

**Effective:[See Text Amendments]**

United States Code Annotated [Currentness](#)  
Title 8. Aliens and Nationality ([Refs & Annos](#))  
Chapter 12. Immigration and Nationality ([Refs & Annos](#))  
    <sup>⌵</sup> [Subchapter II](#). Immigration  
        <sup>⌵</sup> [Part II](#). Admission Qualifications for Aliens; Travel Control of Citizens and Aliens  
            → **§ 1185. Travel control of citizens and aliens**

(a) Restrictions and prohibitions

Unless otherwise ordered by the President, it shall be unlawful--

- (1) for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe;
- (2) for any person to transport or attempt to transport from or into the United States another person with knowledge or reasonable cause to believe that the departure or entry of such other person is forbidden by this section;
- (3) for any person knowingly to make any false statement in an application for permission to depart from or enter the United States with intent to induce or secure the granting of such permission either for himself or for another;
- (4) for any person knowingly to furnish or attempt to furnish or assist in furnishing to another a permit or evidence of permission to depart or enter not issued and designed for such other person's use;
- (5) for any person knowingly to use or attempt to use any permit or evidence of permission to depart or enter not issued and designed for his use;
- (6) for any person to forge, counterfeit, mutilate, or alter, or cause or procure to be forged, counterfeited, mutilated, or altered, any permit or evidence of permission to depart from or enter the United States;
- (7) for any person knowingly to use or attempt to use or furnish to another for use any false, forged, counterfeited, mutilated, or altered permit, or evidence of permission, or any permit or evidence of permission which, though originally valid, has become or been made void or invalid.

(b) Citizens

Except as otherwise provided by the President and subject to such limitations and exceptions as the President may authorize and prescribe, it shall be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid United States passport.

(c) Definitions

The term “United States” as used in this section includes the Canal Zone, and all territory and waters, continental or insular, subject to the jurisdiction of the United States. The term “person” as used in this section shall be deemed to mean any individual, partnership, association, company, or other incorporated body of individuals, or corporation, or body politic.

(d) Nonadmission of certain aliens

Nothing in this section shall be construed to entitle an alien to whom a permit to enter the United States has been issued to enter the United States, if, upon arrival in the United States, he is found to be inadmissible under any of the provisions of this chapter, or any other law, relative to the entry of aliens into the United States.

(e) Revocation of proclamation as affecting penalties

The revocation of any rule, regulation, or order issued in pursuance of this section shall not prevent prosecution for any offense committed, or the imposition of any penalties or forfeitures, liability for which was incurred under this section prior to the revocation of such rule, regulation, or order.

(f) Permits to enter

Passports, visas, reentry permits, and other documents required for entry under this chapter may be considered as permits to enter for the purposes of this section.

CREDIT(S)

(June 27, 1952, c. 477, Title II, ch. 2, § 215, 66 Stat. 190; Oct. 7, 1978, [Pub.L. 95-426, Title VII, § 707\(a\)](#) to (d), 92 Stat. 992, 993; Oct. 25, 1994, [Pub.L. 103-416, Title II, § 204\(a\)](#), 108 Stat. 4311.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1952 Acts. House Report No. 1365 and Conference Report No. 2096, see 1952 U.S. Code Cong. and Adm. News, p. 1653.

1978 Acts. [House Report No. 95-1160](#) and [House Conference Report No. 95-1535](#), see 1978 U.S. Code Cong. and Adm. News, p. 2424.

1994 Acts. [House Report No. 103-387](#), see 1994 U.S. Code Cong. and Adm. News, p. 3516.

References in Text

For definition of Canal Zone, referred to in subsec. (c), see section 3602(b) of Title 22.

Amendments

1994 Amendments. Subsec. (b). Pub.L. 103-416, § 204(a), inserted “United States” following “valid”.

1978 Amendments. Subsec. (a). Pub.L. 95-426, § 707(a) substituted “Unless otherwise ordered by the President, it shall be unlawful” for provisions declaring it unlawful when the United States is at war or during a proclaimed national emergency, or, as to aliens, when there exists a state of war between two or more states and the President finds that the interests of the United States require restrictions to be imposed upon departure of persons from and their entry into the United States.

Subsec. (b). Pub.L. 95-426, § 707(b), substituted provisions prohibiting departure or entry except as otherwise provided by the President and subject to such limitations and exceptions as he may authorize or prescribe, for provisions prohibiting such departure or entry after proclamation of a national emergency has been made, published and in force.

Subsecs. (c) to (g). Pub.L. 95-426, § 707(d), struck out subsec. (c) relating to penalties for violation of this section, and redesignated subsecs. (d) to (g) as (c) to (f), respectively.

Subsec. (e). Pub.L. 95-426, § 707(c), struck out “proclamation” preceding “rule” in two places.

#### Effective and Applicability Provisions

1994 Acts. Section 204(b) of Pub.L. 103-416 provided that: “The amendment made by subsection (a) [amending subsec. (b) of this section] shall apply to departures and entries (and attempts thereof) occurring on or after the date of enactment of this Act [Oct. 25, 1994].”

#### Western Hemisphere Travel Initiative

Pub.L. 110-53, Title VII, § 724, Aug. 3, 2007, 121 Stat. 350, provided that:

“Before the Secretary of Homeland Security publishes a final rule in the Federal Register implementing section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; 8 U.S.C. 1185 note)--

“(1) the Secretary of Homeland Security shall complete a cost-benefit analysis of the Western Hemisphere Travel Initiative, authorized under such section 7209; and

“(2) the Secretary of State shall develop proposals for reducing the execution fee charged for the passport card, proposed at [71 Fed. Reg. 60928-32 \(October 17, 2006\)](#), including the use of mobile application teams, during implementation of the land and sea phase of the Western Hemisphere Travel Initiative, in order to encourage United States citizens to apply for the passport card.”

#### Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under [8 U.S.C.A. § 1551](#).

#### Travel Documents

Pub.L. 108-458, Title VII, § 7209, Dec. 17, 2004, 118 Stat. 3823, as amended Pub.L. 109-295, Title V, § 546, Oct. 4, 2006, 120 Stat. 1386; Pub.L. 110-53, Title VII, § 723, Aug. 3, 2007, 121 Stat. 349; Pub.L. 110-161, Div. E, Title V, § 545, Dec. 26, 2007, 121 Stat. 2080, provided that:

**“(a) Findings.**--Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

**“(1)** Existing procedures allow many individuals to enter the United States by showing minimal identification or without showing any identification.

**“(2)** The planning for the terrorist attacks of September 11, 2001, demonstrates that terrorists study and exploit United States vulnerabilities.

**“(3)** Additional safeguards are needed to ensure that terrorists cannot enter the United States.

**“(b) Passports.**--

**“(1) Development of plan and implementation.**--

**“(A)** The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a plan as expeditiously as possible to require a passport or other document, or combination of documents, deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship, for all travel into the United States by United States citizens and by categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act ([8 U.S.C. 1182\(d\)\(4\)\(B\)](#)). Such plan may not be implemented earlier than the date that is the later of 3 months after the Secretary of State and the Secretary of Homeland Security make the certification required in subparagraph (B) or June 1, 2009. The plan shall seek to expedite the travel of frequent travelers, including those who reside in border communities, and in doing so, shall make readily available a registered traveler program (as described in section 7208(k) [[8 U.S.C.A. § 1365b\(k\)](#)]).

**“(B)** The Secretary of Homeland Security and the Secretary of State shall jointly certify to the Committees on Appropriations of the Senate and the House of Representatives that the following criteria have been met prior to implementation of section 7209(b)(1)(A) [of this note]--

**“(i)** the National Institute of Standards and Technology certifies that the Departments of Homeland Security and State have selected a card architecture that meets or exceeds International Organization for Standardization (ISO) security standards and meets or exceeds best available practices for protection of personal identification documents: *Provided*, That the National Institute of Standards and Technology shall also assist the Departments of Homeland Security and State to incorporate into the architecture of the card the best available practices to prevent the unauthorized use of information on the card: *Provided further*, That to facilitate efficient cross-border travel, the Departments of Homeland Security and State shall, to the maximum extent possible, develop an architecture that is compatible with information technology systems and infrastructure used by United States Customs and Border Protection;

**“(ii)** the technology to be used by the United States for the passport card, and any subsequent change to that technology, has been shared with the governments of Canada and Mexico;

“(iii) an agreement has been reached with the United States Postal Service on the fee to be charged individuals for the passport card, and a detailed justification has been submitted to the Committees on Appropriations of the Senate and the House of Representatives;

“(iv) an alternative procedure has been developed for groups of children traveling across an international border under adult supervision with parental consent;

“(v) the necessary technological infrastructure to process the passport cards has been installed, and all employees at ports of entry have been properly trained in the use of the new technology;

“(vi) the passport card has been made available for the purpose of international travel by United States citizens through land and sea ports of entry between the United States and Canada, Mexico, the Caribbean and Bermuda;

“(vii) a single implementation date for sea and land borders has been established; and

“(viii) the signing of a memorandum of agreement to initiate a pilot program with not less than one State to determine if an enhanced driver's license, which is machine-readable and tamper proof, not valid for certification of citizenship for any purpose other than admission into the United States from Canada or Mexico, and issued by such State to an individual, may permit the individual to use the driver's license to meet the documentation requirements under subparagraph (A) for entry into the United States from Canada or Mexico at land and sea ports of entry.

“(C) **Report.**--Not later than 180 days after the initiation of the pilot program described in subparagraph (B) (viii), the Secretary of Homeland Security and the Secretary of State shall submit to the appropriate congressional committees a report which includes--

“(i) an analysis of the impact of the pilot program on national security;

“(ii) recommendations on how to expand the pilot program to other States;

“(iii) any appropriate statutory changes to facilitate the expansion of the pilot program to additional States and to citizens of Canada;

“(iv) a plan to screen individuals participating in the pilot program against United States terrorist watch lists; and

“(v) a recommendation for the type of machine-readable technology that should be used in enhanced driver's licenses, based on individual privacy considerations and the costs and feasibility of incorporating any new technology into existing driver's licenses.

