

NLWJC - Kagan

DPC - Box 034 - Folder 006

**Immigration - Structural
Reforms [1]**

09/23/98 21:53

09/23/98 15:16

immig- structural reform

~~Becca - It looks as if we've~~ @002/003

~~was here -~~

1. nothing in an appropriate bill; and

2.

ORRIN G. HATCH, UTAH, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

September 23, 1998

The Honorable Judd Gregg, Chairman
The Honorable Ernest Hollings, Ranking Member
Committee on Appropriations
Subcommittee on Commerce, Justice, State and the Judiciary
Washington, D.C. 20510

Dear Senators Gregg and Hollings:

We write to you keep you apprised of the Judiciary Committee's keen interest in and plans to address the structure of the Immigration and Naturalization Service. In the past years, you have granted sizable increases in appropriations to the INS in an effort to improve its functioning, and we know that you have shared many of our concerns with the Service's performance.

Last week, the Judiciary Committee, through the Subcommittee on Immigration, just completed a series of three hearings that were designed to examine the main functions of the INS. Our aim was to consider whether it might make sense to move toward reorganizing the INS. Many have increasingly come to the view that improving the INS's functions may require comprehensive restructuring and not simply continued increases in appropriations.

During the next Congress, we expect the Judiciary Committee to give full consideration to legislation that will reorganize all of the INS's functions and that will be developed after adjournment. Particular attention will likely be paid to reorganizing functions within the Department of Justice, and this could affect other entities within the Department as well.

We cannot underestimate the importance or the size of this task. The INS already has more employees than a number of cabinet-level agencies, including the Department of State and the Department of Labor, and performs a wide range of law enforcement, service, and detention functions. Given the variety of functions performed by the INS, it is our view that any effective reorganization will have to reexamine in one comprehensive process all components of the agency, as well as their relationship to one another and to other components of the Department of Justice.

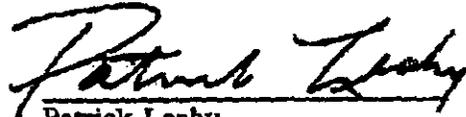
Because of your strong interest in the operation of the INS and the functioning of our immigration system, we are simply writing to inform you of our plans regarding this important issue within our jurisdiction. We believe it would be unwise to attempt to resolve these important, complex, and controversial issues in the brief time remaining before

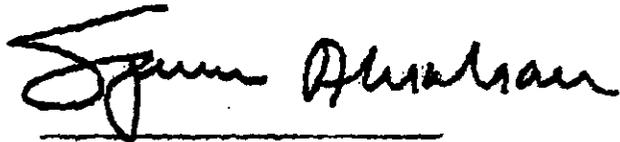
September 23, 1998
Page 2

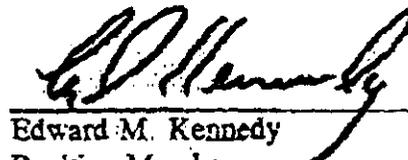
Congress adjourns, but we look forward to working closely with you next year, and we welcome your suggestions and participation.

Sincerely,


Orrin G. Hatch
Chairman


Patrick Leahy
Ranking Member


Spencer Abraham
Chairman
Subcommittee on Immigration


Edward M. Kennedy
Ranking Member

cc: The Honorable Trent Lott
The Honorable Tom Daschle
The Honorable Ted Stevens
The Honorable Robert Byrd

Immigration structural reform

▶ **Julie A. Fernandes**
09/15/98 07:40:45 PM
.....

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: INS Reform mark-up

According to Steve Mertens, the House Judiciary minority staff told the INS that the Committee does not plan to conduct any further legislative mark-up hearings this session. This would mean no Thursday mark-up of the INS reform bill. I am trying to verify with DOJ and Ingrid.

julie

Immig - structural reform

▶ **Julie A. Fernandes**
10/06/98 06:26:37 PM
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Record Type: Record

To: Maria Echaveste/WHO/EOP, Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP, Leslie Bernstein/WHO/EOP, Marjorie Tarmey/WHO/EOP
Subject: FYI: INS Restructuring -- Abraham's Staff Contacts Lott's COS

It appears as if our optimism about INS reform being a dead issue was misplaced. According to OMB and DOJ, Rogers continues to push to get INS reform attached to CJS (or to a CR). Steve M. has asked Justice for their suggested amendments to Rogers's bill that would make it more acceptable to us (in case we need a compromise).

julie

----- Forwarded by Julie A. Fernandes/OPD/EOP on 10/06/98 06:45 PM -----

Steven M. Mertens

10/06/98 04:16:07 PM

Record Type: Record

To: Michael Deich/OMB/EOP, Kenneth L. Schwartz/OMB/EOP, David J. Haun/OMB/EOP, Julie A. Fernandes/OPD/EOP
cc: Theodore Wartell/OMB/EOP, Patricia E. Romani/OMB/EOP
Subject: FYI: INS Restructuring -- Abraham's Staff Contacts Lott's COS

FYI: INS restructuring has been bucked up to a leadership issue. INS talked with Abraham's staff this morning following my call on Rogers continuing attempts to get INS restructuring into CJS. Abraham's staff talked with Lott's COS on this issue and is attempting to get Hatch to call Lott personally.

Steven M. Mertens

10/08/98 10:20:10 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: INS Restructuring -- Hill Conversations as of last night

INS (Alan Erenbaum) just reported that Senator Lott told CJS Chairman Rogers last night that INS restructuring was a "no go" this year because of Senate authorizer claims to this issue.

As a follow-up, Chairman Rogers called Senator Hatch to see if he could work out a deal. Hatch's COS said Hatch would call Rogers' back and hold firm (no action until next year) it that is what the INS and Administration plans to do.

I confirmed that our position remains that this issue should be addressed next session by the authorizers. He will call back after he hears from Hatch's staff.

Message Sent To:

Michael Deich/OMB/EOP
Elena Kagan/OPD/EOP
Julie A. Fernandes/OPD/EOP
Kenneth L. Schwartz/OMB/EOP
David J. Haun/OMB/EOP

Immig-structural reform

Steven M. Mertens

10/08/98 06:34:37 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Theodore Wartell/OMB/EOP, Patricia E. Romani/OMB/EOP

Subject: INS Restructuring -- Possible Bad News

Cong. Berman's staff, confirmed by Mollahan's staff, passed on a rumor that House and Senate CJS Chairmen Rogers and Gregg may have reached a compromise on INS restructuring which may then be included in the CJS conference bill. We have heard that no Dems were involved in the discussions and that Senator Abraham may have signed off on the deal. INS said that Gregg's staff said no final deal has been reached but that Rogers is dealing hard to get this in -- and that it still may be stopped but only at the highest levels.

While at this point we have no specificity on what this compromise restructuring looks like, Berman's staff has heard that it is essentially Rogers' bill with one change -- one year for implementation, rather than 6-months in Roger's original proposal.

I will keep you posted if I hear more.

Message Sent To:

Michael Deich/OMB/EOP
Elena Kagan/OPD/EOP
Julie A. Fernandes/OPD/EOP
Kenneth L. Schwartz/OMB/EOP
David J. Haun/OMB/EOP

Immig - H1B
and
Immig - structural reform

▶ Julie A. Fernandes
09/09/98 05:44:40 PM
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Record Type: Record

To: Peter G. Jacoby/WHO/EOP, Elena Kagan/OPD/EOP
cc: Steven M. Mertens/OMB/EOP, Michael Deich/OMB/EOP, Laura Emmett/WHO/EOP, Cecilia E. Rouse/OPD/EOP
Subject: H1B and INS reform

Peter/Elena:

According to Steve M., Doris told Michael Deich that Abraham would be willing to strongly support our efforts to remove INS reform from CJS if we give him something on H1B. We need to consider, I suppose, whether we want the INS reform discussion to be part of what we are doing on H1B. I am both unsure what Abraham is giving by supporting our INS reform efforts (he already has made statements that this should be done by authorizers (him) and not through the appropriations process) and what else we can give up in the H1B negotiation (we have already made lots of concessions to Abraham and the business community). I have mentioned this to Ceci for her to solicit Gene's input, as well.

julie

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Draft

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

In light of your Committee's upcoming consideration of H.R. 4264, a bill to establish the Bureau of Enforcement and Border Affairs within the Department of Justice, I am writing to share with you my views on the important issue of restructuring the Immigration and Naturalization Service (INS).

Like you, and Chairman Smith, I strongly support the intent of H.R. 4264^y to improve accountability and performance at the INS by changing its structure. The current structure of INS is inefficient and cumbersome. It must be changed. As chief operating officer of the Department of Justice, I am concerned, however, that H.R. 4264, which mandates a total restructuring of the Department's largest agency in just six months, and which leaves no senior level official in charge of and accountable to managing the immigration system on a full-time basis, is an inefficient way to achieve these goals, and will lead to unnecessary consequences that can be avoided with a clear and thoughtful approach.

The Department has invested substantial time and resources to address this issue, and has proceeded with a phased approach to the complex task of successfully accomplishing fundamental reform. These efforts have included a contract with Booz-Allen & Hamilton to develop a framework for an effective immigration system which became the basis for the Department's restructuring proposal, and a recent contract with PricewaterhouseCoopers to develop a comprehensive implementation plan for how the immigration system will look and operate at all levels. These steps demonstrate not only the Department's commitment to reform, but also the complexities and potential dangers inherent in moving too quickly toward a legislative solution which raises significant questions.

Many of the Department of Justice's views are reflected in H.R. 4264. The Department believes INS must be split into two distinct components; one that provides services to the immigrant community, and a separate component to focus on enforcement issues. These components must be separated at virtually all levels, with separate chains of command, responsibility and accountability. In addition, it is vitally important that both components

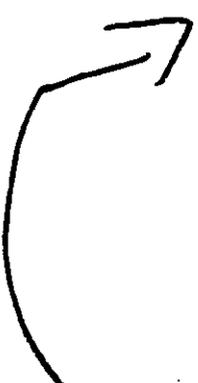
The Honorable Henry Hyde
Page Two

receive equal attention and support, so that both components receive adequate funding. I believe, if given the chance to do so, we can reach agreement and move forward with an approach that everyone supports. Given the important stakes of restructuring the immigration system, I urge you to take the time necessary to work through the important concerns the Department has expressed before finalizing any legislation.

We all agree that there are significant problems which require improvement - the challenge is to identify appropriate answers which will clearly result in better performance. I hope we can work together to achieve our shared goals.

Sincerely,

Eric Holder
Deputy Attorney General



OMB Tagline

Immig-structural reform

▶ **Julie A. Fernandes**
09/08/98 08:18:49 PM
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Record Type: Record

To: Maria Echaveste/WHO/EOP, Steven M. Mertens/OMB/EOP, Michael Deich/OMB/EOP
cc: Elena Kagan/OPD/EOP, Marjorie Tarmey/WHO/EOP
Subject: INS reform -- legislative strategy

Maria,

Elena held a meeting with Peter Jacoby, Michael Deich, Steve M., Ingrid Schroeder and Chuck Kieffer this afternoon to decide our legislative strategy re: INS reform. We decided that Peter would ask Justice to write a letter (from the AG) strongly opposing the Rogers legislation for two reasons: (1) the appropriations process is not the right vehicle for doing this; we have made good progress toward a bi-partisan bill and we should pursue that; etc.; and (2) the bill has substantive problems; e.g., it needs to include an equivalent office for immigration benefits and someone to coordinate the two halves of immigration policy. According to Peter, the mark-up for the Rogers bill will likely be put off until next week, but we still want DOJ to draft the letter as soon as they can. Also, Peter is going to suggest to DOJ that Eric Holder make calls to some Republican members on the House Judiciary committee, asking them to support not reporting the Rogers bill out of committee.

julie

Immig - structural reform

▶ **Julie A. Fernandes**
09/09/98 09:41:53 AM
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Record Type: Record

To: Elena Kagan/OPD/EOP, Maria Echaveste/WHO/EOP
cc: Laura Emmett/WHO/EOP, Leslie Bernstein/WHO/EOP, Marjorie Tarmey/WHO/EOP
Subject: INS Restructuring

FYI.

----- Forwarded by Julie A. Fernandes/OPD/EOP on 09/09/98 10:00 AM -----

From: Ingrid M. Schroeder on 09/09/98 09:39:56 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: INS Restructuring

Justice (Flrst) just reported that the INS restructuring bill is on the agenda for the House Judiciary Committee markup tomorrow, Thursday, September 10th. They are busy putting together the AG's letter (per Peter's guidance) and will ship it over here for clearance ASAP.

Will keep you posted.

Message Sent To:

Michael Deich/OMB/EOP
Steven M. Mertens/OMB/EOP
Julie A. Fernandes/OPD/EOP
Peter G. Jacoby/WHO/EOP
Charles E. Kieffer/OMB/EOP

Message Copied To:

Jeffrey A. Weinberg/OMB/EOP
James J. Jukes/OMB/EOP
David J. Haun/OMB/EOP
Kenneth L. Schwartz/OMB/EOP
Kate P. Donovan/OMB/EOP

immig-structural reform

DRAFT

Mr. Chairman and Members of the Committee:

Last month I appeared before the Committee to discuss the service side of the Immigration and Naturalization Service (INS). I am equally pleased to have the opportunity today to discuss our efforts to enforce the nation's immigration laws – the nature of this mission, our strategy for carrying out these responsibilities, the success we have achieved to date, and the changes we need to make to meet future challenges.

The Enforcement Challenge

INS' primary enforcement functions are to prevent people from entering the country illegally and to find and remove those who are living and working here illegally. This mission has always been far-reaching and complex. However, in recent years, as a result of sweeping social, economic, and political changes at home and abroad, the challenges the agency faces in enforcing the nation's immigration laws have grown in scope and nature -- even since I began my tenure as Commissioner.

