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001. memo	[Email hardcopy of] WAVES confirmation to Cathy Mays re: Appointment with Reed on 8/14/98 (partial) (1 page)	8/13/98	P6/b(6)

COLLECTION:

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FOLDER TITLE:

Immigration [1]

rs48

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Immigration

THE WHITE HOUSE
WASHINGTON

September 29, 1994

MEMORANDUM TO LEON PANETTA

From: Rahm Emanuel
Ron Klain
Subject: Immigration Strategy

In both the short term and the long term, the Administration's objective with regard to immigration should be to strike an aggressive posture, while stressing our accomplishments as part of a balanced approach. We must be seen as taking proper, forceful steps to seriously address the immigration problem without alienating the hispanic and civil rights constituencies. Our goal is not to out-do the Republicans, rather to use our achievements and proposals to prevent them from using this as a wedge issue against us.

What follows is an outline of our communications plan based on our agreement this morning.

As we mentioned in an earlier memo, throughout the next ten days there will be an acceleration of immigration stories in the national media due to the following events:

- a) beginning of Operation GateKeeper
- b) release of Barbara Jordan's Bipartisan Commission Immigration Report
- c) release of the President's annual immigration report
- d) heightened political environment due to the elections.

a. Operation GateKeeper

The major event this weekend is the commencement of Operation Gatekeeper by the Attorney General and the INS. The landing of the operation, with extensive briefing efforts by the Attorney General in Washington and the INS officially, will be covered in San Diego and by the national media. Given the inquiries from the national media, we expect good coverage this weekend of our response to the immigration crisis.

(See attached talking points)

b. Barbara Jordan's Commission Report

On Friday, Barbara Jordan will speak at the National Press Club on the Commission report. As you know, although the Administration and the Commission agree on 90 percent of the

issues, and although this will be reflected in the report, the coverage may be focused on the divisive issues: 1)the registration database and 2)the national identification card.

We are preparing a statement to be released following Barbara Jordan's meeting with Carol Rasco. This statement will define our position on the Commission report and should be circulated to members of the Administration to give them guidance on how to discuss the report.

Before the report is released on Monday, we need to brief the following people on key aspects of the Commission report and the Administrations response:

- Public Liaison (ie. the hispanic community)
- Administration
- Interested Congressional Members
- Interested State and Local officials

(See attached talking points)

d. President's Annual Report on Immigration

Next Wednesday, on October 5, the President's annual report on immigration will be released. (We need to organize activities around the report for Doris Meissner.)

The theme of the report is that a) this is a problem we inherited and b)there is a dramatic contrast between the neglect and inaction of previous administrations versus our aggressive approach to solving this problem.

The President's report will fulfill its statutory obligations and give a status report of the current immigration situation.

Calendar

We have created a calendar of key events, which will be updated regularly, to help organize White House and Administration activities and statements. (See attached).

The next ten days are a crucial opportunity for us to present ourselves in an aggressive posture and win this issue back.

CALIFORNIA ILLEGAL IMMIGRATION:

KEY MESSAGE POINTS

- After years of neglect, the Clinton administration is almost doubling agents at the California border -- up from 640 in October 1992 to 1,120 by October 1995.
- After years of inaction, the Clinton administration is almost doubling the number of criminal aliens being deported from California -- up from 9,000 each year to 15,000 a year by next October.
- After years of denial, for the first time the federal government is going to pay a share of the cost of jailing criminal aliens.
- After years of neglecting and even contributing to this problem, Governor Wilson is in no position to criticize our unprecedented efforts.

FEDERAL HELP FOR THE COST OF INCARCERATING ILLEGAL ALIENS

- By mid-October, DoJ will be able to send an estimated \$30 million to California to reimburse the state for the cost of incarcerating criminal illegal aliens.
- This sum is just a downpayment on a total grant of \$75-\$90 million that will go to California for this purpose within the next year.
- This \$30 million is the first reimbursement ever by the federal government to the states for the cost of incarcerating criminal illegal aliens.
- Where does the money come from? The President's Crime Bill provides the funding for this reimbursement. Crime Bill supporters deserve credit for helping to make these funds available for the state.
- Note that the downpayment of \$30 million is, by itself, larger than the entire balance of the Immigration Emergency Fund -- the Fund that Gov. Wilson has spent so much time talking about.

THE WILSON RECORD: NO ROOM TO CRITICIZE

Today, Governor Wilson wants to crack down on illegal immigrants. But in the 1980s, Senator Wilson had a different approach. Is the Governor a credible critic of the Justice Department's policies? Here is the record:

- As a Senator, Wilson voted three times -- in 1983, 1985, and again in 1987 -- to limit INS enforcement against businesses that hired illegal immigrants.
- In fact, in 1983, Wilson cosponsored an amendment to require the INS to secure a search warrant before entering an agricultural workplace to apprehend illegal aliens. Even fellow Republican Senator Alan Simpson knew the consequences of this move -- to make it virtually impossible for the INS to combat a flood of illegal aliens working in agricultural jobs.
- In 1985, Wilson was more concerned about the rights of illegal aliens than about INS enforcement. Wilson asked on the Senate floor, "Should [illegal immigrants] be so frightened of their apprehension by the Immigration and Naturalization Service that they refuse even to use the housing provided for them by growers for fear of being raided by the INS?"
- Also in 1985, Wilson supported a program to provide lawful status to seasonal agricultural workers "to give the kind of assurance that men and women who are willing to work and work hard, in the sun and in the weather, will at least have the peace of mind to know that their hard work will not be interrupted by a raid."
- In 1987, the L.A. Times reported that Wilson asked the INS to relax its enforcement of the new immigration controls to "avoid the disaster of fruit rotting on the trees."
- Also in 1987, Wilson asked the INS to make it easier for Mexican farm workers to cross the border and proposed a 90-day work permit that would enable Mexican workers to apply for legalization while working the harvest.
- Today, Governor Wilson has much rhetoric for illegal immigrants. But as a Senator, Wilson viewed illegal immigrants as hard-working, valuable assets to California's economy, saying "They are people . . . to the Immigration authorities from whom these poor, work-seeking emigrants flee, with the terror of those who know they are about to lose their livelihood and be deported not to a country they do not wish to return to but at a time they do not wish to return."
- Moreover, during Wilson's first two years as Governor, his agenda did not include any effort to control or deter illegal immigration. It is only in the last two years, as he approached the upcoming election, that he has begun to sound the drumbeat against illegal immigration.

OPERATION GATEKEEPER: A PLAN TO PROTECT CALIFORNIA'S BORDER

Operation Gatekeeper is a strategic plan to reduce illegal crossing of the California border. Announced by Attorney General Janet Reno on September 17, the plan builds on efforts begun over the last 18 months by the Clinton administration.

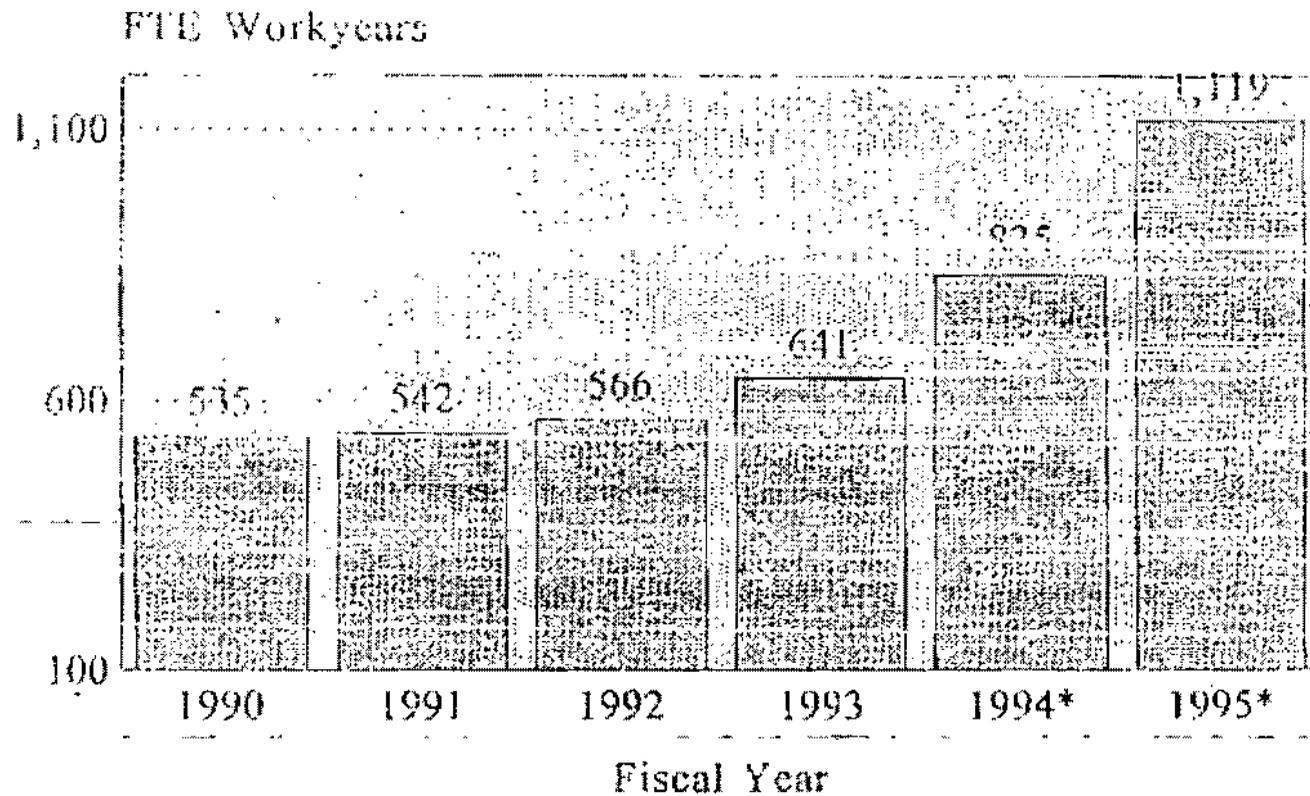
Operation Gatekeeper has seven major components to it; they all add to our existing efforts at the border:

- (1) More Border Agents. In the next 100 days, 220 new and redeployed agents will be added to strengthen the force of the Border Patrol on the line in San Diego. By the end of next year, we will have increased the agent forces on the California border by over 60 percent. This is a dramatic increase in border security, after years of neglect.
- (2) Better Border Control. We will complete 1.5 miles in new lighting -- to light every single section of the border that needs to be lit. This lighting will deter crossers and help agents detect illegal aliens; it is part of our effort to channel aliens to key crossing areas that we will now close.
- (3) Fingerprinting Illegal Aliens. Beginning October 1, we will fingerprint every illegal alien we apprehend in San Diego. This will help us crack down on criminal aliens and track those illegal immigrants who return again.
- (4) Crackdown on Alien Smugglers. In the next 50 days, we will begin to use new authorities under the Crime Bill to prosecute those who smuggle aliens into California. Tough new penalties will send smugglers to prison for up to 10 years for smuggling an alien into the U.S. -- and authorize the death penalty if anyone dies in a smuggling attempt.
- (5) Deportation of Criminal Aliens. We will expand a program to deport criminal aliens directly from California prisons, upon their release. With the expansion of this program, within the next few months, we will almost double the number of aliens removed directly from California's prisons above the level of a year ago.
- (6) Improved Legal Traffic. At the same time that we plug the holes in our border, we will facilitate legal traffic between the U.S. and Mexico with the addition of 110 new inspectors to California ports of entry.
- (7) Helping the State Pay. For the first time ever -- thanks to the President's Crime Bill -- the Federal Government will help states with the costs of incarcerating criminal aliens. The Crime Bill provides \$1.8 billion for criminal alien incarceration over six years, with \$130 million to be distributed in the next 12 months. We will send a downpayment on this sum to California within 100 days.

Immigration and Naturalization Service

California Border Patrol - Enforcement on the Line

Fiscal Years 1990 through 1995

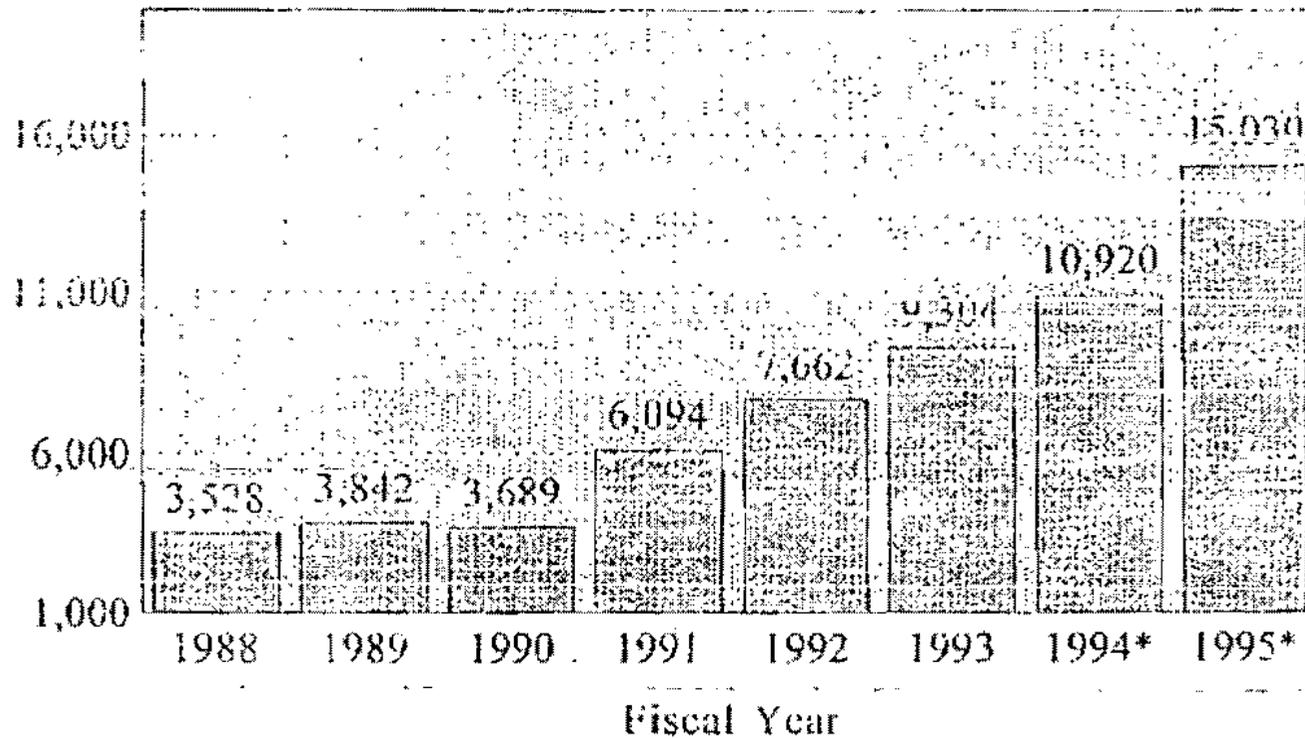


* 1994 and 1995 data are estimated

Immigration and Naturalization Service

California Criminal Alien Deportations Fiscal Years 1988 through 1995

Criminal Deportations



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INS

DRAFT

Telephone Verification System (TVS) Pilot

The Telephone Verification System (TVS) is designed to aid employers in confirming an alien employee's authorization to work, and thereby help ensure that only entitled aliens hold jobs. TVS began in Fiscal Year 1992. It is a voluntary program by which employers, after complying with the Form I-9 verification procedures, can access the INS' TVS database by telephonic means to confirm the employment eligibility of persons newly hired.

Phase I of the TVS demonstration pilot included nine employers who access an INS database to determine employment eligibility of aliens hired to work. In FY 95, INS will expand the pilot to 200 employers, resulting in an estimated prevention of 5,000 unauthorized aliens gaining employment. We expect to further expand the TVS Program the following year, contingent on sufficient appropriations.