“(2) **Requirement to produce documentation.**--The plan developed under paragraph (1) shall require all United States citizens, and categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of such Act [[8 U.S.C.A. § 1182\(d\)\(4\)\(B\)](#)], to carry and produce the documentation described in paragraph (1) when traveling from foreign countries into the United States.

“(c) **Technical and conforming amendments.**--After the complete implementation of the plan described in subsec-

tion (b) [of this note]--

“(1) neither the Secretary of State nor the Secretary of Homeland Security may exercise discretion under section 212(d)(4)(B) of such Act [[8 U.S.C.A. § 1182\(d\)\(4\)\(B\)](#)] to waive documentary requirements for travel into the United States; and

“(2) The President may not exercise discretion under section 215(b) of such act (8 u.s.c. 1185(b)) [subsec. (b) of this section] to waive documentary requirements for United States citizens departing from or entering, or attempting to depart from or enter, the United States except--

“(A) where the Secretary of Homeland Security determines that the alternative documentation that is the basis for the waiver of the documentary requirement is sufficient to denote identity and citizenship;

“(B) in the case of an unforeseen emergency in individual cases; or

“(C) in the case of humanitarian or national interest reasons in individual cases.

“(d) **Transit without visa program.**--The Secretary of State shall not use any authorities granted under section 212(d)(4)(C) of such Act [[8 U.S.C.A. § 1182\(d\)\(4\)\(C\)](#)] until the Secretary, in conjunction with the Secretary of Homeland Security, completely implements a security plan to fully ensure secure transit passage areas to prevent aliens proceeding in immediate and continuous transit through the United States from illegally entering the United States.”

[Notwithstanding any other provision of Pub.L. 108-458, Pub.L. 108-458, Title VII, Subtitle B (§§ 7201 to 7220), to take effect on Dec. 17, 2004, see Pub.L. 108-458, § 7219, which is set out as a note under [8 U.S.C.A. § 1202.](#)]

## EXECUTIVE ORDERS

### [EXECUTIVE ORDER NO. 12172](#)

<Nov. 26, 1979, 44 F.R. 67947, as amended by [Ex. Ord. No. 12206](#), Apr. 7, 1980, 45 F.R. 24101>

## DELEGATION OF AUTHORITY OF PRESIDENT TO SECRETARY OF STATE AND ATTORNEY GENERAL RESPECTING ENTRY OF IRANIAN ALIENS INTO THE UNITED STATES

By virtue of the authority vested in me as President by the Constitution and laws of the United States, including the Immigration and Nationality Act, as amended [this chapter], 8 USC 1185 [this section] and [3 USC 301](#) [section 301 of Title 3, The President], it is hereby ordered as follows:

**Section 1-101.** Delegation of Authority. The Secretary of State and the Attorney General are hereby designated and empowered to exercise in respect of Iranians the authority conferred upon the President by section 215(a)(1) of the Act of June 27, 1952 (8 USC 1185) [subsec. (a)(1) of this section], to prescribe limitations and exceptions on the rules and regulations governing the entry of aliens into the United States.

**Section 1-102.** Effective Date. This order is effective immediately.

JIMMY CARTER

[EXECUTIVE ORDER NO. 13323](#)

&lt;Dec. 30, 2003, 69 F.R. 241&gt;

## ASSIGNMENT OF FUNCTIONS RELATING TO ARRIVALS IN AND DEPARTURES FROM THE UNITED STATES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 215 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1185), and [section 301 of title 3, United States Code](#), and to strengthen the national security of the United States through procedures and systems to manage and control the arrival and departure of persons from the United States, it is hereby ordered as follows:

**Section 1. Functions of the Secretary of Homeland Security.** The Secretary of Homeland Security is assigned the functions of the President under section 215(a) of the INA [subsec. (a) of this section] with respect to persons other than citizens of the United States. In exercising these functions, the Secretary of Homeland Security shall not issue, amend, or revoke any rules, regulations, or orders without first obtaining the concurrence of the Secretary of State.

**Sec. 2. Functions of the Secretary of State.** The Secretary of State is assigned the functions of the President under section 215(a) and (b) of the INA [subsecs. (a), (b) of this section] with respect to citizens of the United States, including those functions concerning United States passports. In addition, the Secretary may amend or revoke part 46 of title 22, Code of Federal Regulations, which concern persons other than citizens of the United States. In exercising these functions, the Secretary of State shall not issue, amend, or revoke any rules, regulations, or orders without first consulting with the Secretary of Homeland Security.

**Sec. 3. Judicial Review.** This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

GEORGE W. BUSH

## CROSS REFERENCES

Counterfeiting and forgery, see [18 USCA § 471 et seq.](#)

Definition of the term--

Alien, see [8 USCA § 1101\(a\)\(1\)](#).

Entry, see [8 USCA § 1101\(a\)\(13\)](#).

Passport, see [8 USCA § 1101\(a\)\(30\)](#).

Person, as used in this subchapter and subchapter I of this chapter, see [8 USCA § 1101\(b\)\(3\)](#).

State, see [8 USCA § 1101\(a\)\(36\)](#).

United States, see [8 USCA § 1101\(a\)\(38\)](#).

False personation, see [18 USCA § 911 et seq.](#)

Fines, penalties and forfeitures, see [28 USCA § 2461 et seq.](#)

Fraud and false statements, see [18 USCA § 1001 et seq.](#)

Passports and visas, see [18 USCA § 1541 et seq.](#)

Repeal of statutes as affecting existing liabilities, see [1 USCA § 109](#).

## FEDERAL SENTENCING GUIDELINES

See [Federal Sentencing Guidelines §§ 2L2.1, 2L2.2](#), 18 USCA.

## CODE OF FEDERAL REGULATIONS

Departure control procedures, see [8 CFR § 215.1 et seq.](#); [22 CFR § 46.1 et seq.](#)

Travel control of citizens in time of war or emergency, see [22 CFR § 53.1 et seq.](#)

## LAW REVIEW COMMENTARIES


Passports, social-security numbers and 26 U.S.C. § 6039E. Stephen Kruger, 20 W.St.U.L.Rev. 1 (1992).


The balance of interest [between national security controls and first amendment interest in academic freedom](#). M. Christina Ramirez, 13 J.C. & U.L. 179 (1986).

[Yang v. Maugans: Just when you thought it was safe to get in the water](#). 21 N.C.J.Int'l L. & Com.Reg. 667 (1996).

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[Aliens](#)  4, 39, 53.9.

[Citizens](#)  10.2.

[Constitutional Law](#)  83(4).

Key Number System Topic Nos. [24](#), 77, [92](#).

## Corpus Juris Secundum

[CJS Aliens § 11](#), Inherent Right to Equitable Treatment--Control of Aliens Departing from United States.

[CJS Aliens § 536](#), Suspension of and Restrictions on Entry and Departure of Aliens.

[CJS Aliens § 537](#), Interdiction of Illegal Aliens.

[CJS Aliens § 547](#), Introduction.

[CJS Aliens § 576](#), Suspension Of, or Restrictions On, Entry.

## RESEARCH REFERENCES

## ALR Library



[78 ALR, Fed. 683](#), Tort Liability of United States Under Claims Act for Acts Committed by Aliens.

[89 ALR 4th 1026](#), Criminal Law: “Official Statement” Mistake of Law Defense.

[132 ALR 738](#), Assumption of Jurisdiction by Court Before Completion of Administrative Procedure as Ground of Prohibition.

#### Encyclopedias

[Am. Jur. 2d Aliens and Citizens § 283](#), Suspension of and Restrictions on Entry and Departure of Aliens.

[Am. Jur. 2d Aliens and Citizens § 947](#), Supporting Documentation.

[Am. Jur. 2d Aliens and Citizens § 1206](#), Introduction.

[Am. Jur. 2d Aliens and Citizens § 1251](#), Other Nonimmigrant Aliens.

[Am. Jur. 2d Aliens and Citizens § 1272](#), Suspension Of, or Restrictions On, Entry.

[Am. Jur. 2d Aliens and Citizens § 2147](#), Control of Aliens Departing from United States.

#### Treatises and Practice Aids

[Federal Procedure, Lawyers Edition § 45:2](#), President.

[Federal Procedure, Lawyers Edition § 45:1049](#), Supporting Documentation.

[Federal Procedure, Lawyers Edition § 45:1306](#), Other Nonimmigrant Aliens.

[Federal Procedure, Lawyers Edition § 45:1338](#), Suspension Of, or Restrictions On, Entry.

[Immigration Law and Crimes § 4:36](#), Permanent Restriction Against Judicial Review.

[Immigration Law and Crimes § 4:37](#), The IIRAIRA Transitional Rule for “Pipeline” Cases Restricting Judicial Review of Deportation and Exclusion Orders.

[Immigration Law Service 2d § 2:9](#), Suspension Of, or Restrictions On, Entry.

[Immigration Law Service 2d § 2:59](#), Introduction.

[Immigration Law Service 2d § 1:246](#), Overview.

[Immigration Law Service 2d § 14:15](#), Doctrine of Jus Soli--Who is Born in United States and Subject to United States Jurisdiction--Children of Foreign Diplomatic Personnel in United States.

[Immigration Law Service 2d PSD EO 12807](#), Executive Order No. 12807 of May 24, 1992 Interdiction of Illegal Aliens.

[Immigration Law Service 2d PSD EO 13276](#), Executive Order 13276 Delegation of Responsibilities Concerning Undocumented Aliens Interdicted or Intercepted in the Caribbean Region November 15, 2002.

Immigration Law Service 2d PSD FAM 1335, Fam 1335 Use of a Foreign Passport.

[Immigration Law Service 2d PSD INA § 237](#), General Classes of Deportable Aliens.

Immigration Law Service 2d PSD FAM 1316.1, Fam 1316.1. Valid Passport Required to Depart or Enter the United States.

Immigration Law Service 2d PSD FAM 1311.1-6, Fam 1311.1-6. Other Travel Documents.

[Immigration Law Service 2d PSD PRES PROC 4865](#), Proclamation 4865 High Seas Interdiction of Illegal Aliens.

[Immigration Law Service 2d PSD PRES PROC 6925](#), Proclamation 6925 Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Formulate or Implement Policies that Are Impeding the Transition to Democracy in Burma or Who Benefit from Such...

