WHAT'S A METAPHOR?: THE DEPORTATION OF A POET

By David Cole*

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. . . .

Justice Jackson, writing for the majority in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943)

[Margaret Randall's] writings go far beyond mere dissent, disagreement with, or criticism of the United States or its policies. Her associations with, and her activities and writings in support of the communist dominated governments of Cuba, North Vietnam, and Nicaragua; and her advocacy and support of revolutionary activity in Mexico, as well as her affiliation with and participation in Communist Party activities, warrant the denial of her application for adjustment of status [to permanent resident] as a matter of discretion.

Immigration and Naturalization Service District Director A.H. Guigni, in his Oct. 2, 1985 decision denying Margaret Randall's application for permanent resident status and giving her thirty days to leave the country

Immigration Court, El Paso, Texas, March 1986. Feminist author Margaret Randall is on the witness stand. Immigration and Naturalization Service (INS) attorney Guadalupe Gonzalez is attempting to demonstrate that Randall should be deported as a subversive because a poetry magazine she once edited has been described in print as a "revolutionary weapon:"

Randall: [Revolutionary weapon] is a metaphor, Ms. Gonzalez. I think that . . .

Gonzalez: What's a metaphor?

Randall: The use of the word "revolutionary weapon" when referring to a magazine which is made of print and words and pictures. It is a metaphor and I would also ask you to look at other things in those three issues which seem so important. There's a letter that deeply criticizes aspects of the Cuban revolutionary experience at that time, specifically stating that the writer of the letter feels that it was non-humanitarian not to let people out of the country. So we gave expression in the magazine to many of the feelings which were being raised at that time by people of our generation.

Gonzalez: Leftist feelings?

Randall: Feelings.

* David Cole is a staff attorney for the Center for Constitutional Rights in New York. He represents Margaret Randall. An earlier version of this article appeared in THE NATION, July 21, 1988.

Gonzalez: Communist feelings?
Randall: All kinds of feelings.
Gonzalez: I mean, did you ever have an article in one of your last three publications extolling the virtues of the free enterprise system?[1]

For more than four years the United States government tried to deport feminist author Margaret Randall for the political content of her publications. The legal basis for the government's case against Randall was the McCarran-Walter Act, the infamous 1952 law that authorizes the government to exclude and deport non-citizens for any number of ill-defined ideological "crimes."[2] The McCarran-Walter Act was passed during the height of the Cold War,[3] and remains on the books to this day.

Under the authority of the McCarran-Walter Act, the Immigration and Naturalization Service (INS) placed Margaret Randall under intense scrutiny. Her "crime" has been characterized in different ways by the immigration officials who have dealt with her case. In October 1985, an INS District Director denied her application for permanent resident status and ordered her to leave the country within thirty days because he found that her "writings go far beyond mere dissent."[4] In August 1986, Immigration Judge Martin F. Spiegel also concluded that Randall should be barred from living in the U.S. permanently and ordered her deported because, in his view, her writings "advocate the economic, international, and governmental doctrines of world communism."[5] And, according to the INS attorneys who prosecuted the case, "Randall's writings are her own indictment against herself."[6]

In July 1989, Randall's case came to a surprising and successful close. The Board of Immigration Appeals (BIA), ruling on Randall's appeal from Judge Spiegel's deportation order, found that she was still a United States citizen, and therefore should never have been subjected to deportation proceedings in the first place. Randall was born a United States citizen, but the government had treated her as an alien ever since 1967, when, living in Mexico, she took out Mexican citizenship in order to

be able to work to support her family. The BIA found that she had not voluntarily relinquished her United States citizenship when she became a Mexican citizen, because she did so out of economic compulsion. Thus, the INS was not only trying to deport a woman for her poetry; it was trying to deport a United States citizen.

The record of the INS's case against Randall stands as a testament to the ideology and mechanism of censorship. During the proceedings, the INS subpoenaed every

1. *In re Randall*, Deportation Hearing Transcript at 165-66 (March 17, 1986).

2. 8 U.S.C. § 1182(a)(28) (1982). The future of the McCarran-Walter Act has recently been called into question, first by Congress, and second by a federal court. On December 22, 1987, Congress enacted a one-year provision that temporarily overrode much of the McCarran-Walter Act. Under this provision, "no alien may be denied a visa or excluded from admission into the United States . . . or subject to deportation because of any past, current, or expected beliefs, statements, or associations which, if engaged in by a United States citizen in the United States, would be protected under the Constitution of the United States." Foreign Relations Authorization Act, §901(a), Pub. L. No. 100-204, 101 Stat. 1399, 1399-1400 (1987). The law contained a number of problematic exceptions, including an exception from the above guarantee for all members of the Palestine Liberation Organization, and was effective for only one year, but it appeared to reflect a readiness in Congress to do away with much of the Act's ideological provisions.

Section 901 appeared to resolve Margaret Randall's case. The INS admitted in February 1988 that Section 901 applied to Randall's case, and that therefore she could not be denied permanent resident status because of her writings. However, the Board of Immigration Appeals ("BIA"), which was considering Randall's appeal, did not issue its decision, and in October 1988 Congress changed the law and the INS changed its position vis-a-vis Randall. Congress extended Section 901 for two years, but limited its protections to aliens seeking non-immigrant (or non-permanent resident) visas. Foreign Operations Appropriations Act § 555, Pub. L. No. 100-461, 102 Stat. 2268 (1988). As a result, the INS revoked its prior position, and argued once again that Randall should be denied permanent resident status and deported because of the "world communis[t]" character of her writings.

The second important development is that in January 1988, a federal district court held several deportation provisions of the McCarran-Walter Act unconstitutional as applied to aliens living in the United States. *American-Arab Anti-Discrimination Committee v. Meese*, 714 F.Supp. 1060 (C. D. Cal. 1989). The court held that the First Amendment protects aliens living in the United States just as it protects citizens. The government has appealed the decision.