The employers targeted for participation in Phase II of the pilot will be contacted using a list of employers who previously have been fined by INS for Employer Sanctions' violations. The employer participants are targeted within the following five states: California, Florida, Illinois, New York and Texas. The strategy for Phase II is to target employers in states and industries that are historically reliant upon illegal alien labor. The employers involved in the expanded TVS program will include agriculture, manufacturing and retail industries.

RAM/IZALM

this describes our pilot project and our plan to expand it to 200 employers in five states next year.

SEPTEMBER-(as of 9/28)

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29 - DC:DM to announce border checkpoint strategy at media availability - SD/LA: AG satellite interviews - AG interview with LA Times.	30 - DC/Jordan Press Club speech on Commission recommendations - SD/LA-AG interviews with radio on Gatekeeper SD:Gus, INS, USAtty announcement on steps being taken to implement Gatekeeper: boat patrols, fingerprinting, etc. -Minority media outreach. Hispanic media Gus, Bersin	

OCTOBER-(As of 9/28)

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
						1 SD: Kick off Gatekeeper at night
2 SD: Gus debriefs media on 1st night of Gatekeeper	3 DC/SD: AG, DM and Gus have phone conversation on 1st 48 hrs of operation ?DC/Gorelick testifies on employer sanctions	4 DC: DM attends Bi-National Commission mtg	5 DC: INS oversight hearing. DM testifies President's Report Issued	6 DC: SCAAP grants announced at AG briefing - DM at internal meeting	7 DM at internal meeting	8
9 -asylum regs ready this week	10 Scopes to border	11 Reich-DOL	12 SD: US Atty's border conference, DM to attend	13 SD: USA's conference -Border Technology event w/AG -DM unavailable	14 SD: USA's Conference with SW Border USAs - DM unavailable	15 - DM unavailable
16 -DM unavailable	17 SD: DM to receive update on first 2 wks of Gatekeeper	18 AZ: DM to Nogales	19	20 - DM internal meeting	21 - DM internal meeting	22
23	24	25	26	27 - INS FY 95 Resource allocation for each state to be ready	28 DC: DM scheduled for Press Club	29
30	31 Baltimore: Commissioners meeting					

NOVEMBER-(As of 9/28)

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15 INS briefs Congress on immigration laws	16	17 San Clemente checkpoint re-opens	18	19
20	21	22	23	24	25	26
27	28	29	30			

DECEMBER-(As of 9/28)

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

AN ATHLETE'S SUDDEN DEATH: WHO'S TO BLAME?

Newsweek

August 11, 1997 \$3.99

Immigration Backlash

A Newsweek Poll: 60% of Americans Say Immigration Is 'Bad for the Country'



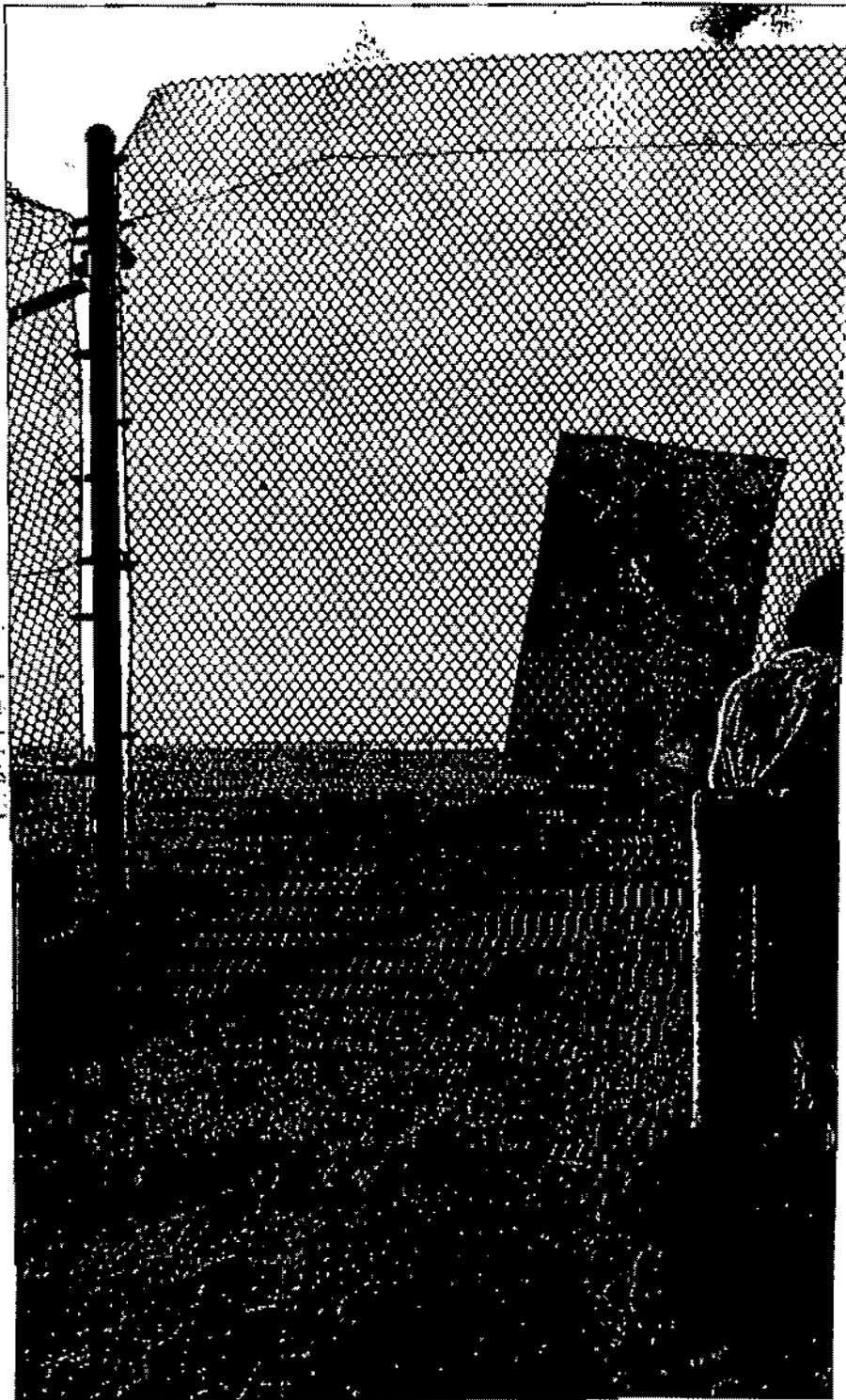
America: Still a

BY TOM MORGANTHAU

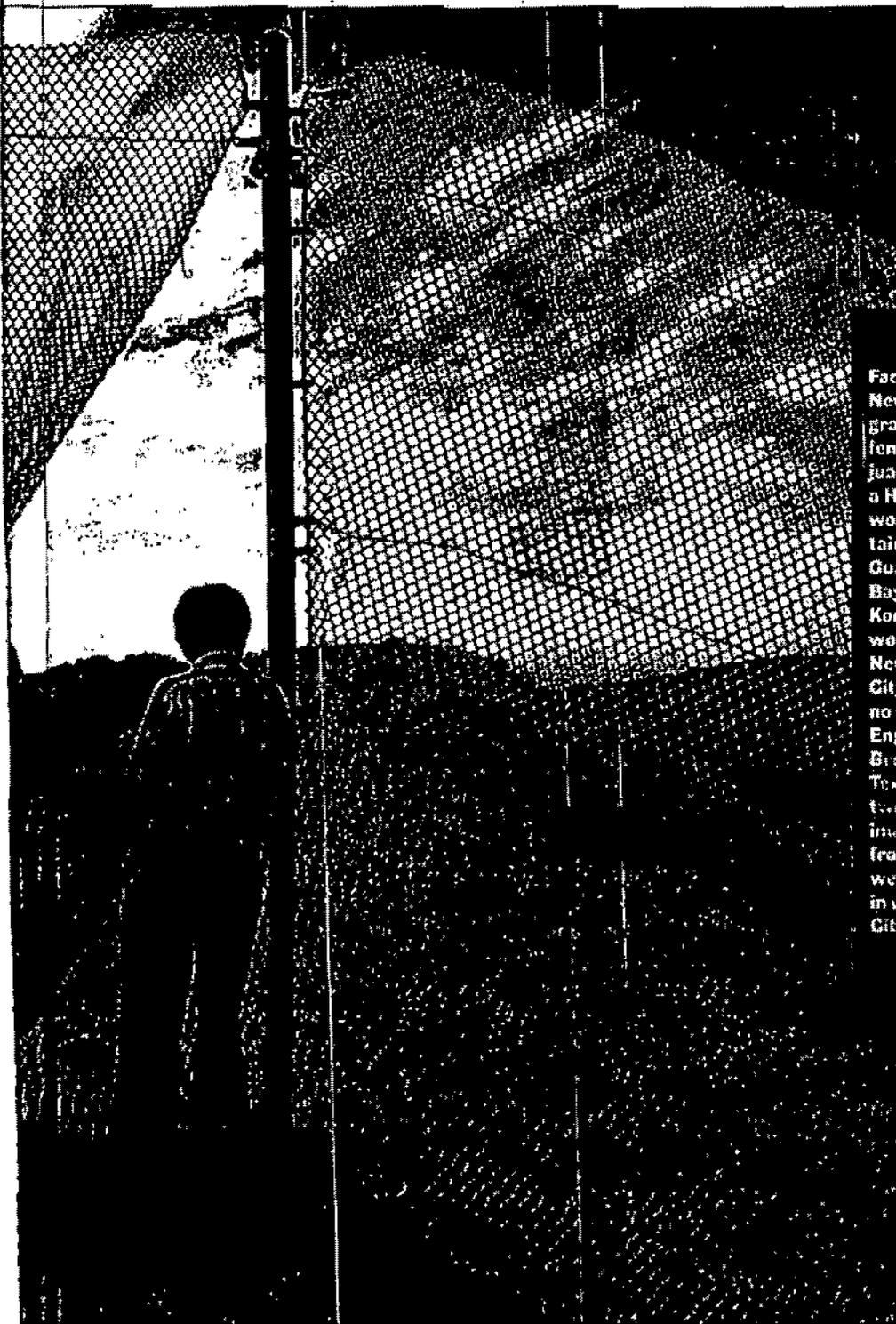
FEW AMERICANS remember Israel Zangwill, but he was a transatlantic celebrity in the years before World War I. Poet, novelist, dramatist and political activist, Zangwill was a founding father of the Zionist movement and an ardent suffragist. He knew Theodore Roosevelt, Oscar Wilde and George Bernard Shaw, and he was a prolific, if preachy, writer. Here is a bit of dialogue from Zangwill's greatest hit, a four-act melodrama that opened in Washington in 1908. The speaker is David, a young composer:

America is God's Crucible, the great Melting-Pot where all the races of Europe are melting and re-forming. . . . Germans and Frenchmen, Irishmen and Englishmen, Jews and Russians—into the Crucible with you all! God is making the American!

The imagery comes from steelmaking, which was state-of-the-art technology then. The play is "The Melting-Pot," a phrase that has lived ever since. Zangwill, despondent at the eclipse of many of his political ideals, suffered a nervous breakdown and died in England in 1926. America had already turned its back on his optimism and, in an orgy of blatant racism, virtually cut off immigration. Two generations later, immigration is running full blast—and Americans once again are asking fundamental questions about the desirability of accepting so many newcomers and the very idea of the Melting Pot. They believe, with some justice, that the nation has lost control of its borders. They are frightened about the long-term prospects for the U.S. economy



a Melting Pot?



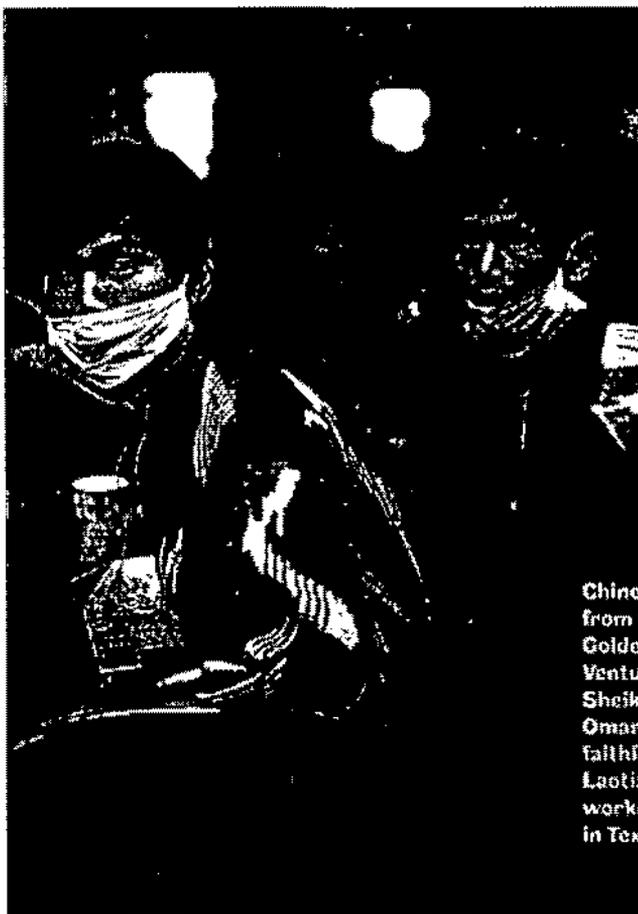
Faces of the New Immigrants: the fence at Tijuana (left); a Haitian woman detained at Guantánamo Bay, Cuba; Korean women in New York City; a Latino studying English in Brownsville, Texas, and two young immigrants from South-west Asia in Jersey City, N.J.



and worried about their jobs. They think, erroneously, that immigrants are flooding the welfare rolls and are heavily involved in crime. And they are clearly uncomfortable with the fact that almost all the New Immigrants come from Latin America, the Caribbean and Asia.

THE LATEST NEWSWEEK Poll reveals the public's sharply shifting attitudes. Fully 60 percent of all Americans see current levels of immigration as bad; 59 percent think immigration in the past was good. Fifty-nine percent also say "many" immigrants wind up on welfare, and only 20 percent think America is still a melting pot.

