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**Immigration - Structural
Reforms [7]**

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EXECUTIVE SUMMARY

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10 A.M., TUESDAY, SEPTEMBER 30, 1997



**Becoming an American:
Immigration and
Immigrant Policy**

A REPORT TO CONGRESS

U.S. COMMISSION ON IMMIGRATION REFORM

COVER ART: THE *STATUE OF LIBERTY* (*LIBERTY ENLIGHTENING THE WORLD*), A GIFT FROM FRANCE THAT WAS INTENDED AS A REPRESENTATION OF REPUBLICAN IDEALS, HAS FOR MORE THAN A CENTURY BEEN THE PREEMINENT SYMBOL OF IMMIGRATION TO THE U.S. THE BLINDFOLDED STATUE OF *JUSTICE*, DERIVED FROM THE GREEK GODDESS, THEMIS, REPRESENTS THE ORDER OF SOCIETY ESTABLISHED BY LAW, CUSTOM, AND EQUITY. THESE TWO SYMBOLS HIGHLIGHT THE COMMISSION'S VIEW THAT A CREDIBLE IMMIGRATION POLICY MUST UPHOLD BOTH OUR IMMIGRATION TRADITION AND OUR COMMITMENT TO THE RULE OF LAW.

1997
EXECUTIVE
SUMMARY

Becoming an American: Immigration & Immigrant Policy

SEPTEMBER 1997

U.S. COMMISSION ON IMMIGRATION REFORM

*The Commissioners and staff
dedicate this final report
of the bipartisan
Commission on Immigration Reform
to the memory of*

Barbara Jordan

*Chair, U.S. Commission on Immigration Reform
December 14, 1993—January 17, 1996*

*"We are a nation of immigrants, dedicated to the rule of law.
That is our history—and it is our challenge to ourselves.
. . . It is literally a matter of who we are as a nation
and who we become as a people. E Pluribus Unum.
Out of many, one. One people. The American people."*

(Barbara Jordan, August 1995)



September 30, 1997

The Honorable Newt Gingrich, Speaker of the House of Representatives
The Honorable Richard Gephardt, Minority Leader of the House of Representatives
The Honorable Trent Lott, Majority Leader of the Senate
The Honorable Tom Daschle, Minority Leader of the Senate

On behalf of the U.S. Commission on Immigration Reform, it is my pleasure to submit our Final Report, *Becoming an American: Immigration and Immigrant Policy*.

As mandated by the Immigration Act of 1990 [Public Law 101-649], this bipartisan Commission has examined and made recommendations regarding the implementation and impact of U.S. immigration policy. In fulfilling our mission, the Commission has held more than forty public hearings, consultations, site visits and expert discussions throughout the United States and in certain key foreign countries.

This report underscores the need for credible, coherent immigrant and immigration policy. Admission to this nation is only the first step of a process by which an immigrant becomes an American. Through the process of Americanization, immigrants become part of our communities and our communities learn from and adapt to their presence. We set out recommendations for immigrant policies that enhance this process through orientation services for immigrants and their new communities, English and civics education, and a credible, efficient naturalization process.

We also recommend immigration reforms. Since the Commission issued its 1994 report on illegal migration, significant progress has been made in improving border management, increasing criminal alien removals, reforming the asylum process, responding to mass migration emergencies, and pilot testing new worksite verification procedures. Illegal migration remains a problem, however, necessitating continued deterrence and removal efforts. In addition, we reiterate our call for legal immigration reform and make new recommendations regarding limited duration admissions.

U.S. COMMISSION ON IMMIGRATION REFORM

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In addition, we urge Congress to reconsider the welfare reform legislation adopted in 1996 that makes legal immigrants ineligible for basic safety net programs. Requiring immigrants to become citizens in order to receive the protections afforded by these programs debases citizenship. Further, making citizenship rather than legal status the determinant of eligibility blurs the distinction between legal immigrants, whom we welcome, and illegal aliens.

Restoring the credibility of our immigration system cannot happen unless the federal government is structured and managed effectively. While the Executive Branch has taken significant steps to address many of the weaknesses in current operations, the organization of the immigration system undermines reform efforts. Hence, in this report, we recommend a fundamental restructuring and streamlining of responsibilities for immigration.

Our work benefited greatly from the effective cooperation we received from the Executive Branch and both Houses of Congress. We also thank the dozens of researchers who have contributed the results of their scholarship and the hundreds of community leaders, government officials, service providers and other experts who participated in our public hearings and consultations.

I particularly thank my fellow Commissioners. We have struggled with many tough issues, and we have reached consensus on nearly all of our recommendations. Without the dedication, hard work, and good humor of the members of this Commission, we could not have achieved this agreement. The work of the Commission could not have been accomplished without the support of an extraordinary staff led by Susan Martin, Executive Director and Andrew Schoenholtz, Deputy Director, assisted by the members of the Policy Research, the Public Affairs, Editorial, and Administrative Staffs. Each staff member has worked tirelessly to provide the Commission with volumes of valuable information, policy memoranda, and logistical support. The Commission is also indebted to the Executive Branch for lending outstanding career persons to serve on the Commission's staff.

Sincerely,



Shirley M. Hufstedler
Chair

U.S. COMMISSION ON IMMIGRATION REFORM

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U.S. COMMISSION ON IMMIGRATION REFORM

INTRODUCTION

Immigration and immigrant policy is about immigrants, their families and the rest of us. It is about the meaning of American nationality and the foundation of national unity. It is about uniting persons from all over the world in a common civic culture.

The process of becoming an American is most simply called "Americanization," which must always be a two-way street. All Americans, not just immigrants, should understand the importance of our shared civic culture to our national community. This final report of the U.S. Commission on Immigration Reform makes recommendations to further the goals of Americanization by setting out *immigrant* policies to help orient immigrants and their new communities, to improve educational programs that help immigrants and their children learn English and civics, and to reinforce the integrity of the naturalization process through which immigrants become U.S. citizens.

This report also makes recommendations regarding *immigration* policy. It reiterates the conclusions we reached in three interim reports—on unlawful migration, legal immigration, and refugee and asylum policy—and makes additional recommendations for reforming immigration policies. Further, in this report, the Commission recommends ways to improve the structure and management of the federal agencies responsible for achieving the goals of immigration policy. It is our hope that this final report *Becoming An American: Immigration and Immigrant Policy*, along with our three interim reports, constitutes a full response to the work assigned the Commission by Congress: to assess the national interest in immigration and report how it can best be achieved.

MANDATE AND METHODS

Public Law 101-649, the Immigration Act of 1990, established this Commission to review and evaluate the impact of immigration policy. More specifically, the Commission must report on the impact of immigration on: the need for labor and skills; employment and other economic conditions; social, demographic, and environmental impact of immigration; and impact of immigrants on the foreign policy and national security interests of the United States. The Commission engaged in a wide variety of fact-finding activities to fulfill this mandate. Site visits were conducted throughout the United States. Commission members visited immigrant and refugee communities in California, Texas, Florida, New York, Massachusetts, Illinois, Arizona, Washington, Kansas, Virginia, Washington, DC, Puerto Rico and the Commonwealth of the Northern Mariana Islands. We also visited such major source countries as Mexico, the Dominican Republic, Cuba, Haiti, and the Philippines. To increase our understanding of international refugee policy issues, we visited Bosnia, Croatia, Germany, and Kenya, and we consulted with Geneva-based officials from the U.N. High Commission for Refugees and the International Organization for Migration. We held more than forty public hearings, consultations with government and private sector officials, and expert roundtable discussions.

IMMIGRATION TODAY

The effects of immigration are numerous, complex, and varied.¹ Immigrants contribute in many ways to the United States: to its vibrant and diverse communities; to its lively and participatory democracy; to its vital intellectual and cultural life, to its renowned

¹ Please see the full report for a more detailed discussion of the economic, social, demographic, foreign policy, and national security implications for U.S. immigration.

**Immigrant Admissions by Major Category:
FYs 1992-1996**

Category of Admission	1992	1993	1994	1995	1996
SUBJECT TO THE NUMERICAL CAP	655,541	719,701	662,029	593,234	771,604
FAMILY-BASED IMMIGRANTS	502,995	539,209	497,682	460,653	595,540
Immediate Relatives of U.S. citizens	235,484	255,059	249,764	220,360	350,192
Spouses and children	170,720	192,631	193,394	171,978	283,592
Parents	64,764	62,428	56,370	48,382	66,600
Children born abroad to alien residents	2,116	2,030	1,883	1,894	1,658
Family-sponsored immigrants	213,123	226,776	211,861	238,122	293,751
Unmarried sons/daughters of U.S. citizens	12,486	12,819	13,181	15,182	20,885
Spouses and children of LPRs	90,486	98,604	88,673	110,960	145,990
Sons and daughters of LPRs	27,761	29,704	26,327	33,575	36,559
Married sons/daughters of U.S. citizens	22,195	23,385	22,191	20,876	25,420
Siblings of U.S. citizens	60,195	62,264	61,589	57,529	64,897
Legalization dependents	52,272	55,344	34,074	277	184
EMPLOYMENT-BASED IMMIGRANTS	116,198	147,012	123,291	85,336	117,346
Priority workers	5,456	21,114	21,053	17,339	27,469
Professionals w/ adv. deg. or of advanced ability	58,401	29,468	14,432	10,475	18,436
Skilled, professionals, other workers, (CSPA)	47,568	87,689	76,956	50,245	62,674
Skilled, professionals, other workers	47,568	60,774	55,659	46,032	62,273
Chinese Student Protection Act (CSPA)	X	26,915	21,297	4,213	401
Special immigrants	4,063	8,158	10,406	6,737	7,831
Investors	59	583	444	540	936
Professionals or highly skilled (Old 3rd)	340	X	X	X	X
Needed skilled or unskilled workers (Old 6th)	311	X	X	X	X
DIVERSITY PROGRAMS	36,348	33,480	41,056	47,245	58,718
Diversity permanent	X	X	X	40,301	58,174
Diversity transition	33,911	33,468	41,056	6,994	544
Nationals of adversely affected countries	1,557	10	X	X	X
Natives of underrepresented countries	880	2	X	X	X
NOT SUBJECT TO THE NUMERICAL CAP	155,094	160,313	136,365	122,960	138,323
Amerasians	17,253	11,116	2,822	939	954
Cuban/Haitian Entrants	89	62	47	42	29
Parolees, Soviet and Indochinese	13,661	15,772	8,253	3,120	2,283
Refugees and Asylees	117,037	127,343	121,434	114,632	128,367
Refugee adjustments	106,379	115,539	115,451	106,795	118,345
Asylee adjustments	10,658	11,804	5,983	7,837	10,022
Registered Nurses and their families	3,572	2,178	304	69	16
Registry, entered prior to 1/1/72	1,293	938	667	466	356
Other	2,179	2,904	2,838	3,692	6,318
TOTAL	810,635	880,014	798,394	716,194	909,959

Note: X = Not Applicable. Excludes persons granted LPR status under the provisions of the Immigration Reform and Control Act of 1986.
Source: Immigration and Naturalization Service, Statistics Division.

job-creating entrepreneurship and marketplaces; and to its family values and hard-work ethic. However, there are costs as well as benefits from today's immigration. Those workers most at risk in our restructuring economy—low-skilled workers in production and service jobs—are those who directly compete with today's low-skilled immigrants. Further, immigration presents special challenges to certain states and local communities that disproportionately bear the fiscal and other costs of incorporating newcomers.