3. At the time Congress specifically found that the Communist Party posed an immediate danger to the survival of the United States government. See *Dennis v. United States*, 341 U.S. 494 (1951); see also Subversive Activities Control Act of 1950, 50 U.S.C. § 781 (1982). Thirty-five years later, the United States government still stands, suggesting that the immediacy of the threat perceived in 1952 was somewhat exaggerated.

4. INS District Director Dec. at 7 (Oct. 2, 1985), reprinted in *Randall v. Meese*, 854 F.2d 472, 486-87 (D.C. Cir. 1988).

5. Immigration Judge Dec. at 23 (Aug. 28, 1986).

6. BIA Oral Argt. Transc. at 17 (Oct. 20, 1987).

Banana Republic by Thomas Daniel

book, article, and poem that Randall ever published, and offered into evidence thousands of pages of Randall's publications. The immigration judge, the only one actually to count them, reported that he had reviewed 2,744 pages of Randall's writings.[7] The record also includes an 848-page transcript from Randall's deportation hearing, and hundreds of pages of legal briefs.

This record details the attempt of the state to excise Margaret Randall from within the national borders and the national consciousness. It is an especially rich source for studying the ideology of censorship for a number of reasons. First, unlike the vast majority of persons affected by the McCarran-Walter Act, Randall was here in the United States when all of this began. Because Randall is here she enjoys due process rights under the Constitution not enjoyed by non-citizens abroad, and therefore the government had to explain and support with evidence its reasons for deporting her.[8] As a result, the government created a voluminous legal record, composed principally of Randall's writings and her explications thereof offered during her deportation hearing, as well as an even more substantial public record in the vast media coverage of this case. Ironically, the government has probably done more to further Randall's "subversive" views by seeking to deport her than she could ever have done on her own.

Second, in Randall's case, unlike many other ideological exclusion and deportation cases, the government did not even *allege* that Randall was an actual threat to anyone, much less to national security. In many cases denominated "ideological," the government at least asserts that a concrete threat is involved, even if it often cannot support its assertion.[9] Even on the surface, the sole grounds for denying Randall permanent residence and ordering her deported were her politics.

Finally, the McCarran-Walter Act itself is written in purely ideological terms. To exclude or deport a non-citizen under the Act, the INS need not demonstrate or charge that the person poses a concrete threat or would harm the community in any particular manner. The law turns explicitly and solely on political advocacy and association. The statute provides that all of the following classes of persons shall be ineligible for visas, excludable, and deportable: anarchists; persons affiliated with any communist or totalitarian party, or "any section, subsidi-

7. Immigration Judge Dec. at 20.

8. The Supreme Court has long held that aliens not living in the United States and seeking to enter are entitled only to whatever process Congress gives them by statute: "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) (upholding against a non-resident alien a "summary exclusion" procedure that provided no notice, no hearing, and allowed for exclusion based on undisclosed confidential information). However, "once an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the Constitution to all people within our border. Such rights include those protected by the First and the Fifth Amendments and the due process clause of the Fourteenth Amendment." *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 n.5 (1953) (holding that same "summary exclusion" procedure could not be applied to returning resident alien, who is entitled to due process) (quoting *Bridges v. Wixon*, 326 U.S. 135, 161 (1945) (Murphy, J., concurring).

9. Thus, for example, in justifying the exclusion of Patricia Lara, a Colombian journalist who attempted to visit the United States in 1986 to attend an honors dinner at her alma mater, the Columbia University Graduate School of Journalism, Assistant Secretary of State Elliott Abrams accused Lara of being a "terrorist" on CBS's "60 Minutes," but never supported the charge with evidence, and never allowed Lara a chance to refute the charge. The Colombian government subsequently protested the United States' action, and said it had no evidence that Lara, a journalist with an established paper in Colombia, was a terrorist.

ary, branch, affiliate, or subdivision of any such association or party"; persons who practice or advocate polygamy; persons who "advocate the economic, international, and governmental doctrines of world communism," or belong to any organization so advocating; persons who "advocate or teach . . . the unlawful damage, injury, or destruction of property"; and those who write or publish, or "knowingly circulate, distribute, print, or display" materials that advocate any one of five proscribed beliefs.[10]

I would like to turn the tables and analyze the political content of the INS's views. I do so because I believe that, to paraphrase the INS, the government's arguments are the McCarran-Walter Act's own indictment against itself. The Randall record presents a rare glimpse at explicit ideological punishment. The INS and the McCarran-Walter Act serve as gatekeepers to the nation's soul. It is not because Randall poses any actual threat to national security, but because toleration of her ideas touches upon a national *in*security, that the INS sought to expel her from the United States, and to censor her from the national discourse.

II.

Margaret Randall is a fifty-two year old mother of four children. She is an internationally acclaimed author of more than 40 books, including many oral histories documenting the daily lives of women, religious workers, and writers in contemporary Cuba and Nicaragua. Her books, which include CUBAN WOMEN NOW, SANDINO'S DAUGHTERS, and CHRISTIANS IN THE NICARAGUAN REVOLUTION, are widely available in the United States, and frequently assigned in courses in Latin American Studies and Women's Studies. Her quarterly bilingual journal EL CORNO EMPLUMADO (THE PLUMED HORN), published from Mexico in the sixties, was the first of its kind to introduce prominent Latin American and North American authors such as Octavio Paz, Ernesto Cardenal, Alejandra Pizarnik, Alan Ginsberg, Ezra Pound and Denise Levertoff to new English- and Spanish-reading audiences. Throughout her career, Randall has sought to foster cultural exchange between citizens of the Americas.