All this—an incendiary mixture of fact, fear and myth—is now making its way into politics. The trend is most obvious in California, where immigration is already a hot-button issue, and it is surfacing in Washington. Recent events like the World Trade Center bombing, the arrest of Sheik Omar Abdel-Rahman and the grounding of the Golden Venture, an alien-smuggling ship crammed with nearly 300 Chinese emigrants, have revived the 10-year-old controversy about illegal immigration. "We must not—we will not—surrender our borders to those who wish to exploit our history of compassion and justice," Bill Clinton



Chinese from the Golden Venture, Sheik Omar's faithful, Laotian worker in Texas

ANDY UZZLE—AP/WIDE

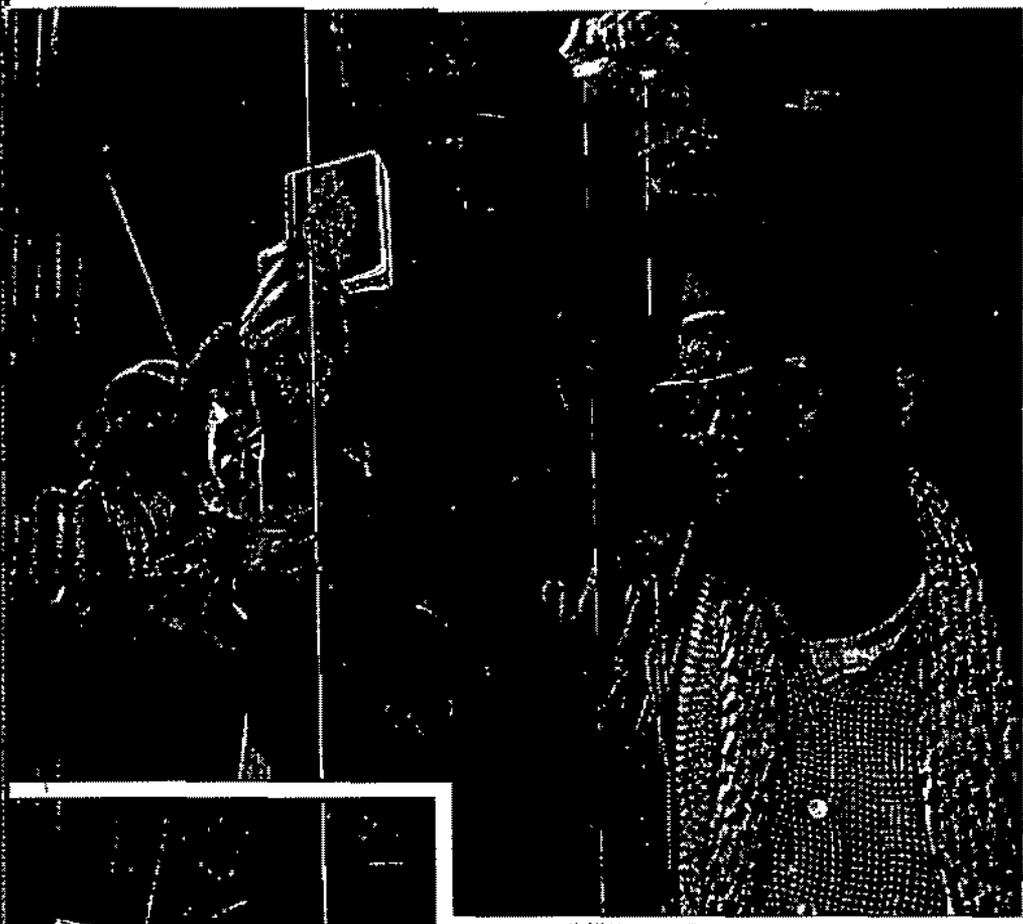
The Economic Cost of Immigration

IMMIGRATION HAS ranked with corn and cars as a mainstay of American economic growth. The traditional theory is simple: energetic workers increase the supply of goods and services with their labor, and increase the demand for other goods and services by spending their wages. A benign circle of growth unfolds as a widening variety of workers create a rising tide of riches for each other. Two hundred years of U.S. history seem to confirm the theory. Yet the perception today is that immigration is a drag on the economy, not a lift. In truth, it's both. "The short-term costs of immigration today are much higher," says Michael Boskin, formerly chief economist to George Bush, "but in the long run, immigrants are still great news for our economy."

The NEWSWEEK Poll shows

that 62 percent of those surveyed worry that immigrants take jobs away from native-born workers. That can be true sometimes. High unemployment in California, where the jobless rate is 8 percent, immigration is soaring and native-born Americans are actually leaving to find work in other states; some temporary displacement may be occurring. In normal times, any job loss is more than offset by the creation of new jobs returning from the immigrants' own work. The immigrants' new spending creates demand for housing, groceries and other necessities, and their employers invest their expanding profits in new machinery and jobs. "It is called competitive capitalism," says Tony Carnevale of the American Society for Training and Development, "and it works."

It's how America grew. Two forces have recently helped us reap the benefits of immigration: the welfare state and the safety net. In the 1990s, the welfare state has been a boon for immigrants since it's the only great decade of immigration since 1990 to 1994. The safety net and a little public aid are the only services provided to these immigrants, the poor and other Northeasterners. One third of the new immigrants simply failed and moved back home. Today, dozens of welfare programs—from food stamps to unemployment compensation—cushion failure and attract immigrants who might otherwise stay home. In California, children born to illegal parents now account for one in eight beneficiaries of one program alone, Aid to Families with Dependent Children (AFDC). The state-run Medic-



BETTMANN ARCHIVE

1600-1776
Seeking greater fortune and religious freedom, Europeans braved the Atlantic to settle in America before the Revolution

said last week, announcing a \$172.5 million proposal to beef up the U.S. Border Patrol and crack down on visa fraud and phony asylum claims. On Capitol Hill, the revival of an issue that many had thought dead is shaking both political parties, and Democrats such as Sen. Dianne Feinstein of California are scrambling to neutralize nativist backlash. "Some of the people who opposed me totally 10 years ago are now saying, 'What's happening to our country? We gotta do something,'" said Republican Sen. Alan Simpson of Wyoming, a perennial advocate of tougher immigration enforcement. "It's ironic beyond belief. Attitudes have shifted dramatically, and it's coming from the citizens."

This is not the 1920s—a time when most

NEWSWEEK POLL

Was immigration a good thing or a bad thing for this country in the past?

- 59% Good thing
- 31% Bad thing

Is immigration a good thing or a bad thing for this country today?

- 28% Good thing
- 60% Bad thing

Is the U.S. still a melting pot, or do immigrants today maintain their national identity more strongly?

- 20% Still a melting pot
- 66% Maintain identity

THE NEWSWEEK POLL, JULY 29-30, 1993

aid program provided \$489 million in health care to more than 400,000 illegal aliens last year. Legal aliens got hundreds of millions more.

Donald Huddle, an immigration expert at Rice University, recently calculated that

the 19.3 million legal, illegal and amnestied aliens accepted into the United States since 1970 utilized \$50.8 billion worth of government services last year. They paid \$20.2 billion in taxes. So the net burden on native-born taxpayers was \$30.6 billion—a social-welfare cost per immigrant of \$1,585. Huddle projects these immigrants will cost taxpayers another \$50 billion a year on average over the next 10 years.

A decline in the skills of new immigrants helps to explain these numbers. Ninety percent of current immigrants arrive from Third World countries with income and social-service levels one tenth or even one twentieth those of the United States. Their education levels relative to those of native-born Americans are steadily declining. So are their earnings. George Borjas of the University of California, San Diego, says that in 1970 the average immigrant actually earned 3 percent more than a native-born American but by 1990 was earning 16 percent less. "Each year the percentage is heading downward," says Borjas. "What's more, welfare dependency has steadily climbed and is now above that of native-borns. In 1990, 37 percent of native Californians received public assistance vs. 10.4 percent of new immigrants. The welfare costs of immigration should dramatically decrease as the California and U.S. economies recover. The long-term benefits of immigrant labor and business enterprise will then be more apparent. But the age of innocence in the American immigration experience is over. The rise of the U.S. welfare state has placed a cushion under the immigrant experience—and diminished the benefits of immigration to the country at large."

RICH THOMAS with ANDREW MURR in Los Angeles

DAVID J. SAMS—TOP LEFT; RICHARD B. LEVINE (TOP

Americans regarded dark-skinned people as inherently inferior, when the Ku Klux Klan marched through Washington in a brazen display of bigotry and when the president of the United States could tell an Italian-American congressman, in writing, that Italians are "predominantly our murderers and bootleggers . . . foreign spawn [who] do not appreciate this country." (The president was Herbert Hoover and the congressman was Fiorello La Guardia.) The civil-rights revolution changed everything: it gradually made overt expressions of any ethnic prejudice into a cultural taboo. Almost accidentally, the moral awakening of the 1960s also gave the nation an immigration law that reopened the Golden Door. This law, passed in 1985 with the firm backing of Robert Kennedy, Edward Kennedy and Lyndon Johnson, has slowly led to a level of sustained immigration that is at least as large as that of 1900-1920. It inadvertently but totally reversed the bias in U.S. law toward immigration from Europe, and it created a policy so complicated that almost no one understands it. The policy, in fact, is a mess, whatever one thinks of the desperate Chinese on the Golden Venture or the young Latinos who scale the fence at Tijuana every night.

Bill Clinton's goal, like that of most defenders of continued large-scale immigration, is to drive home the distinction between legal immigration (good) and illegal immigration (very, very bad). Illegal immigration is undeniably out of control. Congress tried to stop it in 1988 with a law called IRCA, the Immigration Reform and Control Act, which was based on a two-pronged strategy. IRCA offered amnesty and eventual citizenship to an estimated 3.7 million illegal aliens and, at the same time, aimed at shutting down the U.S. job market by making it illegal for employers to hire undocumented aliens. The act has failed. Despite the amnesty, the estimated number of illegals has once again risen to between 2 million and 4 million people. "For the first two years there was a significant drop . . . because folks thought there was a real law here," says Lawrence H. Fuchs, acting chair of the U.S. Commis-

sion on Immigration Reform. "But the word got out" that IRCA had no teeth. Fuchs says, and the influx resumed. Fuchs concedes that as many as 500,000 illegals now enter this country each year, though he admits it is impossible to know for sure.

The concern over illegal immigration is fueled, in part, by two conflicting fears. Illegals are vulnerable to exploitation by employers and are often victimized—extorted, kidnapped, raped, tortured and sometimes killed—by criminals and smugglers. At the other extreme, in cities like Los Angeles, they flood the labor market and set

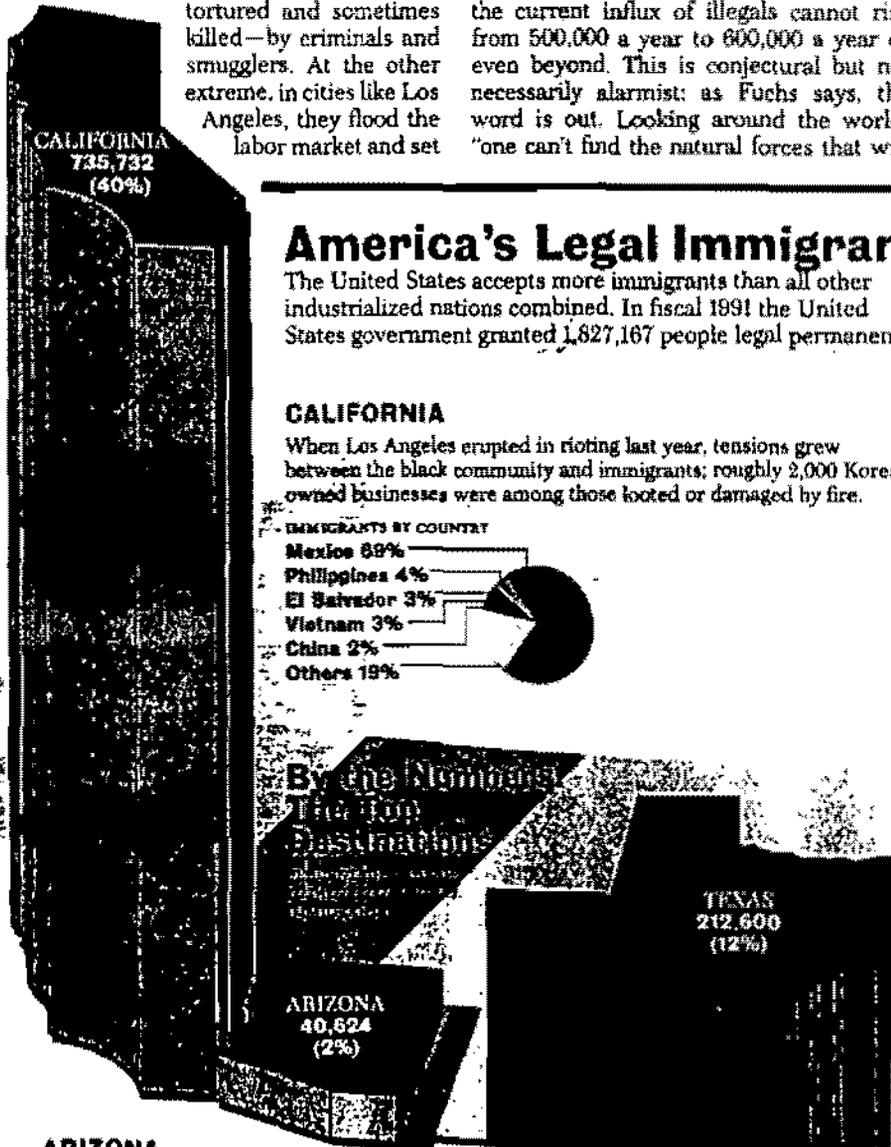
off bitter competition with American workers and legal immigrants for jobs.

But the real problem is the subversion of U.S. law and policy, and that creates two dilemmas for the federal government. The first is what to do about the undocumented aliens who have made their way into this country since IRCA: another amnesty, obviously, would only encourage more illegal immigration. The second dilemma is worse. There is no particular reason to believe that the current influx of illegals cannot rise from 500,000 a year to 600,000 a year or even beyond. This is conjectural but not necessarily alarmist: as Fuchs says, the word is out. Looking around the world "one can't find the natural forces that will



1820-1870
The potato famine of the mid-1840s sent the Irish scurrying to the promised land, while economic depression in Germany triggered an exodus

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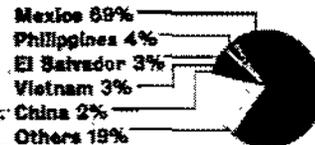
America's Legal Immigrants

The United States accepts more immigrants than all other industrialized nations combined. In fiscal 1991 the United States government granted 1,827,167 people legal permanent

CALIFORNIA

When Los Angeles erupted in rioting last year, tensions grew between the black community and immigrants; roughly 2,000 Korea-owned businesses were among those looted or damaged by fire.

IMMIGRANTS BY COUNTRY



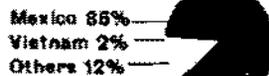
By the Numbers

ARIZONA
40,624 (2%)

ARIZONA

Although many are just passing through in search of opportunities, Arizona's Mexican immigrants often feel at home amid the state's Hispanic heritage.

IMMIGRANTS BY COUNTRY

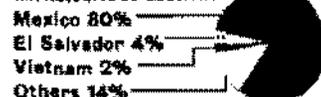


TEXAS
212,600 (12%)

TEXAS

Texas and Mexico share some 1,200 miles of porous border, along which the INS has apprehended about 380,000 illegal aliens so far this year.

IMMIGRANTS BY COUNTRY



bring down the flow," says Harvard University sociologist Nathan Glazer. "The first impact of prosperity will be to increase it. Look at China. These people don't come from the backward areas, they come from the progressive parts. As they learn how to run a business, they say to themselves, 'Why not go to the United States and do even better?'"

The same applies to Bangladesh, the Dominican Republic, Mexico or the Philippines. The dynamic, as Fuchs says, is rooted in powerful macroeconomic forces now at work all around the globe—rising birthrates and the conquest of disease, prosperity or the hope of prosperity, even modern telecommunications. (The glittery materi-

alism of American TV shows is now being broadcast everywhere.) Much as Americans tend to regard the new immigrants as poor, uneducated and less skilled, the vast majority are surely enterprising. What they seek is opportunity—the opportunity to hold two jobs that no Americans want, to buy a television set and a beat-up car, to start a family and invest in the next generation. Immigration is for the young; it takes courage, stamina and determination to pull up your roots, say goodbye to all that is dear and familiar, and hit the long and difficult trail to El Norte. Illegal immigration, with all its hazards, is for the truly daring: the Latino men who wait on Los Angeles street corners, hoping for day-

work, have faced more risk than most Americans will ever know.

You can argue, then, that the distinction between legal and illegal immigration is nearly meaningless. Immigrants are immigrants: how they got here is a detail. And, in fact, the arcane system of regulation created by the 1965 law, together with its amendments and adjustments since, implicitly accepts this argument. The law recognizes three reasons to award immigrant visas—job skills, especially those that somehow match the needs of the U.S.

economy; a demonstrable reason to seek refuge from war or political persecution, and kinship to an American citizen or a legal alien. This triad of goals replaced the national-origin quota system of 1924, which heavily favored immigrants from Northern and Western Europe and severely restricted immigration from everywhere else. It is a matter of lasting national shame that Congress, throughout the 1930s and even after World War II, refused to adjust the law to admit the victims of the Holocaust. That shabby record outraged Jews and had much to do with the passage of act of 1965. So did the old law's bias against Slavs, Poles, Italians, the Chinese and the Japanese.