Properly-regulated immigration and immigrant policy serves the national interest by ensuring the entry of those who will contribute most to our society and helping lawful newcomers adjust to life in the United States. It must give due consideration to shifting economic realities. A well-regulated system sets priorities for admission; facilitates nuclear family reunification; gives U.S. employers access to a global labor market while ensuring that U.S. workers are not displaced or otherwise adversely affected; and fulfills our commitment to resettle refugees as one of several elements of humanitarian protection of the persecuted.

AMERICANIZATION AND INTEGRATION OF IMMIGRANTS

A DECLARATION OF PRINCIPLES AND VALUES

Immigration to the United States has created one of the world's most successful multiethnic nations. We believe these truths constitute the distinctive characteristics of American nationality:

- American unity depends upon a widely-held belief in the principles and values embodied in the American Constitution and their fulfillment in practice: equal protection and justice under the law; freedom of speech and religion; and representative government;
- Lawfully admitted newcomers of any ancestral nationality—without regard to race, ethnicity, or religion—truly become Americans when they give allegiance to these principles and values;
- Ethnic and religious diversity based on personal freedom is compatible with national unity; and
- The nation is strengthened when those who live in it communicate effectively with each other in English, even as many persons retain or acquire the ability to communicate in other languages.

As long as we live by these principles and help newcomers to learn and practice them, we will continue to be a nation that benefits from substantial but well-regulated immigration. We must pay attention to our core values, as we have tried to do in our recommendations throughout this report. Then, we will continue to realize the lofty goal of *E Pluribus Unum*.²

² Our national motto, *E Pluribus Unum*, "from many, one," was originally conceived to denote the union of the thirteen states into one nation. Throughout our history, *E Pluribus Unum* has also come to mean the vital unity of our national community founded on individual freedom and the diversity that flows from it.

Americanization is the process of integration by which immigrants become part of our communities and by which our communities and the nation learn from and adapt to their presence.

AMERICANIZATION

The Commission reiterates its call for the Americanization of new immigrants, that is the cultivation of a shared commitment to the American values of liberty, democracy and equal opportunity. The United States has fought for the principles of individual rights and equal protection under the law, notions that now apply to all our residents. We have long recognized that immigrants are entitled to the full protection of our Constitution and laws. And, the U.S. has the sovereign right to impose obligations on immigrants.

In our 1995 report to Congress, the Commission called for a new commitment to Americanization. In a public speech that same year, Barbara Jordan, our late chair, noted: "That word earned a bad reputation when it was stolen by racists and xenophobes in the 1920s. But it is our word, and we are taking it back." Americanization is the process of integration by which immigrants become part of our communities and by which our communities and the nation learn from and adapt to their presence. Americanization means the civic incorporation of immigrants, that is the cultivation of a shared commitment to the American values of liberty, democracy, and equal opportunity.

The Commission proposes that the principles of Americanization be made more explicit through the covenant between immigrant and nation. Immigrants become part of us, and we grow and become all the stronger for having embraced them. In this spirit, the Commission sees the covenant as:

Voluntary. Immigration to the United States—a benefit to both citizens and immigrants—is not an entitlement and Americanization cannot be forced.

Mutual and Reciprocal. Immigration presents mutual obligations. Immigrants must accept the obligations we impose—to obey our laws, to pay taxes, to respect other cultures and ethnic groups. At the same time, citizens incur obligations to provide an environment in which newcomers can become fully participating members of our society.

Individual, Not Collective. The United States is a nation founded on the proposition that each individual is born with certain rights and that the purpose of government is to secure these rights. The United States admits immigrants as individuals (or individual members of families). As long as the United States continues to emphasize the rights of individuals over those of groups, we need not fear that the diversity brought by immigration will lead to ethnic division or disunity.

To help achieve full integration of newcomers, the Commission calls upon federal, state, and local governments to provide renewed leadership and resources to a program to promote Americanization that requires:

- Developing capacities to orient both newcomers and receiving communities;
- Educating newcomers in English language skills and our core civic values; and
- Revisiting the meaning and conferral of citizenship to ensure the integrity of the naturalization process.

Information and orientation should be provided both to immigrants and to their receiving communities.

**TOP TEN
COUNTRIES OF
ORIGIN OF
LEGAL
IMMIGRANTS:
1996**

Mexico 159,731
Philippines 55,778
India 44,781
Vietnam 42,006
Mainland China 41,662
Dominican Republic 39,516
Cuba 26,415
Ukraine 21,051
Russia 19,646
Jamaica 19,029

Source: INS FY 1996 Public Use
Admissions Data

ORIENTATION

The Commission recommends that the federal, state, and local governments take an active role in helping newcomers become self-reliant: orienting immigrants and receiving communities as to their mutual rights and responsibilities, providing information they need for successful integration, and encouraging the development of local capacities to mediate when divisions occur between groups. Information and orientation should be provided both to immigrants and to their receiving communities.

The Commission believes the federal government should help immigrants and local communities by:

- Giving orientation materials to legal immigrants upon admission that include, but are not limited to: a welcoming greeting; a brief discussion of U.S. history, law, and principles of U.S. democracy; tools to help the immigrant locate and use services for which they are eligible; and other immigration-related information and documents. All immigrants would receive the same materials. The packets would be available in English and other dominant immigrant languages.
- Encouraging state governments to establish information clearinghouses in major immigrant receiving communities. The Commission recommends that the federal government provide modest incentive grants to states to encourage them to establish and maintain local resources that would provide information to immigrants and local communities.
- Promoting public/private partnerships to orient and assist immigrants in adapting to life in the United States. While the federal government makes the decisions about how many and which immigrants will be admitted to the United States,

the actual process of integration takes place in local communities. Local government, schools, businesses, charities, foundations, religious institutions, ethnic associations, and other groups play important roles in the Americanization process.

EDUCATION

Education is the principal tool of Americanization. Local educational institutions have the primary responsibility for educating immigrants. However, there is a federal role in promoting and funding English language acquisition and other academic and civic orientation for both immigrant children and adults.

The Commission urges a renewed commitment to the education of immigrant children. The number of school-aged children of immigrants is growing and expected to increase dramatically. These children, mostly young, speak more than 150 different languages; many have difficulty communicating in English. They are enrolled in public schools as well as in secular and religious private schools throughout the country. And, in addition to the problems other students have, they face particular problems in gaining an education—often because of language difficulties.

The Commission emphasizes that rapid acquisition of English should be the paramount goal of any immigrant language instruction program. English is the most critical of basic skills for successful integration. English can be taught to children in many ways. Effective programs share certain common characteristics. Based on a review of these programs, the Commission emphasizes the need for public and private educational programs to:

- **Conduct regular evaluations of students' English competence and their ability to apply it to academic subjects.**

TOP TEN INTENDED STATES OF RESIDENCE OF LEGAL IMMIGRANTS: 1996

California	199,221
New York	153,731
Texas	82,229
Florida	79,067
New Jersey	63,162
Illinois	42,154
Massachusetts	23,017
Virginia	21,329
Maryland	20,683
Washington	18,718

Source: INS FY 1996 Public Use
Admissions Data

*English is
the most critical
of basic skills
for successful
integration.*

Such evaluations will ensure placement of immigrant children into regular English-speaking classes as soon as they are prepared. Regular evaluation also will highlight strengths and weaknesses in educational programs and provide insight on improvements that are needed to ensure timely English acquisition.

- **Collect and analyze data on immigrant students, including their linguistic and academic performance and the efficacy of the instructional methods used in programs for immigrant children.**
- **Include appropriate grade-level instruction in other academic disciplines.** Coordination with teachers, curricula, and instruction outside of English acquisition will promote students' mastery of regular subject matter while they expeditiously learn English.
- **Involve parents of immigrant students in their schooling.** A characteristic of many of the most successful language acquisition programs is the active involvement of parents in the education of their children.

The Commission encourages programs that are responsive to the needs of immigrant children and an orientation to United States school systems and the community, such as we have seen in "newcomer schools." Newcomer schools must not isolate immigrant newcomers. Instead, they must be transitional and actively promote the timely integration of students into mainstream schools.

The Commission recommends the revival and emphasis on instruction of all kindergarten through grade twelve students in the common civic culture that is essential to citizenship. An understanding of the history of the United States and the principles and practices of our government are an essential for all students, immigrants and

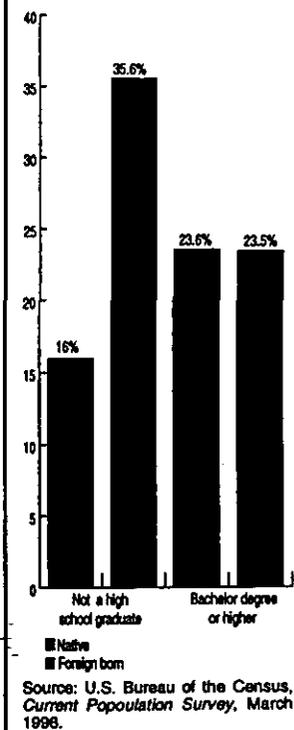
natives alike. Americanization requires a renewed emphasis on the common core of civic culture that unites individuals from many ethnic and racial groups.

The Commission emphasizes the urgent need to recruit, train, and provide support to teachers who work with immigrant students. There is a disturbing shortage of qualified teachers for children with limited English proficiency, of teacher training programs for producing such teachers, and of other support for effective English acquisition instruction.

The Commission supports immigrant education funding that is based on a more accurate assessment of the impact of immigration on school systems and that is adequate to alleviate these impacts. There are costs and responsibilities for language acquisition and immigrant education programs that are not now being met. We urge the federal government to do its fair share in meeting this challenge. The long-term costs of failure in terms of dropouts and poorly educated adults will be far larger for the nation and local communities than the costs of such programs. More specifically, we urge the federal government to:

- Provide flexibility in federal funding for the teaching of English to immigrant students to achieve maximum local choice of instructional model. The federal government should not mandate any one mode of instruction (e.g., bilingual education, English as a second language programs, immersion).
- Make funding contingent on performance outcomes—that is, English language acquisition and mastery of regular academic subject matter by students served in these programs. School systems receiving funds because of large numbers of children with limited English proficiency and immigrant children should be held to rigorous performance

**EDUCATIONAL
ATTAINMENT
NATIVE AND
FOREIGN-BORN
RESIDENTS: 1996**



standards. Federal and state funding incentives should promote—not impede—expeditious placement in regular, English-speaking classes.

The Commission urges the federal, state, and local governments and private institutions to enhance educational opportunities for adult immigrants. Education for basic skills and literacy in English is the major vehicle that integrates adult immigrants into American society and participation in its civic activities. Literate adults are more likely to participate in the workforce and twice as likely to participate in our democracy. Literate adults foster literacy in their children, and parents' educational levels positively affect their children's academic performance.

Adult education is severely underfunded. Available resources are inadequate to meet the demand for adult immigrant education, particularly for English proficiency and job skills. In recognition of the benefits they receive from immigration, the Commission urges leaders from businesses and corporations to participate in skills training, English instruction, and civics education programs for immigrants. Religious schools and institutions, charities, foundations, community organizations, public and private schools, colleges and universities also can contribute resources, facilities, and expertise.

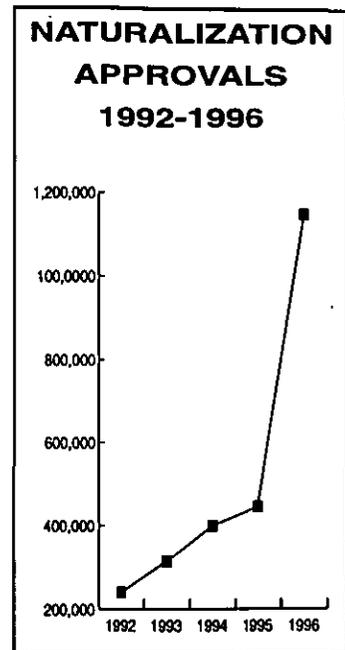
The naturalization process must be credible, and it must be accorded the formality and ceremony appropriate to its importance.