Born in the United States, Randall left this country in her early 20s. For the next 23 years, until her return to the United States in January 1984, she lived in Mexico, Cuba and Nicaragua. She became a Mexican citizen in 1967 in order to secure employment there to support her children. As a result, the United States revoked her U.S. citizenship, an action which only now has been reversed.

10. 8 U.S.C. § 1182(a); 8 U.S.C. § 1251(a)(6). The proscribed beliefs are: (1) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or all forms of law; (2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individual or of officers generally) of the government, because of his or their official character; (3) the unlawful damage, injury, or destruction of property; (4) sabotage; (5) the economic international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship; 8 U.S.C. § 1182(a)(29)(G); 8 U.S.C. § 1251(a)(6)(G).

UNDER ATTACK

for Marian McDonald

Listen. These voices are under attack.

Ismaela of the dark tobacco house. Grandma.
A maid her lifetime of winters, granddaughter of slaves.
Straight to my eyes:
"my mama used to tell me, one of these days
the hens gonna shit upwards!
And I'd stare at those hens' asses, wondering
when *will* that happen?
When we pushed the big ones down
and pulled the little ones up!"

"For Mama, Papa, and Blackie" she wrote
on the poem she left to say goodbye.
Nicaragua, 1977.
Disappear or be disappeared.
Dora Maria whose gaze
her mother always knew.
She trembled at her first delivery,
then took a city fearlessly.

Rain and the river rising. Catalina
chases her ducks that stray.
"And my months," she cries,
on that platform with poles, a house
to do over and over.
"My months gone in the hospital at Iquitos
and the full moon
bringing a madness to my head."
Her body is light against my touch.
A woman's voice, parting such density of rain.

Xuan, my cold hands in hers,
evokes the barracks.
"Soldiers who were our brothers."
Night after night, village by village.
Quang Tri, 1974.
Gunfire replaced by quiet conversation.
The work of women.
Xuan's history, too, is under attack.

Dominga brings her memory down
from the needle trade, Don Pedro,
her own babies dead from hunger.
"I want to tell you my story," she says,
"leave it to the young ones
so they'll know."
We are rocking. We are laughing.
This woman who rescued the flag at Ponce,
Puerto Rico, 1937.
Known by that act alone,
until a book carries her words. Her voice.

I bring you these woman. Listen.
They speak, but their lives are under attack.

They too are denied adjustment of status
in the land of the free. In the home of the brave.

Margaret Randall,
Albuquerque, Winter 1986

Randall returned to the United States in 1984. After marrying a lifelong friend, she decided that she wanted to remain near her elderly parents in Albuquerque, New Mexico. Because the government considered her an alien, Randall applied for permanent resident status.[11] Absent ideological issues, she would be immediately eligible for such status because of her strong family ties. Her parents, siblings, and two of her children are U.S. citizens. But because Randall has at various times publicly dissented from U.S. government policy toward various nations in the world, the INS has twice denied her permanent resident status, and has ordered her deported.

III.

When I tell people about the government's efforts to deport Margaret Randall, they are virtually always shocked. "Do we still do that?" they inevitably ask. The answer, unfortunately, is yes. To those of us brought up to believe that the United States is a tolerant society committed to freedom of expression, the case seems to be an aberration. But history shows that, far from an aberration, this type of "exclusion" has been central to our nation's history.

Indeed, the first case of ideological deportation in this country predates the birth of the nation. In 1635, the Massachusetts legislature banished Roger Williams, who went on to found Rhode Island, for disseminating "newe & dangerous opinions" against the authority of the state.[12] The Alien Act of 1798 authorized the President to expel "all such aliens as he shall judge dangerous to the peace and safety of the United States. . . ."[13] And much of the language of the McCarran-Walter Act stems from a statute that dates to the turn of the century, when Congress first made "anarchism" a deportable political idea after a self-proclaimed "Anarchist" (a native U.S. citizen) assassinated President McKinley.[14]

Professor Michael Rogin has shown that throughout the development of the United States, our country has conceived its citizenry's freedom and self-identity in opposition to those considered less than citizens. It began with the Native Americans:

> Although Indian wars actually exemplified state violence, they fed an opposite myth — the myth of the self-made man. . . . Early settlers made Indians a threat to community. . . . White Americans contrasted their own freedom, disciplined by self-restraint, with the subversive, idle, and violent freedom of the Indians. The self-reliant American gained his freedom, won his authority, and defined the American national identity in violent Indian combat in the West.[15]

Rogin argues that U.S. citizens' early relationship to the Native Americans, whose land they appropriated, finds parallels in their relationship to slaves, and ultimately to all considered different, or "alien:"

> Indians were the first people to stand in American history as emblems of disorder, civilized breakdown, and alien control. . . . The violent conquest of Indians legitimized violence against other alien groups, making coexistence appear to be unnecessary. The paranoid style in American politics . . . goes back to responses to Indians. The series of Red scares that have swept the country since the 1870s have roots in the original red scares. Later countersubversive movements attacked aliens, but the people who originally assaulted reds were themselves aliens in the land. . . . The need to draw rigid boundaries between the alien and the self suggests fears of too dangerous an intimacy between them.[16]

The question the McCarran-Walter Act raises is whether a country can ever call itself pluralist or humanist when it expels and excludes persons like Randall because they hold dissenting points of view.

11. Permanent resident status is the first step toward naturalization. A nonimmigrant alien in the United States who has the requisite close family ties may apply for adjustment of status to permanent resident. 8 U.S.C. § 1255. One must generally be a permanent resident for at least three years to become eligible to apply for naturalization. 8 U.S.C. § 1430(a). A permanent resident alien has the right to live in the United States permanently, subject to deportation for various enumerated offenses.