The pressures on our borders have never been greater. The global economy is increasing the flow of people and products into the country. Accelerated by advances in transportation and communications, by trade agreements, and by our nation's enviable position as the world's preeminent economic power, this flow makes it more challenging for us to deter illegal immigration while facilitating the flow of legal traffic.

The end of the Cold War and the collapse of communism in Eastern Europe and the former Soviet Union have created new sources of immigration. Whether they come from these regions or other parts of the globe, many immigrants entering the country illegally are no longer doing so on their own or as part of a small, isolated group; they are being smuggled in by sophisticated networks linked to other international organized crime such as drug trafficking and terrorism.

Sweeping new mandates such as IIRIRA have also resulted in complex changes to prior ways of dealing with illegal immigration.

Goals of Enforcement

To meet our responsibilities to the nation, we need to address our enforcement challenges comprehensively. This requires both sufficient manpower and equipment and a coherent, comprehensive strategy that establishes priorities and ensures resources are deployed in the most efficient and effective manner possible. Unfortunately, INS never had either adequate resources or a comprehensive plan for enforcing the nation's immigration laws, not even before recent developments made our mission more daunting.

Since 1993, the Clinton Administration, with the strong support of Congress, has been committed to reversing decades of neglect. Over the past six years, this commitment has been backed by unprecedented increases in personnel, equipment, and advanced technology. Between 1993 and the current fiscal year, spending on enforcement activities increased by 180 percent, rising from \$933 million to \$2.6 billion. Today, more than 60 percent of the agency's overall budget is used to enforce our nation's immigration laws.

*Computer
Response*

At the same time, we formulated and implemented an aggressive, pro-active enforcement strategy. This strategy is built on several principles, namely integration, cooperation, consistency, professionalism, and accountability.

Integration

INS has a number of enforcement disciplines: Border Patrol, Inspections, Investigations, Intelligence, and Detention and Deportation. Illegal activities, however, do not respect the artificial boundaries that had been created within each enforcement program. The increasingly sophisticated nature of these activities makes the need for better coordination more pressing. Our strategy recognizes that enforcement cannot be enhanced without moving toward integrating the various enforcement disciplines.

Cooperation

Even if our enforcement functions were thoroughly integrated, it would not be sufficient to meet the complex challenges we face. Internal coordination has to be coupled with external cooperation. That is why working in closer cooperation with other federal agencies is a key goal of our enforcement effort.

At the border, we cannot succeed without a coordinated strategy. The Border Patrol works with the DEA to address drug smuggling. All of our enforcement personnel need to have effective working relationships with other Department of Justice Counterparts -- the FBI, the U.S. Marshal Service, the Bureau of Prisons, and the U.S. Attorneys Office.

At the ports of entry, our inspectors need to work closer with their colleagues from the Customs Service to thwart illegal immigration and contraband and to facilitate the legal flow of people and commerce. Our enforcement personnel must also play lead roles in multi-agency task forces established to combat alien smuggling, terrorism and other organized crimes.

In the interior of the country, it is critical that we maximize our relationships with state and local law enforcement in dealing with illegal immigration.

Illegal activities do not stop at the border and neither should our cooperative enforcement efforts. Restoring control to the Southwest border, for example, requires an excellent working relationship with Mexican officials. But it is not just in Mexico that we need to forge closer ties with our foreign counterparts. We have to do it worldwide.

Consistency

No enforcement strategy can be effective if it is not implemented on consistent basis. Clear standards must be drafted, communicated effectively across field office, and evaluated to ensure consistent application. We have to go after alien smugglers operating in the Midwest with the same determination we show along the Southwest border. Criminals producing fraudulent documents in Los Angeles should face the same high risk of being caught and prosecuted as those working in Chicago.

Professionalism

Crucial to consistent enforcement is having highly professional personnel in all locales. To this end, INS has made a major commitment to improve training for all enforcement officers, as well as to supplying the necessary resources. Proper training is more than giving instruction in the latest law enforcement techniques. It also means ensuring that your personnel are caring, compassionate people who treat everyone they encounter with the respect they deserve. At the end of our enforcement arm, there needs to be a helping hand.

Accountability

Professionalism also requires accountability. Mechanisms must be established to guarantee that the skills and tools provided are applied properly, in terms of both efficiency and compliance with the law.

In addition to being held answerable for how they carry out their duties, our enforcement officers must also be accountable for results of their performance. After all, the only way to measure the success of a strategy is by the results it produces. We, as well as Congress and the American people, need to know whether the considerable investment being made to enhance enforcement is paying sufficient dividends. This means setting performance goals and making sure they are met.

Achieving Results

By almost any measure, there is no question that our efforts to enhance enforcement have accomplished a great deal. While we have accomplished more in the area of border control and management in the past five years than had been accomplished in decades, we have also made strides in the nation's interior, and overseas.

The First Southwest Border Strategy

Nowhere else is the success of our strategic approach to enforcement more visible than along the Southwest border. Before 1993, there was no comprehensive plan for controlling this 2,000-mile frontier — and it showed.

The number of personnel stationed there was insufficient, and the Border Patrol agents

and inspectors we did have lacked proper vehicles, radios and other basic equipment. As a result, illegal immigrants came across the border undisturbed, as did illicit drugs. At the same time, traffic entering the country legally encountered interminable delays at ports of entry.

In short, the border was in chaos.

To restore the rule of law, we developed the Southwest Border Strategy. Its goal is unambiguous: a border that works, one that deters illegal migration, drug trafficking, and alien smuggling while facilitating legal migration and commerce.

To meet this goal, we initiated unparalleled growth in personnel and resources. Between October 1993 and July of this year, the number of the Border Patrol agents and inspectors along the Southwest border has more than doubled.

We bolstered these numbers by providing our officers with the tools and infrastructure they need to do their jobs. Vehicles fleets and communication systems have been upgraded and expanded. Computers, once a rarity, are now considered basic equipment, as are infrared scopes. We also installed dozens of miles of fence and lighting and several high-tech systems.

Establishing a border that works also required us to change our approach to enforcement. The reactive approach to problems that INS had taken historically has been abandoned and replaced by a pro-active posture. Beginning with Operation Hold the Line in El Paso in 1993, and spreading to operations in Arizona, California, and Texas, we have been positioning Border Patrol agents directly on the border. Agents who once spent most of their time and energy chasing down illegal immigrants after they had crossed into the United States are now focused on deterrence.

We also changed our approach to port management along the Southwest border. Working with the Customs Service and other agencies, we developed a port management model that treats each port of entry as a single, seamless entity. As with our border control strategy, a critical element of the new port management plan has brought together business and community leaders.

Today, as a result of expanding personnel and resources and, most important, developing a coherent strategy for deploying them, the situation is as different as night and day.

Deterrence is working. For example, in San Diego apprehensions reached a 17-year low of 283,889 in FY 1997. And there was one 24-hour period in Imperial Beach, once the favorite area for crossing, when not a single person was apprehended, an accomplishment that was unthinkable prior to Operation Gatekeeper.

Apprehension numbers aren't the only measure of the positive impact of enhanced border control. Border operations have contributed to falling crime rates in San Diego, El Paso, Brownsville, and elsewhere. As part of our Southwest Border Strategy, we are committed to

enhancing the quality of life in all border communities.

We are also conducting a new, border-wide safety campaign that aims to warn migrants about the very real dangers associated with illegal crossings, especially when they are being led by ruthless smugglers who put profits before people. We have an obligation to not only educate people about the dangers but also to assist those who don't heed these warnings.

With brutal heat gripping the Southwest this summer, the importance of this public safety campaign couldn't be clearer and represents a prime example of a balanced and humane border enforcement effort. Almost daily, I receive reports of Border Patrol agents who have rescued immigrants from life-threatening situations.

Living up to our commitment to make all border communities - from Brownsville to San Diego - safer, more vital places to live requires more than just reducing the flow of illegal immigrants. We need to improve how the ports of entry - the economic life lines of these communities - function. They depend on the smooth flow of legal immigrants and commerce.

This cannot be accomplished without involving those who have a major stake in improving the port performance, so we established Port Quality Improvement Councils in San Diego and elsewhere. These councils bring together business groups, community organizations and others on a regular basis to address portwide issues.

As part of our port management strategy, we set a goal of a 20-minute average wait for commuters. At San Ysidro, one of the largest and busiest ports in the world, this may have seemed like an impossible dream given that commuters at the port waited for as long as two hours or more. The dream, however, has been realized. Today, the average wait is less than 20 minutes.

For low-risk, frequent travelers, the improvement has been even more impressive. Using various advanced technologies, we have established a program for these commuters known as the Secure Electronic Network for Travelers' Rapid Inspection (SENTRI). Those enrolled in the program are now able to cross the border in just three minutes. Based on our success in San Diego, we are now expanding SENTRI to other ports of entry in Michigan, New York, and Texas.

Interior Enforcement Strategy

Reducing the Power of the Job Magnet

While strengthened border enforcement prevents significant numbers of illegal aliens from entering the country, worksite enforcement is the primary means of reducing the power of the jobs magnet to draw illegal aliens to the United States. By discouraging illegal workers from crossing the border into the United States and sanctioning employers who hire those who do get across, we send a clear message: American jobs belong to legal workers.

In FY 1997, nearly 34,000 illegal workers were removed from worksites across the country, and through the first nine months of this year more than 27,000 unauthorized workers have been removed. We don't want to lose these jobs. That is why the Service is worked with Virginia officials to develop a program for sharing information from enforcement operations to promote the hiring of U.S. citizens and other legal workers. We are currently developing similar programs in California and Florida.

Too many employers are ready and willing to hire undocumented workers, often for substandard wages and under conditions that range from improper to inhumane. We need to intensify our worksite focus on business owners to ensure that swift, decisive action is taken against those who flout the nation's immigration and labor laws. And we are this doing through criminal and administrative proceedings.

Last year, we increased the number of criminal cases presented to the U.S. Attorneys Office by 46 percent, and this year we expect to increase the number by 13 percent. In FY 1997, we completed 4,668 administrative cases that were based on leads provided to the agency. This was a 13-percent increase over the previous year. Our goal this year is to increase the number of lead-driven cases by an even greater percentage - nearly 15%.

We expect the number of illegal workers removed and employers sanctioned to grow even more dramatically in the coming fiscal year because we have just adopted a new worksite enforcement strategy. This strategy maximizes our limited investigatory resources by focusing them on industries with the greatest concentration of illegal workers and employers who engage in the most egregious violations of immigration and labor laws.

Many employers who hire illegal workers do so unwittingly, fooled by high-quality counterfeit documents. To assist their efforts to determine whether a prospective employee truly is authorized to work in the United States, we have developed new, state-of-the-art Employment Authorization Documents and Green Cards. These high-tech cards are the most sophisticated documents we have ever produced, and they are virtually counterfeit proof. The fight against fraudulent documents has also been aided by the expansion of our Forensic Document Laboratory, the best facility of its kind in the world.

Stopping Smugglers

Illegal aliens are often brought to worksites by smugglers, who use extortion, torture, rape, and even murder to collect exorbitant fees which run as high as \$40,000 per alien. Because they are part of international organized crime groups, smugglers are well-financed and well-equipped. Detecting and dismantling these operations requires a web of enforcement that reaches from the border, and beyond, to the worksite.

Working in close coordination with the U.S. Coast Guard, and other agencies, we scored some major victories in the fight against those who traffic in human lives. In March, the

adopted a policy that requires all minors to be housed in state-licensed facilities that meet strict requirements to provide for their medical, educational and recreational needs.

Merely boosting the number of removals is not enough; they need to be conducted in the most expeditious and cost-effective manner possible. That is the aim of the new Institutional Hearing Program (IHP) through which we work with state and local law enforcement officials to identify criminal aliens while they are still incarcerated. This allows us to arrange for a deportation hearing before they complete their sentence and remove them for the country almost immediately upon their release.

Early identification and detection of criminal aliens is also facilitated by the Law Enforcement Support Center (LESC). This new agency resource provides state and local law enforcement officials with 24-hour access to the information they need to determine the INS status of foreign-born suspects they have arrested. And the LESC staff passes arrest information is passed on to our field offices.

Many criminal aliens are removed on aircraft operated by the Justice Prisoner and Alien Transport Service -- the use of which has increased by 500% over the past four years. JPATS flights allow us to return criminal and other illegal aliens to their home country more rapidly and using fewer personnel than via commercial airlines. Removals are also expedited by our expanded presence overseas.

A First Line of Defense Overseas

The contribution of INS' 39 overseas offices to the agency's enforcement efforts is far greater than just assisting with the removal of criminal aliens. These offices, one-third of which opened since last October, serve as the nation's first line of defense against alien smuggling and illegal transit.

Through Operation Global Reach, we are building a comprehensive enforcement network to stop these activities in transit and at their source. A critical element of Global Reach is strengthening both cooperation with our host-country partners and their capacity to detect and deter illegal activity. Just since October, we have trained more than 5,700 foreign law enforcement, immigration, and airline officials in fraudulent document identification and anti-smuggling techniques.

The accomplishments of Operation Global Reach are striking. So far this fiscal year, our overseas offices have intercepted nearly 6,500 migrants and assisted 66 prosecutions in the United States. By halting illegal immigrants before they reach the United States, our international operations allow us to avoid the cost of administrative and criminal proceedings, detention, and removal. Savings in the first six months of this fiscal year alone have totaled \$6.5 million.

