



Office of the Solicitor General
Washington, D.C. 20530

March 15, 1967

Honorable John F. Davis
Clerk
Supreme Court of the United States
Washington, D. C. 20543

Re: Clive Michael Boutilier v.
Immigration and Naturalization
Service - No. 440

Dear Mr. Davis:

During the oral argument of the above-captioned case, Mr. Justice Stewart inquired whether the provision of Section 241(a)(2) of the Immigration and Nationality Act of 1952 which excluded from the United States "aliens afflicted with psychopathic personality" had ever been relied on to exclude or deport aliens other than sexual deviates. Government counsel advised the Court that we would make the necessary inquiries of the Immigration and Naturalization Service and submit such information as is available to the Court.

Attached is a memorandum from the General Counsel of the Immigration and Naturalization Service presenting such data as he was able to gather with respect to Mr. Justice Stewart's inquiry. We are submitting sufficient copies of this letter and the attachment for distribution to the Court.

Sincerely yours,

Thurgood Marshall
Thurgood Marshall
Solicitor General

Attachment

UNITED STATES GOVERNMENT

Memorandum

A10 767 234

TO : The Solicitor General

FROM : Charles Gordon, General Counsel
Immigration and Naturalization Service

SUBJECT: Boutilier v. INS, No. 440, this Term.

DATE: March 15, 1967

In compliance with your request I have inquired concerning the use of the "psychopathic personality" charge for conditions other than those related to sexual perversion.

Our records do not include any breakdown for this purpose. Our 1965 Annual Report at p. 69, lists exclusions for various general causes. One of these is for "mental or physical defectives", without any further breakdown. Similar general classification of deportations for mental or physical defects appears at p. 77 of the same Annual Report. I have made informal inquiries of the New York and Detroit offices of our Service and have been informed that the "psychopathic personality" charge has been used in situations other than those involving sexual perversion, but there is no information readily available as to the proportion of such cases or the specific disorders involved. Our general impression is that sexual perversion is the critical consideration in the preponderance of cases where the "psychopathic personality" charge has been used. A published administrative decision involving a use of this charge in a situation other than sexual perversion is Matter of Stoytcheff, 11 I&N ___, (Interim Decision #1511, 1965). That was an exclusion case in which the alien was charged, on the basis of a certificate of the Public Health Service, as "afflicted with psychopathic personality (paranoid personality per S.N.D.O.)."

I have also been in contact with the United States Public Health Service, whose procedures and findings are of paramount importance in administering the portions of the immigration statute dealing with medical grounds for exclusion. The Manual for Medical Examination of Aliens issued by the U. S. Public Health Service in 1963, before the 1965 Amendment, lists the following conditions as subject to certification as psychopathic personality (pp 6-10, 6-15): Personality pattern disturbance; Inadequate personality; Schizoid personality; Cyclothymic personality; Paranoid personality; Personality trait disturbance; Emotionally unstable personality; Passive-aggressive personality; Compulsive personality; Personality trait disturbance, other; Sociopathic personality disturbance; Antisocial reaction; Dyssocial reaction; Sexual deviation, Specify Supplementary Term.

After the 1965 Amendment, the Public Health Service issued a revision of its Division of Foreign Quarantine Circular No. 137, dated December 21, 1965, which directed that thereafter sexual deviation would not be certified under "psychopathic personality" but would be used as a special ground for certification.

I have also sought to ascertain whether the Public Health Service had any information concerning the types of disorders for which "psychopathic personality" certificates were issued by the Public Health Service, both before and after the 1965 Amendment. The national office of the Public Health Service gave me the following information regarding visa refusals in United States Consular Offices overseas: In fiscal year 1965 there were 31 Public Health Service certificates for "psychopathic personality" but no breakdown is available regarding the specific conditions involved. In the 13 month period from the effective date of the amended law on December 1, 1965 until the end of 1966, there were 7 certifications by the Public Health Service for sexual deviation and 25 certifications for "psychopathic personality", other than sexual deviation.

I have also been informed that the New York office of the United States Public Health Service has figures on similar certifications, which were presented to the New York office of the Immigration and Naturalization Service for use in connection with proceedings for adjustment of status, deportation proceedings and exclusion proceedings. For the one year period between March 1, 1966 and March 1, 1967 the New York office of the Public Health Service issued 19 certifications for sexual deviation, 25 for schizoid personality and 7 for other categories under the "psychopathic personality" classification.

Charles Gordon