The Immigration and Nationality Act provides aliens living in the United States two separate and independent opportunities to apply for adjustment of status to permanent resident: the first to a District Director, and the second to an immigration judge in a deportation proceeding. 8 C.F.R. § 245.2 (1988).

12. Mitchell C. Tilner, Ideological Exclusion of Aliens: The Evolution of a Policy, 2 GEORGETOWN IMM. L.J. 1, 6 n.25 (1987).

13. Alien Act of 1798, Act of June 25, 1798, ch. 58, 1 Stat. 570, 571.

14. See Tilner, 2 GEORGETOWN IMM. L.J. at 24-30 (cited in note 13).

15. Michael Rogin, RONALD REAGAN, THE MOVIE AND OTHER EPISODES IN POLITICAL DEMONOLOGY 49-50 (1987).

16. Id. at 50. Rogin suggests that the psychological source for this ambivalence may be located in our early childhood relations to our mothers, relying on the work of Dorothy Dinnerstein and Nancy Chodorow. See id. at 290-92. See also Dorothy Dinnerstein, THE MERMAID AND THE MINOTAUR (1976); Nancy Chodorow, THE REPRODUCTION OF MOTHERING (1978). This view holds that our initial self-definition, in separating from a mother, has long-standing implications for our relationships with other "Others" throughout our lifetime. Rogin claims that attacks on women have played a central role in the "history of American demonology":

> Countersubversion connects political to sexual anxiety by raising the specter of female power. Subversive women were the targets in the witchcraft persecutions, in antiabolitionist hysteria, in turn of the century racism, and in the Red scares.

Rogin, RONALD REAGAN, THE MOVIE at 290. Whatever view one takes of the role of mother-centered childrearing, it is undeniable that like Native Americans, blacks, and aliens, women play the role of marginalized "Other" in our society, and it is on their subordination that much of white men's "freedom" has rested. It is no mere coincidence that the INS singled out Margaret Randall, a vocal feminist, for its 1980s Red scare.

"Foreigners" are perhaps the quintessential "other." The very word used to describe non-citizens, "alien," suggests a deep-seated need to distinguish us from them, insiders from outsiders, those proud to be an American from those who are not. It can no longer be said, if it ever could, that the McCarran-Walter Act is designed to save us from any concrete threat. Rather, it serves its purpose, as INS attorney Guadalupe Gonzalez implicitly recognized in her argument to the BIA,[17] by affirming through exclusion what "Americans" are not — communists, anarchists, homosexuals, etc. Our borders distinguish us from what lies beyond, marking out our special identity, both geographically and, through the McCarran-Walter Act, ideologically.

Thus, just as the European settlers' "freedom" to create their own new society in America required the denial of Native American's personhood, and just as slavery made possible the unity of all classes of white men before the Civil War,[18] so the exclusion and deportation of politically incorrect "aliens" paradoxically allows us the liberty to be "free." The danger posed by unbounded freedom is that we will lose the social anchor of our "values." There is a fundamental tension between the desire to be free individuals and the desire to be part of a community that defines itself through affirming *particular* substantive values. That tension is encapsulated in the First Amendment, which suggests that our nation's primary substantive value is government neutrality in the sphere of substantive values. But too much freedom threatens our sense of community. The McCarran-Walter Act thus sets the boundaries for our freedom. But at what price? It affirms our faith in democracy by casting out people who believe in other systems of government. It affirms our faith in pluralism by barring from our borders anyone who is perceived as advocating totalitarianism. It privileges narrow nationalist self-definition over the uninhibited exchange of ideas, which is itself one of our most important freedoms. It promotes "freedom" by denying the fundamental humanity of another human being. The question that the McCarran-Walter Act raises is whether a country can ever call itself pluralist or humanist when it expels and excludes persons like Randall because they hold dissenting points of view.

IV.

The trouble began with an investigation sparked by Randall's initial application to become a permanent resident.[19] The result of that investigation set the stage for all that would follow: "The investigation revealed that the applicant is a poet and a writer who has had several of her books published."[20]

This not especially startling fact led the District Director handling Randall's application to "examine" five of her books, "for the purpose of determining whether the applicant would be excludable under the [McCarran-Walter Act]."[21] The bulk of his decision consists of selective quotations from two books: PART OF THE SOLUTION, PORTRAIT OF A REVOLUTIONARY (1973), a collection of poems and journal entries; and SPIRIT OF THE PEOPLE (1975), a report on the condition of women in North Vietnam during the last years of the Vietnam War. The passages quoted include criticism of the United States' bombing of Cambodia, of the National Guard's killing of four students at Kent State, and of the propagandistic character of Voice of America. Some of the quotations were not even written by Randall but by Robert Cohen, the father of her youngest child; others were drawn from Randall's poetry. The District Director drew no distinctions between poetry, prose, Randall's words, or Cohen's words, presumably because the McCarran-Walter Act itself makes no distinctions. Exclusion may be based on *any* words published or even circulated by the individual in question.[22]

In addition to mingling Randall's words with others' words, the District Director made no attempt to distinguish between the literal and the figurative in Randall's work. Thus, he quoted Cohen's description of a childhood diary Randall kept as "one of the 'pure products' of the Amerika(sic) Margaret has now dedicated her life to destroying."[23] The District Director's parenthetical suggests that he does not distinguish "America," the United States, from "Amerika," that part of mainstream U.S. culture that was the subject of progressive critique during the 1960s. From the District Director's point of view, criticism of any aspect of the U.S. is criticism of the whole. Similarly, the District Director found condemning Cohen's description of Randall's poetry magazine, EL CORNO EMPLUMADO, as "a revolutionary weapon," and devoted a full paragraph to Randall's poem "I am Attica," about the prison riots there in 1971.[24] All the quotes are presented matter-of-factly, for, as the District Director says, they "speak for themselves."[25] In other words, the District Director implies, Randall's poetry and journal entries require no interpretation, no engagement by the reader, and can be read meaningfully without ref-

17. See infra, text accompanying notes 30-45.

18. The Richmond Enquirer in 1856 editorialized as follows:

> In this country alone does perfect equality of civil and social privilege exist among the white population, and it exists solely because we have black slaves. Freedom is not possible without slavery.