NATURALIZATION

Naturalization is the most important act that a legal immigrant undertakes in the process of becoming an American. Taking this step confers upon the immigrant all the rights and responsibilities of civic and political participation that the United States has to offer (except to become President). The naturalization process must be credible, and it must be accorded the formality and ceremony appropriate to its importance.

The Commission believes that the current legal requirements for naturalization are appropriate, but improvements are needed in the means used to measure whether an applicant meets these requirements. With regard to the specific legal requirements, the Commission supports:

- **Maintaining requirements that legal immigrants must reside in the United States for five years (three years for spouses of U.S. citizens and Lawful Permanent Residents [LPRs] who serve in the military) before naturalizing.** We believe five years is adequate for immigrants to embrace, understand, and demonstrate their knowledge of the principles of American democracy.
- **Improving the mechanisms used to demonstrate knowledge of U.S. history, civics, and English competence.** The Commission believes that the tests used in naturalization should seek to determine if applicants have a meaningful knowledge of U.S. history and civics and are able to communicate in English. The tests should be standardized and aim to evaluate a common core of information to be understood by all new citizens.
- **Expediting swearing-in ceremonies while maintaining their solemnity and dignity.** In districts where the federal court has exercised sole jurisdiction to conduct the swearing-in ceremonies, long delays often result from crowded court calendars. The Commission recommends that Congress restore the Executive Branch's sole jurisdiction for naturalization to reduce this waiting time. The Executive Branch should continue to work with federal judges as well as other qualified institutions, such as state courts and Immigration Judges, to ensure that swearing-in ceremonies are consistently conducted in a timely, efficient, and dignified manner.



- **Revising the naturalization oath to make it comprehensible, solemn, and meaningful.** The current oath is not easy to comprehend. We believe it is not widely understood by new citizens. Its wording includes dated language, archaic form, and convoluted grammar. The Commission proposes the following revision of the oath as capturing the essence of naturalization.

*Solemnly, freely, and
without any mental reservation,
I, [name] hereby renounce under oath
[or upon affirmation]
all former political allegiances.
My sole political fidelity
and allegiance from this day forward
is to the United States of America.
I pledge to support and respect
its Constitution and laws.
Where and if lawfully required,
I further commit myself to defend them
against all enemies, foreign and domestic,
either by military or civilian service.
This I do solemnly swear [or affirm].*

The Commission calls for urgently needed reforms to increase the efficiency and integrity of the naturalization process. The vast majority of applicants for naturalization are law-abiding immigrants who contribute to our society. The value of Americanization is eroded whenever unnecessary obstacles prevent eligible immigrants from becoming citizens. Its value also is undermined when the process permits the abuse of our laws by naturalizing applicants who are not entitled to citizenship.

Recognizing steps already are underway to reengineer the naturalization process, the Commission supports the following approaches:

- **Instituting efficiencies without sacrificing quality controls.**
In the Commission's 1995 report to Congress, we recommended that the Immigration and Naturalization Service [INS] and the Congress take steps to expedite the processing of naturalization applications while maintaining rigorous standards. Two years later, the naturalization process still takes too long, and previous efforts to expedite processing resulted in serious violations of the integrity of the system. Instituting a system that is both credible and efficient remains a pressing need.
- **Improving the integrity and processing of fingerprints.**
The Commission believes that only service providers under direct control of the federal government should be authorized to take fingerprints. If the federal government does not take fingerprints itself but instead contracts with service providers, it must screen and monitor such providers rigorously for their capacity, capability, and integrity. Failure to meet standards would mean the contract would be terminated.
- **Contracting with a single English and civics testing service.**
The Commission recommends that the federal government contract with one national and respected testing service to develop and administer the English and civics tests to naturalization applicants. Having one organization under contract should help the government substantially improve its oversight. Moreover, contracting with a highly-respected and nationally-recognized testing service will help ensure a high-quality product.

*The value of
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from becoming
citizens.*

- **Increasing professionalism.** While many naturalization staff are highly professional in carrying out their duties, reports from district offices, congressional hearings, and complaints from naturalization applicants demonstrate continued dissatisfaction with the quality of naturalization services. Recruitment and training of longer-term staff assigned to adjudicating applications and overseeing quality control would help overcome some of these problems.

- **Improving automation.** The Commission is encouraged by plans to develop linkages among data sources related to naturalization. The Commission recommends continued funding for an up-to-date, advanced, electronic automation system for information entry and recordkeeping.

- **Establishing clear fee-waiver guidelines and implementing them consistently.** Under current law, the Attorney General is authorized to grant fee waivers to naturalization applicants. The Commission has received accounts of legitimate requests being denied. Clear guidelines and consistent implementation are needed to ensure that *bona fide* requests are granted, while guarding against abuse.

A CREDIBLE FRAMEWORK FOR IMMIGRATION POLICY

In our previous reports, the Commission defined a credible immigration policy "by a simple yardstick: people who should get in do get in, people who should not get in are kept out; and people who are judged deportable are required to leave." By these measures, we have made substantial, but incomplete, progress. What follows are the Commission's recommendations for comprehensive reform to achieve more fully a credible framework for immigration policy.

LEGAL PERMANENT ADMISSIONS

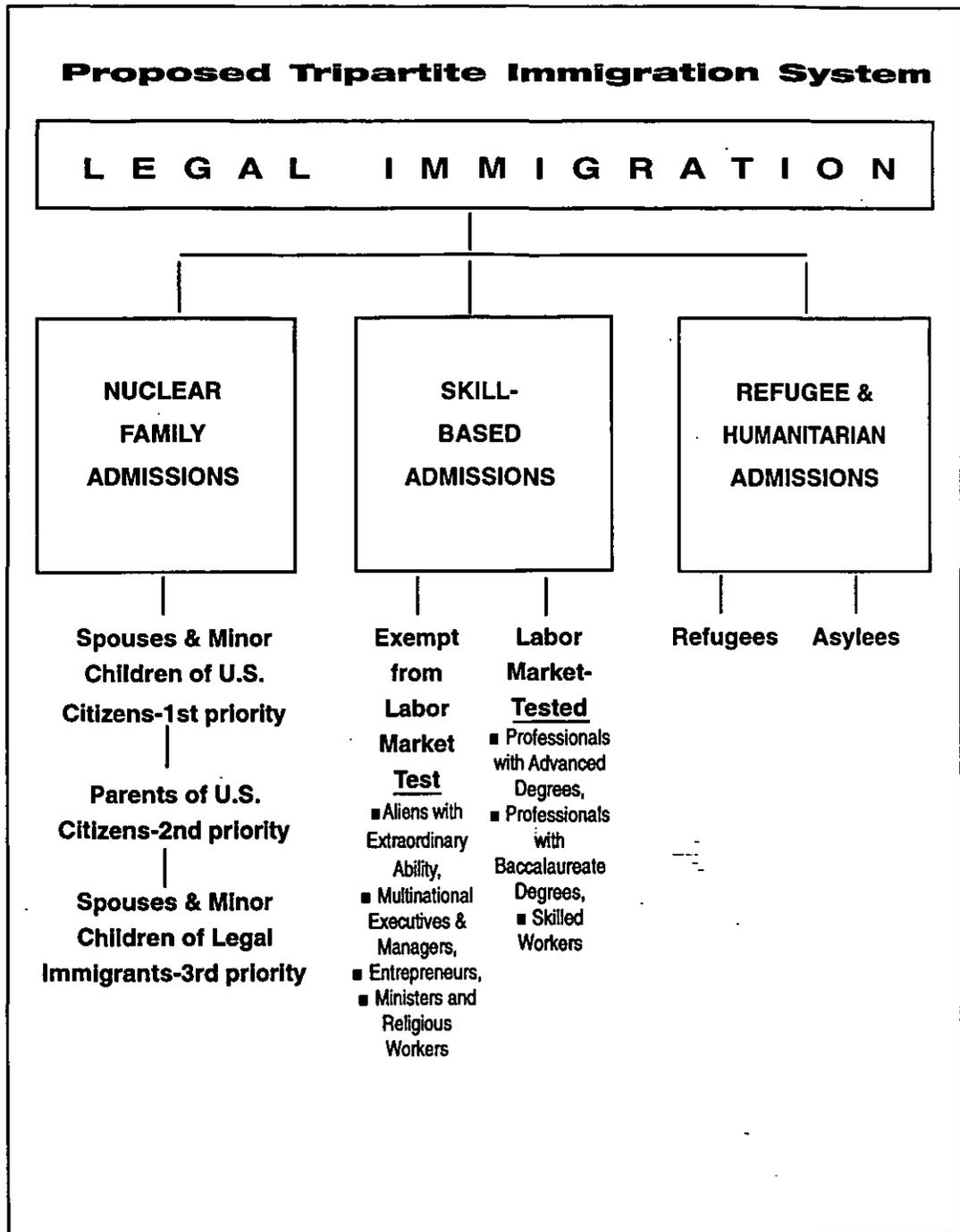
*The Commission reiterates its support for a properly-regulated system for admitting lawful permanent residents.*³ Research and analyses conducted since the issuance of the Commission's report on legal immigration support our view that a properly-regulated system of legal permanent admissions serves the national interest. The Commission urges reforms in our legal immigration system to enhance the benefits accruing from the entry of newcomers while guarding against harms, particularly to the most vulnerable of U.S. residents—those who are themselves unskilled and living in poverty. More specifically, the Commission reiterates its support for:

A properly-regulated system of legal permanent admissions serves the national interest.

- A significant redefinition of priorities and reallocation of existing admission numbers to fulfill more effectively the objectives of our immigration policy. The current framework for legal immigration—family, skills and humanitarian admissions—makes sense. However, the statutory and regulatory priorities and procedures for admissions do not adequately support the stated intentions of legal immigration—to reunify families, to provide employers an opportunity to recruit foreign workers to meet labor needs, and to respond to humanitarian crises around the world. During the two years since our report on legal immigration, the problems in the legal admission system have not been solved. Indeed, some of them have worsened.

Current immigration levels should be sustained for the next several years while the U.S. revamps its legal immigration system and shifts the priorities for admission away from the extended family and toward the nuclear family and away

³ For a full explanation of the Commission's recommendations see *Legal Immigration: Setting Priorities*, 1995. See Appendix for summary of Commissioner Leiden's dissenting statement.



from the unskilled and toward the higher-skilled immigrant. Thereafter, modest reductions in levels of immigration—to about 550,000 per year, comparable to those of the 1980s—will result from the changed priority system. The Commission continues to believe that legal admission numbers should be authorized by Congress for a specified time (e.g., three to five years) to ensure regular, periodic review and, if needed, change by Congress. This review should consider the adequacy of admission numbers for accomplishing priorities.

- **Family-based admissions that give priority to nuclear family members—spouses and minor children of U.S. citizens; parents of U.S. citizens; and spouses and minor children of lawful permanent residents—and include a backlog clearance program to permit the most expeditious entry of the spouses and minor children of LPRs.** The Commission recommends allocation of 550,000 family-based admission numbers each year until the large backlog of spouses and minor children is cleared. Numbers going to lower priority categories (e.g., adult children, siblings, and diversity immigrants), should be transferred to the nuclear family categories. Thereafter Congress should set sufficient admission numbers to permit all spouses and minor children to enter expeditiously.