But all three of these goals have been steadily distorted—chipped at, twisted out of shape—by the realities of immigration since 1965. Kinship to U.S. citizens, known as the "family-reunification policy," has become the overwhelming favorite of visa seekers and the primary reason the pattern of immigration has shifted so hugely to the Third World. It was never intended to be: given the fact that most immigration to the United States had always been from Europe, those who voted for the act of 1965 generally assumed that family-reunification visas would be used by Europeans. They also assumed that there would be no large increase in immigration to the United States. "Our cities will not be flooded with a million immigrants annually," Sen. Edward Kennedy told a subcommittee hearing. "Under the proposed bill, the present level of immigration [about 300,000 a year] remains substantially the same. . . ."



BETTMANN ARCHIVE

1880-1920
Persecution and poverty throughout Europe unleashed the greatest flock of immigrants ever; no fewer than 12 million sought refuge here

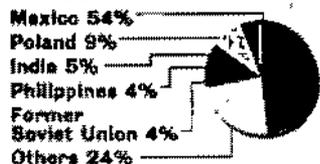
Who They Are and Where They Go

residence. Seventy-nine percent of these legal immigrants, looking for everything from freedom to financial opportunity, chose the seven states below as their new homes.

ILLINOIS

More Poles live in Chicago than any other city in the world except Warsaw. The Polish community continues to draw new immigrants to the Windy City.

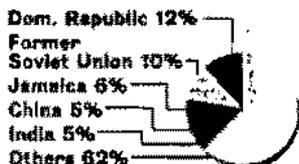
IMMIGRANTS BY COUNTRY



NEW YORK

Ellis Island closed as a port of entry in 1954, but New York City still lures more immigrants than any other U.S. city.

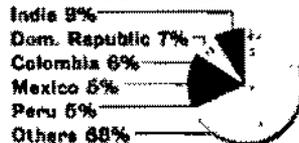
IMMIGRANTS BY COUNTRY



NEW JERSEY

Asian Indians, one of the fastest-growing immigrant groups in New Jersey, speak as many as 20 different languages.

IMMIGRANTS BY COUNTRY



FLORIDA

Fleeing Haitians are the latest wave of immigrants to Miami, but record numbers of Cubans continue to cross the 90-mile stretch on makeshift rafts.

IMMIGRANTS BY COUNTRY



SOURCES: IMMIGRATION AND NATURALIZATION SERVICE AND NEWSWEEK SOURCES
JULIE THAYER—NEWSWEEK



ALON REINBERG—CONTACT

A group of aliens during an INS raid in southern California

That is not what happened. Immigration from Latin America, the Caribbean and Asia, a trickle in 1965, has steadily widened so that it now comprises about 90 percent of the total. Legal immigration from 1971 to 1990 was 10.5 million people—but if 3 million illegals are (conservatively) added in, the total is pretty much the same as 1900-1920, the peak years in American history. Owing partly to a further liberalization of the law in 1990 and partly to the IRCA amnesty, the United States now accepts more immigrants than all other industrialized nations combined. (Upwards of 80 percent are persons of color: so much for the myth that U.S. policy is racist.) Proponents of further immigration argue that the current influx is actually lower than the 1900-1920 peak when considered as a percentage of the U.S. population. They are right: it was 1 percent of the population then and about one third of 1 percent now. But it is still a lot of people.

AND THE LAW IS FULL OF holes. A majority of those who get family-reunification visas (235,484 in 1992) come in with no numerical restriction at all: for them, at least, immigration is a form of entitlement program. Others game the system by forging documents, faking job histories and hiring smart American lawyers to get them eligible for resident visas and green cards. This is known in federal jargon as "adjusting status," and in most years it works for more than 200,000 immigrants. The asylum hustle is the newest wrinkle. By claiming political asylum,

would-be immigrants circumvent the normal rules and, because the jails are full, are usually freed to stay and work. Many simply vanish into the underground economy. "We didn't [expect] the asylum" problem," says Lawrence Fuchs. "We thought of it as the ballerina in the tutu saying, 'I defect, I defect!'"

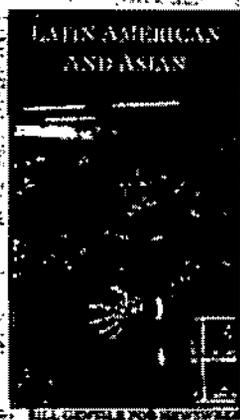
Immigration policy is simultaneously a statement of America's relationship with the rest of the world and a design for the national future: it is, and probably should be, a mixture of altruism and self-interest. Current U.S. policy contains elements of both—but it is a blurry, heavily brokered policy that has been cobbled together over the decades to reflect the changing fads and competing interests of domestic politics. A purely selfish policy would accept only immigrants who could contribute to economic or social progress. But this idea—rewarding visas on the basis of talent or skill—has always been opposed by organized labor and other groups, and it is a minor feature of today's law, totaling about 140,000 out of 810,000 visas annually. Conversely, providing a haven for refugees is in the best tradition of the American conscience, and the United States has taken a lot of refugees since 1970—1.5 million Vietnamese, Laotians, Cambodi-

ans, Cubans, Russians and other oppressed nationalities.

But the vast majority of those who get here are ordinary folks pursuing a better life—and although this, too, is part of the American tradition, the question can and should be asked: What's in it for us? What does all this immigration do for America and Americans? Julian Simon, a University of Maryland economist, says he knows the answer: more immigration means more economic growth—more wealth and more progress for all Americans, period. Pat Buchanan, the talk-show host and erstwhile presidential candidate, has a different answer: more immigrants mean more social friction and the slow erosion of the English-speaking, hybrid European culture we call "American."

There is a third issue as well: how many people, really, can the territorial United States support? Immigration now produces about a third of U.S. population growth, and projections for the future range from a population of about 363 million in 2050 to 436 million by the year 2090. All of these projections are shaky—based on complex assumptions about birth and death rates as well as immigration policy. Some environmentalists (and many Californians) think the United States should immediately halt immigration to protect the ecosystem and the quality of life. Fuchs says his commission has consulted environmentalists and population experts. "They persuaded us that the population growth is terribly serious on a planetary scale, but not in the United States," he says. "So migration to the United States perhaps has a beneficial effect on the global environmental problem." Still, Congress took no notice of this question when it voted to increase immigration in 1990—and given the wide disparity of current views, picking the "right" number of future Americans is ultimately a combination of taste and guesswork.

The further question is one that troubles Pat Buchanan and many others: can America absorb so many people with different languages, different cultures, different backgrounds? The answer, broadly, is yes—which does not



1988-1993
The face of immigration has changed over the last few decades, adding non-European cultures, languages and religions to the melting pot

mean there will be no ethnic friction and does not mean that assimilation is easy for anyone. Assimilation is a generational thing. The first generation—the immigrants themselves—are always strangers in the land. The second generation is halfway between or (kids will be kids) rejects the immigrant culture. The third generation is hyphenated-American, like everybody else, and begins the search for Roots. The tricky

part, which worries Fuchs considerably, is that America's "civic culture" is unique in all the world. It is the belief, as embodied in the Constitution and our political tradition, "that it is individual rights, not group rights, that hold this country together." So here is the question for all of us, native-born and immigrant alike. At what point do policies like affirmative action and minority-voting rights stop being temporary remedies for

past injustices and start being permanent features of the system? The whole concept of group rights, as Fuchs says, is tribalism—the road to Bosnia, not East L.A. And that, surely, is not what Israel Zangwill had in mind when he described America as the crucible of a new civilization.

With ADAM WOLFBERG and BOB COHN in Washington, ANDREW MURK in Los Angeles and bureau reports

Immigrant Schools: The Wrong Lessons

UNION AVENUE ELEMENTARY school, a dusty sprawl of concrete, asphalt and chain-link fence just west of downtown Los Angeles, bears all the scars of the inner city. Yellow caution signs mark the perimeter: NARCOTICS ENFORCEMENT AREA. PEDESTRIANS ONLY. In the distance a police helicopter circles over a crime scene. After school, parents anxiously hook their fingers through the fence and wait for their kids to emerge. But Union Avenue draws more than an avily immigrant neighborhood: its 2,000 students have even more to surmount than the grim realities of crime and poverty. They also face the enormous obstacles, educational and societal, that stand in the way of foreign-born newcomers.

The student body is more than 93 percent Latino. The second largest group is Filipino, at 2.9 percent. A third of the students were born outside the United States, and well over half are not proficient in English. As many as half may be children of illegal aliens. There are as few Anglos as there are Native Americans: six. In the school library there are books in Tagalog, Korean, Vietnamese, Spanish and English, but not even a third of the faculty can speak Spanish. The others rely on bilingual teacher assistants to translate the lessons. This is an explosive subject here. Many claim that bilingual education has done more to divide teachers than to help Spanish speakers. Defenders see it as a multicultural key-stone. The faculty has been Balkanized by bilingualism: at



LARA JO NEWMAN—SABA

NEWSWEEK POLL

Do you agree or disagree (percent of immigrants)

62% Immigrants take the jobs of U.S. natives

78% Many immigrants work hard when taking jobs that Americans don't want

69% Many immigrants weigh in on welfare and raise taxes for Americans

78% Immigrants are a burden on the U.S. economy

78% Immigrants are a burden on the U.S. economy

Most of the newest immigrants come from Central America, and many bring with them the trauma of war. Asked whether he had witnessed

much fighting in his hometown of San Rafael, El Salvador, which he left three years ago, fifth grader Angel Alfaro nods but doesn't want to talk about it. Asked about his school and

what he would do to fix it, he perks up and says in unaccented English, "Nothing. It's perfect."

At Union Avenue, the 100,000 and more immigrants of California's Central Valley are

concentrated in a few schools, and all are struggling to

keep up with the state's curriculum. Many are

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Despite difficulties, the children are eager to learn

most of the fifth graders will end up at Virgil.

Schools like Union Avenue are making a valiant effort. But as a recent report from the Rand Corp. says, "School systems that are beset by debt, declining and unstable revenues, dilapidated buildings and inadequate instructional resources cannot improve simply by trying harder." The federal government has all but ignored the needs of states with large immigrant populations like California, New York, Texas, Florida and Illinois. The single

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STEVEN MCGUIRE in Los Angeles

Why Our Borders Are Out of Control

THE HEADLINES USUALLY BELONG to the most desperate: to the Mexican border-jumpers, the Chinese entombed for months below deck, the Haitians who disembark from ramshackle freighters along the docks in Miami. Then there's the British national who had been living illegally in the United States on and off for more than a decade, until he married his American girlfriend. He says there was nothing to it. "When an employer or whoever asks for your social-security number, you just make it up," he said. "You can live here and have a perfectly normal life. If you have a bank account with a little money, then [you can get] a credit card, a car loan and off you go."

While the United States seeks new ways to thwart gate-crashers, about half of all illegal immigrants walk unchallenged through the front door. Fraudulent passports and visas, questionable claims of asylum and bureaucratic bungling, help tens of thousands reach American soil and stay indefinitely. One notorious recent example is Sheik Omar Abdel-Rahman, the fundamentalist Egyptian cleric whose followers have been charged in February's World Trade Center bombing. By the time Sheik Omar's "green card" (permanent resident-alien status) was revoked in 1992, the authorities had let him into the country four times—even though his name was on a State Department watch list because of his alliance with Islamic radicals. Consular officials in Khartoum, Sudan, where Abdel-Rahman received his visas, had failed to consult the microfiche that carried his name. Even after State realized its error, it didn't notify the Immigration and Naturalization Service (INS) for four months. Abdel-Rahman is now in federal custody. "Everything that could have gone wrong did," concedes State-Department counselor Timothy Wirth.

The vast majority of visa abuse is virtually invisible. Unlike most countries, the United States has no formal departure controls. About 21 million people entered the country



Leaping over a fence across the U.S.-Mexico border

KEITH DANNEMILLER-SABA

NEWSWEEK POLL

Should it be easier or more difficult for people from the following places to immigrate to the U.S.?

	EASIER	MORE DIFFICULT
Haiti	20%	55%
China	32%	45%
Other Asian countries	27%	50%
Africa	31%	45%
Lat. America	30%	47%
East Europe	30%	39%
Middle East	18%	51%

FOR THIS NEWSWEEK POLL, PHILIPPO KREYER RESEARCH ASSOCIATES INTERVIEWED A NATIONAL SAMPLE OF 1,000 ADULTS BY TELEPHONE JULY 29-30. THE MARGIN OF ERROR IS +/- 3 PERCENT. AGE, RACE, GENDER, ETHNICITY AND OTHER INFORMATION NOT SHOWN. THIS NEWSWEEK POLL © 1993 BY NEWSWEEK, INC.

in 1992 on nonimmigrant entry permits. Upon arrival they're asked to supply a local address, which is rarely checked. When they leave, they are supposed to drop off a departure card—but even that isn't required. In 1991, 317,800 visitors overstayed their visas and were still unaccounted for nine to 18 months after they arrived. The INS estimates that about 50 percent of these newcomers will stay permanently, roughly matching the 100,000 to 200,000 believed to cross the Mexican border each year to reside full time in the United States. "Who's the illegal alien?" asks one U.S. Customs official in Miami. "He's the guy with the briefcase sitting next to you on the plane, or the cute blond au pair girl who runs off to California two weeks after she arrives here. Once you're here, you're here, basically for as long as you feel like. And all the Border Patrol agents in the world can't stop it."

Even those who attract authorities' attention can delay deportation almost indefinitely. Maureen Farrell, an Irish visitor arrested

for shoplifting in the early 1980s, claimed that she had been in a house bombed by the Irish Republican Army and asked for asylum. Last month, after appeals kept her case pending for 12 years, she was finally deported. More disturbing is the case of Mir Aimal Kansi, the Pakistani national suspected of killing two CIA employees last January outside agency headquarters in Langley, Va. After entering the United States on a business visa in 1990, he also asked for political asylum. As his case hunched through the system—it can take two years to even schedule a hearing—he received a work permit, which enabled him to get a Virginia driver's license, then an AK-47 assault rifle. Authorities believe he has fled back to Pakistan.

Bogus visas: The lax controls have spawned a robust market for counterfeit documents. Stolen U.S. passports, usually altered with a new photograph, are in special demand. In Haiti, along John Brown Avenue in downtown Port-au-Prince, hustlers openly sell bogus U.S. visas. Once an immigrant is inside the United States, proving legality is easy. The law allows any of 17 different kinds of identification to be presented to employers. Street hustlers in major cities offer packages complete with social-security card and driver's license for as little as \$500. The documents are often crude frauds but usually satisfy employers uninterested in looking too closely.

The administration plan unveiled last week may curtail some abuses. It would expand the State Department's ability to issue fraudproof, machine-readable visas with digitized photos and upgrade the consular-communications network so diplomats can share information with other agencies. The current anxiety over illegal immigration may revive debate over more sweeping measures, like a national holographic social-security card. Opponents on the left and right, decrying it as Big Brother, scuttled the idea when it surfaced in the 1980s as part of immigration-reform legislation. Supporters say that such a card would be virtually impossible to counterfeit. But history suggests that those who truly yearn to come to America and stay will find a way to do it.

BILL TURQUE with SPENCER BEISS in Miami and MELINDA LIU and ADAM WOLFBURG in Washington

PUBLIC LIVES

JOE KLEIN

The Education of Berenice Belizaire

WHEN BERENICE BELIZAIRE ARRIVED IN NEW YORK from Haiti with her mother and sister in 1987, she was not very happy. She spoke no English. The family had to live in a cramped Brooklyn apartment, a far cry from the comfortable house they'd had in Haiti. Her mother, a nurse, worked long hours. School was torture. Berenice had always been a good student, but now she was learning a new language while enduring constant taunts from the Americans (both black and white). They cursed her in the cafeteria and threw food at her. Someone hit her sister in the head with a book. "Why can't we go home?" Berenice asked her mother.