(quoted in Rogin, RONALD REAGAN, THE MOVIE at 53 (cited in note 16)).

19. Randall's initial application for adjustment of status to permanent resident alien was made to District Director A.H. Guigni, in El Paso, Texas.

20. INS District Director Dec. at 1, reprinted in *Randall v. Meese*, 854 F.2d at 483.

21. INS District Director Dec. at 2, 854 F.2d at 483.

22. Thus, if the District Director were an alien, he could be deported for quoting Randall's words in his decision! And if the editors of this journal were aliens, they could be deported for publishing Randall's poetry. See _____ 1 Yale J. of Law & Lib. ____ (1989). Indeed, INS attorneys argued that a *political cartoon* drawn by another but published in EL CORNO EMPLUMADO should be held against Randall.

23. INS District Director Dec. at 2, quoting PART OF THE SOLUTION at 1; 854 F.2d at 484.

24. INS District Director Dec. at 4, 854 F.2d at 485.

25. INS District Director Dec. at 7, 854 F.2d at 486.

erence to context. To the District Director, "[t]he record of the applicant is self-evident."[26]

The District Director's literal interpretive strategy, if it can be called that, is no accident. This reductionism is necessary to the censorship of Randall. Recognizing metaphor requires an acknowledgment of ambiguity, and if the author's meaning is figurative or ambiguous, it is unlikely to fit neatly within the statute's prosaically-defined proscribed doctrines. Similarly, the possibility that each reader might interpret a writer's work differently calls into question the authority of any particular reader. Even more problematically, the recognition of the reader's affirmative role in interpretation implicates the reader, here an INS official, in the joint production of the proscribed meaning. Thus, the commonplaces of a modern-day understanding of interpretation deeply undermine the possibility of engaging in the silencing mandated by the McCarran-Walter Act. But if the words "speak for themselves" and can be read "literally" (whatever that means), the task of the District Director is simply that of testing the "fit" between the author's "self-evident" texts and the statute's "self-evident" terms.

Even so, it was apparently not self-evident to the District Director that any of Randall's writings fell within the terms of the McCarran-Walter Act. The District Director thus referred to, but did not ultimately rely upon, the Act's statutory exclusion provisions. Rather, he denied Randall's application as a discretionary matter. In his view, "[h]er writings go far beyond mere dissent, disagreement with, or criticism of the United States or its policies."[27] His opinion does not explain how the quoted passages go "beyond mere dissent," or where this standard comes from. Thus, even though the District Director read Randall all too literally when it came to interpreting his own authority, he adopted a discretionary standard without support in the "literal" terms of the statute.[28]

The District Director did find support in the spirit of the McCarran-Walter Act. The history of immigration laws directed at "subversive aliens," he explained, demonstrates an intent to guard against aliens who are "detrimental to the national interest." Invocation of this "national interest" justified abandoning the detailed terms of the Act in order to rely vaguely and perfunctorily on discretion. The District Director reasoned that the spirit of the Act empowered him to draw a discretionary line between acceptable "mere dissent" and unacceptable ideas "far beyond mere dissent." Because this line, like Randall's writing, was apparently "self-evident," he did not explicate it.

The District Director's location of the line at "mere dissent" reflects the tension underlying an act of censorious exclusion in a community whose founding ideology emphasizes the primacy of freedom of expression. To claim that Randall's writing is unacceptable because it is "beyond mere dissent" implies that "mere dissent" is acceptable. Our national commitment to the freedom to dissent is simultaneously affirmed and diminished in the very act of excluding dissent: we define our freedom by denying the freedom of others.

V.

Once the District Director denied Randall's application for permanent residence, she became subject to deportation proceedings before an Immigration Judge, and the censor's wand was passed to the INS attorneys who prosecuted that proceeding. Echoing the District Director, INS attorneys argued that the national interest demanded that Randall be found ineligible for permanent resident status and deported, not only as a statutory matter, but also as a matter of "discretion." Relying on the McCarran-Walter Act, INS attorneys claimed: (1) that Randall's writings advocated the "doctrines of world communism;"[29] (2) that she had been a member of communist-affiliated organizations;[30] and (3) that she was not committed to the "good order and happiness of the United States."[31]

During the course of the deportation hearing Randall was compelled to answer questions about her beliefs and opinions regarding Vietnam, Nicaragua, Cuba, Mexico, communism, Marxism, socialism, and even contraception. The INS offered into evidence thousands of pages of Randall's writings, and advanced all of the following as reasons why Randall should not be eligible to live here:

- She published political cartoons critical of the U.S. in EL CORNO EMPLUMADO;
- She dedicated an issue of that journal to Huey Newton;
- She ran an ad for a book by Karl Marx in the journal;
- She held certain Marxist historical views;
- She published poems and articles in Cuban and Nicaraguan journals and newspapers;
- She wrote a poem called "Che;"

26. INS District Director Dec. at 7.

27. INS District Director Dec. at 7.

28. While the statute vests the District Director with the authority to deny adjustment of status to someone who is statutorily eligible, this appears to be the first instance in which a discretionary denial of permanent resident status was based upon the political content of the applicant's views. Discretionary denials are ordinarily based on such "adverse factors" as misrepresentations in applications for entry, recent criminal convictions, or deliberate and repeated violations of immigration laws. 2 C. Gordon and H. Rosenfeld, IMMIGRATION LAW AND PROCEDURE § 7.7d at 7-99 to 7-103 (1987).