Since the Commission first reported its findings on legal admission, the problems associated with family-based admissions have grown. In 1995, the wait between application and admission of the spouses and minor children of LPRs was approximately three years. It is now more than four and one-half years and still growing. Moreover, various statutory changes made in 1996 make it all the more important that Congress take specific action to clear the backlog quickly to regularize the status of the spouses and minor

children of legal permanent residents in the United States. In an effort to deter illegal migration, Congress expanded the bases and number of grounds upon which persons may be denied legal status because of a previous illegal entry or overstay of a visa. An unknown, but believed to be large, number of spouses and minor children of LPRs awaiting legal status are unlawfully present in the United States. While the Commission does not condone their illegal presence, we are cognizant of the great difficulties posed by the long waiting period for a family second preference visa.

- **Skill-based admissions policies that enhance opportunities for the entry of highly-skilled immigrants, particularly those with advanced degrees, and eliminate the category for admission of unskilled workers.** The Commission continues to recommend that immigrants be chosen on the basis of the skills they contribute to the U.S. economy. Only if there is a compelling national interest—such as nuclear family reunification or humanitarian admissions—should immigrants be admitted without regard to the economic contributions they can make.

Research shows that education plays a major role in determining the impacts of immigration. Immigration of unskilled immigrants comes at a cost to unskilled U.S. workers, particularly established immigrants for whom new immigrants are economic substitutes. Further, the difference in estimated lifetime fiscal effects of immigrants by education is striking: using the same methodology to estimate net costs and benefits, immigrants with a high school education or more are found to be net contributors while those without a high school degree continue to be net costs to taxpayers throughout their lifetime.⁴

⁴ National Research Council. 1997. *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*. Washington, DC: National Academy Press.

The Commission also continues to recommend changes in the procedures used in testing the labor market impact of employment-based admissions. Rather than use the lengthy, costly, and bureaucratic labor certification system, the Commission recommends using market forces as a labor market test. To ensure a level playing field for U.S. workers, employers would attest to having taken appropriate steps to recruit U.S. workers, paying the prevailing wage, and complying with other labor standards. Businesses recruiting foreign workers also would be required to make significant financial investments in certified private sector initiatives dedicated to improving the competitiveness of U.S. workers. These payments should be set at a per worker amount sufficient to ensure there is no financial incentive to hire a foreign worker over a qualified U.S. worker.

- **Refugee admissions based on human rights and humanitarian considerations, as one of several elements of U.S. leadership in assisting and protecting the world's persecuted.**⁵ Since its very beginnings, the United States has been a place of refuge. The Commission believes continued admission of refugees sustains our humanitarian commitment to provide safety to the persecuted, enables the U.S. to pursue foreign policy interests in promoting human rights, and encourages international efforts to resettle persons requiring rescue or durable solutions. The Commission also urges the federal government to continue to support international assistance and protection for the majority of the world's refugees for whom resettlement is neither appropriate nor practical.

⁵ For a full explanation of the Commission's refugee-related recommendations, see *U.S. Refugee Policy: Taking Leadership, 1997*.

Persons admitted for limited duration stays help to enhance our scientific, cultural, educational, and economic strength.

The Commission continues to recommend against denying benefits to legal immigrants solely because they are noncitizens. The Commission believes that the denial of safety net programs to immigrants solely because they are noncitizens is not in the national interest. In our 1994 and 1995 reports, the Commission argued that Congress should address the most significant uses of public benefit programs—particularly, elderly immigrants using Supplementary Security Income—by requiring sponsors to assume full financial responsibility for newly-arriving immigrants who otherwise would be excluded on public charge grounds. In particular, the Commission argued that sponsors of parents who would likely become public charges assume the responsibility for the lifetimes of the immigrants (or until they became eligible for Social Security on the basis of work quarters). We also argued that sponsors of spouses and children should assume responsibility for the duration of the familial relationship or a time-specified period. We continue to believe that this targeted approach makes greater sense than a blanket denial of eligibility for public services based solely on a person's alienage.

LIMITED DURATION ADMISSIONS

Persons come to the United States for limited duration stays for several principal purposes: representation of a foreign government or other foreign entities; work; study; and short-term visits for commercial or personal purposes, such as tourism and family visits. These individuals are statutorily referred to as "nonimmigrants." In this report, however, we refer to "limited duration admissions [LDAs]," a term that better captures the nature of their admission: When the original admission expires, the alien must either leave the country or meet the criteria for a new LDA or permanent residence.

For the most part LDAs help enhance our scientific, cultural, educational, and economic strength. However, the admission of LDAs is

**Limited Duration Admissions
and Visa Issuances**

Class of Admission	Admissions (Entries) 1996	Visa Issuances 1996
All classes*	24,842,503	6,237,870
Foreign government officials (& families) (A)	118,157	78,078
Temporary visitors for business and pleasure (B1,B2)	22,880,270	4,947,899
Transit aliens (C)	325,538	186,556
Treaty traders and investors (& families) (E)	138,568	29,909
Students (F1, M1)	426,903	247,432
Students' spouses/children (F2, M2)	32,485	21,518
Representatives (& families) to international organizations (G)	79,528	30,258
Temporary workers and trainees	227,440	81,531
Specialty occupations (H-1B)	144,458	58,327
Performing services unavailable (H2)	23,980	23,204
Agricultural workers (H-2A)	9,635	11,004
Unskilled workers (H-2B)	14,345	12,200
Workers with extraordinary ability (O1, O2)	9,289	4,359
Internationally recognized athletes or entertainers (P1, P2, P3)	33,633	23,885
Exchange & religious workers (Q1, R1)	11,048	5,946
Spouses/children of temporary workers and trainees (H4, O3, P4, R2)	53,572	38,496
Exchange visitors (J1)	215,475	171,164
Spouses/children of exchange visitors (J2)	41,250	33,068
Intracompany transferees (L1)	140,457	32,098
Spouses/children of transferees (L2)	73,305	37,617

Sources: Admissions: U.S. Immigration and Naturalization Service statistical division. Visa Issuances: U.S. Department of State. 1996. *Report of the Visa Office, 1996*. Washington, DC: DOS, Bureau of Consular Affairs.

*Categories may not equal total because of omitted categories (e.g., fiancé(e)s of U.S. citizens, overlapping Canadian Free Trade Agreement professionals, unknown, NATO officials and professionals, and foreign media).

not without costs and, as explained below, certain reforms are needed to make the system even more advantageous for the United States than it now is.

The Commission believes LDA policy should rest on the following principles:

- Clear goals and priorities;
- Systematic and comprehensible organization of LDA categories;
- Timeliness, efficiency, and flexibility in its implementation;
- Compliance with the conditions for entry and exit (and effective mechanisms to monitor and enforce this compliance);
- Credible and realistic policies governing transition from LDA to permanent immigration status;
- Protection of U.S. workers from unfair competition and of foreign workers from exploitation and abuse; and
- Appropriate attention to LDA provisions in trade negotiations to ensure future immigration reforms are not unknowingly foreclosed.

The Commission recommends a reorganization of the visa categories for limited duration stays in the United States to make them more coherent and understandable. The Commission recommends that the current proliferation of visa categories be restructured into five broad groups: official representatives; foreign workers; students; short-term visitors; and transitional family members. This reorganization reflects such shared characteristics of different visa categories

as entry for like reasons, similarity in testing for eligibility, and similar duration of stay in the United States.

The definitions and objectives of the five limited duration visa classifications would be:⁶

- **Official representatives** are diplomats, representatives of or to international organizations, representatives of NATO or NATO forces, and their accompanying family members. The objective of this category is to permit the United States to admit temporarily individuals who represent their governments or international organizations.
- **Short-term visitors** come to the United States for commercial or personal purposes. In 1995 alone, millions of inbound visitors from other countries spent \$76 billion on travel to and in the United States (on U.S. flag carriers, lodging, food, gifts, and entertainment).
- **Foreign workers** are those who are coming to perform necessary services for prescribed periods of time, at the expiration of which they must either return to their home countries or, if an employer or family member petitions successfully,

⁶ The current system includes the J visa for cultural exchange, which is used for a variety of purposes, ranging from short-term visits to study and work. The workers include scholars and researchers, camp counselors, *au pairs*, and various others. Some work activities under the J visa demonstrate a clear cultural or education exchange; other work activities appear only tangentially related to the program's original purposes. Protection of U.S. workers by labor market tests and standards should apply to the latter group in the same manner as similarly situated temporary workers in other LDA categories. The Department of State should assess how better to fulfill the purpose of the Mutual Educational and Cultural Exchange Act of 1961 [Fulbright-Hays Act]. Such an analysis is particularly timely in light of the merger now being implemented between the Department of State and the United States Information Agency, which is responsible for administering the J visa.

adjust to permanent residence. This category would serve the labor needs demonstrated by U.S. businesses, with appropriate provisions to protect U.S. workers from unfair competition.

- **Students** are persons who are in the United States for the purpose of acquiring either academic or practical knowledge of a subject matter. This category has four major goals: to provide foreign nationals with opportunities to obtain knowledge they can take back to their home countries; to give U.S. schools access to a global pool of talented students; to permit the sharing of U.S. values and institutions with individuals from other countries; and to enhance the education of U.S. students by exposing them to foreign students and their cultures.

- **Transitional family members** include fiancé(e)s of U.S. citizens. These individuals differ from other LDAs because they are processed for immigrant status, although they do not receive such status until they marry in the U.S. and adjust. The Commission believes another category of transitional family members should be added: spouses of U.S. citizens whose weddings occur overseas but who subsequently come to the U.S. to reside.

Short-Term Visitors

The Commission recommends that the current visa waiver pilot program for short-term business and tourist visits be made permanent upon the implementation of an entry-exit control system capable of measuring overstay rates. A permanent visa-waiver system requires appropriate provisions to expand the number of participating countries and clear and timely means for removing those countries that fail to meet the high standards reserved for this

privilege. Congress should extend the pilot three years while the control system is implemented.

Foreign Workers

Each year, more foreign workers enter the United States as LDAs for temporary work than enter as skill-based immigrants. In FY 1996, the Department of State issued almost 278,000 limited duration worker visas, including those for spouses and children. By contrast, only 118,000 immigrant visa issuances and domestic adjustments of status in worker categories were recorded in FY 1996, far less than the legislated limit of 140,000.

The Commission recommends that the limited duration admission classification for foreign workers include three principal categories: those who, for significant and specific policy reasons, should be exempt by law from labor market protection standards; those whose admission is governed by treaty obligations; and those whose admission must adhere to specified labor market protection standards. Under this recommendation, LDA worker categories are organized around the same principles that guide permanent worker categories. Accordingly, the Commission proposes different subcategories with labor market protection standards commensurate with the risks to U.S. workers we believe are posed by the foreign workers.

- **Those exempt by law from labor market protection standards** because their admission will generate substantial economic growth and/or significantly enhance U.S. intellectual and cultural strength and pose little potential for undermining the employment prospects and remuneration of U.S. workers. These include:

Individuals of extraordinary ability in the sciences, arts, education, business, or athletics, demonstrated through sustained national or international acclaim and recognized for extraordinary achievements in their field of expertise.

Managers and executives of international businesses. The global competitiveness of U.S. businesses is enhanced by the capacity of multinational corporations to move their senior staff around the world as needed.

Professors, researchers and scholars whose salary or other compensation is paid by their home government, home institution, or the U.S. government in a special program for foreign professors, researchers, and scholars.

