

Draft 7/2/97, 10:40 AM

Lots of legal gobbledygook;
don't spend too much time
on it. Instead, read the memo
signed by you! (and others)

Strategy regarding suspension

Elena

1. The "Stop-Time" Rule

AG issues order sua sponte to take referral in *Matter of NJB*, vacating BIA decision: 7/3/97 or week of 7/7/97 (OLA and INS Congressional Relations to advise on timing)

AG decision is issued several weeks or months later

INS issues guidance at time of order taking referral, protecting against deportation (pending the AG's decision) persons who might be able to claim suspension if the BIA ruling is reversed. Such persons would have to request of INS counsel the filing of a joint motion to reopen to preserve their protection. INS General Counsel issues guidance stating that INS will join motions to reopen and support stay of removal to permit persons otherwise prima facie eligible for suspension but for the stop-time rule to place the issue before the IJ or BIA. If AG sustains *NJB*, INS will seek to have motions dismissed. If AG reverses, IJs should go ahead and reach the merits of the suspension claims. At that point, INS will join motions filed by others prima facie eligible to claim benefits of AG decision for additional *six-month period* after AG ruling in *NJB* (and not longer).

2. The 4000 Cap

Congressional approach:

Overarching objective: legislation essentially as in INS draft:

- No cap applies to pre-April 1 cases [cap applies to cases initiated thereafter; a later regulation will establish the mechanism, although cap is unlikely to be reached]
- Repeal 309(c)(5) [if the legislation passes soon enough, it would moot AG merits decision in *NJB*]
- Apply pre-IIRIRA substantive suspension rules, without cap, to ABC class, whenever put in proceedings

Discuss first with congressional allies, indicating that Administration is taking action as they advocated on *NJB* (i.e., AG's sua sponte referral), but cannot fix cap administratively and so are looking to DED (as described below) as best approximation that meets the