[Immigration Law Service 2d PSD PRES PROC 6958](#), Proclamation 6958 Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Are Members or Officials of the Sudanese Government or Armed Forces.

[Immigration Law Service 2d PSD PRES PROC 7060](#), Proclamation 7060 Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Are Senior Officials of the National Union for the Total Independence of Angola (“UNITA”) and Adult Members of Their...

[Immigration Law Service 2d PSD PRES PROC 7062](#), Proclamation 7062 Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Are Members of the Military Junta in Sierra Leone and Members of Their Families.

[Immigration Law Service 2d PSD 1992 GEN COUNCEL OP](#), General Counsel's Opinions.

[Immigration Law Service 2d PSD 1998 GEN COUNCEL OP](#), General Counsel's Opinions.

#### NOTES OF DECISIONS


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#### [1. Constitutionality](#)


Former § 223 of Title 22 [now covered by subsec. (a) of this section] empowering the President to impose additional restrictions and prohibitions on the entry into the United States during the national emergency proclaimed on May 27, 1941, and the regulations thereunder which enabled the Attorney General to deny an alien a hearing before a board of inquiry where he determined that the alien was excludable under the regulations on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest, were not unconstitutional delegations of legislative power. [U.S. ex rel. Knauff v. Shaughnessy, U.S.N.Y.1950, 70 S.Ct. 309, 338 U.S. 537, 94 L.Ed. 317. Constitutional Law](#) [↪2420](#); [War And National Emergency](#) [↪36](#)



This section making it unlawful for any citizen of United States to depart from or enter, or attempt to depart from or



enter, United States, unless he bears a valid passport, and regulations thereunder making it unlawful to depart for Cuba without a valid passport, were valid. [Travis v. U. S., C.A.9 \(Cal.\) 1965, 353 F.2d 506](#), certiorari granted [86 S.Ct. 1339, 384 U.S. 903, 16 L.Ed.2d 357](#), reversed on other grounds [87 S.Ct. 583, 385 U.S. 491, 17 L.Ed.2d 536](#). [Aliens, Immigration, And Citizenship](#) 770




This section relating to passport requirements, was not unconstitutionally vague or ambiguous by reason of definition of term “United States” or by its inclusion of word “waters” in such definition. [Worthy v. U. S., C.A.5 \(Fla.\) 1964, 328 F.2d 386](#). [Aliens, Immigration, And Citizenship](#) 770


Restrictions on travel to Communist China by citizens of this country is constitutional under regulations promulgated by Secretary of State pursuant to Presidential authority over conduct of foreign affairs. [Worthy v. Herter, C.A.D.C.1959, 270 F.2d 905, 106 U.S.App.D.C. 153](#), certiorari denied [80 S.Ct. 255, 361 U.S. 918, 4 L.Ed.2d 186](#). See, also, [Porter v. Herter, 1960, 278 F.2d 280, 107 U.S.App.D.C. 400](#), certiorari denied [81 S.Ct. 70, 364 U.S. 837, 5 L.Ed.2d 61](#); [Frank v. Herter, 1958, 269 F.2d 245, 106 U.S.App.D.C. 54](#), certiorari denied [80 S.Ct. 256, 361 U.S. 918, 4 L.Ed.2d 187](#).

This section, construed to authorize Secretary of State to impose geographical restrictions on foreign travel, is not constitutionally defective on ground of vagueness. [MacEwan v. Rusk, E.D.Pa.1964, 228 F.Supp. 306](#), affirmed [344 F.2d 963](#). [Statutes](#) 47


This section construed to authorize Secretary of State to impose geographical restrictions on foreign travel is not unlawful delegation of legislative power to executive. [MacEwan v. Rusk, E.D.Pa.1964, 228 F.Supp. 306](#), affirmed [344 F.2d 963](#). [Aliens, Immigration, And Citizenship](#) 651; [Constitutional Law](#) 2423

Geographical passport restrictions imposed by Secretary of State in respect to travel to Cuba are authorized by valid and constitutional statutes. [Zemel v. Rusk, D.C.Conn.1964, 228 F.Supp. 65](#), affirmed [85 S.Ct. 1271, 381 U.S. 1, 14 L.Ed.2d 179](#), rehearing denied [86 S.Ct. 17, 382 U.S. 873, 15 L.Ed.2d 114](#). [Aliens, Immigration, And Citizenship](#) 675; [Constitutional Law](#) 4240

Former §§ 223 to 226b of Title 22 [now covered by this section] did not contravene prohibition of [U.S.C.A.Const. Art. 1, § 9, cl. 3](#), against bills of attainder and ex post facto laws. [Bauer v. Acheson, D.C.D.C.1952, 106 F.Supp. 445](#). [Aliens, Immigration, And Citizenship](#) 651; [Constitutional Law](#) 1100(1); [Constitutional Law](#) 2800

Requirement that alien making application for alien departure permit disclose his membership in or affiliation with Communist Party was not a violation of [U.S.C.A.Const. Amend. 1](#). [U.S. v. Eisler, D.C.D.C.1948, 75 F.Supp. 640](#), affirmed [176 F.2d 21, 84 U.S.App.D.C. 404](#), motion denied [69 S.Ct. 1150, 337 U.S. 912, 93 L.Ed. 1723](#), certiorari denied [69 S.Ct. 1534, 337 U.S. 958, 93 L.Ed. 1758](#). [Constitutional Law](#) 1584

## 2. Construction

This section making it unlawful for any citizen of United States to depart from or enter the United States unless he bears a valid passport is a criminal statute, and must therefore be narrowly construed. [U. S. v. Laub, U.S.N.Y.1967, 87 S.Ct. 574, 385 U.S. 475, 17 L.Ed.2d 526](#). [Aliens, Immigration, And Citizenship](#) 770

This section making it unlawful for any citizen of the United States to depart from or enter the United States unless he bears a valid passport could not be construed as requiring the traveler to bear a passport endorsed as valid for travel to the country for which he departs or from which he returns or as thus encompassing departures for and re-

turn from geographically restricted areas. [U. S. v. Laub, U.S.N.Y.1967, 87 S.Ct. 574, 385 U.S. 475, 17 L.Ed.2d 526. Aliens, Immigration, And Citizenship](#) ↪771

In provision of this section prohibiting, under some circumstances, one's entry into United States unless he "bears a valid passport", quoted phrase was not ambiguous. [Worthy v. U. S., C.A.5 \(Fla.\) 1964, 328 F.2d 386. Aliens, Immigration, And Citizenship](#) ↪770

This section, which prohibited, under some circumstances, one's entry into United States unless he bears valid passport, was not restricted to times of declared war. [Worthy v. U. S., C.A.5 \(Fla.\) 1964, 328 F.2d 386. Aliens, Immigration, And Citizenship](#) ↪771

Language "willfully violate any of the provisions of this section" in this section referred to statutory provisions that it should be unlawful for citizen to enter United States unless he bears a valid passport, and is not ambiguous. [Worthy v. U. S., C.A.5 \(Fla.\) 1964, 328 F.2d 386. Aliens, Immigration, And Citizenship](#) ↪770

This section concerning travel control of citizens and aliens during national emergency and providing that after proclamation of national emergency it shall be unlawful for any citizen to depart from or enter into United States or attempt to do so without valid passport is a criminal law subject to strict construction. [U. S. v. Laub, E.D.N.Y.1966, 253 F.Supp. 433, probable jurisdiction noted 86 S.Ct. 1891, 384 U.S. 984, 16 L.Ed.2d 1002, affirmed 87 S.Ct. 574, 385 U.S. 475, 17 L.Ed.2d 526. Aliens, Immigration, And Citizenship](#) ↪770

This section authorizing President when United States is at war or during existence of any national emergency proclaimed by President to make it unlawful for any citizen of the United States to depart from or enter United States unless he bears valid passport must be strictly construed because it limits constitutionally protected right of travel. [MacEwan v. Rusk, E.D.Pa.1964, 228 F.Supp. 306, affirmed 344 F.2d 963. Constitutional Law](#) ↪1284

Former § 223 of Title 22 [now covered by subsec. (a) of this section] imposing restrictions on departures from United States during war or national emergency was to be reasonably construed. [U.S. v. Eisler, D.C.D.C.1948, 75 F.-Supp. 640, affirmed 176 F.2d 21, 84 U.S.App.D.C. 404, motion denied 69 S.Ct. 1150, 337 U.S. 912, 93 L.Ed. 1723, certiorari denied 69 S.Ct. 1534, 337 U.S. 958, 93 L.Ed. 1758. War And National Emergency](#) ↪49

In prosecution for making false and fraudulent statements in application to Secretary of State for alien departure permit, in determining what information defendant was required to give in response to questions in the application, a common sense approach was to be adopted and former § 223 of Title 22 [now covered by subsec. (a) of this section] and questions were to be given reasonable interpretation. [U.S. v. Eisler, D.C.D.C.1948, 75 F.Supp. 640, affirmed 176 F.2d 21, 84 U.S.App.D.C. 404, motion denied 69 S.Ct. 1150, 337 U.S. 912, 93 L.Ed. 1723, certiorari denied 69 S.Ct. 1534, 337 U.S. 958, 93 L.Ed. 1758. War And National Emergency](#) ↪49


### 3. Construction with other laws

Subsec. (b) of this section providing that, after proclamation of war or national emergency, it should be unlawful for any citizen of United States to depart from or enter, or attempt to depart from or enter, United States unless he bears valid passport must be read in pari materia with [section 211a of Title 22. Haig v. Agee, U.S.Dist.Col.1981, 101 S.Ct. 2766, 453 U.S. 280, 69 L.Ed.2d 640. Statutes](#) ↪223.2(1.1)

### 4. Prior law


Former §§ 223 to 226 of Title 22 [now covered by subsec. (a) of this section] were continued in effect by former § 227 of said Title 22. [U S ex rel Costea v. Smith, N.D.Ill.1929, 36 F.2d 503](#), reversed on other grounds [46 F.2d 229](#).

Only as to immigrants was the war power of the President to impose restrictions on immigration terminated by the Immigration Act of 1924, but as to non-immigrants the power of the President continued. [U.S., on Petition of Albro, ex rel. Graber v. Karnuth, C.C.A.2 \(N.Y.\) 1929, 30 F.2d 242](#), certiorari denied [49 S.Ct. 346, 279 U.S. 850, 73 L.Ed. 993](#).