Thwarting Terrorism

Our overseas offices also play an important role in the agency's efforts to combat

terrorism. We once addressed terrorism in an ad-hoc manner, forging partnerships with other members of the law enforcement and intelligence communities on an as-needed basis. The bombing of the World Trade Center was tragic proof that this approach was ineffective.

Today, INS has a full-time counterterrorism team, known as the National Security Unit. Special Agents assigned to the Unit work closely with both the FBI's Joint Terrorism Task Force and the CIA's Counterterrorism Center. By establishing a specialized unit and forging permanent partnerships with the FBI, CIA and other agencies, we can exercise more effectively the anti-terrorism authorities given to us by Congress in recent years.

Fighting against terrorism is closely linked to our anti-smuggling efforts because international terrorist organizations are known to use alien smuggling operations to support and further their criminal objectives. We have also found that criminal and administrative prosecutions for immigration violations are highly effective tools to penetrate and disrupt these organizations. Last August, for example, two brothers believed to be members of a terrorist group were arrested by INS agents for allegedly engaging in marriage fraud to obtain Green Cards.

Greater Professionalism

Our success at home and abroad would not have been possible if our enforcement officers weren't well-trained professionals. Border Patrol agents, for example, don't set foot in the field until they have completed a basic training course that is the most thorough and rigorous in federal law enforcement. The Service is deeply committed to providing all personnel with the best training possible -- not just basic training, but advanced courses as well. We want to ensure that before someone is assigned to a post they possess all the skills necessary to carry out their job and that their skills remain well honed.

As I mentioned earlier, there is more to professionalizing your work force than simply providing proper training and tools. No amount of resources will guarantee effective performance unless you take steps to ensure that they are being used efficiently and in compliance with the law. For us, this meant expanding and strengthening our Office of Internal Audit (OIA).

Within OIA, we have established the INS post program to identify and solve problems before they become crises. Under this program, every INS office will be subject to a top-to-bottom review by a team drawn from the Service's best and brightest. These reviews allow us to identify not only problems but also good local practices that should be implemented throughout the agency.

We have also moved to enhance the protection of the civil rights of individuals who come in contact with law enforcement officers. Working with the Citizen's Advisory Panel, appointed by the Attorney General, we have made our complaint procedures more accessible and effective. We have developed a standard complaint form, ensured that posters that describe how to report abuses are displayed in the public areas of all field offices, and established a toll-free hotline.

It is clear that these are critically important functions. I hope I can count on your support to not only keep OIA functioning in FY 1999, but also to expand its operations.

Meeting Future Challenges

The progress INS has made in enforcing the nation's immigration laws demonstrates that, when we are given the resources and develop focused strategies, we can attain dramatic results. However, there is a barrier to achieving even greater success that no amount of resources or strategic planning can surmount -- INS' current structure..

This out-dated structure impedes performance by hampering accountability and professionalism and by creating confusion about roles and responsibilities. That is why we have proposed a fundamental restructuring that divides the primary functions of the agency -- Enforcement and Services -- into distinct chains of command, each with a single point of accountability for performance.

As hard as we have tried to build a seamless web of enforcement, the agency's current structure prevents us from weaving a web that is strong enough to fight increasingly sophisticated and well-financed crime syndicates.

We want to establish six to 12 enforcement areas that bring Border Patrol, inspections, investigations, detention and intelligence under a single enforcement director. Currently, the various enforcement components do not answer to the same person until you reach the level of executive associate commissioner. This is far too high in the chain of command for effective coordination of the day-to-day operations of these components. It also creates problems in establishing clear-cut accountability.

Within each enforcement area, the director will be given the flexibility to allocate resources wherever they are most needed. This will sharpen the focus of our enforcement operations and allow us to respond rapidly to changes in the patterns of criminal activities. Enforcement directors will also have the ability to enhance coordination with other law enforcement agencies.

Restructuring will not only eliminate current barriers to effective enforcement created by the various chains of command, it will strengthen our ability to pursue illegal activities that cross geographic boundaries as well. All area directors will report directly to the executive associate commissioner for enforcement operations. Unhindered by layers of bureaucracy, the EAC will be able to directly coordinate all activities and guarantee consistency in our enforcement practices nationwide.

For example, when Border Patrol agents now catch a "coyote" leading illegal aliens across the border, the case all too often ends simply with his deportation or incarceration-- a minor inconvenience for a well-organized smuggling operation. By restructuring our enforcement

operations, however, we will be better equipped to follow the tracks of the coyote to both ends of the smuggling operation -- the organizers and the employers who benefit from it -- and bring down the full force of the law on all those involved. As a result, smuggling rings would be dismantled permanently, not merely disabled temporarily.

Criminal and illegal aliens caught in our sights, stronger enforcement web will be removed more efficiently, more expeditiously, and more effectively. This is because restructuring will enhance the logistics of detention and removal. The current thirty-some offices that are involved in coordinating transportation and detention space for apprehended aliens will be replaced by a handful of new Detention and Enforcement Support offices.

Port management also will be strengthened under our proposal. Because they play an increasingly important role in stopping illegal activities, ports of entry will be placed clearly in the enforcement chain of command with flowcharts through which they need to report. This will allow better coordination between ports, as well as with other INS enforcement officers, enhancing their ability to deter terrorists and other criminals and to detect fraudulent documents and smuggling operations.

In addition, restructuring will enhance recruitment. New career opportunities will be created. Paths for advancement will be better defined. And we will be able to provide comparable pay and benefits for comparable work. With these improvements, we can recruit the highest caliber people available and, more important, retain our best enforcement officers.

Finally, our restructuring proposal will preserve the vital synergy between enforcement and services. These two functions are inter-related and interdependent and need to be kept under the same roof. The detention and investigation of document fraud, for example, involve both sides of the agency and require careful coordination between them.

This synergy is facilitated through shared records and common processes. The new structural framework will strengthen these bonds by establishing a new system of shared support that will serve as the administrative and technological backbone for both enforcement and services. The new shared support operation builds on the sophisticated, integrated technology that INS has developed and installed in the last several years, thus maximizing the return on the considerable investment Congress and the public have made to upgrade the agency's shared technologies and to improve our records management.

I hope we will earn your support for establishing our enforcement of the nation's immigration laws and building on our successful efforts to date. Thank you.

JNS-

Immig - structural reform

▶ **Julie A. Fernandes**
08/05/98 08:12:07 PM
.....

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: INS reform

FYI. According to Alan Erenbaum from INS, Hyde became convinced that the INS reform bill would be too controversial to mark-up, so it did not happen.

julie

08/04/98

:07

2025148231

HQCIR

immig - structural reform

Draft

The Honorable Henry Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Hyde:

2011 INT

I am writing to express the views of the Department of Justice on H.R. 4264, legislation to establish the Bureau of Enforcement and Border Affairs, which was introduced on July 17, 1998. While the Department of Justice strongly endorses the legislation's objective of changing the Immigration and Naturalization Service's current structure in order to improve accountability and performance at the agency, DOJ opposes H.R. 4264 in its current form. While we have a conceptual concern that the bill fails to create a proper balance between enforcement and service, our greatest concerns are operational. The bill does not provide a way to effectively coordinate and integrate enforcement and service functions that are interdependent and it does not allow technologies and recordkeeping that are vital to both functions to be used effectively on a daily basis.

As you know, DOJ has invested a substantial amount of effort to develop a fundamental restructuring proposal that will enhance enforcement of the nation's immigration laws and improve the delivery of services. This proposal, which is embodied in H.R. 4363 the Immigration and Naturalization Service Restructuring Act of 1998, would untangle INS' current confusing and overlapping structure and replace it with two clear organizational chains of command - one to accomplish its enforcement mission and the other to provide immigration-related services. The restructuring would eliminate current INS regional and district offices, and would extend from the lowest level of the agency to the highest. It will greatly improve the ability of the INS to effectively and efficiently perform its duties.

H.R. 4264 is consistent with a number of the underlying principles of the Department's approach. It recognizes that to improve performance, service and enforcement functions must be split from the ground level to the highest levels of the Department. It also acknowledges that both enforcement and administration of the immigration laws belong primarily in the Department of Justice, not other Cabinet agencies. Finally, it recognizes that the enforcement and service functions in the Department are supported by a set of shared services, including records, technology, training, and other management functions.

Despite these similarities, H.R. 4264 as introduced falls to address several critical aspects of our immigration system, omissions which could undermine our efforts to enhance accountability and results. Under the bill, there would no longer be any one person within the Federal government solely responsible for managing our immigration system on a full-time basis. By diffusing INS' current functions into two different agencies that connect only through the Office of the Attorney General, the bill weakens the coordination necessary to administer the immigration laws effectively.

While it would seem on paper that providing that the head of the enforcement bureau report directly to the Attorney General would heighten oversight of this activity, the reality is quite different. The vast scope of responsibilities and competing priorities which ultimately reside with the Attorney General and Deputy Attorney General mean that these offices will not be able to give sufficient attention to providing the vital coordination between immigration enforcement and immigration services. The result would be weakened accountability.

This structure would also create bureaucratic delays in the development of policy and procedures that affect services and enforcement by forcing concurrence with a separate agency outside each agency's chain of command that has very different priorities and perspectives. The result would be weakened effectiveness. It is essential that any restructuring legislation ensure that our immigration system is managed full-time by a single high-level Department official.

H.R. 4264 also fails to take advantage of shared infrastructure -- such as records and computer systems -- and will create inefficiencies in the use of important joint systems. It would be difficult and cumbersome to set up effective coordinating mechanisms that would provide the flexibility necessary to keep operations running smoothly. Instead, the bill should permit a separate supporting unit to provide these shared services to both the enforcement and services sides.

and expensive

The Department wants to continue to work with the Committee on appropriate legislation to restructure INS in a manner which will improve effectiveness and accountability.

Sincerely,

ADD OMB LIFE

immig - structural
reform

▶ **Julie A. Fernandes**
08/04/98 08:03:05 PM
.....

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: INS reform

Elena,
The House Judiciary committee is scheduled to mark-up Rogers's INS reform bill tomorrow morning. The DOJ has written a views letter endorsing the idea of separating enforcement from services (for all our reasons) but opposing Rogers's bill b/c it does not address the issue of coordination between services and enforcement and does not provide for one person within the DOJ responsible for immigration issues (essentially, our reasons for rejecting the Reyes proposal). This letter also references our legislation, that was introduced last week. OMB, Peter and I agree that the letter should be sent. Please let me know by 8:30am tomorrow morning if you think that this letter should not be sent (I faxed you the draft). Thanks.

julie

julie

immig-structural reform
(and)
immig-naturalization

▶ **Julie A. Fernandes**
06/19/98 06:36:05 PM
.....

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: FYI: INS Restructuring Legislation/Naturalization Funding

Elena,
FYI. Here is a summary from Steve Mertens of our status with INS reform and the Smith naturalization bill.

julie

----- Forwarded by Julie A. Fernandes/OPD/EOP on 06/19/98 06:54 PM -----

Steven M. Mertens

06/19/98 06:03:21 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: FYI: INS Restructuring Legislation/Naturalization Funding

FYI: Attached is a wrap-up of INS-related issues --

Restructuring Legislation: INS is still redrafting its restructuring legislative package. They plan to incorporate OMB's suggested expansion of the restructuring section in this revised draft. The draft is with the Commissioner and INS has told me it plans to submit a redrafted bill to the Department on Monday, June 22.

Hill Action: As a follow-up to Julie Fernandes' note, Lamar Smith's Immigration Subcommittee will not markup the Rogers-Reyes restructuring bill on Tuesday as expected. Apparently Chairman Hyde told Rogers that he was not using the Judiciary Committee to further the ends of the appropriators. As a result, the mark-up is off -- which may weaken Rogers resolve/ability to include an INS restructuring proposal in the CJS appropriations bill -- but I wouldn't bet on it.

Michael, you may want to raise the INS restructuring issue with the AG and Director on Tuesday to determine whether the Department and OMB will support a veto threat if restructuring along the lines of Reyes (two bureau within Justice) is included in CJS.

Naturalization: INS is still talking about some type of budget amendment to supplement FY 1999 for naturalization. They wanted to call Maria again. I told them not to -- that the WH would contact them about a follow-up meeting. I also said that from the DPC/OMB perspective INS must justify its current use of resources and outline a coherent backlog reduction plan prior to any discussion of additional resources. I also told INS and the Department that they should not be

floating any funding proposals to the WH that did not clear/having the blessing of the Department. I understand that Colgate told INS that seeking a supplemental appropriation at this time was "nuts."

Please contact Julie or I if we can answer any further questions. Thanks.

Message Sent To:

Michael Deich/OMB/EOP
Julie A. Fernandes/OPD/EOP
Kenneth L. Schwartz/OMB/EOP
David J. Haun/OMB/EOP
Ingrid M. Schroeder/OMB/EOP
Kimberly A. Maluski/OMB/EOP

Insuff-structural reform

From: Ingrid M. Schroeder on 06/26/98 01:51:24 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: James J. Jukes/OMB/EOP, David J. Haun/OMB/EOP

Subject: INS Restructuring Draft Bill

INS (Erenbaum) has advised that, after consulting with the unions, they have decided to pull most of Title II from the INS Restructuring draft bill. That is Sections 201-205, dealing with overtime pay reform, would be deleted. The only remaining provision in Title II, Section 206, dealing with the Commissioner's compensation would be folded into Title I of the draft bill.

This should take care of any scoring issues that we might have had with the bill. Please call me if you have any questions.