Religious workers, including ministers of religion and professionals and other workers employed by religious non-profit organizations in the U.S. to perform religious vocations and religious occupations.

Members of the foreign media admitted under reciprocal agreements. The U.S. benefits from the presence of members of the foreign media who help people in their countries understand events in the United States. Just as we would not want our media to be overly regulated by labor policies of foreign governments, the United States extends the same courtesy to foreign journalists working in the U.S.

- **Foreign workers whose admission is subject to treaty obligations.** This includes treaty traders, treaty investors, and other workers entering under specific treaties between the U.S. and the foreign nation of which the alien is a citizen or national. Under the provisions of NAFTA, for example, Canadian professionals are not subject to numerical limits or labor market testing; Mexican professionals continue to be

subject to labor market tests, but will be exempt from numerical limits in 2003.

- **Foreign workers subject by law to labor market protection standards.** These are principally:

Professionals and other workers who are sought by employers because of their highly-specialized skills or knowledge and/or extensive experience. Included in this category are employees of international businesses who have specialized knowledge but are not managers or executives.

Trainees admitted to the United States for practical, on-the-job training in a variety of occupations. Trainees work in U.S. institutions as an integral part of their training program.

Artists, musicians, entertainers, athletes, fashion models, and participants in international cultural groups that share the history, culture, and traditions of their country.

Lesser-skilled and unskilled workers coming for seasonal or other short-term employment. Such worker programs warrant strict review, as described below. The Commission remains opposed to implementation of a large-scale program for temporary admission of lesser-skilled and unskilled workers.

The Commission recommends that the labor market tests used in admitting temporary workers in this category be commensurate with the skill level and experience of the worker.

- **Employers requesting the admission of temporary workers with highly-specialized skills or extensive experience should meet specific requirements.** Admission should be contingent on an attestation that:

The employer will pay the greater of actual or prevailing wage and fringe benefits paid to other employees with similar experience and qualifications for the specific employment in question. Actual wage rates should be defined in a simple and straightforward manner.

The employer has posted notice of the hire, informed coworkers at the principal place of business at which the LDA worker is employed, and provided a copy of the attestation to the LDA worker.

The employer has paid a reasonable user fee that will be dedicated to facilitating the processing of applications and the costs of auditing compliance with all requirements.

There is no strike or lockout in the course of a labor dispute involving the occupational classification at the place of employment.

The employer has not dismissed, except for cause, or otherwise displaced workers in the specific job for which the alien worker is hired during the previous six months. Further, the employer will not displace or lay off, except for cause, U.S. workers in the specific job during the ninety-day period following the filing of an application or the ninety-day periods preceding or following the filing of any visa petition supported by the application.

The employer will provide working conditions for such temporary workers that are comparable to those provided to similarly situated U.S. workers.

- **Certain at-risk employers of skilled workers (described below) should be required to attest to having taken signifi-**

cant steps—for example, recruitment or training—to employ U.S. workers in the jobs for which they are recruiting foreign workers. We do not recommend, however, that current labor certification processes be used to document significant efforts to recruit. These procedures are costly, time consuming, and ultimately ineffective in protecting highly-skilled U.S. workers.

- **Employers requesting the admission of lesser-skilled workers should be required to meet a stricter labor market protection test.** Such employers should continue to be required to demonstrate that they have sought, but were unable to find, sufficient American workers prepared to work under favorable wages, benefits, and working conditions. They also should be required to specify the plans they are taking to recruit and retain U.S. workers, as well as their plans to reduce dependence on foreign labor through hiring of U.S. workers or other means. Employers should continue to be required to pay the highest of prevailing, minimum, or adverse wage rates, provide return transportation, and offer decent housing, health care, and other benefits appropriate for seasonal employees.

The Commission recommends that categories of employers who are at special risk of violating labor market protection standards—regardless of the education, skill, or experience level of its employees—be required to obtain regular, independently-conducted audits of their compliance with the attestations made about labor market protection standards, with the results of such audit being submitted for Department of Labor review. Certain businesses, as described below, pose greater risk than others of displacing U.S. workers and/or exploiting foreign workers. The risk factors that should be considered in determining whether regular audit requirements must apply include:

- **The employer's extensive use of temporary foreign workers.** Extensive use can be defined by the percentage of the employer's workforce that is comprised of LDA workers. It also can be measured by the duration and frequency of the employer's use of temporary foreign workers.
- **The employer's history of employing temporary foreign workers.** Those employers with a history of serious violations of regular labor market protection standards or of specific labor standards related to the employment of LDA workers should be considered as at risk for future violations.
- **The employer's status as a job contracting or employment agency providing temporary foreign labor to other employers.** Risk of labor violations increases as responsibility is divided between a primary and secondary employer.

To ensure adequate protection of labor market standards, such employers should be required to submit an independent audit of their compliance with all statements attested to in their application. The independent audits should be done by recognized accounting firms that have the demonstrated capacity to determine, for example, that wages and fringe benefits were provided as promised in the attestation and conformed to the actual or prevailing wages and fringe benefits provided to similarly situated U.S. workers.

The Commission recommends enhanced monitoring of and enforcement against fraudulent applications and postadmission violations of labor market protection standards. To function effectively, both the exempt and nonexempt temporary worker programs must provide expeditious access to needed labor. The Commission's recommendations build on the current system of employer attestations that receive expeditious preapproval review but are subject to postapproval enforcement actions against violators. More specifically, the Commission recommends:

- **Allocating increased staff and resources to the agencies responsible for adjudicating applications for admission and monitoring and taking appropriate enforcement action against fraudulent applications and violations of labor market protection standards.** Increased costs required for more efficient adjudication of applications can be covered by applicant fees. However, additional costs incurred for more effective investigations of compliance with labor market standards will require appropriated funds.

- **Barring the use of LDA workers by any employer who has been found to have committed willful and serious labor standards violations with respect to the employment of LDA workers.** Further, upon the recommendation of any federal, state, or local tax agency, barring the use of LDA workers by any employer who has been found to have committed willful and serious payroll tax violations with respect to LDA workers. The law currently provides for such debarment for failure to meet labor condition attestation provisions or misrepresentation of material facts on the application. Implementation of this recommendation would enable penalties to be assessed for serious labor standards violations that are not also violations of the attestations.

- **Developing an enforcement strategy to reduce evasion of the LDA labor market protection standards through contractors.** U.S. businesses' growth in contracting-out functions has raised questions of employment relationships and ultimate liability for employment-related violations, including those related to temporary foreign workers. A uniform policy for dealing with these situations is desirable for the enforcement agencies involved, as well as for employers, contractors, and workers.

*Unlawful
immigration
can be controlled
consistent with
our traditions,
civil rights, and
civil liberties.*

**TOP TEN
COUNTRIES OF
ORIGIN OF
UNLAWFUL
MIGRANTS***

Mexico 2,700,000
El Salvador 335,000
Guatemala 165,000
Canada 120,000
Haiti 105,000
Philippines 95,000
Honduras 90,000
Poland 70,000
Nicaragua 70,000
Bahamas 70,000

* 1996 estimates
Source: INS, 1997, *1995 Statistical
Yearbook of Immigration and
Naturalization Service*, Washington, DC:
Government Printing Office.

CURBING UNLAWFUL MIGRATION

In its first interim report to Congress, the Commission recommended a comprehensive strategy to curb unlawful migration into the United States through prevention and removal.⁷ Despite the additional resources, new policies, and often innovative strategies adopted during the past few years, illegal migration continues to be a problem. The Commission continues to believe that unlawful immigration can be curtailed consistent with our traditions, civil rights, and civil liberties. As a nation committed to the rule of law, our immigration policies must conform to the highest standards of integrity and efficiency in the enforcement of the law. We must also respect due process.

Deterrence Strategies

The Commission reiterates its 1994 recommendations supporting a comprehensive strategy to deter illegal migration. More specifically, the Commission continues to support implementation of the following deterrence strategies:

- An effective border management policy that accomplishes the twin goals of preventing illegal entries and facilitating legal ones. New resources for additional Border Patrol officers, inspectors, and operational support, combined with such new strategies as operations "Hold the Line," "Gatekeeper," and "Safeguard," have improved significantly the management of the border where they are deployed. The very success of these new efforts demonstrates that to gain full control, the same level of resources and prevention strategies must be deployed at all points on the border where significant violations of U.S. immigration law are likely to occur.

⁷ For a full explanation of the Commission's recommendations see: *U.S. Immigration Policy: Restoring Credibility*, 1994.

- **Reducing the employment magnet is the linchpin of a comprehensive strategy to deter unlawful migration.** Economic opportunity and the prospect of employment remain the most important draw for illegal migration to this country. Strategies to deter unlawful entries and visa overstays require both a reliable process for verifying authorization to work and an enforcement capacity to ensure that employers adhere to all immigration-related labor standards. The Commission supports implementation of pilot programs to test what we believe is the most promising option for verifying work authorization: a computerized registry based on the social security number.⁸

- **Restricting eligibility of illegal aliens for publicly-funded services or assistance, except those made available on an emergency basis or for similar compelling reasons to protect public health and safety or to conform to constitutional requirements.** Although public benefit programs do not appear to be a major magnet for illegal migrants, it is important that U.S. benefit eligibility policies send the same message as immigration policy: Illegal aliens should not be here and, therefore, should not receive assistance, except in unusual circumstances. The Commission recommended drawing a line between illegal aliens and lawfully resident legal immigrants with regard to benefits eligibility, in part to reinforce this message. We continue to believe that this demarcation between legal and illegal aliens makes sense. The Commission urges the Congress to reconsider the changes in welfare policy enacted in 1996 that blur the distinctions between legal and illegal aliens by treating them similarly for the purposes of many public benefit programs.

**TOP TEN
STATES OF
RESIDENCE OF
UNLAWFUL
MIGRANTS***

California 2,000,000

Texas 700,000

New York 540,000

Florida 350,000

Illinois 290,000

New Jersey 135,000

Arizona 115,000

Massachusetts 85,000

Virginia 55,000

Washington 52,000

* 1996 estimates
Source: INS. 1997. *1995 Statistical Yearbook of Immigration and Naturalization Service*. Washington, DC: Government Printing Office.

⁸ The Concurring Statement of Commissioners Leiden and Merced can be found in the Commission's 1994 report.

- **Strategies for addressing the causes of unlawful migration in source countries.** An effective strategy to curb unauthorized movements includes cooperative efforts with source countries to address the push factors that cause people to seek new lives in the United States. The Commission continues to urge the United States government to give priority in its foreign policy and international economic policy to long-term reduction in the causes of unauthorized migration.

- **Mechanisms to respond in a timely, effective, and humane manner to migration emergencies.** A credible immigration policy requires the ability to respond effectively and humanely to migration emergencies in which large numbers of people seek entry into the United States. These emergencies generally include *bona fide* refugees, other individuals with need for protection, and persons seeking a better economic life in the U.S. Failure to act appropriately and in a timely manner to determine who should be admitted and who should be returned can have profound humanitarian consequences. Further, an uncontrolled emergency can overwhelm resources and create serious problems that far outlast the emergency.⁹

Removals

A credible immigration system requires the effective and timely removal of aliens who can be determined through constitutionally-sound procedures to have no right to remain in the United States. If unlawful aliens believe that they can remain indefinitely once they are within our national borders, there will be increased incentives to try to enter or remain illegally.

⁹ For a fuller discussion of the Commission's recommendation on mass migration emergencies, see *U.S. Refugee Policy: Taking Leadership, 1997*.