War power, given President to impose restrictions on immigration, was terminated by Immigration Act of 1924. [Johnson v. Keating ex rel. Tarantino, C.C.A.1 \(Mass.\) 1926, 17 F.2d 50](#). [Aliens, Immigration, And Citizenship](#)  [101](#)


Criminal liability under former § 225 of Title 22 was not extended beyond war period by former § 227 of said Title 22, such former § 227 merely extending the regulatory provisions of said former §§ 223 to 226 [now covered by this section]. [Flora v. Rustad, C.C.A.8 \(Minn.\) 1925, 8 F.2d 335](#).

Former § 227 of Title 22 continued in force indefinitely into the peace period, former §§ 223 to 226 of said Title 22 [now covered by this section] including the penal provisions thereof, in so far as the same related to requiring passports and visas from aliens seeking to enter the United States and thereafter it was lawful to impose restrictions upon all aliens seeking to enter the United States and to impose penalties for a violation thereof. [Bennedsen v. Nelson, D.C.Minn.1924, 2 F.2d 296](#).


Former §§ 223 to 226 of Title 22 [now covered by this section] were not repealed by Act Nov. 10, 1919, c. 104, 41 Stat. 353, covering the same subject, and providing that it was to go into effect when said sections were to cease to be operative, and continue in force until March 4, 1921, such former sections not having ceased to be operative. [Sichofsky v. U.S., C.C.A.9 \(Cal.\) 1922, 277 F. 762](#). [War And National Emergency](#)  [49](#)

##### 5. Purpose

By enactment of first travel control statute in 1918, now this section, Congress made clear its expectation that executive would curtail or prevent international travel by American citizens if it was contrary to national security, and principal reason for such statute was fear that “renegade Americans” would travel abroad and engage in transference of important military information to persons not entitled to it. [Haig v. Agee, U.S. Dist. Col. 1981, 101 S.Ct. 2766, 453 U.S. 280, 69 L.Ed.2d 640](#). [Aliens, Immigration, And Citizenship](#)  [673](#)

Former §§ 223 to 226 [now covered by this section] of Title 22 originally passed as war measure and President's proclamation constituted law prescribing conditions on which alien might enter prior to General Immigration Act, former §§ 201 to 226 of this title. [Felich v. Meier, C.C.A.8 \(Utah\) 1927, 23 F.2d 185](#). [Aliens, Immigration, And Citizenship](#)  [224](#)

Former §§ 223 to 226 of Title 22 [now covered by this section] were supported by the power of Congress to regulate the entry of aliens, as well as by the war powers of Congress. [Sichofsky v. U.S., C.C.A.9 \(Cal.\) 1922, 277 F. 762](#).

Intent of Congress in enacting this section cast in language almost identical to earlier acts was ascertainable by examining the history of the earlier acts. [U. S. v. Laub, E.D.N.Y.1966, 253 F.Supp. 433](#), probable jurisdiction noted [86 S.Ct. 1891, 384 U.S. 984, 16 L.Ed.2d 1002](#), affirmed [87 S.Ct. 574, 385 U.S. 475, 17 L.Ed.2d 526](#). [Statutes](#)  [217.1](#)

## 6. Power of President

Program created by President for interdiction and repatriation of Haitian migrants interdicted beyond territorial sea of United States, which Coast Guard was ordered to enforce, did not usurp authority that Congress had delegated to, or implicate responsibilities that it had imposed upon, Attorney General alone. [Sale v. Haitian Centers Council, Inc., U.S.N.Y.1993, 113 S.Ct. 2549, 509 U.S. 155, 125 L.Ed.2d 128. Aliens, Immigration, And Citizenship](#) 🔑147

Under constitution, President has authority to evaluate military and political exigencies in foreign countries, and accordingly, a newspaperman's contention that Secretary of State had erred in denying him authority to travel in certain areas under Communist control in that presence of American newspapermen in such areas would better foreign relations rather than worsen them was one which could only be properly addressed to Executive or to Congress and one which court had no authority to pass upon. [Worthy v. Herter, C.A.D.C.1959, 270 F.2d 905, 106 U.S.App.D.C. 153, certiorari denied 80 S.Ct. 255, 361 U.S. 918, 4 L.Ed.2d 186. Constitutional Law](#) 🔑2588

Under this section providing that while proclamation of national emergency is in force, it shall, except as otherwise provided by President, and subject to such limitations as he may authorize and prescribe, be unlawful for any citizen to depart from or enter or attempt to depart from or enter the United States unless he bears a valid passport, President has statutory authority to designate restricted geographical areas in which American citizens may not travel, and under proclamation and executive order, such authority is delegated to Secretary of State. [Worthy v. Herter, C.A.D.C.1959, 270 F.2d 905, 106 U.S.App.D.C. 153, certiorari denied 80 S.Ct. 255, 361 U.S. 918, 4 L.Ed.2d 186. Aliens, Immigration, And Citizenship](#) 🔑675

The designation of certain area of the world as forbidden to American travelers falls within power of Chief Executive to conduct foreign affairs. [Worthy v. Herter, C.A.D.C.1959, 270 F.2d 905, 106 U.S.App.D.C. 153, certiorari denied 80 S.Ct. 255, 361 U.S. 918, 4 L.Ed.2d 186. Aliens, Immigration, And Citizenship](#) 🔑673

Statutory authorization for president to interdict illegal aliens on high seas established that Congress allowed executive branch to exercise broad discretion regarding alien immigration. [Haitian Refugee Center, Inc. v. Gracey, D.C.D.C.1985, 600 F.Supp. 1396, affirmed 809 F.2d 794, 257 U.S.App.D.C. 367. Aliens, Immigration, And Citizenship](#) 🔑211; [International Law](#) 🔑7

President has, under his constitutional powers, ample authority to conduct foreign affairs and to conduct and prevent war and, incident thereto, power to limit travel to Cuba through regulations issued by state department. [U. S. v. Travis, S.D.Cal.1963, 241 F.Supp. 468. Aliens, Immigration, And Citizenship](#) 🔑673

What action will best promote foreign relations is not for courts to determine, but for President. [U. S. v. Travis, S.D.-Cal.1963, 241 F.Supp. 468. Constitutional Law](#) 🔑2551

Findings of President in proclamation of January 17, 1953 that national emergency still existed and that interest of United States required restrictions and prohibitions with respect to control of persons entering or leaving United States in addition to those otherwise provided by law met requirements of this section authorizing President to impose restrictions and prohibitions on travel. [U. S. v. Travis, S.D.Cal.1963, 241 F.Supp. 468. Aliens, Immigration, And Citizenship](#) 🔑673

This section authorizing President when United States is at war or during existence of any national emergency to make it unlawful for any citizen of the United States to depart from or enter United States authorize President to re-

strict travel by United States citizens to Cuba, the government of which is hostile to United States. [MacEwan v. Rusk, E.D.Pa.1964, 228 F.Supp. 306](#), affirmed [344 F.2d 963](#). [Aliens, Immigration, And Citizenship](#) 771

Presidential proclamations in 1950 and 1953 declaring existence of national emergency authorized regulations in 1961 refusing to permit United States citizens to travel to Cuba, the government of which is hostile to United States, under this section authorizing President during existence of any national emergency to make it unlawful for any United States citizen to depart from or enter United States unless he bears a valid passport. [MacEwan v. Rusk, E.D.Pa.1964, 228 F.Supp. 306](#), affirmed [344 F.2d 963](#). [Aliens, Immigration, And Citizenship](#) 771

#### 7. Power of Congress

Congress may punish violations of this section imposing reasonable restrictions on right of citizen to travel in foreign countries. [Worthy v. U. S., C.A.5 \(Fla.\) 1964, 328 F.2d 386](#). [Aliens, Immigration, And Citizenship](#) 673

#### 8. Rules and regulations

An area travel restriction, requiring special validation of passports for travel to Cuba, although a valid civil regulation under [§ 211a of Title 22](#), was not, and was not intended or represented to be, an exercise of authority under this section making it unlawful for any citizen of the United States to depart from or enter the United States unless he bears a valid passport. [U. S. v. Laub, U.S.N.Y.1967, 87 S.Ct. 574, 385 U.S. 475, 17 L.Ed.2d 526](#). [Aliens, Immigration, And Citizenship](#) 771

Regulations promulgated pursuant to proclamation of President of the United States that no alien should be permitted entry to United States if it appeared to satisfaction of Secretary of State that entry would be prejudicial to interests of United States as provided in rules authorized to be prescribed by Secretary of State, with concurrence of Attorney General, sufficiently conformed with the proclamation and were not too vague. [U.S. ex rel. Knauff v. Watkins, C.A.2 \(N.Y.\) 1949, 173 F.2d 599](#), certiorari granted [69 S.Ct. 941, 336 U.S. 966, 93 L.Ed. 1117](#), affirmed [70 S.Ct. 309, 338 U.S. 537, 94 L.Ed. 317](#). [Administrative Law And Procedure](#) 390.1; [Aliens, Immigration, And Citizenship](#) 154

Any right which enemy alien wife of citizen of United States had under former § 712 of this title dealing with an alien whose spouse was a citizen regularly stationed abroad by United States employer, would not exempt her from the scope of regulations promulgated pursuant to presidential proclamation made under former § 223 of Title 22 authorizing president to establish restrictions as to aliens when a state of war existed. [U.S. ex rel. Knauff v. Watkins, C.A.2 \(N.Y.\) 1949, 173 F.2d 599](#), certiorari granted [69 S.Ct. 941, 336 U.S. 966, 93 L.Ed. 1117](#), affirmed [70 S.Ct. 309, 338 U.S. 537, 94 L.Ed. 317](#). [Aliens, Immigration, And Citizenship](#) 242