Message Sent To:

Steven M. Mertens/OMB/EOP
Douglas D. McCormick/OMB/EOP
Raymond P. Kogut/OMB/EOP
Lisa B. Fairhall/OMB/EOP
Kimberly A. Maluski/OMB/EOP
Daniel J. Chenok/OMB/EOP
Maria Echaveste/WHO/EOP
Steven D. Aitken/OMB/EOP
Elena Kagan/OPD/EOP
Julie A. Fernandes/OPD/EOP
Leanne A. Shimabukuro/OPD/EOP
Ellen J. Balis/OMB/EOP
Stephen G. Elmore/OMB/EOP
Janet R. Forsgren/OMB/EOP
Michael_J._Moran @ HUD.gov @ inet
Peter G. Jacoby/WHO/EOP
Tracey E. Thornton/WHO/EOP

▶ **Julie A. Fernandes**
06/18/98 07:36:58 PM
.....

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Leslie Bernstein/WHO/EOP, Laura Emmett/WHO/EOP
Subject: INS reform

Julie Anbender from INS sent me a copy of the new Reyes legislation. According to Michael Meyers (Kennedy's counsel) Smith intends to mark this up on Tuesday. Also, Rogers has indicated to Smith that he endorses the Reyes proposal. Rogers will likely take the subcommittee's product as an expression of what the authorizers want and start crafting his appropriations bill pursuant to it. This is sure to upset Abraham, who has indicated his intention to control the reform process (and has already held his first hearing).

This bill effects the same kind of change that was outlined in Reyes's earlier version -- pulling the enforcement components of the agency (including inspectors) out of INS and into Main Justice, headed by a Bureau Director (a la FBI and DEA). The bill does not mention the Services side of the operation, but does direct the AG to put mechanisms in place to coordinate between the Bureau of Enforcement and the INS.

I have put in a call to the subcommittee's minority staff person (Tina Hone) and will try to find out more about what our options are.

Julie

Message Sent To:

Elena Kagan/OPD/EOP
Maria Echaveste/WHO/EOP
Peter G. Jacoby/WHO/EOP
Michael Deich/OMB/EOP
Steven M. Mertens/OMB/EOP

JANET MURGUIA

06/19/98 09:47:10 PM

Record Type: Record

To: Maria Echaveste/WHO/EOP, Julie A. Fernandes/OPD/EOP, Elena Kagan/OPD/EOP
cc: Peter G. Jacoby/WHO/EOP, Tracey E. Thornton/WHO/EOP
Subject: Re: INS reform

I spoke with Reyes, Becerra, and Guitierrez separately on this yesterday and have been in touch with Alan Erenbaum (INS/Leg). This is what I've gathered: Reyes is actually a little nervous about the reaction to the proposal but felt that Rogers was driving action on this and on him very hard in order to get it up at his Commerce, Justice, State Mark up next week. The fact is that Rep. Lamar Smith is not excited about doing this either but Rogers is really pressuring him to act before the approps. mark-up as well. So late Wednesday evening they came up with the modified Reyes proposal. Reyes told me he believes its better to go with this proposal than with the Rogers proposal and feels like he has made a significant contribution by pulling Rogers off his original bill. Becerra and Guitierrez both understand the shortcomings in Reyes' proposal but really wanted the Administration and groups to take the lead on highlighting these problems first. Reyes has actually said that he's not totally comitted to the proposal and wants to see what reaction he gets from the Administration, Hispanic Caucus and the groups. But the fact is that the most important response for him will be what the rest of the Hispanic Caucus has to say about the proposal. Becerra and Guitierrez have agreed to talk to Reyes over the weekend. I know that Peter Jacoby was also trying to ensure that Gephardt speak with Reyes to pull him off as well. We should try to meet on Monday (or earlier) both internally and with the groups. Should I set this up or do you want to? Let me know. Janet.

----- Forwarded by Janet Murguia/WHO/EOP on 06/19/98 08:26 PM -----


Maria Echaveste

06/19/98 09:49:15 AM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP
cc: Janet Murguia/WHO/EOP, Peter G. Jacoby/WHO/EOP
bcc:
Subject: Re: INS reform 

Julie--thanks for the info--i just learned that markup of Smith's naturalization bill in full committee is scheduled for Tues--the groups will try to get it postponed--unclear what will happen--we need to regroup --can you find out from INS what they know and what their plan is--?

Julie A. Fernandes

 Julie A. Fernandes
06/19/98 09:45:37 AM
.....

Record Type: Record

To: Maria Echaveste/WHO/EOP

cc: Peter G. Jacoby/WHO/EOP, Elena Kagan/OPD/EOP, Janet Murguia/WHO/EOP

Subject: Re: INS reform 

Maria,

I spoke with Marisa Demeo from MALDEF late yesterday. The advocates had a conference call last night to determine next steps. All of the groups oppose the Reyes bill. When he first introduced it, he said he would add additional provisions (chiefly dealing with the services side of the operation) before it moved forward. However, as we can see, he has not done that.

The CHC is on the fence. Becerra and the rest of the caucus signed on to the original bill, and it will take a lot of convincing to persuade them not to go with Reyes. Right now, the CHC is trying to set up a meeting for today before 2pm to discuss their position. Neither Reyes nor Becerra will be in town on Monday. The groups convinced the caucus to invite INS to their meeting today so that they could be briefed on the Administration's plan and why it is better for their constituents. Becerra has indicated that if the groups can come forward with specifics about what makes the bill bad (including policy and politics), the caucus could be persuaded. Also, Reyes's staff has indicated that he might be willing to lift the Administration's proposal on services into the bill + create a Director of Services equivalent to the Director of the Bureau of Enforcement.

According to Marisa, Smith is scheduled to mark this up on Tuesday. Rogers will then take this as a signal to allow him to make this part of his CJS appropriations package.

MALDEF is very concerned about the CHC. If they support this bill, it will really move.

Julie

Steven M. Mertens

06/16/98 06:27:10 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Theodore Wartell/OMB/EOP, Patricia E. Romani/OMB/EOP

Subject: FYI -- Status of INS Restructuring Legislative Proposal

FYI: Per David Haun's note of last week, we received a draft of INS' proposed restructuring legislation on Wednesday, June 10. The Department of Justice told OMB that it wanted to clear the bill prior to any official OMB circulation and said it could clear the bill by Monday, June 15th. On Monday, the Department returned the bill to INS telling them that they needed to redraft the restructuring section of the bill -- telling INS that from the Department's perspective it did not pass the "laugh test." On Monday I also talked with INS Legislative Affairs and suggested the restructuring section needed to be expanded along the lines Elena mentioned two weeks ago. INS asked that I recommend some language. Attached is what I have informally submitted to INS this evening for consideration as they attempt to expand the restructuring section of the bill.

I will talk with INS tomorrow in an effort to nail down a date when they plan to resubmit the bill to the Department for clearance. Even an optimistic scenario, however, make clearance of the Administration's restructuring proposal prior to Senate Appropriations Subcommittee markup next Tuesday, highly unlikely.

Attachment:



LEGISLAT.W

Message Sent To:

Michael Deich/OMB/EOP
Elena Kagan/OPD/EOP
Julie A. Fernandes/OPD/EOP
Kenneth L. Schwartz/OMB/EOP
David J. Haun/OMB/EOP
Ingrid M. Schroeder/OMB/EOP
Kimberly A. Maluski/OMB/EOP
Sandra Schatz/OMB/EOP

TITLE I -- AGENCY ORGANIZATION

SEC. 101. AGENCY ORGANIZATION. -- The Immigration and Naturalization Service [the Service] shall be responsible for enforcing the immigration laws of the United States as codified in the Immigration and Nationality Act as amended. The Service will be organized in a way that ensures the effective implementation of border enforcement strategies through border management controls and the timely and efficient provision of immigrant services and benefits that safeguard integrity. The Service will be structured along programmatic lines and composed of an: (1) Office of Immigrant Services, (2) Office of Enforcement Operations, and (3) Office of Shared Support Services.

(a) Headquarters Operations -- The Service will be lead by a Commissioner and Deputy Commissioner who will focus on immigration enforcement and service policy and establish a framework to implement national priorities. In addition, headquarters operations will be responsible for strategic planning and the development of agency goals, objectives and performance targets; agency-wide management support and coordination; and budget formulation and execution. All line management and operational authority for agency-wide support systems like finance, budget, information resource management policy, research and development and records management will be consolidated within headquarters.

(1) Chief Financial Officer -- A Chief Financial Officer (CFO) is established to coordinate budget formulation, execution and agency-wide financial management operations. The CFO will be responsible for the effective and efficient management and accountability of Service resources. The CFO will coordinate the formulation and execution of the Service's budget through a director of budget. To address the Service's diverse funding sources, the CFO will be responsible for ensuring sound agency-wide financial management systems and processes through a director of finance.

(2) Strategic Planning and Statistical Measures -- A director of planning will be responsible for developing the long term-strategy for the Service and facilitating the process of designing programs to execute that strategy. This office will develop long-range strategic and performance measurement planning, in cooperation with program components. In addition, this office will be responsible for establishing and strengthening Federal immigrant statistical policy and measurement operations.

(b) The Office of Immigrant Services will be headed by a Senior Executive who will report directly to the Commissioner. The Executive Associate Commissioner (EAC) for Immigrant Services will be responsible for establishing an operational chain of command dedicated solely to immigration services, focusing comprehensively on providing quality, timely and efficient services to the immigrant

community. The EAC will be responsible for all aspects of INS service and benefit operations and the Office of Immigration Services will be organized around four functional goals: providing efficient, accurate benefit processing from service centers and service area operations, ensuring secure documents with uncompromising integrity, serving the refugee and asylee population through humane and timely service and benefits, and ensuring timely processing and courteous service for the immigrant community through nationally-established customer service standards. The responsibilities and duties of the EAC for Immigrant Services include:

(1) Service Center Operations -- Service center operations will include automated assembly-line processing for all applications and petitions that do not require immigrant interviews. In addition, the service centers will provide front-end fee receipt, data entry and scheduling for all applications and petitions that require interviews. The EAC will be responsible for the collection of all management reporting information relative to the service centers, for budget formulation and execution for the service center budgets, for ensuring the accuracy and quality control of the adjudication of benefits at the service centers, for all employee hiring and grievance issues at the centers and for monitoring, overseeing and executing the mail file and data entry operations. Additionally, the EAC is responsible for coordinating, with the Office of Shared Support Services, the effective acquisition and utilization of shared support items including information technology, financial management, facility construction, personnel and training, etc.

(2) Service Area Operations -- Service area operations will be located in immigrant communities around the United States. The EAC will be responsible for ensuring that these offices provide efficient and effective service, while maintaining the integrity of application processing. These offices will provide information to applicants, take fingerprints and photographs, test applicant for benefits where necessary, and interview aliens, as required by law. Some offices will be configured as full-service offices and others will serve as satellite locations. All will have a standard "look and feel" with clear signs, comfortable waiting rooms, evening and weekend hours, and other customer-friendly features. The EAC will be responsible for effectively operating these decentralized offices, and developing and maintaining performance measures for the activities that take place within these offices to ensure uncompromising integrity and customer service.

(3) Foreign Operations -- The EAC will be responsible for all overseas operations involving benefits processing and overseas enforcement of the immigration laws of the United States. All foreign activities will be monitored and overseen by the EAC for Immigrant Services, including refugee, and asylee processing, and addressing the threat of international anti-terrorism and related enforcement support efforts.

(4) Telephone Center Operations -- The Service will operate a coordinated telephone answering system to respond to customer inquiries. The EAC for Immigrant Services will be responsible for designing and operating a telephone system that relies on all assets of the Service to ensure that customer inquiries are promptly and accurately addressed. This will include operating and maintain the telephone centers, any contract call answering facilities, and utilizing an overflow telephone call answering capacity designed to access information officers at the service centers and service area offices as needed.

(c) The Office of Enforcement Operations will be headed by a Senior Executive who will report directly to the Commissioner. This Executive Associate Commissioner (EAC) for Enforcement will be responsible for establishing an operational chain of command dedicated solely to immigration enforcement, focusing comprehensively on illegal immigration problems at the border, and ensuring better linkages with interior enforcement through a single point of accountability for performance. The EAC for Enforcement Operations will be responsible for all aspects of the Service's enforcement and border management operations and be organized around four functional goals: managing the border; conducting inspections and managing all port of entry operations; overseeing investigations and removals; and detention. Additionally, the EAC is responsible for coordinating, with the Office of Shared Support Services, the effective acquisition and utilization of shared support items including information technology, financial management, facility construction, personnel and training, etc. The responsibilities and duties of the EAC for Enforcement Operations will include:

(1) Border Management -- The Border Patrol will perform its current border management and control functions of deterring illegal immigration and apprehending illegal aliens, between ports of entry. In addition, the Border Patrol will continue to work with Federal, State and local law enforcement agencies to effectively administer laws related to the interdiction of drug trafficking activities and local criminal alien activities. Port of Entry management is a key component of border management due to the interrelationship between activities at and between land border ports of entry. Aliens attempting illegal entry at land, air and sea ports of entry will be swiftly apprehended and removed from the United States. The EAC will be operationally responsible for carrying out these duties in compliance with applicable law and policy and will be responsible for effectively monitoring resource utilization and maintaining accurate performance measures for these activities. By restructuring both Border Patrol and Inspection activities under a single EAC for Enforcement Operations, the Service will be able to provide seamless border enforcement along the Nation's borders.

(2) Interior Enforcement and Removals -- The EAC will be responsible for consolidating investigators, intelligence officers and deportation officer functions into one coordinated multi-disciplinary component to focus on illegal alien removals

and to vigorously combat immigration document fraud, smuggling and illegal employment in the workplace. This consolidated approach will ensure swift and proper apprehension, incarceration and removal of those illegally residing and working in this country.