Because home was too dangerous. The schools weren't always open anymore, and education—her mother insisted—was the most important thing. Her mother had always pushed her: memorize everything, she ordered. "I have a pretty good memory," Berenice admitted last week. Indeed, the other kids at school began to notice that Berenice always, somehow, knew the answers. "They started coming to me for help," she says. "They never called me a nerd."

Within two years Berenice was speaking English, though not well enough to get into one of New York's elite public high schools. She had to settle for the neighborhood school, James Madison—which is one of the magical American places, the alma mater of Ruth Bader Ginsburg among others, a school with a history of unlikely success stories. "I didn't realize what we had in Berenice at first," says math teacher Judith Khan. "She was good at math, but she was quiet. And the things she didn't know! She applied for a summer program in Buffalo and asked me how to get there on the subway. But she always seemed to ask the right questions. She understood the big ideas. She could think on her feet. She could explain difficult problems so the other kids could understand them. Eventually, I realized: she wasn't just pushing for grades, she was hungry for knowledge... And you know, it never occurred to me that she also was doing it in English and history, all these other subjects that had to be much tougher for her than math."

She moved from third in her class to first during senior year. She was selected as valedictorian, an honor she almost refused (still shy, she wouldn't allow her picture in the school's yearbook). She gave the speech, after some prodding—a modest address about the importance of hard work and how it's never too late to try hard: an immigrant's valedictory. Last week I caught up with Berenice at the Massachusetts Institute of Technology where she was jump-starting her college career. I asked her what she wanted to be doing in 10 years: "I want to build a famous computer, like IBM," she said. "I want my name to be part of it."

Berenice Belizaire's story is remarkable, but not unusual. The New York City schools are bulging with overachieving immigrants.

The burdens they place on a creaky, corroded system are often cited as an argument against liberal immigration policies, but teachers like Judith Khan don't seem to mind. "They're why I love teaching in Brooklyn," she says. "They have a drive in them we no longer seem to have. You see these kids, who aren't prepared academically and can barely speak the language, struggling so hard. They just sop it up. They're like little sponges. You see Berenice, who had none of the usual, preconceived racial barriers in her mind—you see her becoming friendly with the Russian kids, and learning chess from Po Ching [from Taiwan]. It is so exciting."

Dreamy hothouse: Indeed, it is possible that immigrant energy reinvigorated not just some schools (and more than a few teachers)—but the city itself in the 1980s. "Without them, New York would have been a smaller place, a poorer place, a lot less vital and exciting," says Prof. Emmanuel Tobler of New York University. They restored the retail life of the city, starting a raft of small businesses—and doing the sorts of entry-level, bedpan-emptying jobs that nonimmigrants spurn. They added far more to the local economy than they removed; more important, they reminded enlightened New Yorkers that the city had always worked best as a vast, noisy, dreamy hothouse for the cultivation of new Americans.

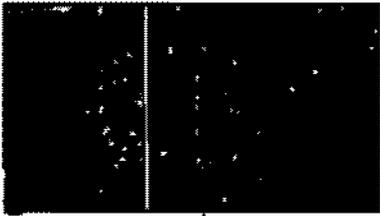
The Haitians have followed the classic pattern. They have a significantly higher work-force participation rate than the average in New York. They have a lower rate of poverty. They have a higher rate of new business formation and a lower rate of welfare dependency. Their median household income, at \$28,853, is about \$1,000 less than the citywide median (but about \$1,000 higher than Chinese immigrants, often seen as a "model" minority). They've also developed a traditional network of fraternal societies, newspapers, and neighborhoods with solid—extended, rather than nuclear—families. "A big issue now is whether women who graduate from school should be allowed to live by themselves before they marry," says Lola Poisson, who counsels Haitian immigrants. "There's a lot of tension over that."

Such perverse propriety cannot last long. Immigrants become Americans very quickly. Some lose hope after years of menial labor; others lose discipline, inebriated by freedom. "There's an interesting phenomenon," says Philip Kasinitz of Williams College. "When immigrant kids criticize each other for getting lazy or loose, they say, 'You're becoming American.'" (Belizaire said she and the Russians would tease each other that way at Madison.) It's ironic, Kasinitz adds, "Those who work hardest to keep American culture at bay have the best chance of becoming American success stories." If so, we may be fixed on the wrong issue. The question shouldn't be whether immigrants are ruining America, but whether America is ruining the immigrants.



Valedictorian: Not yet 'acting American' at MIT

IRA WYMAN FOR NEWSWEEK

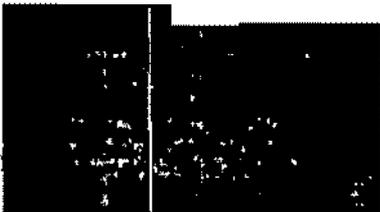
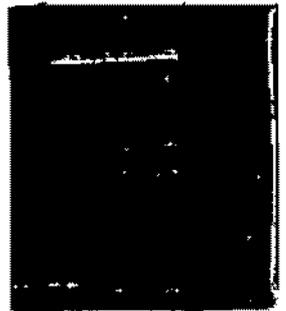


THE WHITE HOUSE
WASHINGTON

DATE: July 19, 1993

TO: *David Gergen*
George Stephanopoulos
Bob Rubin
Bruce Rind

FROM: JOHN D. PODESTA
Assistant to the President and
Staff Secretary



THE WHITE HOUSE
WASHINGTON

July 16, 1993

20. 16 P10: 31

MEMORANDUM FOR THE PRESIDENT

FROM: ROBERT E. RUBIN *RE*

SUBJECT: Secretary Reich Memorandum on Immigration

Bob Reich has written the attached memorandum on immigration, and, in talking with Bob, we both felt you would like to see it.

Most immigration issues are under the purview of the National Security Council, but some of these issues have significant employment and economic impacts. Bob and I feel that the issues raised in his memorandum will require some small administrative process and response. There is no action for you to take at this time, and we will follow up in organizing the necessary process and response.

Attachment

*Part of our overall immigration report -
like this as
some confusion with
and clearly wanted*

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

MEMORANDUM FOR THE NATIONAL ECONOMIC COUNCIL

FROM: ROBERT B. REICH 
SUBJECT: U.S. Immigration Policy
and its Workforce Effects

I. The Problems

In assessing immigration policy, three labor market issues are paramount:

(1) There is concern that the large number of immigrants during a sustained period of high unemployment may be affecting the employment opportunities of U.S. workers. These concerns are sometimes exaggerated, but may be on target in areas or occupations in which immigrants are intensively concentrated. Labor market effects should be considered when evaluating the overall impact of immigration policies.

(2) Immigrants are often subjected to abusive working conditions. These conditions can be particularly deplorable for illegal immigrants but there is increasing evidence that legal temporary nonimmigrants are being subject to abuse as well.

(3) There is also increasing evidence that certain features of temporary nonimmigrant employment programs are functioning poorly and leading to unintended consequences. Because of the Department of Labor's administrative responsibilities for aspects of these programs, abuses associated with these programs are of particular concern to us. Many of the abuses have occurred under the H-1B program¹.

* In Massachusetts, one firm has filed applications for more than 1,100 H-1B computer programmers and analysts after having announced and started to lay-off more than 1,600 U.S. workers, many in the same occupations.

¹ The H-1B program allows admission of "professional" nonimmigrants for temporary employment in "specialty occupations."

- From October 1991 to May 1993, there were at least ten California computer companies that laid off from 100 to 2,000 workers but each applied for at least 25 H-1B visa slots.
- We have found systematic underpayments of required wages in most of the H-1B investigations we have conducted. Recent immigration reforms may have made it easier for such abuses to occur.
- While annual H-1B admissions are capped at 65,000, one university alone has filed applications for 10,000 such workers.
- We have also seen reports, especially from California, that individuals admitted as "visitors for business" under B-1 visas are circumventing the H-1B program and also are replacing U.S. workers in the computer industry in large numbers, mostly through out-sourcing arrangements with job contractors. This nonimmigrant program is administered by INS and the Department of State.

II. Background

In FY 1992, we estimate that at least several million people entered the United States who could become active labor market participants:

- There were nearly one million permanent immigrants, the vast majority of whom were adults. Most of these immigrants were not admitted through employment programs.
- There were 4.3 million temporary nonimmigrants admitted into the country who could potentially have some connection to the labor market. Of these, 2.8 million were temporary admissions for business (many of whom were in the country for very short periods of time or were repeat visitors). More than 400,000 of the temporary nonimmigrants were explicitly admitted as workers.
- In 1989, it was estimated that there were two million undocumented immigrants in the United States. This figure is almost certainly higher today. Some of these illegal migrants are children, but most are presumably part of the labor market.
- Overall, the proportion of immigrants legally admitted specifically for employment purposes is relatively small -- representing only about 10 percent of the 5.3 million legal

permanent and temporary admissions -- but many more migrants are active in the labor market.

During the 1980s, as the economy grew and new (albeit relatively low wage) jobs were being created, the influx of large numbers of migrants to the U.S. caused relatively little public concern. Moreover, the economic activity, talents, and drive of these new entrants can substantially benefit the U.S. economy and create the potential for economic growth.

As the economy changed in recent years, however, and in light of current trends in downsizing of industries that require a relatively highly-skilled workforce -- exacerbated by the continuing shrinkage of defense-based industries -- we can expect immigration-related problems to continue to emerge and public concern to escalate in parallel. For example, in 1990 when our system for admitting legal immigrants and nonimmigrants was last revised, the national unemployment rate stood at 5.5 percent. It subsequently grew much higher and has -- despite recent improvements -- stubbornly remained at a level near 7 percent.

We have already begun to see signs of growing problems. We have read recurring reports involving lay-offs of highly-skilled U.S. workers -- e.g., computer programmers, analysts, and engineers -- who it appears are sometimes being replaced by lower cost foreign workers. These abuses often occur under non-immigrant programs which were supposed to be designed to preclude such employment (see attached news clips). CBS's 60 Minutes is currently producing a story on just such effects. And Congressman Smith (R-TX) has recently introduced legislation (see attachment) to link the ceiling on admissions of immigrants to the national unemployment rate.

III. Department of Labor Response

To address these emerging problems, we are taking a number of steps to remedy abuses and strengthen protections for U.S. workers both in the short and longer terms.

In the short term:

- We have asked the Congress to change the Immigration and Nationality Act to allow us the discretion not to proceed with a controversial program (see attached news clip) to use general labor market information in determining the admissibility of certain employment-based permanent immigrants.
- We are also developing regulatory changes in certain employment-based immigrant and nonimmigrant programs for which we have some administrative responsibility to

strengthen protection of U.S. workers. These include measures to:

- ▶ Require employers to disclose terms and conditions of employment to H-1B workers.
- ▶ Limit employers' labor condition applications (LCAs) to a single geographic area.
- ▶ Require employers to identify the source of the prevailing wage information they use as the basis for paying their H-1B workers.
- ▶ Limit the kinds of deductions allowed to be taken from workers' pay.
- ▶ Clarify what kinds of cash payments qualify, and which do not, toward meeting an employers' wage payment obligations.
- ▶ Clarify, to broaden, the sources from which complaints of violations can be accepted.

For the longer term:

- We are encouraging other Departments, particularly State and Justice, to work with us to strengthen controls on the admission of certain categories of nonimmigrants who are not supposed to engage in employment in the U.S., but appear to be doing so in increasing numbers, in some cases in deplorable conditions.
- We have also started working with our colleagues in the INS and the USTR to explore the feasibility of certain legislative changes we would like to see enacted to further strengthen protections for U.S. workers and discourage employers from seeking nonimmigrant workers in certain cases. In the H-1B program alone, these include:

MEASURES TO MANAGE THE NUMBER OF ADMISSIONS

- ▶ Reduce the H-1B cap of 65,000 admissions per year on an annual basis by 2,000 for each one-tenth of one percent that the national unemployment rate exceeds the rate when the current H-1B provisions were enacted (5.5%). The 65,000 cap would remain the ceiling if the national unemployment rate were to drop below 5.5 percent.
- ▶ Establish a separate "cap" per employer to limit H-1B admissions so that the employer's use of nonimmigrant workers in all categories does not exceed a fixed percentage -- e.g., 10 percent -- of the employer's

total workforce, or its workforce at any single work site.

- ▶ Limit H-1B period of stay to three (3) year duration, as opposed to the current six year duration.
- ▶ Disallow H-1B workers to adjust status to permanent residency or adjust to another legal nonimmigrant status until the worker has left the country for a minimum period of time (six months to two years).

MEASURES TO MANAGE THE "MIX" OF WORKERS ADMITTED

- ▶ Establish a pre-admission requirement that employers seeking H-1B workers attest that they have unsuccessfully recruited for U.S. workers for the target position(s) for some period of time -- e.g., 60 days.
- ▶ Establish authority for DOL to reject H-1B LCAs for occupations in which a labor surplus can be shown to exist.
- ▶ Raise the qualifications for H-1B admission eligibility to require a Masters degree or equivalent, as opposed to a Bachelors degree.

MEASURES TO BETTER PROTECT U.S. WORKERS

- ▶ Add "no lay-off" (past and duration) attestation provisions.
- ▶ Add requirement for employer to attest to taking timely and significant steps to develop, recruit, and retain U.S. workers in the occupations for which H-1B admissions are sought.
- ▶ Add provision that employers using H-1B workers obtained through contract must file separate attestation and be jointly liable for compliance with all attestation elements.
- ▶ Provide subpoena authority for enforcement.
- ▶ Allow directed, as opposed to only complaint-based, investigations.
- ▶ Add debarment penalty for failure to cooperate in DOL investigations or discrimination against individuals cooperating in investigations.

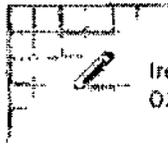
- ▶ Authorize DOL to reject LCAs where the wage promised is clearly less than that which prevails for the occupation in the area of employment.
- ▶ Require employers to pay H-1B workers in U.S. currency in the U.S., and to pay the cost of round-trip travel for any H-1B workers.

While we intend to pursue these and likely other steps in coming months, we realize that this issue extends well beyond the Labor Department and poses potentially serious problems for the Administration. We stand ready to assist this process in any way we can.

cc:

RAHM EMANUEL
DAVID GERGEN
BOB RUBIN
MARK GEARAN
GENE SPERLING
GEORGE STEPHANOPOLOUS

Immigration - Central America



Irene Bueno
02/24/99 07:18:22 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP

Subject: NACARA

This is an update on a NACARA meeting I attended today chaired by Janet Murgia and attended by NSC, Justice and State staff. (Sorry I missed the police brutality meeting but it conflicted with this meeting but I got a report of the meeting).

We discussed the options presented by Scott Busby. The options were developed assuming that the DOJ regulations would provide the presumption of "extreme hardship" for NACARA groups (ie Salvadoran and Guatemalans). DOJ (James Costello) informed us that the regulations are not yet completed but he expects they will be soon.

The option that had consensus at least for the President's upcoming visit to Central America is for the President to announce the regulation. If the regulation is not ready, we will need to draft some language that communicates in the strongest terms possible that we are headed in the direction of providing presumption of extreme hardship. With regard to legislation to help other Central Americans, the President would indicate that the Administration will work with Congress to address this issue. I will bring you a copy of the list of options that Scott drafted. The consensus option is a modified option 1.

