

NLWJC - Kagan

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**Immigration - Chinese
Smuggling**

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To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP

Subject: Alien smuggling

Elena,

I attended an NSC meeting this afternoon re: alien smuggling and, in particular, how we (the federal government) can better handle situations where boat loads of Chinese are found off the western coast. These migrants sometimes head for Mexico (from where they will be smuggled to the U.S.) and sometimes head for the U.S. Thus, it is a law enforcement issue for both countries.

The only immigration issue discussed was whether INS's expedited removal procedures could be adapted to better handle boat loads of Chinese. Under the current system, a person who arrives in the country without proper immigration papers is immediately deported, unless that person can make a threshold claim of asylum. The DOJ and INS have worked hard to make this process as fair as possible and have erred on the side of making the threshold showing fairly low. The DOJ believes that, in general, the use of a low threshold works well to carry out its mandate to deport easy cases and detain for investigation border-line cases. DOJ and INS strongly support how expedited removal is being implemented.

However, b/c of this low threshold and a recent change in the law that allows credible fear of persecution to be established based on the birth control policies of the migrant's home country, more than 90% of Chinese who arrive on boats are able to make the necessary threshold showing; thus, only a small percentage are quickly deported.

The State Department has asserted that our credibility in asking for greater cooperation from Mexico on this issue requires that we take greater steps to make the necessary changes in our laws so that the Chinese can be repatriated expeditiously from the U.S. However, DOJ does not think that there are regulatory or legislative changes that they would recommend.

However, DOJ is going to take a stab at it. They are preparing an options paper on what regulatory changes could be made to make expedited removal work better for Chinese arriving on boats, without making it worse for the vast majority of immigrants to whom it applies. We should get this in a couple of weeks.

Julie