29. 8 U.S.C. § 1182(a)(28)(G)(v).

30. 8 U.S.C. § 1182(a)(28)(C).

31. This standard had never before been invoked to establish inadmissibility. It is not found in the McCarran-Walter Act, but in the standard for naturalization. 8 U.S.C. § 1427(a)(3). The INS attorneys sought to bootstrap this standard onto the question of admissibility, by invoking the provision that renders excludable aliens who are "ineligible to citizenship." 8 U.S.C. § 1182(a)(22). But the Act defines "ineligible to citizenship" as limited to individuals who are "permanently debarred from becoming a citizen of the United States." 8 U.S.C. § 1101(a)(19). And the "good order and happiness of the United States" standard is a temporally limited one: the applicant must satisfy this standard only for the five years preceding her application for naturalization. 8 U.S.C. § 1427(a). Thus, the standard can never "permanently debar[]" one from becoming a citizen, and has no applicability to the admissibility question.

•She interviewed communists, among others, for some of her books on Latin American oral history;
•She was a friend of Ernesto Cardenal, a Nicaraguan poet and the Minister of Culture;
•She admitted to being an atheist.

The scope of these examples reveals the INS attorneys' strategy. Rather than limit themselves to proving ineligibility under specific statutory provisions, they sought to demonstrate that Randall was generally undeserving of the United States through a scattershot attack. They urged the Immigration Judge to entertain broadly-framed arguments directed to his discretion, which, in their view, justified the introduction of evidence that Randall was an atheist, that she supported Black Panther activist Huey Newton, and that she published cartoons making fun of U.S. government officials. Their unprecedented invocation of the "good order and happiness of the United States" standard is particularly revealing, for it allowed them to ask explicitly the question that the McCarran-Walter Act implicitly asks of all aliens — are you a "true American?" Randall, the INS attorneys asserted, is not.

The spirit of the INS attorneys' approach comes through most clearly in the briefs they filed and the arguments they advanced after the hearing and on appeal. The introductory paragraph of the INS's Post-Hearing Memorandum reflects the tone that the INS attorneys adopted throughout the proceedings:

> Randall once wrote of Fidel Castro: "Half a million people had tears in their eyes as they shouted the support of this man who is without doubt the most brilliant, the most courageous, and most humane leader of our or any time." Gosh. Castro (?), who in 1986 is swarming Nicaragua, instructing the Sandinistas in the torture of political prisoners? Castro (?), who in Caligulan fashion dispersed thousands of human beings to this country who have suffered and told of the horrors that are the instruments of his governance? Yes, Randall has perpetuated the myth and the lie. Indeed, she has done so with mundane reliability spanning twenty years. Yes, she has published and exported the lie, arraying the distinctive Communist assault on humanity in the garb of guerrillas in green fatigues who speak of the liberation of the oppressed classes, of world solidarity, and of the need to rid themselves of the imperialist monster to the North — indisputably Communism with hispanic elan.[32]

While this hysteria remained unchanged throughout the case, its underlying rationale developed over time. At the outset, INS attorneys relied principally on the McCarran-Walter Act's historical basis — the threat that the Soviet Union would, through world communism, overthrow the United States. They stated that their purpose was not to punish Randall for her "patent defamation of the Government of the United States,"[33] but "to prevent a world-wide Communist conspiracy from accomplishing its purpose in this country."[34]

To underscore the importance of this purpose and the dangers of communism, the INS attorneys prefaced their analysis of Randall's writings with extensive quotations from seemingly every statute Congress has ever passed on the subject of communism. These statutes, promulgated in the paranoia of the McCarthy Era, have hardly been used since the late 1950's. They are premised on the 1952 Congress' finding that there was a secretive world-wide communist conspiracy that would stop at nothing to gain its ends:

Freedom is merely a symbol to fight for, Randall a symbol to fight against. What freedom means and who Randall is are lost in this clash of symbols.

> There exists a world Communist movement which, in its origins, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.[35]

Yet the INS attorneys could not adopt the McCarthy Era rhetoric wholesale, because from hindsight its paranoia is all too evident. The INS attorneys could not maintain that the United States would be physically endangered if it permitted Randall to remain. Without that link to a concrete threat, the paranoia of the 1950s becomes pure, undisguised animus. Of Randall's CHRISTIANS IN THE NICARAGUAN REVOLUTION, a book of interviews, the INS attorneys write:

> Randall confesses, "I am a Marxist and an Atheist," but wait, the good news is that she loves Christians and yes, Fidel, too, loves Christians. Indeed in Cuba, Randall tells us there is no religious repression — absolutely none. What's more, the book explains those dirty imperialists can't stand to hear that Fidel loves Christians and Marxists/Atheists, like Margaret Randall, love Christians and that Christians are part of the happy FSLN family here in Nicaragua. . . .[36]

Toward Randall herself, the INS attorneys adopted a "love it or leave it" stance: "Margaret Randall is a fifty-

32. INS Post-Hearing Mem. at 1 (Aug. 1, 1986).
33. Id. at 23.
34. Id. at 33.
35. 50 U.S.C. § 781.
36. INS Post-Hearing Mem. at 55.

year old malcontented expatriate who has deliberately chosen to live a self-imposed political exile from the United States for the majority of her adult life."[37]

Thus, the prejudice that the McCarthy Era bred lives on. But unadulterated animus is difficult to justify, and must be rationalized if it is to call upon the power of the state. Its modern-day vindication comes in even more purely distilled ideological terms: the "war" is no longer between the United States and the Soviet Union, two countries, but between "democracy" and "communism," two ideas. It is a war ultimately with ourselves. The enemy, according to INS attorney Gonzalez, is not so much the communism out there as our own internal "ambivalence."[38] By deporting Randall, we reaffirm that our ideals are so valuable that they cannot be questioned, so valuable that they justify the expulsion from our midst of those who question them. Ideological deportation becomes a statement of fundamentalist faith in "America."