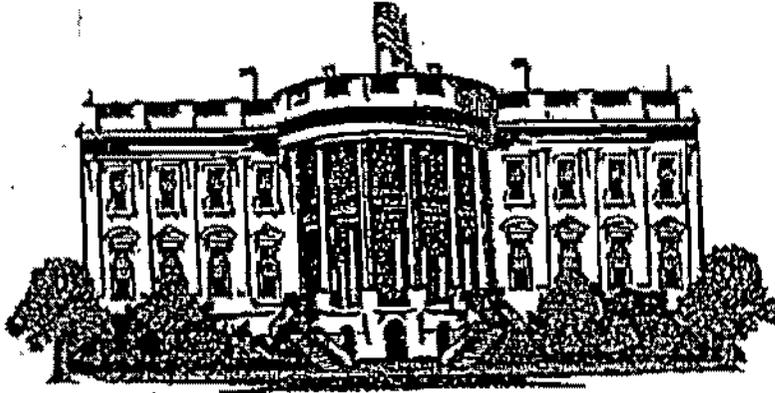
While there are some downsides with this approach (doesn't resolve the parity issue, other Central Americans and Eastern Europeans are not left out), I think that this option provides the right balance - targets and helps the Salvadorans and Guatemalans while at the same time not undermining our enforcement message by creating a magnet - if immigrants come here as undocumented immigrants that they will eventually be allowed to legalize.

The immediate next steps are for Scott to draft talking points that will be circulated for clearance and James will continue to press on the regulations. After the Central America trip, Janet, I and others will meet with groups and folks on the Hill to discuss next steps on legislation.

Based on discussions with the Hill, immigrant groups and others, this option would be okay for now but the announcement of the regulations is key. The Hill and some groups have another issue that may want to throw into the legislative mix dealing with Section 377 that requires a legislative fix (changing the registry date) and it is unclear if they will tie this fix to the NACARA legislation.

Please let me know if you have any questions.

Thanks.



THE WHITE HOUSE

Domestic Policy Council

DATE: 2/24/99

FACSIMILE FOR: Bruce Reed & Elena Kagan
Laura Emmitt

PHONE: () - FAX: () 456 - 2878

FACSIMILE FROM: Irene Bueno

PHONE: () - FAX: () -

NUMBER OF PAGES (INCLUDING COVER): 4

- FOR YOUR REVIEW
- PER MY E-MAIL OR VOICE-MAIL MESSAGE TO YOU
- PER YOUR REQUEST

COMMENTS: _____

Irene Bueno
02/24/99 07:18:22 PM

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cc: Laura Emmett/WHO/EOP
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Please let me know if you have any questions.

Thanks.

DRAFT

DRAFT

Legislative Options for Central Americans

Option 1: Adopt NACARA regulation with presumption of "extreme hardship," support legislation for Hondurans similarly situated to ABC class (i.e., asylum applicants prior to 1992)

*Stahn
ju*

Pros:

- Aimed most clearly at groups displaced by civil wars and human rights abuses.
- Least likely to create "magnet effect."
- Most likely to succeed legislatively.

Cons:

- DoJ continues to review comments on draft NACARA regulation and final outcome on "extreme hardship" presumption is still unclear.
- Nowhere close to full parity with Nicaraguans and Cubans; will meet with serious disappointment from governments, advocates and Hispanic Caucus.
- Will leave us open to charge that we failed to rectify discrimination created by Republicans.
- Proposed regulatory and legislative package leaves out Eastern Europeans.

Option 2: Assuming a presumption of extreme hardship, express support for addressing the disparities wrought by NACARA but decline to support specific legislation at present time.

Pros:

- Permits us time to see how parity advocates on Hill can do in defining and moving legislation.
- Creates less (although does not eliminate) pressure to grant DED since we are not committed to particular class.

Cons:

- Hard to express support for legislation without getting specific. (e.g., What are outer limits of what we'd support?)

2

- May still create magnet effect (but less than option 3) without any positive benefit.
- Cedes leadership role to Hill.

Option 3: Assuming a presumption of extreme hardship, support amnesty for Salvadorans, Guatemalans, Hondurans and Haitians who were present in the country prior to December 31, 1995. *Amnesty?*

Pros:

- Simple, clean message: equal treatment for similarly situated individuals.
- Will win support of governments, Hispanic Caucus and immigration advocates.

Cons:

- Will probably create greatest "magnet effect" by signaling to people in region that if they can get here, they might eventually become legal.
- Lack of INS record on potential beneficiaries may make fraud easier.
- Could jeopardize our strong immigration enforcement message.
- Will create pressure from other groups to gain similar treatment (Liberians, Dominicans, Mexicans) and will be difficult (although not impossible) to distinguish these and other groups from potential beneficiaries of this legislation.
- Will generate greatest pressure for us to grant DED to protect potential beneficiaries while legislation is pending; DED will be difficult to administer.
- Will result in more favorable treatment (amnesty) to less deserving individuals (post-civil war migrants) than those covered by NACARA (should we limit coverage of legislation to non-NACARA individuals).
- Least likely to pass.

**San Diego Immigrants Issue Meeting
August 14, 1998**

Maria Echaveste
Karen Skelton
Emil Parker
Rob Weiner (call in)
Elena Kagan
Cynthia Rice
T.J. Glauthier, OMB
Irene Bueno, HHS
Shirley Watkins, Ag
Cheryl Macias, Ag

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	[Email hardcopy of] WAVES confirmation to Cathy Mays re: Appointment with Reed on 8/14/98 (partial) (1 page)	8/13/98	P6/b(6)

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Bruce Reed (Subject File)
OA/Box Number: 21205

FOLDER TITLE:

Immigration [1]

rs48

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



WAVES_CONF @ PMDF.EOP.GOV
08/13/98 03:36:25 PM

Record Type: Record

To: Cathy R. Mays/OPD/EOP
cc:
Subject: WAVES Confirmation

ADDRESSEES: CATHY_R_MAYS
SUBJECT: CONFIRMATION: APPT. REQUEST FOR REED, BRUCE
FROM: WAVES OPERATIONS CENTER - ACO: TAREK CHARISSE GRAVES
Date: 08-13-1998
Time: 15:33:20

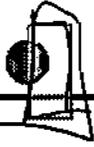
This message serves as confirmation of an appointment for the visitors listed below.

Appointment With: REED, BRUCE
Appointment Date: 8/14/98
Appointment Time: 11:30:00 AM
Appointment Room: WW
Appointment Building: WH
Appointment Requested by: MAYS CATHY
Phone Number of Requestor: 86515
WAVES APPOINTMENT NUMBER: U91419

If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 3
TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 3

GOLDEN, OLIVIA 05/23/55 [REDACTED]
MACIAS, CHERYL 12/21/56 [REDACTED]
WATKINS, SHIRLEY 01/07/38 [REDACTED]



Cynthia A. Rice

08/13/98 09:45:57 AM

[Handwritten signature]

Record Type: Record

To: Cathy R. Mays/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: Principals Meeting -- Draft List of Invitees

BR and EK said invitees should be:

- ~~Paul Begala~~
- ✓ Maria Echaveste
- ✓ Rahm Emanuel
- ✓ Doug Sosnick *Don. Claw*
- ✓ Paul Begala *Elaine Parker*
- ✓ Bruce Reed
- ✓ Elena Kagan
- ✓ Gene Sperling
- ✓ ~~Neil Craig Smith~~
- ✓ Karen Skelton *Shalala*
- ✓ Jack Lew
- ✓ Dan Glickman
- ✓ Cynthia Rice
- ✓ Rob Weiner (may have to join by phone)
- ✓ Emil Parker
- ✓ Olivia Golden

[Handwritten signature: Cynthia]

[Handwritten signature: Emil Parker]

[Handwritten signature: Shalala]

[Handwritten signature: EK]

[Handwritten signature: BR]

I'm still working on asking them about the paper.

----- Forwarded by Cynthia A. Rice/OPD/EOP on 08/13/98 09:44 AM -----



Cynthia A. Rice

08/12/98 07:02:46 PM

Record Type: Record

To: Cathy R. Mays/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: Principals Meeting -- Draft List of Invitees

Bruce left me voice mail saying he wants to set up a principals meeting on this issue for Friday morning.

Would you please run this list of invitees by BR or EK? Not sure they need Shalala, they may want to add Begala or Sosnick? Also ask them if we should distribute in advance this revised background paper.

Date:

Thursday or Friday

Subject:

Possible USDA response to San Diego County action to report undocumented immigrants to the INS which may prevent U.S. citizen children from obtaining food stamps and other benefits

Invitees:

Maria Echaveste

Rahm Emanuel

Bruce Reed

Elena Kagan

Gene Sperling

Craig Smith

Karen Skelton

Jack Lew

Dan Glickman

Donna Shalala

Cynthia Rice

Rob Weiner (may have to join by phone)

Emil Parker

Background:



sd0813.wpd



Cynthia A. Rice

08/13/98 09:46:46 AM

Record Type: Record

To: Laura Emmett/WHO/EOP
cc: Cathy R. Mays/OPD/EOP
bcc:
Subject: Re: Principals Meeting -- Draft List of Invitees 

See my new note -- they no longer think Shalala needs to be invited and if we have the meeting tomorrow, Glickman should be able to make it!
Laura Emmett



Laura Emmett

08/13/98 09:45:06 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc: Cathy R. Mays/OPD/EOP
bcc:
Subject: Re: Principals Meeting -- Draft List of Invitees 

FYI- Shalala is already on vacation & will be until August 19, Glickman goes on vacation Saturday until August 23
Cynthia A. Rice



Cynthia A. Rice

08/12/98 07:02:46 PM

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Donna Shalala

Cynthia Rice

Rob Weiner (may have to join by phone)

Emil Parker

Background:



sd0813.wpd

San Diego Immigrant Issue

San Diego Action: San Diego County plans to send a letter to all CalWORKS (TANF), Food Stamps, and General Relief (but not Medicaid) recipients stating that the county plans to provide immigration status information to the INS for all undocumented adults living in the home except in certain very limited circumstances (in cases of domestic violence or children are being cared for by a non-parent relative). San Diego uses an application form which requires parents to specify their immigration status (with one box labeled "undocumented") even if they are not applying for assistance for themselves.

Effect of San Diego Policy: Undocumented parents may be deterred from applying for or receiving Food Stamps for their citizen children. Children cannot apply for their own benefits; application must be made by a parent or another adult exercising parental control. According to advocates, as many as 428,000 citizen children nationwide could be blocked from obtaining Food Stamps if other jurisdictions follow San Diego's policy.

Legal Basis of San Diego Policy: Section 404 of the Personal Responsibility Act says that each state that receives a TANF grant "shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and other identifying information on, any individual who the State knows is unlawfully in the United States." Advocates note that if San Diego did not have an application form requiring parents to check "undocumented" then they would not "know." In addition, section 434 of the welfare law says "Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States."

Legislative History on Eligibility for Citizen Children: Early versions of Congressional welfare reform proposals which had made citizen children ineligible for benefits were amended before final passage to maintain their eligibility. The Agriculture Research bill enacted in June restored Food Stamps to legal immigrant children irregardless of their parents' immigration status.

Possible Administration Action: USDA could send a letter to the state of California saying "Our concern is that requiring ineligible parents to go beyond the requirements of the Food Stamp program and provide more detailed information as to why they are ineligible, many parents will be deterred from making application for eligible children" and asking that action be delayed until this concern can be resolved. The letter would focus on the effect of collecting information on the Food Stamp application on the service received by eligible, U.S. citizen children (and not on the reporting of information to the INS).

Legal Basis of Possible Administration Action: The Food Stamp Act, as amended by the welfare reform law, requires states to "establish procedures governing the operation of food stamp offices that...provide timely, accurate, and fair service to applicants for, and participants in, the food stamp program [and] develop an application containing the information necessary to comply with this Act." This requirement has not been defined in regulations. In addition, the Food Stamp Act prohibits states from imposing additional conditions of eligibility for food stamps not authorized by federal law.

Possible Additional Administration Action: If the San Diego refuses to changes its policy, then USDA could bring administrative action against the state. In addition, USDA could begin a rulemaking to define "timely, accurate, and fair service."

San Diego Immigrant Issue

San Diego Action

- San Diego County plans to send a letter to all welfare and Food Stamp recipients stating that the county will report to the INS undocumented adults living in the home.
- States are required to report to the INS any individual a State "knows" is unlawfully in the U.S., but are not required to ask about immigration status on benefit applications.

Effect of San Diego Policy

- Undocumented parents may be deterred from applying for or receiving Food Stamps for their U.S. citizen children. Children cannot apply for their own benefits; application must be made by a parent or another adult exercising parental control. According to advocates, as many as 428,000 citizen children nationwide could be blocked from obtaining Food Stamps if other jurisdictions follow San Diego's policy.
- During welfare reform, the Administration supported maintaining U.S. citizen children's eligibility for benefits (even as legal immigrants were made ineligible) and the Agriculture Research bill enacted in June restored Food Stamps to legal immigrant children irregardless of their parents' immigration status.

Possible Administration Action

- USDA could send a letter to the state of California asking that action be delayed concerns can be resolved and stating "Our concern is that requiring ineligible parents to go beyond the requirements of the Food Stamp program and provide more detailed information as to why they are ineligible, many parents will be deterred from making application for eligible children."
- The letter would further state that "Based on our current understanding of the County's plans, we believe that the fair service requirement of the law would be violated." The Food Stamp law requires states to "establish procedures governing the operation of food stamp offices that...provide timely, accurate, and fair service to applicants for, and participants in, the food stamp program [and] develop an application containing the information necessary to comply with this Act."
- Subsequent to sending a letter, USDA could begin a formal rulemaking process to define this issue in regulations.

June 25, 1998

CalWORKs PROGRAM GUIDE
Special Notice
98-26

FOOD STAMP PROGRAM GUIDE
Special Notice
98-13

GENERAL RELIEF PROGRAM GUIDE 3
Special Notice
98-8

SUBJECT: REPORTING UNDOCUMENTED IMMIGRANTS INFORMATION TO IMMIGRATION AND NATURALIZATION SERVICE (INS)

Effective: July 1, 1998

1. Purpose

The purpose of this Special Notice is to inform staff of the requirement to refer immigration status information to the INS regarding undocumented adult immigrants who apply for benefits in the CalWORKs, Food Stamps and General Relief programs or who are known to be present in the United States unlawfully.

2. Background

Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Congress makes the following statements concerning national policy with respect to welfare and immigration:

"Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes...It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits."

Section 434 of the PRWORA authorizes the County to send to INS information regarding immigration status, lawful or unlawful, of an adult immigrant in the United States. The Board of Supervisors has directed the Family Resource Bureau to develop a system to provide immigration status information to the INS for undocumented adult immigrant applicants, recipients and other unlawful immigrant household members in the CalWORKs, Food Stamp and General Relief programs. The only exception will be undocumented persons who are non-needy caretaker relatives of children receiving CalWORKs, persons who are battered or subjected to extreme cruelty in the United

SUBJECT: REPORTING UNDOCUMENTED IMMIGRANTS INFORMATION TO IMMIGRATION AND NATURALIZATION SERVICE (INS)

States or a child alien who is undocumented. Undocumented immigrants in the Medi-Cal program will not be reported at this time, although they may be reported through their connection to a CalWORKs, Food Stamps or General Relief case.

3. Change

Starting August 1998, Family Resource Bureau Automation staff will generate, at the beginning of each month, a monthly report which contains the names and other specific information of adult persons who are coded as undocumented immigrants. The report will be produced in database format and will be provided to the INS. Since September 8, 1997, Family Resource Bureau has had informing notices posted in district offices which state that federal law permits the County to provide identifying information to INS. In addition, similar information has been included in intake packets.

4. Informing Notice

In early July 1998, a notice (Attachment A and B) will be sent to all existing recipients in the CalWORKs, Food Stamp and General Relief programs to inform them of this INS reporting system. Effective upon receipt of this notice, all CalWORKs, Food Stamps and General Relief intake packets must include this informing notice. Until this attachment is available as a form, photocopy for inclusion with all intake packets as needed. Lobby posters will be revised.

5. Identification of Undocumented Immigrants

An immigrant applicant/recipient is considered undocumented if he/she:

◆ In CalWORKs Program

- Checks the "undocumented" box on the SAWS 2, question 2, and has a birthplace outside of the U.S.; or
- Is unable to present any other valid documents to verify his/her citizenship/immigrant status, as identified in AFDC Program Guide 42-430 and 42-450; or
- Has claimed a satisfactory immigrant status but the Systematic Alien Verification Entitlements (SAVE) verification (primary and secondary) indicates that such a record is not found.

