

Bruce -

I took the liberty of approving this memo for you. I believe it went into the President on Friday.

Elena

cc: Jose, Leanne

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
MARIA ECHAVESTE
JOHN HILLEY
BRUCE REED
CHUCK RUFF

SUBJECT: Central American Migrants

Purpose

To obtain your approval on a strategy to provide relief to Central American migrants affected by the new immigration law.

Background

The new immigration law severely restricts the availability of suspension of deportation -- the remedy traditionally available to deportable aliens who have resided in the U.S. for considerable periods of time. The law imposes more stringent standards for suspension, sets a 4,000 annual cap on the number of suspensions, requires migrants to be in the U.S. ten rather than seven years, and no longer permits time spent in removal proceedings to count toward the residency requirement. In a decision known as *NJB*, the Board of Immigration Appeals (BIA) ruled that this "stop-time" rule applies retroactively.

These changes dramatically reduce the number of migrants eligible for suspension. Consequences are most profound for Central Americans who entered the U.S. in the 1980s in response to civil war and political persecution, particularly two groups who had been authorized to remain in the U.S. under various special measures:

Nicaraguans under the Nicaraguan Review Program (NRP): The Reagan Administration protected roughly 40,000 Nicaraguans from deportation during the pendency of a DOJ review of their asylum applications known as *NRP*. The program ended in June 1995.

ABC Guatemalans and Salvadorans: As a result of a 1990 court settlement (known as *ABC*), Salvadoran and Guatemalan asylum-seekers who came to the U.S. in the 1980s were protected from

deportation until their asylum claims could be decided under special adjudication procedures. The ABC class is comprised of roughly 190,000 Salvadorans and 50,000 Guatemalans.

Under prior rules, roughly 120,000 individuals in these groups could have obtained relief; under the new law, only a small fraction will be able to benefit from suspension. The change in rules as applied to these groups has prompted criticism from Central American leaders, human rights groups, and Members of Congress, including prominent Republicans such as Senator Abraham and Speaker Gingrich.

Forms of Relief

We can provide some relief to NPR and ABC class members through administrative action. Specifically, the Attorney General has decided to review *NJB*, the decision applying the stop-time rule retroactively. The Attorney General's announcement will be applauded by Central Americans and their governments.

Administrative steps are not available to fully address the other harmful provisions of the law - the cap and the more stringent standards. The most we could do is grant deferred enforced departure (DED). DED would protect its beneficiaries from deportation; however it offers only a temporary solution, as it would not result in naturalization and can be terminated by a future President. (DED is an inherent Presidential foreign policy authority, which was used to provide relief to Chinese students in 1990 after the Tiananmen incidents and in 1992 and 1993 for Salvadorans. Here, it would be justified by the foreign policy implications of a sudden return of thousands of Central American migrants. The Office of Legal Counsel is looking into whether any intervening legislation may have circumscribed the President's authority.)

Therefore, we believe we should pursue legislative action. Our proposal would restore ABC and NRP members to the status quo ante - exempting them from the cap and from the new, more stringent suspension standards. Because prospects for success are uncertain, we would hold in reserve the possibility of DED.

Proposed Course of Action

After informing key Members of Congress, we would take the following steps:

1. The Attorney General would announce her decision on *NJB*.
2. We would present our legislative proposal with bipartisan congressional support and privately refer to the possibility of

DED as a form of leverage. We would not agree to any trade-off against legal immigration numbers which Senators Abraham and Kennedy (our strongest allies on the Hill on this issue) have warned would reopen the legal immigration debate.

3. The Administration would announce temporary steps to ensure that any ABC or NRP member who would have qualified for suspension under the old rules would not be deported.

4. In the absence of prompt legislative action, we will come back to you with a recommendation that you grant DED.

RECOMMENDATION

That you approve the proposed course of action.

APPROVE _____

DISAPPROVE _____