Executive Order authorizing Secretary of State to revoke, modify or amend regulations restricting travel of United States citizens as he might find to be in interest of United States was a proper delegation of authority. [U. S. v. Travis, S.D.Cal.1964, 241 F.Supp. 472](#), affirmed [353 F.2d 506](#), certiorari granted [86 S.Ct. 1339, 384 U.S. 903, 16 L.Ed.2d 357](#), reversed on other grounds [87 S.Ct. 583, 385 U.S. 491, 17 L.Ed.2d 536](#). [Aliens, Immigration, And Citizenship](#) 673



#### 9. Limitations on travel


Area restrictions upon use of otherwise valid passport are not criminally enforceable under this section governing travel control of citizens during war or national emergency. [Travis v. U. S., U.S.Cal.1967, 87 S.Ct. 583, 385 U.S.](#)






[491, 17 L.Ed.2d 536. Aliens, Immigration, And Citizenship](#)  [769](#)

The right to travel is a part of the liberty of which a citizen cannot be deprived without due process of law. [U. S. v. Laub, U.S.N.Y.1967, 87 S.Ct. 574, 385 U.S. 475, 17 L.Ed.2d 526. Constitutional Law](#)  [4036](#)


Secretary of State may deny a passport, or revoke one already extant, when sole travel that is intended by citizen is to an area that Secretary has declared restricted, but the silence of Congress did not permit an inference that it had authorized executive curtailment of constitutionally protected liberty of travel to nonrestricted areas to achieve the objective of restraining travel to restricted areas. [Lynd v. Rusk, C.A.D.C.1967, 389 F.2d 940, 128 U.S.App.D.C. 399. Aliens, Immigration, And Citizenship](#)  [675](#); [Aliens, Immigration, And Citizenship](#)  [676](#)



Restrictions as to foreign areas to which citizens may travel have long been used and are recognized as valid. [Travis v. U. S., C.A.9 \(Cal.\) 1965, 353 F.2d 506, certiorari granted 86 S.Ct. 1339, 384 U.S. 903, 16 L.Ed.2d 357, reversed on other grounds 87 S.Ct. 583, 385 U.S. 491, 17 L.Ed.2d 536. Aliens, Immigration, And Citizenship](#)  [673](#)


Proclamation of national emergency of December 16, 1950 satisfied conditions of this section authorizing President to place restrictions and prohibitions on travel, although proclamation antedated effective date of said section. [U. S. v. Travis, S.D.Cal.1963, 241 F.Supp. 468. Aliens, Immigration, And Citizenship](#)  [673](#)

Question of whether conditions in Cuba or other reasons involving conduct of foreign affairs were sufficient to require limiting of travel to that country was not for judicial determination. [U. S. v. Travis, S.D.Cal.1963, 241 F.Supp. 468. Constitutional Law](#)  [2551](#); [Aliens, Immigration, And Citizenship](#)  [673](#)



#### [10. National emergency, expiration of](#)


Court has right to consider whether national emergency declared by President has expired by lapse of time. [U. S. v. Laub, E.D.N.Y.1966, 253 F.Supp. 433, probable jurisdiction noted 86 S.Ct. 1891, 384 U.S. 984, 16 L.Ed.2d 1002, affirmed 87 S.Ct. 574, 385 U.S. 475, 17 L.Ed.2d 526. Constitutional Law](#)  [2543](#)

Whether proclaimed national emergency had terminated was not for judicial determination. [U. S. v. Travis, S.D.Cal.1963, 241 F.Supp. 468. Constitutional Law](#)  [2543](#); [War And National Emergency](#)  [39](#)

Court may not lightly hold that executive proclamation of national emergency has expired by lapse of time. [MacEwan v. Rusk, E.D.Pa.1964, 228 F.Supp. 306, affirmed 344 F.2d 963. United States](#)  [28](#)

#### [11. Passport--Necessity](#)

Right of foreign travel may not be arbitrarily or unreasonably restrained but is not absolute right, and right of Congress to require passports and to impose reasonable restrictions upon foreign travel is not dependent on existence of state of war but may be exercised under broad power to enact legislation for regulation of foreign affairs. [Worthy v. U. S., C.A.5 \(Fla.\) 1964, 328 F.2d 386. Aliens, Immigration, And Citizenship](#)  [673](#); [Aliens, Immigration, And Citizenship](#)  [675](#)

Citizen, absent from his country, cannot have his fundamental right of free ingress thereto subjected to criminal penalty if he does not have a passport, and this is true however wrongful the citizen's departure may have been. [Worthy v. U. S., C.A.5 \(Fla.\) 1964, 328 F.2d 386. Aliens, Immigration, And Citizenship](#)  [771](#)

It is forbidden to leave the United States without a passport, and it is within the power of the Secretary of State to refuse to issue a passport. [Briehl v. Dulles, C.A.D.C.1957, 248 F.2d 561, 101 U.S.App.D.C. 239](#), reversed [78 S.Ct. 1113, 357 U.S. 116, 2 L.Ed.2d 1204](#). [Aliens, Immigration, And Citizenship](#) ↪675

Aliens resident in the United States, who were not “hostile aliens,” within the regulations adopted pursuant to former § 223 of Title 22 [now covered by subsec. (a) of this section], were free to go to and return from Canada without passports, and the arrest and an order for deportation of such aliens, because of their return to the United States without inspection was without warrant of law and void. [In re Wysback, D.C.Mass.1923, 292 F. 761](#). [Aliens, Immigration, And Citizenship](#) ↪256

12. ---- Proof of identity and allegiance, passport

As travel control document, passport is both proof of identity and proof of allegiance to United States, and even under this section, passport remains in a sense a document by which government vouches for the bearer and for his conduct. [Haig v. Agee, U.S.Dist.Col.1981, 101 S.Ct. 2766, 453 U.S. 280, 69 L.Ed.2d 640](#). [Aliens, Immigration, And Citizenship](#) ↪675

13. ---- Endorsements on passport

A trip to Cuba would have been lawful on April 13, 1962 only if travelers had had passports specifically endorsed for travel to Cuba. [U. S. v. Healy, U.S.Fla.1964, 84 S.Ct. 553, 376 U.S. 75, 11 L.Ed.2d 527](#). [Aliens, Immigration, And Citizenship](#) ↪675

14. ---- Issuance of passport

A “passport” is a document identifying a citizen, in effect requesting foreign powers to allow the bearer to enter and to pass freely and safely, recognizing the right of the bearer to the protection and good offices of American diplomatic and consular officers. [U. S. v. Laub, U.S.N.Y.1967, 87 S.Ct. 574, 385 U.S. 475, 17 L.Ed.2d 526](#). [Aliens, Immigration, And Citizenship](#) ↪675

Provision of Subversive Activities Control Act, § 785 of Title 50, making it a felony for a member of a Communist organization to apply for, use or attempt to use a passport, is unconstitutional on its face in that the section sweeps too widely and to indiscriminately across the liberty guaranteed in [U.S.C.A.Const., Amend. 5](#), and the broad and enveloping prohibition indiscriminately excludes plainly relevant considerations such as an individual's knowledge, activity, commitment, and purposes in and places for travel. [Aptheker v. Secretary of State, U.S.Dist.Col.1964, 84 S.Ct. 1659, 378 U.S. 500, 12 L.Ed.2d 992](#). [Aliens, Immigration, And Citizenship](#) ↪770; [Constitutional Law](#) ↪4509(1)


A “passport” is evidence of permission from sovereign to its citizen to travel to foreign countries and to return to land of his allegiance, as well as request to foreign powers that such citizen be allowed to pass freely and safely. [Worthy v. U. S., C.A.5 \(Fla.\) 1964, 328 F.2d 386](#). [Aliens, Immigration, And Citizenship](#) ↪675

Denial of American passport has very direct bearing on applicant's personal liberty to travel outside the United States, and therefore executive department's discretion in such matter, although political, must be exercised with regard to constitutional rights of citizens, who are ultimate source of all governmental authority. [Bauer v. Acheson, D.C.D.C.1952, 106 F.Supp. 445](#). [Constitutional Law](#) ↪1284


15. ---- Affidavits as equivalent, passport


An alien, entering the United States without a passport required by regulations made pursuant to former § 223 of Title 22 [now covered by subsec. (a) of this section] continued in force by former § 227 of said Title 22 could not rely on affidavits made before departing from the United States, and before returning thereto, as the equivalent of a passport, nor could the government be estopped by any representations made by its consular agent in the country from which such alien came. [Takeyo Koyama v. Burnett, C.C.A.9 \(Hawai'i\) 1925, 8 F.2d 940.](#)


16. ---- Fraudulently procured passport




The use of a fraudulently procured passport to gain admission to the United States is unlawful. [U S v. Goldstein, E.D.N.Y.1939, 30 F.Supp. 771. Aliens, Immigration, And Citizenship](#) 237

17. ---- Validity of passport

Willful and knowing agreement among holders of two passports bearing the stamped word "Cuba" beneath names of proscribed countries included in printed provision that passports were not valid for travel to or in certain areas and of a third passport not bearing the stamped word "Cuba" to induce, recruit and arrange for group of American citizens to depart for Cuba, performance of acts in furtherance thereof, and travel to Cuba and back during national emergency did not constitute crime under this section regarding travel control of citizens and aliens during national emergency. [U. S. v. Laub, E.D.N.Y.1966, 253 F.Supp. 433, probable jurisdiction noted 86 S.Ct. 1891, 384 U.S. 984, 16 L.Ed.2d 1002, affirmed 87 S.Ct. 574, 385 U.S. 475, 17 L.Ed.2d 526. Aliens, Immigration, And Citizenship](#) 776


That a passport is not valid for purposes of request of Secretary of State to all whom it may concern does not make a passport invalid for purposes of departure from and entry into United States. [U. S. v. Laub, E.D.N.Y.1966, 253 F.Supp. 433, probable jurisdiction noted 86 S.Ct. 1891, 384 U.S. 984, 16 L.Ed.2d 1002, affirmed 87 S.Ct. 574, 385 U.S. 475, 17 L.Ed.2d 526. Aliens, Immigration, And Citizenship](#) 675


Defendant charged with making and circulating false statements with intent to hinder and obstruct armed forces of United States had constitutional right to present evidence that statements alleged to have been made and circulated had not been false and that they had not been published or circulated with criminal intent, and where such evidence lay abroad in Red China and North Korea and could only be obtained if defense attorney were permitted to travel to those countries, federal government's continued refusal to validate defense attorney's passport would require dismissal of indictment. [U.S. v. Powell, N.D.Cal.1957, 156 F.Supp. 526. Constitutional Law](#) 2588