SUBJECT: REPORTING UNDOCUMENTED IMMIGRANTS INFORMATION TO IMMIGRATION AND NATURALIZATION SERVICE (INS)

◆ In Food Stamp Program

- Checks the "undocumented" box on the S/WS 2, question 2 or the DFA 285-A2, question 3, and has a birthplace outside of the U.S.; or
- Is unable to present any other valid documents to verify his/her citizenship/immigrant status, as identified in the Food Stamp Program Guide 63-155; or
- Has claimed a satisfactory immigration status but SAVE verification (primary and secondary) indicates that such a record is not found.

◆ In General Relief Program

- Is unable to present acceptable verification of immigrant status; or
- Has claimed a satisfactory immigrant status, but SAVE verification for a companion case (i.e., CalWORKs, Food Stamp or Medi-Cal) indicates that such a record is not found (the General Relief ET receives a copy of the SAVE verification (primary and secondary) of legal or non-legal status from the companion case ET).

6. Required Action

ETs are reminded of the requirement to correctly identify each immigrant applicant's or household member's immigration status. They shall also ensure that the appropriate Citizenship/Alienage (C/A) coding as indicated in Case Data System (CDS) Code & Message Handbook, Generic Section 7 is entered for each undocumented immigrant household member.

A. Intake

During the month of July 1998, Intake supervisors must verify the accurate C/A coding of all cases in the CalWORKs, Food Stamp and General Relief programs.

Intake ETs must ensure that applicants who have not received the revised informing notice (Attachment A and B) are provided a copy at the intake appointment.

SUBJECT: REPORTING UNDOCUMENTED IMMIGRANTS INFORMATION TO IMMIGRATION AND NATURALIZATION SERVICE (INS)

B. Granted

As part of the CA 7 process during the month of July, all cases must be reviewed for C/A coding. ET will review the appropriate Statement of Facts and the current case document to determine who is/should be coded as undocumented immigrants. An ad hoc will be produced to identify persons already coded as undocumented. The client is to be contacted to ensure that the undocumented person still lives in the home. The case record must be updated through additions and deletions to accurately reflect undocumented immigrant household members; i.e., if the household member who was previously listed on the case record with an undocumented C/A code has since moved out, the C/A code for this individual has to be removed.

The following exceptions will not be reported to INS. Incorrect use of person numbers may cause these individuals to be included in the report to INS. The only exceptions include:

- ◆ Undocumented non-needy caretaker relatives of children receiving CalWORKs. If the payee in a CalWORKs case is a non-needy caretaker, the ET must ensure that the Person Number "88" or "89" is used; or
- ◆ A child alien who is undocumented; or
- ◆ Undocumented persons who claim to have been battered or subjected to extreme cruelty in the United States. This includes persons who are battered or subjected to extreme cruelty, or have a child who is battered or subjected to extreme cruelty, by a spouse, parent, or by a member of the spouse or parent's family residing in the same household. The ET must ensure that households containing battered persons are referred to appropriate community resources for help. Households including a battered person must be flagged by entering a "B" in Special Characteristic Box D through the BDM household (HSHD) screen.

When questioned by an immigrant applicant/recipient concerning potential consequences of the INS referral policy to the applicant/recipient, the ET shall respond that the Family Resource Bureau's only authorized action is to report identifying information to INS. Whether or not the INS will take any follow-up actions with respect to the applicant/recipient's unlawful presence is not within the jurisdiction or knowledge of the Family Resource Bureau. Any and all immigration actions are within the jurisdiction of the INS. Therefore, if the immigrant applicant has any questions or concerns, he or she will need to contact the INS for further information.

SUBJECT: REPORTING UNDOCUMENTED IMMIGRANTS INFORMATION TO IMMIGRATION AND NATURALIZATION SERVICE (INS)

With respect to eligibility decision for undocumented immigrant applicants, ETs will continue to make eligibility decisions for each program as required by state and federal law and regulations.

7. Automation Impact

At the beginning of each month, Automation will produce a report which identifies cases containing adults with the "U" C/A code. Data for the report shall be collected from CalWORKs, Food Stamp and General Relief cases through the Case Data System (CDS).

For each adult person identified, the report shall contain the following data elements:

- A. Name.
- B. Address.
- C. Telephone Number.
- D. Date of birth.
- E. Social Security Number if applicable and available.

The initial report provided to INS shall contain a complete listing of all identified undocumented adult applicants/recipients (other than exceptions listed in item 6.) known to the CalWORKs, Food Stamp and General Relief cases. No program identification is linked to information being given to INS.

Each subsequent monthly report shall contain only the names and other required data elements for adult persons who have been added to CDS files during the prior month.

8. Forms Impact

Until Attachment A and B are available as a form, refer to the information in item 4.

Sherry Paul, Assistant Deputy Director
Program Support Division
Family Resource Bureau

Ray Koenig, Assistant Deputy Director
CalWORKs Division
Family Resource Bureau

SP:RK:dh

DM/ADM Contact: Integrity Section
Donna Hand (848) 338-2725

SUBJECT: REPORTING UNDOCUMENTED IMMIGRANTS INFORMATION TO IMMIGRATION AND NATURALIZATION SERVICE (INS)

COUNTY OF SAN DIEGO
HEALTH AND HUMAN SERVICES AGENCY

IMPORTANT NOTICE

FEDERAL LAW NOW AUTHORIZES THE COUNTY TO GIVE IMMIGRATION STATUS INFORMATION FROM PUBLIC BENEFIT PROGRAMS TO THE IMMIGRATION AND NATURALIZATION SERVICES (INS).

EFFECTIVE AUGUST 1, 1998, IF YOU OR YOUR FAMILY MEMBERS ARE RECEIVING BENEFITS FROM THE CALWORKS, FOOD STAMP OR GENERAL RELIEF PROGRAMS OR APPLY FOR BENEFITS FROM THESE PROGRAMS, IMMIGRATION STATUS INFORMATION FOR ALL UNDOCUMENTED ADULTS LIVING IN YOUR HOME WILL BE GIVEN TO INS. THE ONLY EXCEPTION WILL BE:

- UNAIDED CARETAKER RELATIVES OF CHILDREN RECEIVING CALWORKS (CARETAKER RELATIVES ARE NON-PARENTS WHO HAVE PARENTAL CONTROL OF THE CHILDREN. FOR EXAMPLE: AUNTS, UNCLES AND GRANDPARENTS).
- PERSONS WHO ARE BATTERED OR SUBJECTED TO EXTREME CRUELTY IN THE UNITED STATES. IF YOU ARE A BATTERED PERSON OR SUBJECTED TO EXTREME CRUELTY, OR HAVE A CHILD WHO IS BATTERED OR SUBJECTED TO EXTREME CRUELTY, BY A SPOUSE, PARENT, OR BY A MEMBER OF THE SPOUSE OR PARENT'S FAMILY RESIDING IN THE SAME HOUSEHOLD, PLEASE CONTACT YOUR ELIGIBILITY TECHNICIAN.

INFORMATION WHICH WILL BE GIVEN TO INS INCLUDES NAME, ADDRESS, TELEPHONE NUMBER, DATE OF BIRTH AND SOCIAL SECURITY NUMBER FOR THOSE WHO HAVE ONE.

Attachment A

**CONDADO DE SAN DIEGO
AGENCIA DE SALUD Y RECURSOS HUMANOS**

NOTICIA IMPORTANTE

LA LEY FEDERAL AHORA AUTORIZA AL CONDADO DE SAN DIEGO A DAR INFORMACIÓN AL DEPARTAMENTO DE INMIGRACIÓN Y NATURALIZACIÓN (INS) SOBRE EL ESTADO MIGRATORIO DE LOS SOLICITANTES/RECIPIENTES DE PROGRAMAS DE ASISTENCIA PÚBLICA.

A PARTIR DEL 1ro. DE AGOSTO DE 1998, SI USTED O MIEMBROS DE SU FAMILIA ESTÁN RECIBIENDO BENEFICIOS DE LOS PROGRAMAS DE CAL-WORK, ESTAMPILLAS PARA COMIDA O ASISTENCIA GENERAL (GR), O SI APLICA PARA DICHS PROGRAMAS, INFORMACIÓN SOBRE EL ESTADO MIGRATORIO DE TODOS AQUELLOS ADULTOS INDOCUMENTADOS QUE VIVAN EN SU HOGAR SERA TRANSMITIDA AL DEPARTAMENTO DE INS. LAS ÚNICAS EXCEPCIONES SERÁN:

- PARIENTES ENCARGADOS QUE NO RECIBEN ASISTENCIA PARA SI MISMOS, PERO CUIDAN DE NIÑOS QUE RECIBEN ASISTENCIA DE CAL-WORK (PARIENTES ENCARGADOS SON AQUELLOS QUE TIENEN CONTROL PATERNAL SOBRE LOS NIÑOS. POR EJEMPLO: TÍOS, TÍAS Y ABUELOS(AS).
- PERSONAS QUE HAYAN SIDO GOLPEADAS O SUJETAS A CRUELDAD EXTREMA EN LOS ESTADOS UNIDOS. SI USTED ES UNA PERSONA GOLPEADA O HA SIDO SUJETA A CRUELDAD EXTREMA POR SU ESPOSO(A), PADRES, O POR ALGUN MIEMBRO DE LA FAMILIA DE SU ESPOSO(A), O FAMILIAR DE SUS PADRES QUE RESIDEN EN EL MISMO HOGAR, POR FAVOR COMUNIQUESE CON SU TRABAJADOR(A).

LA INFORMACIÓN QUE SERÁ TRANSMITIDA AL DEPARTAMENTO DE INS INCLUIRA NOMBRE, DIRECCIÓN, NUMERO DE TELÉFONO, FECHA DE NACIMIENTO Y NÚMERO DE SEGURO SOCIAL DE AQUELLAS PERSONAS QUE LO TENGAN.

DRAFT

Commissioner
Department of Social Services
State of California

We are writing to express our concerns about the plans of San Diego County to send information concerning the parents of children participating in the Food Stamp Program to the Immigration and Naturalization Service (INS).

Our understanding is that the County plans to send information about alien parents who applied for benefits on behalf of their children to the INS if the parents did not evidence their official alien status at the time of application and were coded as "undocumented".

The Food Stamp Act requires agencies that administer the program to provide "fair service" to applicants and recipients. The Act clearly envisions that all eligible persons will be served - no conditions of eligibility beyond those described in the Act may be imposed. We are concerned about the access of eligible children to the program. Children cannot apply on their own for benefits; application must be made by a parent or another adult exercising parental control. If the parent cannot establish food stamp eligibility because of their immigration status, any citizen children and certain alien children are still entitled to benefits. However, if the parents do not apply, there is no way that their children can receive this entitlement.

Our concern is that by requiring ineligible parents to go beyond the requirements of the Food Stamp Program and provide more detailed information as to why they are ineligible, many parents will be deterred from making application for eligible children. The Food Stamp Program requires verification of the status of eligible aliens. However, if a person is not claiming to be eligible, there is no reason to go any further and further identify alien status. The identification of undocumented parents combined with the County's plan to forward their names and addresses to the INS is likely to have such a chilling impact on applications that eligible children will not be able to access the benefits for which Congress has made them eligible.

Based on our current understanding of the County's plans, we believe that the fair service requirement of the law would be violated. We are asking you to direct the County to delay any plans for the disclosure of undocumented family members until this concern can be resolved.

Susan Carr Gossman
Deputy Administrator for Food Stamps
Food and Nutrition Service

TO: [Bruce Reed]
FROM: Diana Fortuna DF
CC: Elena Kagan
Cynthia Rice
Steve Warnath
RE: Materials for Legal Immigration Briefing Friday at 11
DATE: March 20, 1997

Thanks for agreeing to do a quick drop-by at the mass briefing of advocacy groups on our legal immigration proposals. We will have a crowd of over 100. It would be ideal if you could come at the beginning, and stay for 5 minutes. Q&A will be after you depart.

Attached are:

- talking points for you
- a list of the groups attending
- the packet that the groups will get (agenda, a 5-page summary of our proposals, and some recent quotes from the President and Vice President)
- a set of internal Q&A's
- an HHS summary of related bills on the Hill

The order of speakers is supposed to be:

- Maria Echaveste -- Welcome
- You -- Overview
- Jack Lew -- Budget/Hill perspective
- John Callahan (Acting SSA Commissioner) -- SSA perspective and summary of our plan
- Donna Shalala -- general rallying cry; effect on state/local governments, providers
- Janet Murguia -- more Hill perspective
- SSA will distribute state-by-state estimates of the number of people who will lose SSI
- Comments/questions

Since you, Jack Lew, and Shalala are all just dropping by, we may have to do some shuffling of the agenda if people are early or late.

Sorry if I'm stating the obvious, but these groups will be particularly interested to hear whether you are interested in this issue, as opposed to welfare to work -- so it would probably be best not to talk about welfare to work except in passing.

Draft Talking Points
Briefing on Administration's Legal Immigration Proposals

- Restoring benefits to legal immigrants is an absolutely critical part of the Administration's agenda for this year.
- These cuts have nothing to do with welfare reform's goal of returning people to work.
- Our budget follows through on the commitment the President made when he signed the bill.
- The President is talking about this issue as he travels the country -- even though the press isn't always picking it up. For example, when he visited the state legislatures in Maryland and Michigan to discuss education reform, he also spoke about the need for restoring benefits to legal immigrants.
- We must keep building momentum to change the law. The NGA resolution was helpful, but we must keep pushing.
- It is unfortunate but true that we will gain momentum and allies during the spring and summer, as the SSI and food stamp cut-offs draw near. Media stories about people whose lives will be devastated by these changes will help us make our case.
- The Congressional leadership's preferred approach of a temporary block grant to states is not acceptable to the Administration.
- The Administration is reaching out to members of Congress and affected groups. The President is going to keep talking about it.