(3) Detention and Enforcement Support -- The EAC will be responsible for ensuring logistical coordination for the incarceration and transportation of criminal and illegal aliens. The EAC will be responsible for effectively managing the Service's bed spaces at both, Service-owned and contract detention facilities. Additionally, the EAC will be responsible for effectively acquiring bedspaces from State and local entities to ensure the Service can properly execute its law enforcement responsibilities.

(d) The Office of Shared Support Services will be headed by a Senior Executive who will report directly to the Commissioner. This Executive Associate Commissioner (EAC) for Shared Support Services will be responsible for establishing an operational chain of command dedicated to meeting the enforcement and services support requirements for all Service operational components. The EAC for Share Support Services will be responsible for the effective provision of shared administrative and support services to ensure that each side of the agency has the appropriate administrative and technological tools to do its jobs in the most effective and cost-efficient way. The EAC will accomplish this through four functional goals: establishing and maintaining a records management system that accurately and efficiently documents immigrant status, ensuring information and enforcement technology enhancements and initiatives are developed, implemented and maintained to operational component specifications; building and maintaining a "best in class" recruiting, hiring and training operation to meet Service employment requirements and building and managing a Service physical plant to adequately support agency housing needs. The responsibilities and duties of the EAC for Share Support Services will include:

(1) Automation and Technology -- The EAC will be responsible for ensuring that the Service establishes and maintains state-of-the-art information resources capability to carry out agency enforcement and service functions. Additionally, this EAC will be responsible for deploying and monitoring technology and ensuring that the Service's workforce operates as effectively as possible with these tools. The EAC will also establish and promulgate agency-wide policy relative to the acquisition and deployment of technology capabilities in coordinating with the operational components of the Service.

(2) Centralized Records Management -- The EAC will be responsible for maintaining a centralized repository for all Service records and will be responsible for the effective transition from paper to electronic automated files. Service records are the foundation of its work -- whether in law enforcement or for

the provision of services to the immigrant community and the EAC will be responsible for establishing a records management organizational and management structure, agency-wide records management policy and building an agency-wide electronic recordkeeping system. This centralized capability will also provide the foundation for a nationwide expansion of the Law Enforcement Support Center.

(3) Personnel and Training -- The EAC will be responsible for tracking and hiring all categories of Service personnel and ensuring that all employees receive proper training in a timely manner. Specialized training courses and a full spectrum of basic, advanced, and continuing education will be established to ensure a professional workforce. Records ensuring that all employees received requisite training will be maintained by this office. The responsibility for recruiting, hiring and promulgating all related personnel information will reside with this EAC.

(4) Facilities Management -- The EAC will be responsible, in coordination with the operational components of the Service, for planning, constructing and renovating all required Service support facilities, including Border Patrol stations, detention facilities and general support office space.

Immig-structural reform

▶ **Julie A. Fernandes**
06/24/98 07:10:21 PM
.....

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: INS reform

All:

Alan Ehrenbaum just returned from a meeting with Reyes, advocates (including MALDEF, La Raza, National Immigration Forum, and others), and Hill staff (including Gephardt, Watt, Berman, CHC, Gutierrez and Conyers staff) on INS reform. Essentially, they all communicated to Reyes that he had been working with the wrong team on this and that he should be working with the Administration. Apparently, Reyes got the same message yesterday in a meeting with Gutierrez and Becerra. At the end of today's meeting, Reyes handed out an organizational chart that reflected the latest version of his plan. According to Alan, it looks just like our plan, except the Commissioner is a Deputy Attorney General.

As soon as we can get our version of the reform legislation cleared (which should be in a couple of days at the most), we can start working with Reyes's staff on how he wants to proceed.

Julie

Message Sent To:

Elena Kagan/OPD/EOP
Maria Echaveste/WHO/EOP
Michael Deich/OMB/EOP
Steven M. Mertens/OMB/EOP
Peter G. Jacoby/WHO/EOP
Leanne A. Shimabukuro/OPD/EOP
Janet Murguia/WHO/EOP
Ingrid M. Schroeder/OMB/EOP

immig - structural reform



**U.S. Department of Justice
Office of Legislative Affairs**

Office of the Assistant Attorney General

Washington, D.C. 20530

Draft

The Honorable Albert Gore
President
United States Senate
Washington, D.C. 20510

Dear Mr. President:

Enclosed herewith is a draft bill, the "Immigration and Naturalization Service Restructuring Act of 1998" which contains provisions to implement dramatic and fundamental reforms within the INS.

This bill will untangle the INS' overlapping and confusing organizational structure and replace it with two clear organizational chains of command -- one to accomplish its enforcement mission and the other to provide immigration-related services. By retaining both of these functions within a single agency, the Administration's reform plan will ensure that both the enforcement and service operations are appropriately coordinated and supported. ~~X~~In addition, this legislation will strengthen accountability and improve performance by allowing each of the two chains of command to focus on its unique requirements.

The key provision of the bill are to:

- Effect an operational split between enforcement and services, resulting in two distinct, clear lines of authority from the field to headquarters, with an INS Commissioner continuing to be responsible for overall agency operations.

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- Eliminate the current field structure in which district offices serve both enforcement and service functions, and replace it with separate enforcement and service offices that bring the right mix of staff and skills to local service caseloads and enforcement needs.
- Improve the quality of the workforce by creating separate enforcement and service career paths for INS employees, so that the best employees can move up the ladder and be rewarded for high performance.
- Restructure management operations to ensure an effective "shared services" operation (e.g., records and data management, technological support, training, and administrative support) that will serve both the enforcement and the service sides of the agency.
- Establish a Chief Financial Officer to improve financial, accounting, and budget execution systems.
- Develop a new form of overtime pay within INS' enforcement occupations, to achieve parity with other Federal law enforcement agencies and to minimize the use of administratively uncontrollable overtime.

The bill fundamentally changes the way the INS conducts business. Most important, it will greatly improve the ability of the INS to effectively and efficiently perform its duties and provide measurable changes to the immigrant community.

It would be appreciated if you would lay this draft bill before the House. An identical proposal has been transmitted to the House of Representatives.

The Office of Management and Budget has advised that there is no objection to the presentation of this proposal to the Congress from the standpoint of the Administration's program.

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We look forward to working with you and other members of Congress to implement this legislation and to ensure successful, long-term improvements in our Nation's immigration system.

Sincerely,

L. Anthony Sutin
Acting Assistant Attorney General

Attachments

cc: **Honorable Trent Lott**
Majority Leader

A BILL

To provide for the restructuring of the Immigration and Naturalization Service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—This Act may be cited as the "Immigration and Naturalization Service Restructuring Act of 1998".

SECTION 2. PURPOSES.—The purposes of this Act are to—

(a) Advance the effective enforcement of our immigration laws at our borders and in the interior, and the efficient provision of immigration and citizenship services.

(b) Untangle INS' overlapping and frequently confusing organizational structure by replacing it with two clear operational chains of command—one for enforcement and one for providing services—from the highest level of the agency to the lowest.

(c) Create two parallel operational divisions which can each focus on its unique management, knowledge, skills and abilities, while also retaining the essential functions for guiding and coordinating these operations.

(d) Improve customer-oriented immigrant services by:

- (1) Creating new local service offices;
- (2) Establishing new, distinct lines of accountability of authority for services;
- (3) Setting clear standards for customer service; and,
- (4) Using technology to improve efficiency and customer service.

(e) Strengthen enforcement operations by:

- (1) Establishing a single, coordinated enforcement mission;
- (2) Integrating enforcement, and strengthening accountability;
- (3) Organizing enforcement areas by function, including Border Patrol, inspections, investigations and removals, detention and enforcement

support; and,

(4) Developing overtime pay parity with other Federal law enforcement agencies:

(f) Provide for efficient integration of service and enforcement by:

(1) Creating an administrative and technical backbone of support for enforcement and service; and,

(2) Developing and managing essential immigration records, computer systems, training and shared administrative functions.

SECTION 3. DEFINITIONS.—For purposes of this Act, the following definitions shall apply—

(a) the term "INA" refers to the Immigration and Nationality Act of 1952, as amended up to the effective date of this Act.

(b) the term "INS" means the Immigration and Naturalization Service.

SECTION 4. EFFECTIVE DATE. Except as otherwise provided by this Act, this Act shall take effect on October 1, 2000.

TITLE I—AGENCY ORGANIZATION

SECTION. 101. AGENCY ORGANIZATION.—The Immigration and Naturalization Service [the Service] shall be responsible for administering the immigration laws of the United States. The Service will be organized in a way that ensures the effective implementation of enforcement strategies at the border, the interior of the country, and overseas, and the timely and efficient provision of immigrant services and benefits with complete integrity. The Service will be structured along programmatic lines and composed of an: (1) Office of Immigrant Services, (2) Office of Enforcement Operations, and (3) Office of Shared Services.

(a) **Headquarters Operations** — The Service will be lead by a Commissioner and Deputy Commissioner who will focus on immigration enforcement and service policy and establish a framework to implement national priorities. In addition, headquarters operations will be responsible for policy formulation, strategic planning and the development of agency goals, objectives and performance targets; agency-wide management support and coordination; budget formulation and execution; public affairs; Congressional relations; general counsel; and internal audit.

(1) Chief Financial Officer -- A Chief Financial Officer (CFO) will be established for the effective and efficient management and accountability of Service resources. The CFO will coordinate budget formulation, execution and agency-wide financial management operations. To address the Service's diverse funding sources, the CFO will ensure sound agency-wide financial management systems and processes. The CFO will ensure that immigrant services and enforcement operations have clearly separated and defined resource streams.

(2) Strategic Planning and Statistical Measures -- A director of the strategy unit will be responsible for policy formulation, developing the long term-strategy for the Service and facilitating the process of designing programs to execute that strategy. This office will create long-range strategic and performance measurement plans, in cooperation with relevant program components. In addition, this office will be responsible for establishing and strengthening Federal immigration statistical policy and measurement operations.

(b) The Office of Immigrant Services will be headed by a Senior Executive who will report directly to the Office of the Commissioner. The director of the Office of Immigrant Services will be responsible for establishing an operational chain of command dedicated solely to immigration services, focusing comprehensively on providing quality, timely and efficient services to the immigrant community and institutions requiring immigrant services. The director will be responsible for all aspects of INS service and benefit operations and the Office of Immigration Services will be organized around four functional goals: (1) ensuring timely processing and courteous service for the immigrant community through nationally-established customer service standards, (2) providing efficient, accurate benefit processing from remote service centers and service area operations, (3) ensuring secure documents with uncompromising integrity, and (4) serving the refugee and asylee population through humane and timely service and benefits. Additionally, the director of the Office of Immigrant Services is responsible for coordinating, with the Office of Shared Services, the effective acquisition and utilization of shared support items including information technology, financial management, facility construction, personnel and training. The responsibilities and duties of the director of the Office of Immigrant Services shall include:

(1) Service Area Operations -- Service area operations will be located in immigrant communities around the United States. The director of the Office of Immigrant Services will develop and maintain performance measures to ensure that offices within each area provide efficient and consistent service, while maintaining the integrity of application processing. These offices will provide a variety of services to applicants, including fingerprinting, photographing, and interviewing applicants. Some offices will be configured as full-service offices and others will serve as satellite locations. All will have a standard appearance with customer-oriented features.

(2) Service Center Operations -- Service center operations will include centralized automated processing and adjudication for applications and petitions that do not require immigrant interviews. In addition, the service centers will provide front-end fee receipt, data entry and scheduling for applications and petitions that require interviews. The director will be responsible for the collection of all management reporting information relative to the service centers, for

budget formulation and execution for the service center budgets, for ensuring the accuracy and quality control of the adjudication of benefits at the service centers, for all employee hiring and grievance issues at the centers and for monitoring, overseeing and executing the mail file and data entry operations.

(3) Telephone Center Operations -- The Service will operate a coordinated telephone assistance system to respond to customer inquiries. The director of the Office of Immigrant Services will be responsible for designing and operating a telephone system that relies on all assets of the Service to ensure that customer inquiries are promptly and accurately addressed. This will include operating and maintaining the telephone centers, any contract call-answering facilities, and utilizing an overflow telephone call assistance capacity designed to access information officers at the service centers as needed.

(c) The Office of Enforcement Operations will be headed by a Senior Executive who will report directly to the Office of the Commissioner. The director of the Office of Enforcement Operations will be responsible for establishing an operational chain of command dedicated solely to immigration enforcement, focusing comprehensively on illegal immigration problems at the border and in the interior of the U.S., and ensuring better linkages of enforcement operations through a single point of accountability for performance. The director of the Office of Enforcement Operations will be responsible for all aspects of the Service's enforcement and border management operations including international enforcement efforts and will be organized around four functional goals: managing by the Border Patrol of the border between ports-of-entry; conducting inspections and managing all port of entry operations; overseeing investigations and removals; and coordinating and managing detention and enforcement support. Additionally, the director of the Office of Enforcement Operations is responsible for coordinating, with the Office of Shared Services, the effective acquisition and utilization of shared support items including information technology, financial management, facility construction, personnel and training. The responsibilities and duties of the director of the Office of Enforcement Operations will include:

(1) Border Management --

By placing both Border Patrol and Inspection activities under a single director of the Office of Enforcement Operations, the Service will be able to provide seamless border enforcement along the Nation's borders, and will be better able to coordinate operations with other Federal and governmental agencies along the border.

(a) The Border Patrol will perform its current border management and control functions of deterring illegal immigration and apprehending illegal aliens between ports of entry. In addition, the Border Patrol will continue to work with Federal, State and local law enforcement agencies to effectively administer laws related to the interdiction of drug trafficking activities.