Our current removal system does not work. Hundreds of thousands of aliens with final removal orders remain in the U.S. The system's ineffectiveness results from a fragmented, uncoordinated approach, rather than flawed legal procedures. The Executive Branch does not have the capacity, resources, or strategy to detain aliens likely to abscond, to monitor the whereabouts of released aliens, or to remove them.

The Commission urges immediate reforms to improve management of the removal system and ensure that aliens with final orders of deportation, exclusion, or removal are indeed removed from the United States. Establishing a more effective removal system requires changes in the management of the removal process. More specifically, the Commission recommends:

- **Establishing priorities and numerical targets for the removal of criminal and noncriminal aliens.** The Commission encourages headquarters, regional, and local immigration enforcement officials to set these priorities and numerical goals.
- **Local oversight and accountability for the development and implementation of plans to coordinate apprehensions, detention, hearings, removal, and the prevention of reentry.** With guidance on priorities, local managers in charge of the removal system would be responsible for allocation of resources to ensure that aliens in the prioritized categories are placed in the system and ultimately removed. Local managers also would be responsible and accountable for identifying effective deterrents that reduce the likelihood that removed aliens would attempt to reenter the U.S.
- **Continued attention to improved means for identifying and removing criminal aliens with a final order of deportation.**

The Commission reiterates the importance of removing criminal aliens as a top priority. Our recommendation regarding the importance of removing noncriminal aliens with final orders is not intended to shift the attention of the removal system away from this priority. Rather, both criminal and noncriminal aliens must be removed to protect public safety (in the case of criminals) and to send a deterrent message (to *all* who have no permission to be here).

- **Legal rights and representation.** The Executive Branch should be authorized to develop, provide, and fund programs and services that educate aliens about their legal rights and immigration proceedings. Such programs should also encourage and facilitate legal representation where to do so would be beneficial to the system and the administration of justice. Particular attention should be focused on aliens in detention where release or removal can be expedited through such representation. Under this approach, the alien would not have a right to appointed counsel, but the government could fund services to address some of the barriers to representation.

- **Prosecutorial discretion to determine whether to proceed with cases.** Guidelines on the use of prosecutorial discretion should be developed, local Trial Attorneys trained, support staff provided, and discretion exercised with the goal of establishing a more efficient and rational hearing system. Trial attorneys should focus their efforts on trying cases that are likely to result in the removal of the alien upon completion of the proceedings.

- **Strategic use of detention and release decisions.** Detention space, always in limited supply, is in greater demand as the government has focused more on the removal of criminal

aliens and as Congress mandates more categories to be detained. Detention needs to be used more strategically if removals are to be accomplished. Alternatives to detention should be developed so that detention space is used efficiently and effectively. The Commission fully supports the three-year pilot program, created with and implemented by the Vera Institute, to help define effective alternatives to detention for specific populations.

- **Improved detention conditions and monitoring.** Detention cannot be used effectively unless the conditions of detention are humane and detainees are free from physical abuse and harassment by guards. We have no doubt that appropriate criteria for all facilities can be promulgated, based on sound governmental judgment and consultation with concerned nongovernmental organizations. But most importantly, a system to monitor facilities on a regular basis must be developed. Inspections must occur more than once annually.

Further, the Commission recommends that the Department of Justice consider placing administrative responsibility for operating detention centers with the Bureau of Prisons or U.S. Marshals Service. An immigration enforcement agency should not be shouldered with such a significant responsibility that is not part of its fundamental mission or expertise.

- **Improved data systems.** Current data systems are unable to link an apprehension to its final disposition (e.g., removal, adjustment of status). This significantly limits the use of apprehension and removal data for analytical purposes. The Commission urges development of data systems that link apprehensions and removals and provide statistics on individuals.

- The redesigned removal system should be managed initially by a Last-In-First-Out [LIFO] strategy to demonstrate the credibility of the system. Once a coherent system is organized and appropriate resources are assigned to removing deportable aliens—not simply to put aliens through proceedings—removals should proceed in a Last-In-First-Out mode. In this way, the government can send a credible deterrent message to failed asylum seekers, visa overstayers, users of counterfeit documents, and unauthorized workers, that their presence in the United States will not be tolerated. Such a well-organized system can establish control over the current caseload and quickly prioritize the backlog for enforcement purposes. The deterrent effect of LIFO has been shown in the asylum system where new procedures were adopted in a LIFO mode.

The Commission urges Congress to clarify that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [IIRIRA] and the Antiterrorism and Effective Death Penalty Act of 1996 [AEDPA] do not apply retroactively to cases pending when the new policies and procedures went into effect. As a matter of policy, the Commission believes that retroactive application of new immigration laws undermines the effectiveness and credibility of the immigration system. Applying newly-enacted laws or rules in an immigration proceeding that has already commenced results in inefficiency in the administration of the immigration laws. It can also raise troubling issues of fairness. Finally, it invites confusion, adds uncertainty, and fosters a lack of trust and confidence in the rule of law.

ACHIEVING IMMIGRATION POLICY GOALS

INTRODUCTION

Restoring credibility and setting priorities—themes at the center of the Commission's policy recommendations on illegal and legal immigration, respectively—will not come to pass unless the government is structured to deliver on these policies. An effective immigration system requires both credible policy and sound management. Good management cannot overcome bad policy. Poor structures, lack of professionalism, poor planning, and failure to set priorities will foil even the best policies.

Until relatively recently, the agencies responsible for implementing immigration policy were underfunded, understaffed, and neglected. During the past few years, however, massive increases in resources and personnel, combined with significant political attention to immigration issues, have provided new opportunities to address long-standing problems. A recent General Accounting Office [GAO] report documented improvements—including, for example, a more strategic approach to the formulation of immigration enforcement programs. The Commission has seen progress in many management areas—for example, more effective border management, increased numbers of criminal alien removals, and asylum reform that has deterred abusive claims while protecting *bona fide* refugees. Nevertheless, problems remain in the operation of the U.S. immigration and naturalization system. Further improvements must be made if it is to function smoothly and effectively, anticipating and addressing, rather than reacting to, problems.

*An effective
immigration system
requires both
credible policy and
sound management.*

Current U.S. Immigration System				
FUNCTION AGENCY	IMMIGRATION ENFORCEMENT	BENEFITS	LABOR STANDARDS	APPEALS
DEPARTMENT OF JUSTICE				
Immigration & Naturalization Service	✓	✓	✓	✓
Executive Office for Immigration Review				✓
DEPARTMENT OF STATE				
Consular Affairs		✓		
Bureau for Population, Refugees & Migration		✓		
Board of Appellate Review*				✓
DEPARTMENT OF LABOR				
Employment Standards Administration			✓	
Employment Training Administration		✓		
Board of Alien Labor Certification Appeals				✓

*For a limited set of nationality and citizenship-related matters.

STRUCTURAL REFORM

The Commission recommends fundamental restructuring of responsibilities within the federal government to support more effective management of the core functions of the immigration system: border and interior enforcement; enforcement of immigration-related employment standards; adjudication of immigration and naturalization applications; and consolidation of administrative appeals. The immigration system is one of the most

Proposed U.S. Immigration System				
FUNCTION AGENCY	IMMIGRATION ENFORCEMENT	BENEFITS	LABOR STANDARDS	APPEALS
DEPARTMENT OF JUSTICE Bureau for Immigration Enforcement	✓			
DEPARTMENT OF STATE Undersecretary for Citizenship, Immigration, and Refugee Admissions		✓		
DEPARTMENT OF LABOR Employment Standards Administration			✓	
AGENCY FOR IMMIGRATION REVIEW				✓

complicated in the federal government bureaucracy. In some cases, one agency has multiple, and sometimes conflicting, operational responsibilities. In other cases, multiple agencies have responsibility for elements of the same functions. Both situations create problems.

Mission Overload. Some of the agencies that implement the immigration laws have so many responsibilities that they have proved unable to manage all of them effectively. Between Congressional mandates and administrative determinations, these agencies must give equal weight to more priorities than any one agency can handle. Such a system is set up for failure and, with such failure, further loss of public confidence in the immigration system.

No one agency is likely to have the capacity to accomplish all of the goals of immigration policy equally well. Immigration law enforce-

<p align="center">Proposed Restructuring of the Immigration System</p>			
<p align="center">DEPARTMENT OF JUSTICE</p> <p align="center">BUREAU FOR IMMIGRATION ENFORCEMENT</p> <p align="center">Immigration enforcement at the border and in the interior of the United States</p>	<p align="center">DEPARTMENT OF STATE</p> <p align="center">UNDERSECRETARY FOR CITIZENSHIP, IMMIGRATION, AND REFUGEE ADMISSIONS</p> <p align="center">Adjudication of eligibility for immigration, refugee and naturalization applications</p>	<p align="center">DEPARTMENT OF LABOR</p> <p align="center">EMPLOYMENT STANDARDS ADMINISTRATION</p> <p align="center">Enforcement of immigration- related employment standards</p>	<p align="center">INDEPENDENT AGENCY</p> <p align="center">AGENCY FOR IMMIGRATION REVIEW</p> <p align="center">Administrative review of all authorized immigration- related appeals</p>

ment requires staffing, training, resources, and a work culture that differs from what is required for effective adjudication of benefits or labor standards regulation of U.S. businesses.

Diffusion of Responsibilities Among Agencies. Responsibility for many immigration functions are spread across numerous agencies within single departments or between departments. For example, responsibility for making decisions on skill-based immigrant and LDA applications is dispersed among the Department of Labor [DOL], the Department of Justice's [DOJ] Immigration and Naturalization Service [INS], and the Department of State [DOS]. Responsibility for investigating employer compliance with immigration-related labor standards is shared by INS and DOL.

The Commission considered a range of ways to reorganize roles and responsibilities, including proposals to establish a Cabinet-level Department of Immigration Affairs. After examining the full range of options, the Commission concludes that a clear division of responsibility among existing federal agencies, with appropriate consolidation of functions, will improve management of the federal immigration system. As discussed below, *the Commission recommends a restructuring of the immigration system's four principal operations as follows:*¹⁰

- 1. Immigration enforcement at the border and in the interior of the United States in a Bureau for Immigration Enforcement at the Department of Justice;*
- 2. Adjudication of eligibility for immigration-related applications (immigrant, limited duration admission, asylum, refugee, and naturalization) in the Department of State under the jurisdiction of an Undersecretary for Citizenship, Immigration, and Refugee Admissions;*

¹⁰ See Appendix for Commissioner Leiden's concurring statement.

The importance and complexity of the enforcement function within the U.S. immigration system necessitate the establishment of a higher-level, single-focus agency within the Department of Justice.

3. *Enforcement of immigration-related employment standards in the Department of Labor; and*
4. *Appeals of administrative decisions including hearings on removal, in an independent body, the Agency for Immigration Review.*

The Commission believes this streamlining and reconfiguring of responsibilities will help ensure: coherence and consistency in immigration-related law enforcement; a supportive environment for adjudication of applications for immigration, refugee, and citizenship services; rigorous enforcement of immigration-related labor standards to protect U.S. workers; and fair and impartial review of immigration decisions.

Bureau for Immigration Enforcement (DOJ)

The Commission recommends placing all responsibility for enforcing United States immigration laws to deter future illegal entry and remove illegal aliens in a Bureau for Immigration Enforcement at the Department of Justice. The Commission believes that the importance and complexity of the enforcement function within the U.S. immigration system necessitate the establishment of a higher-level, single-focus agency within the DOJ. The Commission further recommends that the newly configured agency have the prominence and visibility that the Federal Bureau of Investigation [FBI] currently enjoys within the DOJ structure. The Director of the Bureau would be appointed for a set term (e.g., five years). The agency would be responsible for planning, implementing, managing, and evaluating all U.S. immigration enforcement activities both within the United States and overseas.