Even if government's refusal to validate defense attorney's passport for travel to Red China and North Korea would deprive defendants of an adequate opportunity to prepare and present their defense to charges in indictment, court would have no power to interfere with foreign policy of United States, as formulated by executive branch of government, by directing state department to validate passport. [U.S. v. Powell, N.D.Cal.1957, 156 F.Supp. 526. Constitutional Law](#) 2588; [Criminal Law](#) 1891; [Indictment And Information](#) 144.2


18. ---- Revocation of passport

Where there had been few situations involving substantial likelihood of serious damage to national security or foreign policy of the United States as result of passport holder's activities abroad, but in cases which had arisen, the executive had consistently exercised power to withhold passports, government would not be faulted because there



were so few occasions to exercise announced policy and practice, as against contention that congressional approval of administrative interpretation could only be proved by showing that many passports were revoked on national security and foreign policy grounds. [Haig v. Agee, U.S. Dist. Col. 1981, 101 S.Ct. 2766, 453 U.S. 280, 69 L.Ed.2d 640, Aliens, Immigration, And Citizenship](#) 676


Citizen had no right to use a passport issued to her in violation of the conditions and restrictions which by law governed its use, so that Secretary of State properly revoked and withheld her passport until she agreed to refrain from the passport's use in restricted areas. [Lynd v. Rusk, C.A.D.C. 1967, 389 F.2d 940, 128 U.S.App.D.C. 399, Aliens, Immigration, And Citizenship](#) 676


Secretary of State may not revoke or withhold a passport because of citizen's refusal to promise that he will not travel to restricted area without using a passport. [Lynd v. Rusk, C.A.D.C. 1967, 389 F.2d 940, 128 U.S.App.D.C. 399, Aliens, Immigration, And Citizenship](#) 675; [Aliens, Immigration, And Citizenship](#) 676


Congressional silence does not permit inference that Congress, which has been unready to support Secretary of State by making travel to restricted areas a crime, has authorized Secretary to impose administrative sanctions of passport withdrawal, which deprives citizen of liberty to travel to nonrestricted areas as well as restricted ones. [Lynd v. Rusk, C.A.D.C. 1967, 389 F.2d 940, 128 U.S.App.D.C. 399, Aliens, Immigration, And Citizenship](#) 675

#### 19. Persons subject to restrictions--Generally

Disclosures which would have declared purpose of obstructing intelligence operations and recording of intelligence personnel were not protected by [U.S.C.A. Const. Amend. 1](#), and mere fact that respondent was also engaged in criticism of the government did not render his conduct beyond reach of the law. [Haig v. Agee, U.S. Dist. Col. 1981, 101 S.Ct. 2766, 453 U.S. 280, 69 L.Ed.2d 640, Constitutional Law](#) 1584; [Aliens, Immigration, And Citizenship](#) 676

An individual congressman must conform to regulations pertaining to passports which apply to all citizens which have been authorized by the branch of the government having jurisdiction over the subject. [Porter v. Herter, C.A.D.C. 1960, 278 F.2d 280, 107 U.S.App.D.C. 400, certiorari denied 81 S.Ct. 70, 364 U.S. 837, 5 L.Ed.2d 61, United States](#) 12

Former § 223 of Title 22 [now covered by subsec. (a) of this section] providing that when there was a national emergency proclaimed by the President, or a state of war, the President might proclaim additional restrictions as to entry into, or the departure from the United States by aliens, was not rendered inapplicable to enemy alien, who was a war bride, because of the fact that the President had by proclamation proclaimed a cessation of hostilities of World War II. [U.S. ex rel. Knauff v. Watkins, C.A.2 \(N.Y.\) 1949, 173 F.2d 599, certiorari granted 69 S.Ct. 941, 336 U.S. 966, 93 L.Ed. 1117, affirmed 70 S.Ct. 309, 338 U.S. 537, 94 L.Ed. 317, Aliens, Immigration, And Citizenship](#) 242

Former § 223 of Title 22 [now covered by subsec. (a) of this section] providing that when there was a national emergency proclaimed by the President, or a state of war, the President might proclaim additional restrictions and prohibitions as to entry into, or the departure from the United States by aliens, was an "immigration law" within meaning of former § 232 of this title permitting admission to United States of alien spouses of veterans, if otherwise admissible under "immigration laws", and therefore alien wife of veteran could be exclude under former § 223 of Title 22 on basis of undisclosed information of a confidential nature. [U.S. ex rel. Knauff v. Watkins, C.A.2 \(N.Y.\) 1949, 173 F.2d 599, certiorari granted 69 S.Ct. 941, 336 U.S. 966, 93 L.Ed. 1117, affirmed 70 S.Ct. 309, 338 U.S. 537, 94 L.Ed. 317, Aliens, Immigration, And Citizenship](#) 242

[20](#). ---- Aliens, persons subject to restrictions

Purpose of proclamations and regulations, relating to exclusion of aliens, was the exclusion of aliens whose presence was deemed inimical to national security, and in the accomplishment of this purpose there was no reason to differentiate between aliens who sought reentry and those who sought entry for the first time. [United States Ex. Rel. Kwong Hai Chew v. Colding, C.A.2 \(N.Y.\) 1951, 192 F.2d 1009](#), certiorari granted [72 S.Ct. 769, 343 U.S. 933, 96 L.Ed. 1341](#), reversed on other grounds [73 S.Ct. 472, 344 U.S. 590, 97 L.Ed. 576](#). [Aliens, Immigration, And Citizenship](#) ↪[242](#)

Presidential proclamations and regulations, relating to exclusions of aliens whose presence was deemed inimical to national security, were not repugnant to or impliedly repealed by the subsequent Internal Security Act of 1950, former § 137 et seq. of his title. [United States Ex. Rel. Kwong Hai Chew v. Colding, C.A.2 \(N.Y.\) 1951, 192 F.2d 1009](#), certiorari granted [72 S.Ct. 769, 343 U.S. 933, 96 L.Ed. 1341](#), reversed on other grounds [73 S.Ct. 472, 344 U.S. 590, 97 L.Ed. 576](#). [Aliens, Immigration, And Citizenship](#) ↪[242](#)

The war power conferred by former §§ 223 to 227 of Title 22 [now covered by this section] was apparently considered as applicable to one claiming to be a nonimmigrant alien. [U.S. ex rel. Komlos v. Trudell, C.C.A.2 \(Vt.\) 1929, 35 F.2d 281](#), certiorari denied [50 S.Ct. 157, 280 U.S. 607, 74 L.Ed. 651](#).


Action of a special board of inquiry approved in excluding aliens applying for admission as temporary visitors, on the ground that they were without passports visaed by an American consul, the consul to whom they applied having refused visas. [U.S. ex rel. Johanson v. Phelps, D.C.Vt.1926, 14 F.2d 679](#), affirmed [22 F.2d 288](#), certiorari denied [48 S.Ct. 324, 276 U.S. 630, 72 L.Ed. 741](#).

Former § 223 of Title 22 [now covered by subsec. (a) of this section] providing that the President might in a national emergency proclaim restrictions on the entry of aliens, the Presidential Proclamation No. 2523 permitting Secretary of State and Attorney General to exclude aliens whose entry would be prejudicial to interests of the United States, and the regulations establishing classes whose entry was deemed prejudicial, established a series of classifications of excludable aliens to supplement existing laws. [U.S. ex rel. Vajta v. Watkins, S.D.N.Y.1949, 88 F.Supp. 51](#), affirmed [179 F.2d 137](#). [War And National Emergency](#) ↪[49](#)

Under former § 223 of Title 22 [now covered by subsec. (a) of this section] providing that President in a national emergency might proclaim restrictions barring entry of aliens, and proclamation barring aliens whose entry would be prejudicial to interests of United States as provided in rules prescribed by the Secretary of State, a class of aliens excluded by law was created, and the Attorney General might deport members thereof whenever discovered within five years after entry to be a member of the class. [U.S. ex rel. Vajta v. Watkins, S.D.N.Y.1949, 88 F.Supp. 51](#), affirmed [179 F.2d 137](#). [Aliens, Immigration, And Citizenship](#) ↪[286](#); [War And National Emergency](#) ↪[49](#)


Each return by alien to United States from abroad constitutes an "entry" within Proc. No. 2523, Nov. 14, 1941, 3 F.R. 273, forbidding "entry" of alien prejudicial to interests of United States, notwithstanding that alien before going abroad may have been lawful resident of United States. [Ex parte Van Laeken, N.D.Cal.1948, 81 F.Supp. 79](#). [Aliens, Immigration, And Citizenship](#) ↪[771](#)


An alien, who was admitted to United States as quota immigrant and who was denied citizenship as being attached to principles of communism and not to principles of American Constitution, and who voluntarily journeyed abroad in pursuit of his calling as seaman, could, on his return, be denied admission and be detained by immigration author-


ities pending determination whether alien's entry would be prejudicial to interests of United States. [Ex parte Van Laeken, N.D.Cal.1948, 81 F.Supp. 79. Aliens, Immigration, And Citizenship](#)  230

#### 21. Deportation of violator



So much of former § 223 of Title 22 [now covered by subsec. (a) of this section] as was extended to peace times did not carry, as one of the consequences of its violation, the deportation of an alien, and former §§ 223 to 226 of said Title 22 [now covered by this section] and the proclamation contained provisions relating to passports and visas which were intended for the guidance of immigration officials but neither such former sections nor the proclamation contained any mandate authorizing deportation. [U S ex rel Costea v. Smith, N.D.Ill.1929, 36 F.2d 503](#), reversed on other grounds [46 F.2d 229](#).