(b) Port of Entry management is a key component of border management due to the interrelationship between activities at and between land border ports of entry. The director will be operationally responsible for carrying out these duties in compliance with applicable law and

policy and will be responsible for effectively monitoring resource utilization and maintaining accurate performance measures for these activities.

(2) **Interior Enforcement and Removals** – The director of the Office of Enforcement Operations will be responsible for consolidating investigations, intelligence and deportation functions into one coordinated multi-disciplinary component to focus on illegal alien removals and to vigorously combat immigration document fraud, smuggling and illegal employment in the workplace. This consolidated approach will ensure swift and proper apprehension, incarceration and removal of those illegally residing and working in this country.

(3) **Detention and Enforcement Support** – The director of the Office of Enforcement Operations will be responsible for ensuring logistical coordination for the incarceration and transportation of criminal and illegal aliens. The director will be responsible for effectively managing the Service's bed space at both Service-owned and contract detention facilities. Additionally, the director will be responsible for effectively acquiring bed space from State and local entities to ensure the Service can detain and transport individuals it apprehends.

(d) The Office of Shared Services will be headed by a Senior Executive who will report directly to the Office of the Commissioner. The director of the Office of Shared Services will be responsible for establishing an operational chain of command dedicated to meeting the support requirements for both the enforcement and service operational components. The director of the Office of Shared Services will be responsible for the effective provision of shared administrative and support services to ensure that each side of the agency has the appropriate administrative and technological tools to do its jobs in the most effective and cost-efficient way. The director will accomplish this through four functional goals: establishing and maintaining a records management system that accurately and efficiently documents immigration status; ensuring information and enforcement technology enhancements and initiatives are developed and maintained to operational component specifications; building and maintaining a superior recruiting, hiring and training operation to meet Service employment requirements; and building and managing a Service physical plant to adequately support agency housing needs. The responsibilities and duties of the director of the Office of Shared Services will include:

(1) **Automation and Technology** – The director of the Office of Shared Services will be responsible for ensuring that the Service establishes and maintains state-of-the-art information resources capability to carry out agency enforcement and service functions. The director will be responsible for deploying and monitoring technology and ensuring that the Service's workforce operates as effectively as possible with these tools. The director will also establish and promulgate agency-wide policy relative to the acquisition and deployment of technology capabilities in coordinating with the operational components of the Service.

(2) **Centralized Records Management** – The director will be responsible for maintaining a centralized repository for all Service records and will be responsible for establishing a greater level of data integrity in existing electronic records and managing the transition to an electronic records environment.

(3) **Personnel and Training** -- The director will be responsible for tracking the hiring of all categories of Service personnel and ensuring that all employees receive proper training in a timely manner. Specialized training courses and a full spectrum of basic, advanced, and continuing education will be established to ensure a professional workforce.

(4) **Administrative Support** -- The director will be responsible, in coordination with the operational components of the Service, for planning, constructing and renovating all required Service facilities and equipment, including Border Patrol stations, detention facilities, Immigrant Services offices and general support office space. The director will also be responsible for logistics; procurement; and environmental, occupational and health activities of the Service.

SEC. 102. SAVINGS PROVISIONS

(a) **LEGAL DOCUMENTS.**—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the INS, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date); shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorization official, a court of competent jurisdiction, or operation of law.

(b) **Proceedings.**—This Act shall not affect any proceedings and any application for any benefits, service, license, permit, certificate, or financial assistance pending on the date of the enactment of this Act before an office whose functions are transferred by this Act, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(c) **Suits.**—This Act shall not affect suits commenced before the date of the enactment of this Act, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

(d) **Nonabatement of Actions.**—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred by the Act, shall abate by reason of the enactment of this Act.

(e) **Continuance of Suits.**—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and under this Act such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) **Administrative Procedure and Judicial Review.**—Except as otherwise provided by this Act, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred by this Act shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred by this Act.

TITLE II—INS COMPENSATION

SEC. 201. (a) **IN GENERAL.**— Section 1 of the Act of March 2, 1931 (8 U.S.C. § 1353a) is amended to read as follows:

"EXTRA COMPENSATION: OVERTIME AND PREMIUM PAY FOR IMMIGRATION INSPECTORS

"(a) EXTRA COMPENSATION.—

Immigration inspectors shall be allowed extra compensation for overtime services and services at night or on Sundays and holidays to perform immigration examination, inspection or preinspection duties in connection with any person arriving or landing in or departing to the United States at the rate specified herein.

"(b) OVERTIME PAY.—

"(1) **IN GENERAL.**— Subject to paragraph (2) and subsection (d) an immigration inspector who is officially assigned to perform work in excess of 40 hours in the administrative workweek of the inspector or in excess of 8 hours in a day or for an immigration inspector under a compressed work schedule in excess of the number of hours of the compressed work schedule shall be compensated for that work at an hourly rate of pay that is equal to 2 times the hourly rate of the basic pay of the inspector. Overtime pay provided under this subsection shall not be paid to any inspector unless such inspector actually performs work during the time corresponding to such overtime pay. For purposes of this paragraph, the hourly rate of basic pay for an

immigration inspector does not include any premium pay provided for under subsection (c).

**"(2) SPECIAL PROVISIONS RELATING TO OVERTIME WORK ON
CALLBACK BASIS.-**

"(A) MINIMUM DURATION.- Any work for which compensation is authorized under paragraph (1) and for which the immigration inspector is required to return to the inspector's place of work shall be treated as being not less than 2 hours in duration; but only if such work begins at least 1 hour after the end of any previous regularly scheduled work assignment and ends at least 1 hour before the beginning of the following regularly scheduled work assignment.

"(B) COMPENSATION FOR COMMUTING TIME.-

"(i) IN GENERAL.- Except as provided in clause (ii), in addition to the compensation authorized under paragraph (b)(1) for work to which subparagraph (2)(A) applies, the immigration inspector is entitled to be paid, as compensation for commuting time, an amount equal to 3 times the hourly rate of base pay for the immigration inspector.

"(ii) EXCEPTION.- Compensation for commuting time is not payable under clause (i) if the work for which compensation is authorized under paragraph (1)—

**"(I) does not commence within 16 hours of the immigration
inspector's last regularly scheduled work assignment, or**

**"(II) commences within 2 hours of the next regularly
scheduled work assignment of the immigration inspector.**

"(c) PREMIUM PAY FOR IMMIGRATION INSPECTORS.-

"(1) NIGHT WORK DIFFERENTIAL.-

"(A) 6 P.M. to MIDNIGHT.- If the hours of regularly scheduled work of an immigration inspector occur during the period beginning at 6 p.m. and ending at 12 a.m., the inspector is entitled to pay for the actual hours worked during such period (except for work to which paragraph (2) or (3) applies) at the inspector's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

"(B) MIDNIGHT to 8 A.M.- If the hours of regularly scheduled work of an immigration inspector occur during the period beginning at 12 a.m. and ending at 8 a.m., the inspector is entitled to pay for the actual hours worked during such period (except for work to which paragraph (2) or (3) applies) at the inspector's hourly rate of basic pay plus premium pay

amounting to 20 percent of that basic rate.

"(2) SUNDAY DIFFERENTIAL.- An immigration inspector who performs any regularly scheduled work on a Sunday that is not a holiday is entitled to pay for the hours worked between 12:01 a.m. and 12 Midnight at the inspector's hourly rate of basic pay plus premium pay amounting to 50 percent of that basic rate for that Sunday work that is not in excess of 8 hours, or for an employee on a compressed work schedule for that Sunday work that is not in excess of the employee's compressed work schedule for that day.

"(3) HOLIDAY DIFFERENTIAL.- An immigration inspector who performs any regularly scheduled work on a holiday is entitled to pay for that work at the inspector's hourly rate of basic pay plus premium pay amounting to 100 percent of that basic rate for that holiday work that is not in excess of 8 hours, or for an employee on a compressed work schedule for that holiday work that is not in excess of the employee's compressed work schedule for that day.

"(4) PAYMENT OF PREMIUM PAY DIFFERENTIALS.- Premium pay provided under this section shall be paid only for actual nonovertime work performed during the periods for which the differentials are authorized. An Immigration Inspector shall receive payment for only one of the differentials for any one given period of work. The order of precedence for the payment of premium pay differentials is holiday, Sunday, and night work.

"(5) TREATMENT OF PREMIUM PAY.- Premium pay provided for under this subsection shall not be treated as basic pay for any purpose, nor shall it be used in calculating lump sum annual leave payments in accordance with sections 5551 and 5552 of title 5, United States Code.

"(d) LIMITATIONS.-

"(1) CALENDAR YEAR CAP.- The aggregate of overtime pay under subsection (b) (including commuting compensation under subsection (b)(2)(B)) that an immigration inspector may be paid in any calendar year may not exceed any limitation established by law, except that—

"(A) the Commissioner of the Immigration and Naturalization Service or her designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Immigration and Naturalization Service. This authority may not be delegated below the Deputy Commissioner of the Immigration and Naturalization Service, and

"(B) the Commissioner is authorized to pay any immigration inspector for one assignment that would result in the overtime pay of that inspector exceeding any statutory limitation established by law, in addition to any overtime pay that may be received pursuant to a waiver under subparagraph (A).

"(2) EXCLUSIVITY OF PAY UNDER THIS SECTION.- An immigration

inspector who receives overtime pay under subsection (b) or premium pay under subsection (c) for time worked shall not receive pay or other compensation for that work under any other provision of law.

"(e) REGULATIONS.- The Attorney General shall promulgate regulations to prevent-

"(1) the abuse of callback work assignments and commuting time compensation authorized under subsection (b)(2); and

"(2) the disproportionately more frequent assignment of overtime work to immigration inspectors who are near to retirement.

"(f) DEFINITIONS.- As used in this section:

"(1) The term 'immigration inspector' means an individual whose position of record is that of an 'Immigration Inspector' or 'Supervisory Immigration Inspector,' consistent with such applicable standards as may be promulgated by the Office of Personnel Management and the Attorney General, with the exception of those Immigration Inspectors and Supervisory Immigration Inspectors meeting the definition of a law enforcement officer under section 5541(3) of title 5, United States Code.

"(2) The 'term holiday' means any day designated as a holiday under a Federal statute or Executive Order."

(b) NECESSARY CONFORMING AMENDMENTS.--

(1) Section 2 of the Act of 1931 (8 U.S.C. § 1353b) is amended to read as follows:

"It shall be the duty of the master, owner, agent or consignee of a vessel, aircraft or other conveyance arriving or landing in or departing to the United States from foreign territory to reimburse the Attorney General for any extra compensation paid to immigration inspectors pursuant to section 1353a of this title. Such compensation shall be paid if such immigration inspectors have been ordered to report for duty and have so reported whether immigration examination, inspection or preinspection services are actually performed or not: Provided, That this section shall not apply to the provision of immigration examination, inspection or preinspection services to passengers arriving by international ferries, bridges, or tunnels, or by aircraft, railroad trains, or vessels on the Great Lakes and connecting waterways, when operating on regular schedules. The Attorney General shall promulgate regulations that establish the rate(s) at which the master, owner, agent or consignee of a vessel, aircraft or other conveyance shall be billed at a level that will ensure the recovery of the full cost of any extra compensation paid to immigration inspectors pursuant to section 1353a of this title. Notwithstanding section 80503 of Title 49, the owner, operator, or agent of a private aircraft or private vessel shall reimburse the Attorney General for the full cost of any extra compensation paid to

immigration inspectors pursuant to section 1353a of this title."

(2) Section 1 of the Act of March 4, 1921 (8 U.S.C. §1353c) is amended to read as follows:

"Nothing in section 209 of Title 18 of the United States Code, relative to the augmenting of salaries of officers and employees of the executive branch of the United States government from non-United States Government sources shall prevent the Attorney General from receiving reimbursements for extra compensation for overtime services and services at night or on Sundays and holidays incident to the immigration examination, inspection or preinspection of persons arriving or landing in or departing to the United States. Such reimbursements shall be deposited as offsetting receipts in the Immigration User Fee Account to remain available until expended."

(3) Section 1353d of title 8 (8 U.S.C. 1353d) is repealed.

(4) Section 286(h)(1) of the Immigration and Nationality Act (8 U.S.C. 1356(h)(1)) is amended by adding a new subparagraph (C) to read as follows:

"(C) Notwithstanding any other provision of law, all reimbursements received pursuant to section 1353b of this title for extra compensation paid to immigration inspectors pursuant to section 1353a of this title shall be deposited in the Immigration User Fee Account."

(c) **EFFECTIVE DATE.**— The amendments made by paragraphs (a) and (b) shall apply to immigration inspection services provided on or after the first day of the first applicable pay period beginning 180 days following the date of enactment of this Act.

(d) **ADDITIONAL BENEFITS FOR IMMIGRATION INSPECTORS.**—

(1) **TREATMENT OF CERTAIN PAY FOR RETIREMENT PURPOSES.**—

Section 8331(3) of title 5, United States Code, is amended—

(A) by striking out "and" at the end of subparagraph (D);

(B) by striking out the semicolon at the end of subparagraph (E) and inserting "; and";

(C) by adding after subparagraph (E) the following:

"(F) with respect to a immigration inspector (referred to in subsection (f)(1) of section 1 of the Act of March 2, 1931), compensation for overtime inspectional services provided for under subsection (b) of such section 1, but not to exceed 50

percent of any statutory maximum in overtime pay for immigration inspectors which is in effect for the calendar year involved;"; and

(D) by striking out "subparagraphs (B), (C), (D), and (E) of this paragraph," and inserting "subparagraphs (B), (C), (D), (E), and (F) of this paragraph".