The Commission recommends the following distribution of responsibilities within the Bureau for Immigration Enforcement.

Uniformed Enforcement Officers. The Commission recommends merger of the INS Inspectors, Border Patrol, and detention officers into one unit, the Immigration Uniformed Service Branch. Its officers would be trained for duties at land, sea, and air ports of entry, between land ports on the border, and in the interior where uniformed officers are needed for enforcement.

Investigators. The Commission believes investigations will be a key part of the new agency's responsibility. Investigators are the main agents responsible for identifying and apprehending people who are illegally residing or working in the United States, for deterring smuggling operations, for building a case against those who are not deterred, and for identifying, apprehending, and carrying out the removal of aliens with final enforceable orders of removal.

Intelligence. The Bureau will require an Intelligence Division to provide strategic assessments, training and expertise on fraud, information about smuggling networks, and tactical support to uniformed officers or investigators.

Assets Forfeiture Unit. As with the other DOJ enforcement agencies, the Bureau will have an Assets Forfeiture unit.

Pre- and Post-Trial "Probation" Officers. "Probation" functions are not now performed consistently or effectively, but the Commission believes this function is essential to more strategic use of detention space. As it is unlikely that all potentially deportable aliens could or should be detained awaiting removal, the Commission believes more attention should be given to supervised release programs and to sophisticated methods for tracking the whereabouts of those not detained.

A more streamlined and accountable adjudication process, involving fewer agencies but greater safeguards, will result in faster and better determinations of immigration and citizenship benefits.

Trial Attorneys/Prosecutors. The Commission believes that the Trial Attorneys, who in effect are the Government's immigration prosecutors, should be vested with, *and should utilize*, an important tool possessed by their criminal counterparts: prosecutorial discretion.

Field Offices. The new agency would implement its programs through a series of field offices that are structured to address comprehensively the immigration enforcement challenges of the particular locality. As the location of these offices should be driven by enforcement priorities, they are likely to be in different places than current district offices. Regional Offices could be retained for administrative and managerial oversight of these dispersed and diverse field offices.

Citizenship, Immigration, and Refugee Admissions (DOS)

The Commission recommends that all citizenship and immigration benefits adjudications be consolidated in the Department of State, and that an Undersecretary for Citizenship, Immigration, and Refugee Admissions be created to manage these activities. At present, three separate agencies—the INS, the Department of State, and the Department of Labor—play broad roles in adjudicating applications for legal immigration, limited duration admissions, refugee admissions, asylum, and/or citizenship. The Commission believes a more streamlined and accountable adjudication process, involving fewer agencies but greater safeguards, will result in faster and better determinations of these benefits. As in the current system, these services would be funded through fees paid by applicants and retained by the benefits offices for delivery of the services.

The Commission considered the advantages and disadvantages of consolidating responsibility in the Department of Justice and in the Department of State, the two agencies that already have the most

significant immigration, refugee, and citizenship duties. Bearing in mind the dual problems the Commission identified in the current structures—mission overload and fragmentation of responsibility, we concluded that consolidation in the Department of State makes greater sense than creation of a new, separate benefits agency within the Department of Justice.

Taking responsibility for immigration and citizenship services out of the Department of Justice sends the right message, that legal immigration and naturalization are not principally law enforcement problems; they are opportunities for the nation as long as the services are properly regulated. Further, the Department of Justice does not have the capacity internationally to take on the many duties of the Department of State. The Department of State, however, already has a domestic presence and an adjudication capability. It issues one-half million immigrant visas and six million nonimmigrant visas each year. DOS also provides a full range of citizenship services both domestically (issuance of almost 6 million passports annually) and abroad (e.g., citizenship determinations and registration of births of U.S. citizens overseas). Indeed, DOS has devoted a major share of its personnel and its capital and operating resources to these adjudicatory functions at embassies and consulates in more than two hundred countries and in passport offices in fifteen U.S. cities.

Consolidating responsibility requires some changes in the way the Department of State administers its immigration responsibilities, which we believe will strengthen the adjudication function. Because immigration has both foreign and domestic policy import, the Department of State will need to develop mechanisms for consultation with groups representing a broad range of views and interests regarding immigration. Such consultations already occur in the refugee program. The Department of State also will need to change its historic position on review of consular decisions. At present, decisions made at INS and the Department of Labor on many immigrant and LDA applications may be appealed, but no appeal is available

on consular decisions. The Commission believes that immigrant and certain limited duration admission visas with a U.S. petitioner should be subject to independent administrative appeal (see below).

The Undersecretary, who would have direct access to the Secretary of State, would be responsible for domestic and overseas immigration, citizenship, and refugee functions. These include adjudication of applications for naturalization, determinations of citizenship overseas, all immigrant and limited duration admission petitions, work authorizations and other related permits, and adjustments of status. It also would have responsibility for refugee status determinations abroad and asylum claims at home. Overseas citizenship services would continue to be provided by consular officers abroad. The agency would have enhanced capacity to detect, deter, and combat fraud and abuse among those applying for benefits.

Within the Office of the Undersecretary would be a unit responsible both for formulating and assessing immigration policy as well as reviewing and commenting on the immigration-related effects of foreign policy decisions. This policy capacity would be new for the Department of State, but it is in keeping with the important role that migration now plays in international relations.

The Undersecretary would have three principal operating bureaus:

A Bureau of Immigration Affairs would focus on the immigration process, as noted above, as well as on LDA processing. In addition to its existing overseas work, the Immigration Affairs Bureau would be responsible for domestic adjudication/examination functions, including work authorization, adjustment of status, domestic interviewing, and the issuance of appropriate documentation (e.g., green cards). The Immigration Affairs Bureau also would staff immigration information and adjudication offices in areas with immigrant concentrations.

A Bureau of Refugee Admissions and Asylum Affairs would assure an appropriate level of independence from routine immigration issues and processes. It would combine the present Bureau for Population, Refugees and Migration [PRM] responsibilities for overseas refugee admissions, the refugee and asylum offices of the INS, and the DOS asylum office in the Bureau of Democracy, Human Rights and Labor. This would integrate the key governmental offices in one of our most important and historic international activities.

A Bureau of Citizenship and Passport Affairs would be responsible for naturalization, other determinations of citizenship, and issuance of passports. Local offices performing some citizenship functions, such as overseas travel information, passport and naturalization applications, testing and interviews, could be located with local immigration services.

Overseas citizen services would continue to be handled within the newly consolidated organization. These services include: responding to inquiries as to the welfare or whereabouts of U.S. citizens; assisting when U.S. citizens die, are arrested, or experience other emergencies abroad; providing notarial services; and making citizenship determinations and issuing passports abroad.

Quality Assurance Offices would oversee records management, monitoring procedures, fraud investigations, and internal review. At present, monitoring of the quality of decisions made on applications for immigration and citizenship benefits receives insufficient attention. The Commission believes that quality decisions require some form of internal supervisory review for applicants who believe their cases have been wrongly decided. This type of review helps an agency monitor consistency and identify problems in adjudication and offers a means of correcting errors. A staff responsible for and dedicated to ensuring the quality of decisions taken on applications

for immigration and citizenship should address some of the weaknesses in the current system, such as those recently identified in the naturalization process.

With respect to the domestic field structure for implementing these programs, the Regional Service Centers [RSCs] and National Visa Center [NVC] would continue to be the locus of most adjudication. The physical plants are excellent and the locally-hired staffs are trained and in place. At this time, information is passed from the RSCs to the NVC when the applicant for admission is overseas. Overseas interviews would continue to take place at embassies and consulates.

A range of other interviews would take place domestically. Ideally, to avoid long lines and waits for service, there would be smaller offices in more locations than the current INS district offices. The Commission recommends against locating these offices with the enforcement offices discussed above. Asking individuals requesting benefits or information to go to an enforcement agency sends the wrong message about the U.S. view of legal immigration.

The Department of Labor is the best equipped federal agency to regulate and investigate employer compliance with standards intended to protect U.S. workers.

Immigration-Related Employment Standards (DOL)

The Commission recommends that all responsibility for enforcement of immigration-related standards for employers be consolidated in the Department of Labor. These activities include enforcing compliance with requirements to verify work authorization and attestations made regarding conditions for the legal hire of temporary and permanent foreign workers. The Commission believes that as this is an issue of labor standards, the Department of Labor is the best equipped federal agency to regulate and investigate employer compliance with standards intended to protect U.S. workers. The hiring of unauthorized workers and the failure of employers to comply with the commitments they make (e.g., to pay prevailing wages, to have recruited

U.S. workers) in obtaining legal permission to hire temporary and permanent foreign workers are violations of such labor standards. Enforcement of compliance with these requirements currently lies within the responsibility of both INS and DOL. Under consolidation, the DOL Employment Standards Administration's [ESA] Wage and Hour Division [WH] and Office of Federal Contract Compliance Programs [OFCCP] would perform these functions in conjunction with their other worksite labor standards activities.

Sanctions Against Employers Who Fail to Verify Work Authorization. The Commission believes all worksite investigations to ascertain employers' compliance with employment eligibility verification requirements should be conducted by DOL. DOL already conducts many of these investigations. However, under this recommendation, DOL also would assess penalties if employers fail to verify the employment eligibility of persons being hired. DOL would not be required to prove that an employer knowingly hired an illegal worker, just that the employer hired a worker without verification of his or her authorization to work. With implementation of the Commission's proposal for a more effective verification process, this function will be critical to deterring the employment of unauthorized workers.¹¹

Enforcement of Skill-Based Immigrant and Limited Duration Admissions Requirements. The Commission believes an expedited process is needed for the admission of both temporary and permanent foreign workers, as discussed earlier in this report, as long as adequate safeguards are in place to protect the wages and working conditions of U.S. workers. To prevent abuse of an expedited system, an effective postadmission enforcement scheme is necessary.

¹¹ At present, DOL investigates employer compliance with the requirement to check documentation and fill out the I-9 form, while INS does this paperwork review and investigations of knowing hire of illegal aliens. The latter investigations are hampered, however, by the absence of an effective verification process and proliferation of fraudulent documents.

Not only is independence in decisionmaking the hallmark of meaningful and effective review, it is also critical to the reality and the perception of fair and impartial review.

DOL's other worksite enforcement responsibilities place it in the best position to monitor employers' compliance with the attestations submitted in the admissions process. DOL investigators are experienced in examining employment records and interviewing employees. Penalties should be established for violations of the conditions to which the employer has attested, including payment of the appropriate wages and benefits, terms and conditions of employment, or any misrepresentation or material omissions in the attestation. Such penalties should include both the assessment of significant administrative fines as well as barring egregious or repeat violators from petitioning for the admission of permanent or temporary workers.

Agency for Immigration Review

The Commission recommends that administrative review of all immigration-related decisions be consolidated and be considered by a newly-created independent agency, the Agency for Immigration Review, within the Executive Branch. The Commission believes that a system of formal administrative review of immigration-related decisions—following internal supervisory review within the initial adjudicating body—is indispensable to the integrity and operation of the immigration system. Such review guards against incorrect and arbitrary decisions and promotes fairness, accountability, legal integrity, uniform legal interpretations, and consistency in the application of the law both in individual cases and across the system as a whole.