This is best expressed in Gonzalez' argument to the Board of Immigration Appeals (BIA), in which she urged the BIA to "keep faith with the American people" by finding Randall deportable:

> The American system of government is a better and a freer system than those Margaret Randall chooses to join and to support. Our nation is and must be deeply committed to its democratic form of government, and it is worthy of champions in that cause. The Board has an opportunity in this case to keep faith with the American people in their fight against communism.[39]

Gonzalez' call for a reaffirmation of faith was accompanied not by a citation to the McCarran-Walter Act, nor to any case law applying the Act, but of Allan Bloom's THE CLOSING OF THE AMERICAN MIND:

> There is an enemy here, and that enemy is ambivalence and the danger is one that has been recognized as recently as this year by a noted author and professor out of the University of Chicago. . . . In his book, THE CLOSING OF THE AMERICAN MIND, the danger is that we will dilute the battle between freedom and communism to the level of no fault auto insurance. The danger is that we will view this case in a context where there is no right or wrong. But there is a right and a wrong. The American Congress has stated that our system of government is right, and it is good, and the communist system is bad. We are an intolerant government. We are intolerant of world communism, and we are intolerant of those individuals like Randall, who attempt to increase its hold on the world. As columnist George Wills so aptly put it, "America is not a hotel. The American door does not swing open to all types of men and women, to all types of lifestyles, and to all types of political ideologies."[40]

Gonzalez effectively concedes that we are no longer protecting the nation itself, but the "national perspective:" "It is a perspective in favor of god and country, a perspective in favor of freedom and one for which we must never apologize."[41]

Gonzalez' citation of Allan Bloom is telling. Bloom's book is part of a conservative movement that criticizes the loss of "values" in modern liberal education and society. The book's success as a best-seller is consistent with the resurgence of fundamentalist religions and the popularity of Ronald Reagan. Reagan's Education Secretary William Bennett waged a vigorous public campaign against the so-called "ethical relativism" of liberal pedagogy, in which the United States and the Soviet Union are presented as two different social systems, not as "right" and "wrong" systems. All of these phenomena share a rejection of the doubt that liberalism appears to engender. From this view, Jimmy Carter personifies liberalism's ambiguity; Ronald Reagan is the paradigm of conservatism's simple faith. Gonzalez picks up on this trend, and in her hands, democracy becomes an article of faith, not a system to be discussed and questioned.[42]

Gonzalez' argument is a remarkably honest defense of censorship. Censorship is predicated on the danger posed by ideas, but it is rarely openly defended on those grounds. Gonzalez asks the Board to deport Randall not to protect the United States from any concrete threat but simply to "make a statement . . . [a] statement against Randall, and for freedom."[43] The impossibility of affirming freedom while deporting a person because of her ideas does not occur to Gonzalez. Freedom is merely a symbol to fight for, Randall a symbol to fight against. What freedom means and who Randall is are lost in this clash of symbols.

The INS attorneys took on their task with true ideological passion. The task — to prosecute a woman solely for the political content of her books — required an explicit justification of censorship, for there could be no masking of the ideological nature of their actions. When the rhetoric of the McCarthy Era struck hollow thirty-five years after the fact, the INS attorneys turned to Allan Bloom, and issued a fundamentalist call to an unquestioning faith. From this "national perspective," faith in our values is more important than the substance of the values themselves. At that point, and only at that point, ideological punishment is, as Justice Holmes said, "perfectly logical:"

37. INS Appeal Brief at 1 (May 29, 1987).
38. BIA Oral Argt. Transc. at 19.
39. Id. at 18.
40. Id. at 19.
41. Id.
42. The parallels to the Ayatollah Ruhollah Khomeini's death threat against author Salman Rushdie for writing a novel that allegedly satirizes the Muslim faith underscore the essentially fundamentalist tenor of the Reagan Administration's actions. While the United States has certainly not threatened to kill Randall for the politically sacrilegious content of her work, it does seek forcibly to separate her from her family, her home, and her work solely for that reason. And like the Ayatollah, the INS fails to take into account the fictional character of the work, assigning a rigidly literal meaning to the text. For less extreme parallels between American ideology and religious faith, see S. Levinson, CONSTITUTIONAL FAITH 9-53 (1988).
43. BIA Oral Argt. Transc. at 20.

> Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition.[44]

The difference is that Justice Holmes was being ironic.

VI.

The third immigration official to apply the McCarran-Walter Act against Randall was Immigration Judge Martin F. Spiegel. He held that Randall had advocated the "doctrines of world communism," and should be deported. His decision, however, lacks the ideological fervor of the INS attorneys; it reads as if the law simply left him no choice.

Judge Spiegel made no attempt to justify his decision as protecting "the national interest" or affirming the values of freedom and democracy. His decision is dry, technical and, at its core, empty. He quoted in full the ideological exclusion provisions of the McCarran-Walter Act and summarized the INS's allegations. He then listed each of the exhibits of Randall's writings, assured the reader that he had "read and studied in their entirety" all "2,744 pages,"[45] and concluded that Randall's writings "advocate the economic, international, and governmental doctrines of world communism as set forth in Section 212(a)(28)(G)(v) of the Act."[46]

At the point of applying the statute to Randall's writings, however, the decision skips a beat. Judge Spiegel failed to quote even a single passage from the 2,744 pages he had "read and studied." Nor did he set forth, much less apply, the statutory definition of the proscribed "doctrines of world communism," a definition so specific and detailed that it is unlikely that anyone has ever so advocated:

> advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.[47]

In effect, Congress' exaggeration of the evils of "communism" resulted in a statutory definition that almost no communist would advocate. Yet Judge Spiegel never cited this definition.

