally, it addresses the issue of the constitutionality of Congress’s limitation on the presidential pardon power by only recognizing certain crimes that can be eliminated by a pardon for immigration purposes.

Chapter 6 provides information on the role of federal pardons as a potential remedy in immigration cases. It will discuss the rules and procedures governing executive clemency. It also gives the reader a historical overview of federal pardons approved under several administrations, highlighting both successful and unsuccessful cases.

Chapter 7 discusses the role of state pardons in resolving immigration cases. It will talk about the different state clemency models, including pardon power exercised by independent boards with no involvement of the governor, pardons approved where the governor may act only upon advice of a board, and pardons exercised solely by the governor. The chapter also includes a short state-by-state description of pardon procedures.

Although private bills and pardons are often seen as remedies of last resort, practitioners should aggressively pursue them on behalf of their clients. Hopefully, this book will serve to encourage you to consider such strategies.

⁸ U.S. House of Representatives Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law, Rules of Procedure and Statement of Policy for Private Immigration Bills, 110th Cong. (2007), at 3 (statement of policy).