The review function works best when it is well insulated from the initial adjudicatory function and when it is conducted by decisionmakers entrusted with the highest degree of independence. Not only is independence in decisionmaking the hallmark of meaningful and effective review, it is also critical to the reality and the perception of fair and impartial review.

Hence, the Commission recommends that the review function be conducted by a newly-created independent reviewing agency in the Executive Branch. To ensure that the new reviewing agency is independent and will exist permanently across Administrations, we believe it should be statutorily created. It would incorporate the activities now performed by several existing review bodies, including the DOJ Executive Office for Immigration Review, the INS Administrative Appeals Office, the DOL Board of Alien Labor Certification Appeals, and the DOS Board of Appellate Review. It also would have some new responsibilities.

This reviewing agency would be headed by a Director, a presidential appointee, who would coordinate the overall work of the agency, but would have no say in the substantive decisions reached on cases considered by any division or component within the agency.

There would be a trial division headed by a Chief Immigration Judge, appointed by the Director. The Chief Judge would oversee a corps of Immigration Judges sitting in immigration courts located around the country. The Immigration Judges would hear every type of case presently falling within the jurisdiction of the now-sitting Immigration Judges.

The reviewing agency also would consider appeals of decisions by the benefits adjudication agency, using staff with legal training. Although the benefits adjudication agency will handle a wide range of applications—from tourist visas to naturalization and the issuance of passports—not all determinations will be appealable, as is the case under current law. We envision that those matters that are appealable under current law would remain appealable. The only difference is that the appeal would be lodged with and considered by the new independent Agency for Immigration Review rather than by the various reviewing offices and Boards presently located among the several Departments.

The administrative appeals agency also would consider appeals from certain visa denials and visa revocations by consular officers. Under current law, such decisions are not subject to formal administrative or judicial review. The Commission believes that consular decisions denying or revoking visas in specified visa categories—i.e., all immigrant visas and those LDA categories where there is a petitioner in the United States who is seeking the admission of the visa applicant—should be subject to formal administrative review. The visa applicant would have no right to appeal an adverse determination. Instead, standing to appeal a visa denial or revocation would lie only with United States petitioners, whether U.S. citizens, lawful permanent residents, or employers.

An appellate Board would sit over the trial and administrative appeals divisions of the new independent Agency for Immigration Review. This appellate Board would be the highest administrative tribunal in the land on questions and interpretations of immigration law. It would designate selected decisions as precedents for publication and distribution to the public at large. Its decisions would be binding on all officers of the Executive Branch. To ensure the greatest degree of independence, decisions by the Board would be subject to reversal or modification only as a result of judicial review by the federal courts or through congressional action. Neither the Director of the reviewing agency nor any other agency or Department head could alter, modify, or reverse a decision by the appellate Board.

MANAGEMENT REFORM

The Commission urges the federal government to make needed reforms to improve management of the immigration system. While the Commission-recommended structural changes will help improve implementation of U.S. policy, certain management reforms also must be adopted if the restructured agencies responsible for immigration matters are to be effective in performing their functions. Structural

reforms will not by themselves solve some of the management problems that have persisted in the immigration agencies.

More specifically, the Commission recommends:

- **Setting More Manageable and Fully-Funded Priorities.** The Commission urges Congress and the Executive Branch to establish and then appropriately fund a more manageable set of immigration-related priorities. More manageable means fewer objectives, but also a set of more integrated priorities, more realistically-achievable short-term and long-term goals, and greater numerical specificity on expected annual outcomes to which agencies could be held accountable.
- **Developing More Fully the Capacity for Policy Development, Planning, Monitoring and Evaluation.** Each department with immigration-related responsibilities needs to perform a wide range of policy functions, including, but not limited to, long-range and strategic policy planning, inter-agency policy integration, policy review, policy coordination, priority setting, data collection and analysis, budget formulation, decisionmaking, and accountability. The Domestic Policy Council and the National Security Council in the White House can also play an important role in coordinating policy development across departments.
- **Improving Systems of Accountability.** Staff who are responsible for immigration programs should be held accountable for the results of their activities. Systems should be developed to reward or sanction managers and staff on the basis of their performance.
- **Recruiting and Training Managers.** The Commission believes enhancements must be made in the recruitment and training of managers. As immigration-related agencies grow

and mandated responsibilities increase or evolve, closer attention should be paid to improving the skills and managerial capacity of immigration staff at all levels to ensure more efficient and effective use of allocated resources.

- **Strengthening Customer Service Orientation.** The Commission urges increased attention to instilling a customer-service ethic in staff, particularly those responsible for adjudication of applications for benefits.

- **Using Fees for Immigration Services More Effectively.** The Commission supports the imposition of user fees, but emphasizes: (1) that the fees should reflect true costs; (2) that the agencies collecting the fees should retain them and use them to cover the costs of those services for which the fees are levied; (3) that those paying fees should expect to be treated to timely and courteous service; and (4) that maximum flexibility should be given to agencies to expand or contract their response expeditiously as applications increase or decrease.

The Commission reiterates its 1994 recommendations concerning the need for improvements in immigration data collection, coordination, analysis, and dissemination. Although some progress has been made, much more needs to be done to collect data that will inform responsible immigration policymaking. The Commission believes that each agency involved in immigration must establish a system and develop a strategy for the collection, interagency coordination, analysis, dissemination, and use of reliable data.

Further, the Commission urges the federal government to support continuing research and analysis on the implementation and impact of immigration policy. In particular, the federal government should support data collection and analysis in the following areas: longitu-

dinal surveys on the experiences and impact of immigrants; on the experiences and impact of foreign students and foreign workers admitted for limited duration stays; and on the patterns and impacts of unlawful migration.

CONCLUSION

This report concludes the work of the U.S. Commission on Immigration Reform. Together with our three interim reports, this final set of recommendations provides a framework for immigration and immigrant policy to serve our national interests today and in the years to come. The report outlines reforms that will enhance the benefits of legal immigration while mitigating potential harms, curb unlawful migration to this country, and structure and manage our immigration system to achieve all these goals. Perhaps most important, this report renews our call for a strong commitment to Americanization, the process by which immigrants become part of our community and we learn and adapt to their presence. Becoming an American is the theme of this report. Living up to American values and ideals is the challenge for us all.

APPENDIX

Statement of Commissioner Warren R. Leiden

While I agree with most of the findings and recommendations of the Commission majority, there are two subjects of major recommendations on which I am moved to make separate statements—one in dissent (Legal Permanent Admissions) and one in concurrence (Structural Reform).

LEGAL PERMANENT ADMISSIONS

Legal immigration needs reform of priorities and allocations, but current levels of legal immigration are in the national interest. Virtually all the research and analysis received by the Commission indicated that the current levels of legal immigration continue to provide a net positive benefit to America in a multitude of ways. Whatever interest is examined—economic, social, political, scientific, or cultural—the current levels of legal immigration are found to benefit each of these aspects of American life. Yet the majority recommends a one-quarter reduction in legal immigration from current levels, but not now, rather in five to eight years.

There is no convincing argument for this drastic reduction in legal immigration now or years from now. Current levels of legal immigration clearly serve the national interest and can better do so if priorities and allocations are reformed.

Prioritize family-based admissions without eliminating family reunification. Spouses and minor children of U.S. citizens and lawful permanent residents [LPRs] and parents of U.S. citizens should receive the highest priority for immigration, but this can be

accomplished without eliminating the immigrant categories for adult sons and daughters or siblings of U.S. citizens.

The family preference categories should be reordered, placing the spouses and minor children of LPRs at the top, with a "spillover" of unused visas going to the remaining family categories. This approach would ensure the quickest reduction in the shameful backlog of spouses and minor children of LPRs, without sacrificing the family unification of those sons and daughters who simply turned twenty-one years old. The backlog of spouses and children of LPRs has already begun to decrease, indicating that a new stable level of family immigration can be achieved once the one-time "echo" of the legalization program has been processed.

Preserve employment-based immigration levels and reform labor market tests without penalizing employers. I dissent from the majority's recommendation to reduce employment-based immigration by almost 30 percent to only 100,000 admissions per year (including spouses and children). This level was already exceeded in FY 1996, and the creation of new backlogs by such a "reform" is clearly wrong. The employment-based immigration ceiling should be kept at the current level, with review in three to five years.

New requirements and procedures need to be developed to replace the labor certification process to test the *bona fides* of the petitioning employer's need and to avoid adverse effect on similar U.S. workers. I dissent from the majority's recommendation that such employers be required to pay a "substantial fee" or tax for the privilege of sponsoring international personnel, which will serve more to penalize U.S. employers who petition for international personnel than to prevent adverse effect.

STRUCTURAL REFORM

Restructure the federal immigration responsibilities to separate the adjudications function from the enforcement function but keep them in the Department of Justice along with the appeals function. The federal responsibilities to conduct immigration enforcement, both at the border and inside the U.S., and to adjudicate immigration and naturalization applications and petitions have not been managed adequately. After substantial recent increases in appropriations and fee account receipts, as well as the determined staff and sometimes impressive accomplishments of the Immigration and Naturalization Service [INS], it is inescapable that the majority is correct in its conclusion that the primary immigration functions need to be separated and restructured.

However, the benefits of this restructuring can be gained with far less disruption, at less cost, and with greater chance of success if it is accomplished within the Department of Justice. The two main functions of the INS— enforcement and adjudications—should be separated into two different agencies within the Department of Justice, with separate leadership. The creation of the Executive Office for Immigration Review [EOIR], which separated the immigration hearings and appeals function from the rest of INS in 1983, is a good model for this restructuring. Like the EOIR, each agency should have its separate mission, career paths, training, and management, while still benefiting from policy and strategic coordination at senior department level.

The Department of Justice is the proper place for the immigration enforcement function and it is the proper place for the adjudications function. The Department of Justice has long experience with and is the preeminent repository of expertise in both the immigration enforcement and adjudications functions. The Department of Justice epitomizes the values of due process and the rule of law, which are especially important in achieving effective enforcement and fair,

accurate adjudications for a well-regulated, highly selective, legal immigration system. The division of these two immigration functions within the Department of Justice would be far less disruptive to either responsibility at a time when both adjudications workloads and the need for enforcement activities are at record levels.

Similarly, keeping both functions within the Department of Justice would be far less costly than the transfer of all adjudications activities to the Department of State. And keeping adjudications within Justice would not require the proposed creation of an entirely new independent agency for immigration review in place of EOIR.

Some predictable disruption and added expense are justifiable if the outcome is most likely to be an improvement. However, the consequences of the transfer of all adjudications functions to the Department of State are far from certain. Unlike the Department of Justice, the Department of State would be undertaking an entirely different mission. Historically, immigration and consular matters have received tertiary attention and status at the Department of State. While some argue that the Department of State could, and should, adopt an entirely new mission in the post-Cold War era, it is a great risk to take. The Department of State has not had experience with the large volume of substantive adjudications that heretofore have been done by the Department of Justice. Moreover, elementary concepts of legal process, including administrative and judicial review, precedent decisions, and the right to counsel, have been vigorously resisted by the Department of State throughout its history of consular affairs.

In contrast, the Department of Justice has the experience and the expertise. It needs only the restructuring and separation of enforcement from adjudications, with dedicated leadership and management for each, to have the best chance of success, at less cost and with less disruption of the fundamental immigration responsibilities.

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REFUGEE POLICY

REPORT TO CONGRESS

U.S. COMMISSION ON IMMIGRATION REFORM

2430 E STREET NW, SOUTH BUILDING

WASHINGTON, DC 20037

202-776-8400

U.S. COMMISSION ON IMMIGRATION REFORM