(2) FOREIGN LANGUAGE PROFICIENCY AWARDS.- Cash awards for foreign language proficiency may, under regulations prescribed by the Attorney General, be paid to immigration inspectors (as referred to in section 1(f)(1) of the Act of March 2, 1931) for languages other than those for which a formal course of instruction is provided by the Immigration and Naturalization Service for continued employment in the position or for which proficiency is a condition of employment. Such awards may be paid to the same extent and in the same manner as would be allowable under subchapter III of chapter 45 of title 5, United States Code, with respect to law enforcement officers (as defined by section 4521 of such title).

(e) EFFECTIVE DATE.--The amendments made by paragraph (d) shall take effect on the first day of the first applicable pay period beginning 180 days following the date of enactment of this Act, and apply only with respect to service performed on or after such date.

SEC. 202. FUNDING.--For the purposes of carrying out this Act, additional funding to compensate inspectors within the Immigration and Naturalization Service Salaries and Expenses Account shall be subject to appropriation. For inspectors funded with offsetting collections, this Act shall not impact the level of planned obligations as depicted in the President's Fiscal Year 1999 Budget. Given the following receipt levels, offsetting collections credited to the Immigration and Naturalization Service shall not exceed the following:

<u>Fiscal Year</u>	<u>Offsetting Receipts</u>	<u>Obligations</u>
1999	\$1,426,000,000	\$1,463,000,000
2000	\$1,417,000,000	\$1,227,000,000
2001	\$1,429,000,000	\$1,272,000,000
2002	\$1,447,000,000	\$1,319,000,000
2003	\$1,437,000,000	\$1,319,000,000

SEC. 203. (a) IN GENERAL.-- Title 5, Section 5545 "Night, standby, irregular, and hazardous duty differential" is amended by adding a new subsection "e" as follows:

"(e) Notwithstanding the provisions of subsection (c)(2), the Attorney General, with the approval of the Office of Personnel Management, may provide that a full-time immigration officer in a position that requires substantial amounts of overtime duty shall be paid premium pay on an annual basis for an uncommon tour of duty of 50 hours of work in an administrative workweek. Premium pay under this subsection shall be 25 percent of the immigration officer's rate of basic pay, and shall be paid in lieu of any other premium pay provided by other provisions of this subchapter, except premium pay as provided for under section 5542 for overtime hours

officially ordered and approved in excess of the uncommon tour of duty, night and Sunday pay, and holiday pay.

"(1) The Attorney General shall require that an immigration officer paid under the provisions of this subsection with an uncommon tour of duty accrue and use leave on the basis of the uncommon tour of duty.

"(a) The leave accrual rates for such immigration officer shall be directly proportional (based on the number of hours in the biweekly tour of duty and the accrual rate of the corresponding leave category) to the standard leave accrual rates for employees who accrue and use leave on the basis of an 80-hour biweekly tour of duty. One hour (or appropriate fraction thereof) of leave shall be charged for each hour (or appropriate fraction thereof) of absence from the uncommon tour of duty.

"(b) When an immigration officer commences to be paid under the provisions of this subsection, his or her leave balances shall be converted to the proper number of hours based on the proportion of hours in the uncommon tour of duty compared to the former tour of duty.

"(c) When an immigration officer ceases to be paid under the provisions of this subsection, his or her leave balances shall be converted to the proper number of hours based on the proportion of hours in the new tour of duty compared to the uncommon tour of duty.

"(2) Premium pay under this section may continue for an aggregate period of not more than 60 workdays in a calendar year on temporary assignment to agency sanctioned training that requires a tour of duty of less than 50 hours per administrative workweek.

"(3) Any determinations by the Attorney General that pay under this subsection is no longer appropriate shall apply to all employees in the positions designated by the Attorney General, notwithstanding any other provision of law.

"(4) Notwithstanding paragraph (2), premium pay under this section shall not be paid during a period of training which is considered initial, basic training usually provided in the first year of service.

"(5) Immigration officers in positions authorized by the Attorney General for pay under this subsection may not receive premium pay under the provisions of subsection (c)(1) or (2) of this section or section 5545a of this chapter.

"(6) The Attorney General, or her designee, may, in her discretion, approve an immigration officer's request to not be assigned the overtime required under this section for a designated period of time because of a personal or family hardship. The immigration officer must sign a written statement documenting the request and his or her

understanding that premium pay under this section will not be paid.

"(7) Pay under this subsection shall be treated as part of basic pay for purposes of--

"(a) sections 5595(c), 8114(e), 8331(3), and 8704(c), and

"(b) such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe.

"(8) For the purpose of calculating an employee's lump-sum annual leave payments under sections 5551 and 5552 of this title:

"(a) overtime pay under the Fair Labor Standards Act of 1938, as amended, for overtime hours regularly scheduled during an immigration officer's uncommon tour of duty under this subsection shall not be included in the definition of pay, and

"(b) his or her leave balances shall be converted to the proportionate number of hours corresponding to an 80-hour biweekly tour of duty.

"(9) For the purpose of computing an employee's annuity under section 8339 of this title, an employee's unused sick leave balance shall be converted to the proportionate number of hours corresponding to an 80-hour biweekly tour of duty."

(b) OVERTIME PAY COMPUTATIONS UNDER THE FAIR LABOR STANDARDS ACT.— Notwithstanding any other provision of law, immigration officers receiving premium pay under the provisions of section 5545(e) of title 5 and subject to the provisions of section 7 of the Fair Labor Standards Act of 1938, as amended --

(1) shall be deemed to be employees within the provisions of subsection 7(a) of the Act and bona fide meal periods shall not be compensable, and

(2) shall be paid for the hours of the uncommon tour of duty in excess of 40 hours of work in an administrative workweek at one-half the hourly regular rate computed in accordance with section 7 of such Act.

SECTION 204. CONFORMING AMENDMENTS.—

(a) Section 5542 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) In applying subsection (a) of this section with respect to any immigration officer who is paid premium pay under Section 5545(e), such immigration officer

shall be compensated under such subsection (a), at the rates provided for, for overtime work which is officially ordered and approved in excess of the number of hours in the employee's weekly uncommon tour of duty."

(b) Section 5546 of title 5, United States Code, is amended by adding at the end thereof the following new subsections:

"(f) Notwithstanding subsections (a) and (d), in the case of any full-time immigration officer on an uncommon tour of duty under section 5545(e) who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such immigration officer is entitled to pay for a maximum of 8 hours for work performed during the tour of duty at the rate of such immigration officer's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay. For hours worked in excess of 8 in the uncommon tour of duty the employee is entitled to premium pay in accordance with section 5545(e). For hours worked in excess of the uncommon tour of duty, the immigration officer is entitled to premium pay in accordance with the provisions of section 5542(a) of this title.

(g) Notwithstanding subsections (b) and (d), in the case of an immigration officer on an uncommon tour of duty under section 5545(e) who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such immigration officer's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of 8 hours. For hours worked on such a holiday in excess of 8 in the uncommon tour of duty the immigration officer shall be paid in accordance with section 5545(e). For hours worked in excess of the uncommon tour of duty, the immigration officer is entitled to premium pay in accordance with the provisions of section 5542(a) of this title."

(c) Section 5547(a) of title 5, United States Code, is amended in the first sentence by striking "5545(a), (b), and (c)" and inserting "5545(a), (b), (c), and (e)".

(d) Section 5595(c) of title 5, United States Code, is amended in the last sentence by striking "5545(c)(1) of this title." and inserting "5545(c)(1), 5545(c)(2), 5545(e), and 5545a of this title."

(e) Section 8114(e) of title 5, United States Code, is amended by inserting immediately after "section 5545(c)(1)" the following: "section 5545(c)(2), section 5545(e), and section 5545a".

(f) Section 8331(3) of title 5, United States Code, is amended by striking at the end of subparagraph (D) the word "and", by inserting after subparagraph (E) the word "and", and by adding the following new subparagraphs:

"(F) with respect to an immigration officer premium pay under section 5545(e) of this title;

(G) with respect to a criminal investigator as defined in section 5545a, availability pay under section 5545a of this title;"

(g) Section 8704(c)(1) of title 5, United States Code, is amended by striking "; and" and inserting ";" and adding the following new paragraphs:

"(3) with respect to an immigration officer premium pay under section 5545(e) of this title; and

with respect to a criminal investigator as defined in section 5545a, availability pay under section 5545a of this title."

SECTION 205. EFFECTIVE DATE— The amendments made by Sections 203 and 204 shall take effect on the first day of the first applicable pay period beginning 180 days following the date of enactment of this Act.

SEC 206. COMMISSIONER COMPENSATION.—Effective as of the day following the date on which the present incumbent in the office of the Commissioner ceases to serve as such, the Commissioner of the Immigration and Naturalization Service shall receive compensation at the rate prescribed for level III of the Federal Executive Salary Schedule (section 5314 of title 5, United States Code).

TITLE III—CONFORMING AMENDMENTS

SEC. 301. CONFORMING AMENDMENTS.

(a) Section 103(e)(2) of the INA, 8 U.S.C. section 1103(e)(2), is amended by striking "district office of the Service" and inserting "designated office of the Immigration and Naturalization Service".

(b) Section 242(b)(3)(A) of the INA, 8 U.S.C. section 1252(b)(3)(A), is amended by striking "Service district" and inserting "designated office of the Immigration and Naturalization Service".

(c) Section 316 of the INA, 8 U.S.C. section 1427, is amended—

(1) in section (a) by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service"; and

(2) in section (f)(1) by striking "district of the Service" and inserting "area

serviced by the designated office of the Immigration and Naturalization Service".

(d) Section 319 of the INA, 8 U.S.C. section 1430, is amended—

(1) in section (a) by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service";

(2) in section (b)(3) by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service";

(3) in section (c)(5) by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service"; and

(4) in section (d) by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service".

(e) Section 324 of the INA, 8 U.S.C. section 1435(a)(1), is amended by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service".

(f) Section 328 of the INA, 8 U.S.C. section 1439, is amended—

(1) in section (a) by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service";

(2) in section (b)(1) by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service"; and

(3) in section (c) by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service".

(g) Section 329(b)(2) of the INA, 8 U.S.C. section 1440(b)(2), is amended by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service".

(h) Section 335(f) of the INA, 8 U.S.C. section 1446(f), is amended by striking "district of the Service" each time the phrase appears and inserting "area serviced by the designated office of the Immigration and Naturalization Service".

(i) Section 338 of the INA, 8 U.S.C. section 1449, is amended by striking "district office of the Service" and inserting "designated office of the Immigration and Naturalization Service".

(j) Section 339(b) of the INA, 8 U.S.C. section 1450(b), is amended by striking "district office of the Service" and inserting "designated office of the Immigration and Naturalization Service".

(k) Section 404 of the INA, 8 U.S.C. section 1101, note, is amended--

(1) in section (b)(2)(A)(i) by striking "a district director of the Service" and inserting "a designated Immigration and Naturalization Service officer"; and

(2) in (b)(2)(A)(iii) by striking "in a district" and inserting "in a designated office of the Immigration and Naturalization Service".

Section-by-Section Analysis of the "Immigration and Naturalization Service Restructuring Act of 1998."

Background

America has always been a nation of immigrants. Significant progress has been made in improving the Nation's immigration system. Over the last five years, illegal immigration has been curtailed through tougher border control, a badly abused asylum system has been reformed, and a record numbers of criminal and other aliens have been removed. While important progress has been made, recent changes in the breadth and scope of the Immigration and Naturalization Service's (INS) mission require a rethinking of its structure.

In its final report to Congress last fall, the Commission on Immigration Reform (CIR) called for significant reform to our Nation's immigration system. The major thrust of the CIR's proposed reform was to dismantle the INS and to parcel out its immigration functions to the Departments of Justice, State and Labor.

In response to CIR's recommendations, the President asked the Domestic Policy Council (DPC) to "evaluate carefully the [CIR] proposal and other reform options designed to improve the executive branch's administration of the Nation's immigration laws." In conducting this review, the DPC, working closely with the Office of Management and Budget, consulted with the Departments of Justice, Labor, and State, CIR staff, immigration experts and advocacy groups, and other White House offices, including the National Security Council. This review examined organizational and restructuring options including those formulated by the CIR and members of Congress. From this effort, a new framework for reform was established, and the Justice Department contracted with a management consulting firm to provide an independent assessment of structural options and assisted in developing a framework.

The DPC review process concluded that the CIR report correctly diagnosed many of INS' longstanding problems - insufficient accountability between field offices and headquarters, lack of consistency, need for greater professionalism, overlapping organizational relationships, and significant management weaknesses. These problems have hampered the INS' ability to effectively enforce our immigration laws both at our borders and in the interior, and to efficiently provide immigration services. Improving the ability of the INS to pursue these critical priorities must be the goal of any restructuring.

General description of the amendments

The most effective way to remedy the issues identified by the DPC review is to implement dramatic and fundamental reforms within the INS. The reforms to be implemented will untangle INS' overlapping and frequently confusing organizational structure and replace it with two clear organization chains of command - one for accomplishing its enforcement mission and one for providing services. Each operation will be headed by a senior executive who will report directly to the Commissioner through the Deputy Commissioner.

The restructuring will eliminate the current field structure in which regional district offices serve both enforcement and service functions and replace it with separate enforcement and service offices that bring the right mix of staff and skills to local service caseload and enforcement efficiency and effectiveness. The restructuring will allow each operation to focus on its unique management, knowledge, skills, and abilities, while also retaining the essential functions for coordinating these operations.

The new immigration services operation will locate new service offices in immigrant communities around the country. These offices will focus on providing efficient and effective service, while maintaining the integrity of application processing. The offices will provide a range of services, including: providing information to applicants, taking fingerprints and photographs, and interviewing. Depending on community needs, some offices will be configured as full-service centers and others will serve as satellite locations to perform specific functions. These new service facilities will have a standard "look and feel" with clear signs, comfortable waiting rooms, evening and weekend hours, and other customer-friendly features.