Judge Spiegel's only attempt to justify his conclusion consisted of his own one-sentence synopses of the general themes of three books and one article by Randall. He characterized CUBAN WOMEN NOW, a book of interviews with Cuban women, as "consistent in its praise for the efforts of the Castro communist revolution in improving women's rights and conditions in Cuba as well as being consistently supportive of the communist revolution in Cuba."[48] But he did not explain how praise for an existing communist regime constituted "advocating the establishment of a totalitarian Communist dictatorship." The discussion of Randall's works, the most critical section of his opinion, reads as if Judge Spiegel was ashamed of what he was doing, and wanted simply to get it over with as quickly as possible.

Perhaps because of this uneasiness, Judge Spiegel continued, *after* finding Randall statutorily ineligible for permanent resident status, to say in dicta that on every other ground, including the exercise of discretion, Randall deserved to be granted permanent resident status. He went out of his way to distance himself from both the District Director's decision, which rested on a discretionary evaluation of Randall's politics, and from the INS attorneys, who urged a decision on even broader discretionary grounds:

> [A]ccording evidentiary weight to respondent's nonproscribed political opinions would result in the political opinion of the adjudicating officer being the determinative factor. Clearly the favorable or unfavorable exercise of discretion cannot and must not

IMMIGRATION LAW

When I ask the experts
"how much time do I have?"
I don't want an answer
in years or arguments.

I must know
if there are hours enough
to mend this relationship,
see a book all the way to its birthing,
stand beside my father
on his journey.

I want to know how many seasons of chamisa
will be yellow then grey-green
and yellow
/light/
again,
how many red cactus flowers
will bloom beside my door.

I will not follow language
like a dog with its tail between its legs.

I need time equated with music,
hours rising in bread.
years deep from connections.

The present always holds a tremor of the past.

Give me a handful of future
to rub against my lips.

Margaret Randall,
Albuquerque, October 1985

44. *Abrams v. United States*, 250 U.S. 616, 630 (1919).
45. Immigration Judge Dec. at 20.
46. Id. at 23.
47. 8 U.S.C. § 1101(e)(3).
48. Immigration Judge Dec. at 24.

be based upon the personal political opinion of the adjudicating officer.[49]

Thus, Judge Spiegel declared invalid a standardless discretionary assessment of the political content of Randall's writings and in its place applied statutory standards of ineligibility to the same political content. But in the context of reading a poet's works to determine whether she advocates a particular political world view, is it any less arbitrary if the reader applies a Congressional definition or his own standard? Nonetheless, whether or not it makes sense, Judge Spiegel's distinction serves an ideological purpose. It suggests that Judge Spiegel's decision is founded upon "objective" rather than "subjective" criteria. And this move both distances Judge Spiegel from responsibility for the decision — it is not *his* political opinion but Congress' that requires the denial — and simultaneously affirms the United States conception of a fair and objective administration of laws.

In the end, however, Judge Spiegel's opinion is an exercise in the absurd. Its bureaucratic abstinence from rhetorical excess is inconsistent with the spirit of the ideological exclusion provisions it so bureaucratically applies. It is an act of censorship without ideological commitment. Without such commitment, the deportation appears all the more senseless. So senseless, in fact, that Judge Spiegel was apparently unable to undertake the very task of reading and interpretation that the Act required.

VII.

Throughout Margaret Randall's ordeal, none of the government officials who applied the McCarran-Walter Act engaged Randall as an author, as a person with whom to communicate. The call to censor permits no exchange beyond that necessary to cut off the exchange. And in the end, each official demanded just such a cut-off: Margaret Randall's deportation.

To deport a poet from a democratic country is therefore to deny, ultimately, both poetry and democracy. It is to reject ambiguity and plurality in favor of authoritarianism.

Three paradoxes run through the INS officials' treatment of Randall. First, they all pay lip service to our nation's commitment to freedom of speech at the very moment that they urge Randall's expulsion for the political content of her views. But none of them addresses the paradox created by that assertion. The paradox is so blatant that it cannot go unstated, but so deep that it cannot be resolved except by foregoing the censor's role. And both the law on its face and the political tenor of the times reinforce the call to censor.

The second paradox may be even deeper and is barely acknowledged by the INS officials. Their role as censor requires an explicit faith in the ability to determine an unproblematic, "literal" meaning. If a text's meaning is fluid, if it depends upon context and reader, if it requires the interpretation of metaphors and figures, the INS' task becomes virtually impossible. The relationships between author, text, and reader are rendered deeply problematic by recognition of the complex dynamic that determines a particular reading of a text. It may no longer make sense to assign responsibility for the reader's interpretation to the author's intention. It becomes unclear who should be deported: the author, the reader, or the text itself? Ambiguity, the hallmark of the poet, is the downfall of the censor. The drive to censor Randall for her poetry can be viewed not only as an attempt to reaffirm the traditional values of democracy and freedom, but also as a desperate grasp for the deeper security of immediate, objective, "literal" truth.

The coexistence of those two paradoxes raises a third. Democracy and freedom are ultimately premised on the recognition that truth *cannot* be unmediated or objective. We tolerate and encourage a plurality of voices in part because we recognize that no one voice is privileged. Democracy contemplates a process of exchange that seeks consensus and coexistence, and rejects the authority of any government official to control the truth. Poetry, literature, culture, and even law itself require a similar process of exchange, and all recognize to some extent the inability even of the authors themselves to establish a single authoritative meaning for their texts.

To deport a poet from a democratic country is therefore to deny, ultimately, both poetry and democracy. It is to reject ambiguity and plurality in favor of authoritarianism. It is, in short, to adopt the very totalitarian precepts from which the McCarran-Walter Act was purportedly designed to save us.

49. Id. at 31.