That alien may re-enter country under immigration act does not warrant deportation not otherwise authorized. [U S ex rel Swystun v. McCandless, D.C.Pa.1928, 24 F.2d 211](#), affirmed [33 F.2d 882. Aliens, Immigration, And Citizenship](#)  253

Deportation of alien because of official's failure to sign passport visé was not warranted. [U S ex rel Swystun v. McCandless, D.C.Pa.1928, 24 F.2d 211](#), affirmed [33 F.2d 882. Aliens, Immigration, And Citizenship](#)  397

Order of deportation by Department of Labor because of official's failure to sign passport visé was not conclusive on courts. [U S ex rel Swystun v. McCandless, D.C.Pa.1928, 24 F.2d 211](#), affirmed [33 F.2d 882. Aliens, Immigration, And Citizenship](#)  397

The Department of Labor was without authority to order an alien deported on ground, not charged in the warrant of arrest, and on which the alien had not had a hearing, that she entered on a passport not issued or designed for her use, in violation of former § 223(e) of Title 22, [now covered by subsec. (a) of this section]. [Throumoulopoulou v. U.S., C.C.A.1 \(Me.\) 1925, 3 F.2d 803](#).

Under former § 223 of Title 22 [now covered by subsec. (a) of this section] providing that President in a national emergency might proclaim restrictions barring entry of aliens, and proclamation barring aliens whose entry would be prejudicial to interests of United States as provided in rules prescribed by the Secretary of States, a class of aliens excluded by law was created, and the Attorney General might deport members thereof whenever discovered within five years after entry to be a member of the class. [U.S. ex rel. Vajta v. Watkins, S.D.N.Y.1949, 88 F.Supp. 51](#), affirmed [179 F.2d 137. Aliens, Immigration, And Citizenship](#)  286; [War And National Emergency](#)  49


Under former § 223 of Title 22 [now covered by subsec. (a) of this section] permitting the President in a national emergency to proclaim restrictions on entry of aliens, and the regulations promulgated pursuant to a proclamation forbidding entry if prejudicial to interests of the United States in the view of the Secretary of State and Attorney General, alien who entered under nonimmigrant visa as a visitor for six months period, but who had advocated and acquiesced in activities contrary to decency in behalf of Axis countries during World War II could be deported as a member of a class excluded by law. [U.S. ex rel. Vajta v. Watkins, S.D.N.Y.1949, 88 F.Supp. 51](#), affirmed [179 F.2d 137. Aliens, Immigration, And Citizenship](#)  287

#### 22. Protective custody for defectors


The Attorney General has authority under subsec. (a)(1) of this section to prevent departure of an alien defector who is being repatriated under duress and might, in a particular case, have discretionary authority to provide some sort of


protective custody for that defector. 1980 (Counsel-Inf.Op.) 4B Op.O.L.C. 348.

### 23. Private right of action


Subsec. (b) of this section prohibiting any citizen from leaving the United States unless he bears a valid passport did not create a duty, the breach of which would give rise to an action under the Federal Tort Claims Act, sections 1346(b) and 2671 et seq. of Title 28, on the part of immigration officials to inquire as to whether infant child being taken from the country by his father had a valid passport or to prevent him from leaving the country if he did not possess one. [Dore v. Schultz, S.D.N.Y.1984, 582 F.Supp. 154, United States](#)  [78\(5.1\)](#)


### 24. Jurisdiction and venue


Where alien executed under oath in New York City and caused to be mailed to the Secretary of State in the District of Columbia an application for permission to depart from the United States, venue of prosecution for knowingly making false statements in such application with intent to induce or secure the granting thereof was properly laid in the District of Columbia. [Eisler v. U.S., C.A.D.C.1949, 176 F.2d 21, 84 U.S.App.D.C. 404, motion denied 69 S.Ct. 1150, 337 U.S. 912, 93 L.Ed. 1723, certiorari denied 69 S.Ct. 1534, 337 U.S. 958, 93 L.Ed. 1758. Criminal Law](#)  [113](#)

In prosecution for knowingly and willfully making false statements in application for alien departure permit, where document was signed by defendant and sworn to by him before a notary public in New York City, but document was addressed and mailed to and received by Department of State, Washington, D.C., offense was not complete until false statement and application were received by and filed in the Department of State and, therefore, District Court of United States for District of Columbia had jurisdiction. [U.S. v. Eisler, D.C.D.C.1947, 75 F.Supp. 634. Criminal Law](#)  [113](#)

### 25. Pleadings and motions

Indictment charging conspiracy to violate this section making it unlawful for any citizen of the United States to depart from or enter the United States unless he bears a valid passport did not allege a crime where the alleged conspiracy consisted of recruiting and arranging travel to Cuba of 58 American citizens whose passports, although otherwise valid, were not specifically validated for travel to that country which was a geographically restricted area. [U.S. v. Laub, U.S.N.Y.1967, 87 S.Ct. 574, 385 U.S. 475, 17 L.Ed.2d 526. Aliens, Immigration, And Citizenship](#)  [794](#)

Three-judge district court, in action attacking Secretary of State's refusal to validate plaintiff's passport for travel to Cuba, properly refused to decide whether plaintiff could be criminally prosecuted for travel in violation of area restriction, where complaint did not specify sort of travel to Cuba plaintiff had in mind and papers filed did not disclose nature of charge, if any, which would be brought against plaintiff. [Zemel v. Rusk, U.S.Conn.1965, 85 S.Ct. 1271, 381 U.S. 1, 14 L.Ed.2d 179, rehearing denied 86 S.Ct. 17, 382 U.S. 873, 15 L.Ed.2d 114. Declaratory Judgment](#)  [385](#)

That indictment referred only to this section prohibiting, under some circumstances, one's entry into United States unless he bears a valid passport, and omitted reference to section which prescribed penalty for violation was not prejudicial to defendant and was not ground for dismissal. [Worthy v. U. S., C.A.5 \(Fla.\) 1964, 328 F.2d 386. Indictment And Information](#)  [144.1\(1\)](#)

Charge of unlawful departure from United States was not essential to valid indictment for violation of prohibition of

making unlawful entry. [Worthy v. U. S., C.A.5 \(Fla.\) 1964, 328 F.2d 386. Aliens, Immigration, And Citizenship](#) ↪794

In prosecution of an alien for knowingly making false statements in his application to the Secretary of State for permission to depart from the United States with intent to induce or secure the granting thereof, the defendant's motion to exclude all government employees from the jury was properly denied. [Eisler v. U.S., C.A.D.C.1949, 176 F.2d 21, 84 U.S.App.D.C. 404, motion denied 69 S.Ct. 1150, 337 U.S. 912, 93 L.Ed. 1723, certiorari denied 69 S.Ct. 1534, 337 U.S. 958, 93 L.Ed. 1758. Jury](#) ↪83(3)

Where indictment charged that alien had falsely stated in application for permission to depart from the United States that he was not and had not been a member of or affiliated with any organizations, groups, etc., whereas he had been and was then a member of and affiliated with the Communist Party, the defendant's complaint after indictment that the question asked was ambiguous could not be sustained. [Eisler v. U.S., C.A.D.C.1949, 176 F.2d 21, 84 U.S.App.D.C. 404, motion denied 69 S.Ct. 1150, 337 U.S. 912, 93 L.Ed. 1723, certiorari denied 69 S.Ct. 1534, 337 U.S. 958, 93 L.Ed. 1758. War And National Emergency](#) ↪49

Count of indictment charging offense of knowingly making false statements in an application for alien departure permit with intent to induce and secure the granting of such permit in violation of former § 223 of Title 22 [now covered by subsec. (a) of this section] stated sufficient facts to constitute an offense. [U.S. v. Eisler, D.C.D.C.1947, 75 F.Supp. 634. War And National Emergency](#) ↪49

Where count one charged offense of knowingly and willfully making and using a false affidavit knowing the same to contain fraudulent and fictitious statements in matter within jurisdiction of the Department of State under former § 80, now 1001, of Title 18, count two charged offense of knowingly and willfully making and causing to be made false and fraudulent statements and representations in a matter within jurisdiction of Department of State under former § 80, now 1001, of Title 18, and count three charged offense of knowingly making false statements in an application for permission to depart from the United States with intent to induce and secure the granting of such permission, but all counts were grounded upon the same alleged false statement made in the same document and they were each addressed to the same identical wrongful acts, motion to dismiss counts one and two would be granted. [U.S. v. Eisler, D.C.D.C.1947, 75 F.Supp. 634. Indictment And Information](#) ↪144.2

Motion to transfer prosecution for offense of knowingly making false statements in an application for alien departure permit on ground that transfer of proceedings to southern district of New York was in interest of justice would be denied where there would be substantial number of witnesses other than from and around City of New York. [U.S. v. Eisler, D.C.D.C.1947, 75 F.Supp. 634. Criminal Law](#) ↪124


In prosecution for knowingly making false statements in an application for alien departure permit, motion for transfer of proceeding to another district on ground that there existed in District of Columbia so great a prejudice against defendant that he could not obtain fair and impartial trial therein would be denied without prejudice to renewal at trial. [U.S. v. Eisler, D.C.D.C.1947, 75 F.Supp. 634. Criminal Law](#) ↪126(2)


## [26. Separability of offenses](#)


Unlawful departure from United States and unlawful entry into United States are separate offenses. [Worthy v. U. S., C.A.5 \(Fla.\) 1964, 328 F.2d 386. Aliens, Immigration, And Citizenship](#) ↪771

## [27. Defenses](#)





Defendant's conviction for departing from United States for Cuba without valid passport could not stand if defendant in fact had valid passport and gravamen of government's claim, under this section relating to travel control of citizens during war or national emergency, was that her passport was not valid for travel to Cuba. [Travis v. U. S., U.S.-Cal.1967, 87 S.Ct. 583, 385 U.S. 491, 17 L.Ed.2d 536. Aliens, Immigration, And Citizenship](#) 771

Ordinarily, citizens may not be punished for actions, undertaken in good faith reliance upon authoritative assurance that punishment will not attach. [U. S. v. Laub, U.S.N.Y.1967, 87 S.Ct. 574, 385 U.S. 475, 17 L.Ed.2d 526. Criminal Law](#) 36.6


Government's permitting citizen's freedom of movement on his arrival from Cuba, prior to taking him into custody for entering without valid passport, was not entrapment. [Worthy v. U. S., C.A.5 \(Fla.\) 1964, 328 F.2d 386. Criminal Law](#) 37(6.1)