The restructuring will create an operational chain of command dedicated solely to immigration enforcement, focus comprehensively on illegal immigration problems at the border, and establish better linkages with interior enforcement through a single point of accountability for performance. This approach will strengthen professionalism and improve results. This structure also will ensure priorities are shared and allow close coordination of day-to-day operations among each enforcement discipline. Furthermore, the integrated structure will increase the INS's ability to coordinate with other federal enforcement agencies, both along the border of the United States and within the interior. The new enforcement operations areas will combine all functions related to the enforcement of immigration laws. Each enforcement area will be organized according to four functions, and led by a single director. The Area Enforcement Director will report directly to the director of the Office of Enforcement Operations.

The shared services operation (e.g., records and data management, technological support, training, and administrative support) will serve as the administrative and technological backbone upon which both enforcement and service operations depend under the new framework. Under the restructuring, each side of the agency will have the appropriate administrative and technological tools to do its job in the most efficient and cost-effective way. These tools will range from new computer software systems that are "user friendly" for enforcement agents and service officers, to appropriate training to strengthen professionalism.

Pay Reform for Immigration Inspectors

The Customs Service and the INS share jurisdiction over Ports-of-Entry. Inspection of cross-border traffic has been parceled out statutorily by subject matter: the Customs Service is responsible for cargo (clearing the entry of goods and merchandise) while the INS is responsible for persons (screening travelers seeking admission into the United States). Under current law, both agencies are cross-designated to enforce each other's respective areas of laws and are cross-designated to enforce Federal drug laws. Consequently, INS inspectors, like their Customs counterparts, interdict inadmissible aliens, contraband, and drugs.

However, INS inspectors and Customs officers are paid premium pay and overtime pay under two significantly different pay systems, often for performing the same duties

Overtime for Customs officers (defined as Customs inspectors and canine enforcement officers) is paid at 2 times basic pay for actual hours worked, officers are paid substantial differentials for night work, and an officer's overtime up to one-half the statutory pay cap is considered basic pay for retirement purposes. This legislation amends the provisions under which immigration inspectors in the INS are currently paid overtime, Sunday, and holiday pay to afford immigration inspectors the same pay that Customs inspectors are currently receiving, with minimal changes to reduce the cost of providing such pay and retirement benefits while at the same time paying premium pay to such inspectors for actual hours worked.

The proposed provision for overtime modernization will both strike equity in pay between the INS inspector and the Customs officer and more fairly compensate the INS inspector by streamlining the specific rules for overtime work.

The issue of equitable compensation between the two agencies is inextricably linked to the corresponding span of duties of each agency. Both Customs and INS inspectors are charged with a similar mission--protecting the United States borders, either from the illegal entry of goods or the illegal entry of people--and continue to perform these duties side by side.

Pay Reform for INS Law Enforcement Officers

Under the existing pay provisions in title 5, United States Code, INS law enforcement officers are at risk of losing overtime when they transfer from one law enforcement position to another, even if that transfer is within the same occupational series. Moreover, these officers are at risk of losing their overtime pay even in those situations where the transfer is involuntary. Consequently, the loss of overtime pay is a factor in career decisions within enforcement operations. To eliminate this serious problem, the INS is proposing to amend title 5 to add a new form of premium pay on an annual basis to ensure that employees do not lose overtime when they transfer positions.

The proposed reform removes the pay disincentives that currently exist under current title 5 overtime pay provisions for employees to move up the ladder and be rewarded for high performance. It supports career growth within the enforcement operations by ensuring that a career choice does not result in a 25 percent decrease in pay and provides a sense of financial security and consistency as INS officers make choices to move within enforcement operations. It improves morale and facilitates the growth of a cohesive, integrated, enforcement chain of command.

The primary overtime provision that applies to INS law enforcement officers, other than criminal investigators, is "administratively uncontrollable overtime" (AUO), which is governed by the provisions of 5545(c)(2) of title 5. Payment of AUO is discretionary with each Federal agency, and the amount of the annual premium pay may vary from 10 to 25 percent of basic pay depending on the average number of hours worked per week. The primary overtime provision that applies to criminal investigators is availability pay.

Availability pay, which was enacted under the Law Enforcement Availability Act of 1994, provides a uniform 25 percent premium pay to all criminal investigators regardless of the duties they perform. Thus, unlike all other law enforcement officers within the INS, criminal investigators within the INS are not at risk of losing their availability pay whenever they transfer from one position to another.

The differences between AUO and availability pay generate sentiments of disparate treatment and undermine morale.

This is a particularly serious problem within the INS for example in 1997, 6,900 INS law enforcement officers receive AUO as compared to a total of 1,396 law enforcement officers in nine other law enforcement agencies. Overall, there are three major differences between AUO and availability pay which lead to the feelings of disparate treatment:

1. AUO is discretionary with the agency and is appropriate only in those limited circumstances where it is inherent in the duties of the position that the overtime required by the duties of the position require substantial amounts of irregular or occasional overtime, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. As a result of these requirements, it is possible that an INS border patrol agent who is currently receiving AUO may lose that overtime pay if the INS requires him or her transfer to a border patrol agent position in Headquarters that does not meet the requirements for AUO. In contrast, availability pay is a guaranteed entitlement that the agency must pay to "ensure the availability of criminal investigators for unscheduled duty based on the needs of the agency." This means availability pay is portable; i.e., a criminal investigator can continue to earn availability pay regardless of the investigator's assignment.

2. The level of AUO may vary from 10 to 25 percent depending on the average number of AUO hours worked per week. Availability pay is a fixed 25 percent.

3. AUO counts as base pay for retirement and other benefits only for those law enforcement officers who meet the retirement definition of a law enforcement officer, i.e., that officer is covered by and contributing toward law enforcement retirement. Availability pay counts as base pay for retirement and other benefits for all recipients, regardless of his/her retirement coverage.

To eliminate these problems, the INS is proposing to amend title 5 to add a new form of premium pay on an annual basis for employees in enforcement positions to ensure that they are not at risk of losing overtime pay. The proposed overtime pay calls for establishing an uncommon tour of 50-hours of work in an administrative workweek for immigration officers in occupations in enforcement operations that may preclude the payment of AUO under current law, regulations, and guidelines, but which require substantial amounts of overtime work. Employees in these occupations would receive premium pay at the rate of 25 percent of basic pay for the 10 hours of the uncommon tour in excess of the basic 40-hour workweek.

Employees would be entitled to receive overtime pay under the provisions of title 5, for overtime hours worked in excess of the uncommon tour that are officially ordered and approved. The Attorney General would determine the occupations for which such an uncommon tour is appropriate, which would be limited to full-time employees in these occupations.

The INS believes that the proposed pay provisions relating to the uncommon tour as well as the provisions relating to immigration inspectors will solve the current disparate treatment relating to officers in those occupations.

However, the INS is continuing to review all pay and retirement issues to ensure that all INS employees in all occupations are treated fairly and will not be adversely impacted by the planned restructuring.

Section-by-section analysis

Section 1. This bill may be cited as the "Immigration and Naturalization Service Restructuring Act of 1998."

Section 2. The purpose of this bill is to restructure the Immigration and Naturalization Service within the Department of Justice by replacing the current organizational structure with new organizational chains of command. Under the revised structure, the Immigration and Naturalization Service will consist of two separate functions: one enforcement function and one service function, with separate lines of authority. The revised structure will also include one shared services office that will provide administrative and technical support to the two separate functions.

Section 3. This section contains the definitions applicable to the bill.

Section 4. The effective date of this bill is October 1, 2000, unless otherwise specified.

Section 101(a). This subsection identifies the functional units within the Headquarters functions that provide advice and guidance directly to the Office of the Commissioner. The units include internal audit, general counsel, public affairs, congressional relations, a chief financial officer, and strategy and planning.

Section 101(b). This subsection describes the immigrant services function of the INS. This functional unit encompasses all aspects of service operations and consists of the services areas, which will provide personal processing of benefits, and remote services, which will perform activities that benefit from economies of scale and can be performed from remote locations.

Section 101(c). This subsection describes the enforcement operations function, which encompasses all activities relating to the enforcement of immigration laws, including border patrol, inspections, investigations and removals, and detention and enforcement support.

Section 101(d). This subsection describes the shared services function that will support both immigrant services and enforcement operations. This unit will include records, IRM, training, human resources, training, and administrative support.

Section 102(a). This subsection provides that all legal documents that are in effect prior to the restructuring shall continue in effect until modified or terminated.

Section 102(b). This subsection states that the restructuring shall not affect any proceeding or any application for a benefit that is pending on the date of the enactment of the bill.

Section 102(c). This subsection states that the restructuring will not affect any suit that was commenced prior to the time the restructuring occurs.

Section 102(d). This subsection provides that the restructuring will not abate any action or suit pending against the INS or any individual in his or her official capacity.

Section 102(e). This subsection provides that if any INS official is party to a suit with respect to that officer's function, and said function is transferred, the suit will continue with the new officer or office as a substituted or added party.

Section 102(f). This subsection indicates that all statutory requirements relating to administrative procedure and judicial review that currently apply to an office in which a function is transferred will apply in the same way to the new office.

Section 201(a). This subsection amends sections 1 and 2 of the Act of March 2, 1931, 8 U.S.C. sections 1353a and 1353b, to provide for extra compensation and premium pay for immigration inspectors for overtime services and services at night or on Sundays and holidays to perform immigration inspections duties in connection with persons arriving at or landing in or departing to the United States. The overtime and premium pay provisions of section 201 parallel overtime and premium pay provisions for United States Customs Service customs officers under section 267 of title 19, United States Code. Overtime pay for immigration inspectors is subject to the statutory limitations established by law, rather than a defined dollar amount. This language is preferable to the inclusion of a limitation expressed in a fixed amount. The INS overtime limitation contained in current (and past) appropriation law applies to ALL INS employees and ALL overtime earned by these employees.

If the overtime limitation is included in title 8 as a fixed amount, any changes in the limitation effected through the appropriation law without changes to title 8 could result in inequities between INS employees.

Section 201(d). This subsection amends section 8331(3) of title 5, U.S.C. to provide that up to 50 percent of an immigration inspector's overtime under section 201 is considered basic pay for retirement purposes, as is the overtime pay for customs officers.

This section also provides that immigration inspectors, like customs officers, may be paid a foreign language proficiency award under regulations promulgated by the Attorney General. The provision differs from the Customs provision to take into account that the INS provides a formal course of instruction in Spanish as part of both its basic immigration officer and border patrol agent training academies.

Section 202. This subsection provides that for inspectors funded with offsetting collections, any new provisions shall not impact the level of planned obligations as depicted in the President's Fiscal year 1999 budget.

Section 203(a). This subsection establishes an uncommon tour of 50-hours of work in an administrative workweek for immigration officers in occupations in enforcement operations that may be preclude the payment of AUO under current law, regulations, and guidelines, but which require substantial amounts of overtime work. Employees in these occupations would receive premium pay at the rate of 25 percent of basic pay for the 10 hours of the uncommon tour in excess of the basic 40-hour workweek. Employees would be entitled to receive overtime pay under the provisions of title 5, United States Code, for overtime hours worked in excess of the uncommon tour that are officially ordered and approved. The Attorney General would determine the occupations for which such an uncommon tour is appropriate, which would be limited to full-time employees in these occupations.

Section 203(b). This subsection ensures that employees who currently receive Fair Labor Standards Act (FLSA) overtime will continue to receive such overtime while receiving overtime under the uncommon tour provision. Currently, INS law enforcement who are eligible to receive FLSA overtime receive such overtime in addition to any AUO they may also receive. Thus, this subsection maintains the status quo.

Section 204. This subsection amends various sections of title 5 to conform to proposed changes.

Section 205. This subsection provides that the effective date for Sections 203 and 204 be on the first day of the first applicable pay period beginning 180 days following the date of enactment of this Act.

Section 206. This subsection elevates the Commissioner's pay to a level equal to that of the heads of other law enforcement agencies. The INS employs the largest number of law enforcement officers within the Federal government. This subsection shall take effect when the present incumbent in the office of the Commissioner ceases to serve in that position.

Section 301(a). Amends Section 103(e)(2) of the INA by striking "district office of the Service" and inserting "designated office of the Immigration and Naturalization Service".

Section 301(b). Amends Section 242(b)(3)(A) of the INA by striking "Service district" and inserting "designated office of the Immigration and Naturalization Service".

Section 301(c). Amends Section 316 of the INA, (1) in section (a) by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service" each time it appears

Section 301(d). Amends Section 319 of the INA by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service" each time it

Section 301(e). Amends Section 324 of the INA by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service".

Section 301(f). Amends Section 328 of the INA by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service" each time it appears.

Section 301(g). Amends Section 329(b)(2) of the INA by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service".

Section 301(h). Amends Section 335(f) of the INA by striking "district of the Service" each time the phrase appears and inserting "area serviced by the designated office of the Immigration and Naturalization Service".

Section 301(i). Amends Section 338 of the INA by striking "district office of the Service" and inserting "designated office of the Immigration and Naturalization Service".

Section 301(j). Amends Section 339(b) of the INA by striking "district office of the Service" and inserting "designated office of the Immigration and Naturalization Service".

Section 301(k). Amends Section 404 of the INA, 8 U.S.C. section 1101, ~~note~~, by striking "a district director of the Service" and inserting "a designated Immigration and Naturalization Service officer" and by striking "in a district" and inserting "in a designated office of the Immigration and Naturalization Service".