Under former §§ 223 to 226 of Title 22 [now covered by this section] defendant's entry without a proper passport required by an executive order thereunder was within the saving clause of the Joint Resolution of March 3, 1921, declaring certain wartime acts, regulations, and prohibitions terminated, but providing that this should not exempt from prosecution or relieve from punishment for offenses committed in violation of the acts repealed. [Sichofsky v. U.S., C.C.A.9 \(Cal.\) 1922, 277 F. 762.](#)


In prosecution for having made false and fraudulent statements in application to Secretary of State for alien departure permit, alleged fact that information concealed by defendant, when revealed, did not place him within one of the seven categories of aliens whose departure, according to regulations promulgated by Secretary of State, would be prejudicial to interests of the United States, was not a defense. [U.S. v. Eisler, D.C.D.C.1948, 75 F.Supp. 640, affirmed 176 F.2d 21, 84 U.S.App.D.C. 404, motion denied 69 S.Ct. 1150, 337 U.S. 912, 93 L.Ed. 1723, certiorari denied 69 S.Ct. 1534, 337 U.S. 958, 93 L.Ed. 1758. War And National Emergency](#) 49

The question of relevancy is not open to one who knowingly makes false statements with intent to mislead officials of the government. [U.S. v. Eisler, D.C.D.C.1947, 75 F.Supp. 634. Fraud](#) 68.10(4)

## [28. Hearing and notice](#)

The continued exclusion of alien as a bad security risk, without hearing, does not deprive alien of any statutory or constitutional right, even though refusal of other countries to accept alien results in his continued detention at Ellis Island. [Shaughnessy v. United States ex rel. Mezei, U.S.N.Y.1953, 73 S.Ct. 625, 345 U.S. 206, 97 L.Ed. 956. Aliens, Immigration, And Citizenship](#) 463

The national emergency during which the Attorney General was authorized to exclude without a hearing an alien still existed. [U.S. ex rel. Knauff v. Shaughnessy, U.S.N.Y.1950, 70 S.Ct. 309, 338 U.S. 537, 94 L.Ed. 317. War And National Emergency](#) 49

State Department's letter notifying passport applicant that applicant would be receiving notice of adverse action did not trigger regulatory requirement that Department hold hearing on denial of passport application within 60 days after receipt of notice of adverse action upon applicant's request. [Agee v. Baker, D.D.C.1990, 753 F.Supp. 373. Aliens, Immigration, And Citizenship](#) 677

Secretary of State was without authority to summarily revoke passport, during period for which it was valid, without

prior notice or opportunity for hearing and on bald statement that citizen's activities were contrary to best interests of United States, and he was likewise without authority to refuse to renew passport under same circumstances. [Bauer v. Acheson, D.C.D.C.1952, 106 F.Supp. 445. Aliens, Immigration, And Citizenship](#) ↪ 677

Abuse of war powers by Attorney General in excluding undesirable aliens, without hearing, would not justify judicial supervision. [Van Laeken v. Wixon, D.C.Cal.1949, 84 F.Supp. 958. Constitutional Law](#) ↪ 2553; [War And National Emergency](#) ↪ 49

### 29. Evidence--Admissibility

Where indictment charged that alien had falsely stated in application for permission to depart from the United States that he was not and had not been a member of or affiliated with any organizations, groups, etc., whereas he was then a member of and affiliated with the Communist Party, evidence that the defendant was an agent of the Communist International was properly admitted. [Eisler v. U.S., C.A.D.C.1949, 176 F.2d 21, 84 U.S.App.D.C. 404](#), motion denied [69 S.Ct. 1150, 337 U.S. 912, 93 L.Ed. 1723](#), certiorari denied [69 S.Ct. 1534, 337 U.S. 958, 93 L.Ed. 1758. War And National Emergency](#) ↪ 49

Where indictment charged that alien had falsely stated in application for permission to depart from the United States that he was not and had not been a member of or affiliated with any organizations, groups, etc., whereas he was then a member of and affiliated with the Communist Party, and defendant in response to his motion for bill of particulars had been informed that government would prove that he was a member of such party in Germany from 1918 to 1945 and that he was in the same period affiliated with Communist organizations in Russia, Austria and China, and in the United States from about 1928 to 1945, defendant's contention that prosecuting attorney's outline in his opening statement of the broad sweep which the proof would take concerning defendant's activities as a Communist and as an agent of the Communist International was prejudicial error, could not be sustained. [Eisler v. U.S., C.A.D.C.1949, 176 F.2d 21, 84 U.S.App.D.C. 404](#), motion denied [69 S.Ct. 1150, 337 U.S. 912, 93 L.Ed. 1723](#), certiorari denied [69 S.Ct. 1534, 337 U.S. 958, 93 L.Ed. 1758. Criminal Law](#) ↪ 1171.2

### 30. ---- Sufficiency, evidence

Evidence sustained conviction of alien of knowingly making false statements in his application to the Secretary of State for permission to depart from the United States with intent to induce or secure the granting of such permission. [Eisler v. U.S., C.A.D.C.1949, 176 F.2d 21, 84 U.S.App.D.C. 404](#), motion denied [69 S.Ct. 1150, 337 U.S. 912, 93 L.Ed. 1723](#), certiorari denied [69 S.Ct. 1534, 337 U.S. 958, 93 L.Ed. 1758. War And National Emergency](#) ↪ 49

Evidence established that national emergency proclaimed in 1950 by the President, proclaimed as still existing in 1953, and recognized as continuing in 1960, 1961, and 1962 had not expired at time of performance of acts which culminated in allegedly unlawful trip to Cuba by 58 American citizens in June 1963. [U. S. v. Laub, E.D.N.Y.1966, 253 F.Supp. 433](#), probable jurisdiction noted [86 S.Ct. 1891, 384 U.S. 984, 16 L.Ed.2d 1002](#), affirmed [87 S.Ct. 574, 385 U.S. 475, 17 L.Ed.2d 526. Aliens, Immigration, And Citizenship](#) ↪ 795(4)

### 31. Questions for court or jury

In prosecution for making false and fraudulent statements in application to Secretary of State for alien departure permit, evidence was sufficient for jury. [U.S. v. Eisler, D.C.D.C.1948, 75 F.Supp. 640](#), affirmed [176 F.2d 21, 84 U.S.App.D.C. 404](#), motion denied [69 S.Ct. 1150, 337 U.S. 912, 93 L.Ed. 1723](#), certiorari denied [69 S.Ct. 1534, 337 U.S. 958, 93 L.Ed. 1758. War And National Emergency](#) ↪ 49

The fact that Department of State had substantially all, if not all, of critical information which defendant was charged with having concealed, at time of approval of application for alien's departure permit, did not preclude prosecution for making false and fraudulent statements in application, but action of State Department could be considered by jury in reaching its verdict and by court in determining punishment. [U.S. v. Eisler, D.C.D.C.1948, 75 F.-Supp. 640](#), affirmed [176 F.2d 21, 84 U.S.App.D.C. 404](#), motion denied [69 S.Ct. 1150, 337 U.S. 912, 93 L.Ed. 1723](#), certiorari denied [69 S.Ct. 1534, 337 U.S. 958, 93 L.Ed. 1758. War And National Emergency](#) 49

### [32. Injunction](#)

Inability of citizen seeking injunction against Secretary of State's revocation of his passport and for declaratory relief to make any definite specific plans until the underlying general controversy was resolved provided a basis for an appropriate general declaration that the Secretary could not withhold citizen's passport because of citizen's failure to give assurances that he would refrain from travel to designated areas without a passport. [Lynd v. Rusk, C.A.D.C.1967, 389 F.2d 940, 128 U.S.App.D.C. 399. Declaratory Judgment](#) 203

Where substantial constitutional question, as to validity of passport law, was presented by suit to enjoin denial of plaintiff's right to passport, case was proper one for determination by three-judge court. [Bauer v. Acheson, D.C.D.C.1952, 106 F.Supp. 445. Courts](#) 101

Where former §§ 223 to 226b of Title 22 [now covered by this section], were susceptible of interpretation followed by Secretary of State, and, as so interpreted and applied, would be unconstitutional, mere fact that in opinion of three judges who heard injunction suit involving validity of such sections, said sections could be interpreted so as to provide due process, would not change fact that there was substantial constitutional question, and would not ipso facto require remand to one district judge for final determination of issues. [Bauer v. Acheson, D.C.D.C.1952, 106 F.Supp. 445. Courts](#) 101

### [33. Review](#)

Conviction for departing from United States for Cuba without valid passport was required to be reversed where government did not allege, and introduced no proof, that defendant did not bear valid passport on each of occasions on which she departed for Cuba, via Mexico. [Travis v. U. S., U.S.Cal.1967, 87 S.Ct. 583, 385 U.S. 491, 17 L.Ed.2d 536. Aliens, Immigration, And Citizenship](#) 793; [Aliens, Immigration, And Citizenship](#) 795(4)

Establishment of means test for passport applicants, particularly at a time when passport was required for most foreign travel, would raise serious constitutional questions, and therefore court reviewing dismissal of petition for declaratory and mandatory relief, brought by plaintiff who had been denied passport to travel abroad, would reverse on non-constitutional ground that arbitrary and capricious denial of passport had been alleged, rather than consider legality of means test, which was not conclusively shown to have been applied to passport applicants generally. [Kraus v. Dulles, C.A.D.C.1956, 235 F.2d 840, 98 U.S.App.D.C. 343. Constitutional Law](#) 976

Giving of consular visé on passport of visiting alien is not ministerial act, but involves discretion, not reviewable by courts. [U.S. ex rel. London v. Phelps, C.C.A.2 \(Vt.\) 1927, 22 F.2d 288](#), certiorari denied [48 S.Ct. 324, 276 U.S. 630, 72 L.Ed. 741. Aliens, Immigration, And Citizenship](#) 207

Issue of whether passport applicant was denied due process at passport hearing was not ripe for judicial review, where applicant failed to exhaust administrative process by questioning sources of charges against him by means of-

ferred and failing to address substance of charges. [Agee v. Baker, D.D.C.1990, 753 F.Supp. 373.](#) [Administrative Law And Procedure](#) 229; [Aliens, Immigration, And Citizenship](#) 677

8 U.S.C.A. § 1185, 8 USCA § 1185

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