Note: there is no need for you to summarize our budget proposal, since others will do so and most of the people in the room are familiar with it, but here it is in case you want it:

Basic description of proposals:

- Restore SSI and Medicaid to legal immigrants who are disabled after entry, and to immigrant children
- Extend the eligibility period for refugees and asylees for SSI and Medicaid from 5 to 7 years
- Delay the ban on food stamps for legal immigrants from April to September 1997
- Cost: \$14.6 billion over 5 years

Legal Immigration Briefing
Friday March 21, 1997 Room 450

Participants

Eileen M. Collins
Jack Bresch
Suzanne Hansen
Lynne Patricia Fagnani
Sherry Hayes
Jack Bresch
Colleen Courtney Bloom
Barbara Louise Gay
Leslie C. Cobb
Jeff Sanders
Kate Kellenberg
Eileen McGrath
Bruce Yarwood
Cheryl Peterson
Kathy Bryant
Cynthia Woodside
Lawrence Moore, III

Eve Brooks
Karabelle Pissigati
Lauri Lipper
Jim Weill
Ed Kealy/Catherine Ghram
Anne Bryant
Mike Casserly

Daphne Kwok
Bob Sakaniwa
Jayne Parks
Matthew Finucane

Jennifer Vasilof
Cecilia Nunoz
Pat Reuss
Ann Hoffman
Ileann Jimenez

Organization

Provider Organizations

American Hospital Association
Catholic Health Alliance
NACH
National Assn Public Hospitals & Health Systems
Protestant Health Alliance
Catholic Health Association
American Assn. for Homes & Services for Aging
American Assn. for Homes & Services for Aging
American Academy of Pediatrics
Association of American Medical Colleges
Nat. Assn of Community Health Centers
American Medical Womens' Association
American Health Care Association
American Nurses Association
American College of OBGYNs
National Assn of Social Workers
National Assn of Social Workers

Children's Organizations

Association of Child Advocates
Child Welfare League of America
The Children's Partnership
Children's Defense Fund
Committee for Educational Funding
National School Boards Association
Council of Great City Schools

Asian American Organizations

Organization for Chinese Americans
Japanese American Citizen's League
Asian Pacific American Legal Consortium
Asian Pacific American Labor Alliance

Women's Organizations

Coalition on Human Needs
La Raza
NOW/LDEF
UNITE
MANA

Deborah Weinstein
Evangelina Frescas Dobbs
Lesley Orloff

Marty Ford
Justin Dart
Pat Wright
Billie Jean Keith
Speeve David

Elizabeth Birch
Luis Buitrago
Kerry Lobel
Martin Ornelas-Quintero
Keith Boykin
Sandra Gillis
Elizabeth McGrail
Andrew Greenfield
Michael Maggio
Lavi Soloway
Wing Ng

Vicki Mongiardo
Houeida Saad
Maher Hanania
May Berry
Zanku Armenian
Christopher Hekimian
Martins Zvaners
Russell Zavistovich
Abdurahman Alamoudi
Rita Mullan
Robert W. Tobin
John Kromkowski
Nancy Huber
Christine Bageac
Armand A. Scala
Lindita Imami
Reverend Imre A. Bertalan
Laszlo Pasztor
Frank Koszorus
Dale Denda

Children's Defense Fund
Wider Opportunities for Women
AYUDA

Disability Organizations

Consortium of Citizens with Disabilities/The Arc
Justice For All
Disability Rights Education and Defense Fund
National Council on Disability
National Council on Disability

Gay/Lesbian Organizations

Human Rights Campaign
National Latino Lesbian & Gay Organization
NGLTF
LLEGO
BGLLF
PFLAG
Lesbian & Gay Immigration Rights Task Force
Immigration lawyer
Immigration lawyer
Lesbian & Gay Immigration Rights Task Force
Gay Mens Health Crisis

Ethnic Organizations

American Arab Anti-Discrimination Committee
American Federation of Ramallah, Palestine
Arab American Institute
Armenian National Committee of America
Armenian National Committee of America
American Latvian Association
Belarusian Congress Committee of America
American Muslim Council
Americans for a New Irish Agenda
Ancient Order of Hibernians
Catholic University of America
Central Coordinating Committee
Congress of Romanian Americans, Inc.
Congress of Romanian Americans, Inc.
National Albanian American Council
Hungarian American Coalition
National Federation of American Hungarians
Hungarian American Federation of Metropolitan DC
National Federation of Polish Americans

Ms. Nuala F. Moore
Ms. Dayle Spinelli Lewis
Father Sean McManus
Monica Amarelo
Robert Blancato
Sophia Miskiewicz
Vello Ederma
Nancy Donahue
Ihor Gawdiak
Eugene Iwanciw

Jaydee Hanson
Bronwyn Lance
Father Robert Brooks
Jaydee Hanson
Nicola Jefferson
Richard Parkins
Tom Hart
Kara Morrow
Cynthia Philips
Jennifer Consilvio

David Harris
Ellen Whitman
Richard Foltin
Brittanie Zelkind
Deena Margolis
Lisa Zachary
Mark Levin
Stephen Silberfarb
Abba Cohen
Murray Tenenbaum
Tami Schultz
Elaine Senter
Reva Price
Mark Hetfield
Shara Abraham
Susan Silverman

Ana Maria Rivas-Beck
Marisa Demeo
Jaime Zapata

Irish American Unity Conference
Order Sons of Italy
Irish National Caucus
PALCUS
Italian American Democratic Leadership Council
Polish American Congress
Joint Baltic American National Committee
Rosapepe and Spanos
Ukrainian American Coordinating Council
Ukrainian National Association

Religious Organizations

United Methodist Church
Lutheran Immigration & Refugee Service
The Episcopal Church
The United Methodist Church
NCC/CWS--Immigration & Refugee Program
Episcopal Parkins
Immigration Coalition Committee
Jesuit Social Ministries
United States Catholic Conference
The Jesuit Conference

Jewish Organizations

American Jewish Congress
American Jewish Congress
American Jewish Committee
American Jewish Committee
National Council of Jewish Women
Council of Jewish Federations
National Conference on Soviet Jewry
National Jewish Democratic Council
Agudath Israel of America
Jewish Comm. Council of Greater Washington
Jewish Community Council of Greater Washington
Hadassah
Jewish Council for Public Affairs
Hebrew Immigrant Aid
Religious Action Center of Reform Judaism
Anti-Defamation League

Hispanic Organizations

Coalition of Hispanic Health & Human Services Org.
MALDEF
National Assn. For Bilingual Education

Tomasa Gonzalez
Ralph Del Aguia

National Hispanic Council on Aging
Natl. Assn. of Latino Elected & Appointed Officials

Karabelle Pizzigati
Thomas R. Brooks
Gabriela Uro
Tanya Oubrey
Ashley Giglio
Sally Shake
Brian Koman

Education Organizations

Child Welfare League of America
Child Welfare League of America
Council of City Schools
DOE
American Association of Community Colleges
Education Legislative Services
Leadership Conference Education Fund

Elizabeth Quinn
Dale Frederick Swartz, III
Andrew B. Greenfield
Wendy Zimmerman
Judith E. Golub
Gayle R. Nathanson
Chai Feldblum
Eula Tate
Suzanne Ramos
Kevin Layton
Seth Kilbourne
Jeremy Meadows
Joshua Bernstein
Deborah Sanders
David Super
Karen Lightfoot

Immigration Organizations

Maggio & Kattar
Rick Swartz & Associates
Frellicher & Hoffman, P.C.
Urban Institute
American Immigration Lawyers Assn.
American Immigration Lawyers Assn.
Georgetown Univ. Law Center
United Auto Workers
Wilmer, Cutler & Pickering
Human Rights Campaign
Human Rights Campaign
National Conference of State Legislators
NILC
Washington Lawyers Committee
Center on Budget & Policy Priorities
Center on Budget & Policy Priorities

Gregory Thomas Nojeim
Jeanne Butterfield
Berta Romero
Francis Peter Sharry Jr.

American Civil Liberties Union
American Lawyers Assn.
Interaction
National Immigration Forum

**WHITE HOUSE BRIEFING
ON
LEGAL IMMIGRATION**

Friday, March 21, 1997
Room 450
11:00 am

WELCOME AND INTRODUCTION

Maria Echaveste
Assistant to the President and
Director, Office of Public Liaison

REMARKS

Secretary Donna Shalala

Bruce Reed
Assistant to the President for Domestic Policy
Domestic Policy Council

*

Jack Lew
Deputy Director, Office of Management and Budget

*

John J. Callahan
Acting Commissioner, Social Security Administration

*

Janet Murguia
Deputy Assistant to the President for Legislative Affairs

QUESTIONS AND COMMENTS

TREATING LEGAL IMMIGRANTS FAIRLY: SUMMARY

"We must join together to do something else, too, something both Republican and Democratic Governors have asked us to do: to restore basic health and disability benefits when misfortune strikes immigrants who came to this country legally, who work hard, pay taxes and obey the law. To do otherwise is simply unworthy of a great nation of immigrants."

-President Clinton, 1997 State of the Union.

Restoring fair treatment for legal immigrants is a key part of the President's agenda this year.

The President's budget proposal makes good on his promise to correct the welfare law's harsh provisions on legal immigrants -- provisions that punish children and legal immigrants with severe disabilities, and burden State and local governments. The welfare law denies most legal immigrants access to fundamental safety net programs unless they become citizens -- even though they are in the U.S. legally, are responsible members of our communities, and in many cases have worked and paid taxes. These provisions have nothing to do with the real goal of welfare reform, which is to move people from welfare to work.

- The President's budget proposes to restore Supplemental Security Income (SSI) and Medicaid to legal immigrants who become disabled after they entered the country and to legal immigrant children. This country should protect legal immigrants and their families -- people admitted as permanent members of the American community -- when they suffer accidents or illnesses that prevent them from earning a living. Similarly, the country should provide Medicaid to legal immigrant children if their families are impoverished.
- The President proposes to extend the SSI and Medicaid eligibility period for refugees and asylees from 5 to 7 years, to give that vulnerable group additional time to naturalize.
- Finally, the budget proposes to delay the ban on Food Stamps for legal immigrants from April to September 1997 to provide more time for immigrants who are in the process of naturalizing to complete the process.

The President's proposal would reinstate SSI eligibility for approximately 320,000 severely disabled legal immigrants. Of these 320,000 immigrants, the budget restores Medicaid coverage to 195,000 disabled legal immigrants. In addition, the proposal restores Medicaid coverage to about 30,000 non-disabled legal immigrant children. The cost of these immigrant proposals is \$14.6 billion over 5 years -- \$9.7 billion in SSI costs, and \$4.9 billion in Medicaid costs.

In January, the National Governors' Association agreed that the legal immigrant provisions of the welfare law will cause a considerable cost shift to some states and expressed concerns about the effect of the law on aged and disabled legal immigrants. Providing state-funded benefits to this needy population will divert resources from job training and child care -- which are critical to moving people from welfare to work. The NGA passed a resolution asking Congress and the President to work together to find an equitable solution for states and vulnerable legal immigrants without reopening the welfare reform debate. The President's proposal would do just that.

**TREATING LEGAL IMMIGRANTS FAIRLY:
RESTORING BENEFITS FOR LEGAL IMMIGRANTS WITH SEVERE DISABILITIES**

The President's budget would restore SSI benefits for 312,000 legal immigrant adults who become disabled after their entry into the U.S., in recognition of the fact that they cannot provide for their own support through work. Of those 312,000 legal immigrant adults, approximately 195,000 adults would have Medicaid coverage restored.

Denying SSI eligibility to aged and disabled legal immigrants has nothing to do with welfare reform. Barring legal immigrants who played by the rules and entered the country according to our laws from programs available to all other taxpayers is unfair and shortsighted.

- Approximately 900,000 SSI recipients are now receiving notices that they are at risk of losing their benefits, unless they can show that they are citizens or are in one of a narrow group of exceptions. Under current law, over 400,000 legal immigrants will lose their SSI benefits in August and September of this year.
- Disabled legal immigrants who have sponsors can turn to them for assistance, but many sponsors can't afford the extra costs associated with a disability. In addition, an estimated 44% of legal immigrants, such as refugees, never had sponsors in the first place. Others had sponsors who have died or ceased to support them.
- Many disabled legal immigrants are elderly and reside in nursing homes or assisted living facilities. Without SSI cash assistance, they may face eviction from assisted living arrangements. About 39,000 legal immigrants are in nursing homes and a large number have difficulties with the activities of daily living.
- Nearly 70% of legal immigrants on SSI are over age 65; nearly 30% are over 75 years of age.
- Without SSI payments, state and local governments and private charities will become the prime source of assistance to legal immigrants with severe disabilities.
- In addition, under current state Medicaid plans, it appears that some states may have no provision to continue Medicaid coverage for legal immigrants who lose their SSI. In some states, disabled recipients who lose their SSI may also be without any help for medical expenses.

TREATING LEGAL IMMIGRANTS FAIRLY: PROTECTION FOR LEGAL IMMIGRANT CHILDREN

The President proposes to restore SSI and Medicaid for legal immigrant children.

- The welfare reform law denies SSI and Medicaid to many legal immigrant children who become seriously ill, or have an accident and become disabled, and whose families fall on hard times. It also denies preventive services under Medicaid to legal immigrant children, likely leading to more costly health problems in the future. This policy threatens the health and well-being of a very vulnerable population -- legal immigrant children of low-income parents who need medical services or cash assistance (if disabled), and cannot work their way out of need. We all lose if we deny future citizens the care and support that all children need.
- Under the President's proposal, legal immigrant children would continue to be eligible for SSI and Medicaid. In FY 1998, this proposal would protect SSI and Medicaid eligibility for about 8,000 disabled legal immigrant children, and ensure medical care for about another 30,000 non-disabled children. Existing program income eligibility rules are not affected; only legal immigrant children who are members of low-income families would be eligible for the restored SSI and Medicaid.
- The President's proposal does not undermine or "reopen" welfare reform. The welfare reform provisions denying assistance to legal immigrant children have nothing to do with the central goal of welfare reform: moving people from welfare to work. Instead, the President's proposal protects access to health care for vulnerable low-income children who are permanent members of this nation's communities, cannot work, and do not have any other means of health care. It also protects cash assistance for low-income immigrant children with severe disabilities.
- It is important to note that legal immigrant children cannot become naturalized citizens unless both parents are citizens, or the surviving or custodial parent is a citizen. Therefore, unlike adult legal immigrants, children immigrants do not have an independent avenue to naturalization. For example, orphaned immigrant children must be adopted by a U.S. citizen in order to be classified as a citizen.
- The SSI and Medicaid costs associated with these immigrant children are about \$400 million over 5 years. This policy will ensure that low-income immigrant families with severely disabled immigrant children continue to have a safety net of SSI and Medicaid. It also guarantees that non-disabled legal immigrant children are protected by the Medicaid benefit package, which provides on-going assistance for children suffering from chronic asthma, screening for developmental disabilities, and well-child and preventive care to prevent the need for intensive and costly care in the future.

TREATING LEGAL IMMIGRANTS FAIRLY: EXTENDING ELIGIBILITY FOR REFUGEES

- As a nation of immigrants, this country has a long-standing policy of welcoming to this country refugees and asylees who are fleeing persecution in their home country, and helping them resettle in their new home.
- Under the welfare law, refugees and asylees are exempt from SSI and Medicaid eligibility restrictions for the first 5 years that they are in the U.S. However, after 5 years, needy refugees and asylees would be denied SSI benefits, and Medicaid coverage is a state option rather than guaranteed.
- The President's proposal would extend from 5 to 7 years the period of SSI and Medicaid eligibility for refugees and asylees. This extension would alleviate current hardships while providing elderly refugees an extra 2 years to learn English well enough to naturalize. This policy would cost about \$700 million over 5 years, and protect eligibility for about 17,000 refugees and asylees in FY 1998.
- Few refugees arrive with any financial assets that can be used for self-support. In addition, refugees do not have sponsors.
- Refugees and asylees need a longer eligibility period for assistance than other legal immigrants because of the circumstances that bring them to this country in the first place. Refugees and asylees come to the U.S. with a history of persecution in their country of origin. These individuals frequently experience greater difficulties putting their lives together and becoming self-supporting than other legal immigrants. About one-half of refugees speak little or no English when they arrive here; only about one-tenth speak English fluently.
- Elderly refugees are a particularly vulnerable group. SSA data indicate that of the estimated 58,000 elderly refugees who will lose their SSI eligibility in August/September 1997, 24,000 are aged 75 or older. An estimated two-thirds (38,000) of the 58,000 are severely disabled.
- Generally, refugees and asylees may apply for citizenship after residing in the United States for 5 years. However, the naturalization process can take up to a year, or more. Therefore, individuals who entered the U.S. as refugees or asylees will lose their SSI -- and potentially their Medicaid -- before completing the application process for citizenship, even if they apply for citizenship as soon as they meet the 5 year residency requirement. Also, many elderly refugees are not able to acquire sufficient English language skills in this period of time to pass the citizenship test.
- In refugee communities, the pending loss of SSI and Medicaid and the inability to become naturalized citizens is a major concern. Elderly refugees are understandably terrified that they will be left destitute and homeless.

TREATING LEGAL IMMIGRANTS FAIRLY: THE FOOD STAMP PROGRAM

The welfare reform law made most legal immigrants ineligible to participate in the Food Stamp Program. It was effective immediately for new applicants and at the next recertification for already participating non-citizens.

Concerned about the impact of the law on legal immigrants, who are in the country legally and, in many cases, work and pay taxes, the Administration has worked since the passage of the law to ensure fairer treatment for legal immigrants.

- As an immediate first step, on the day he signed the law the President signed a directive instructing USDA to allow states to extend the certification periods (the time during which people are authorized to receive benefits) of currently participating non-citizens in order to ensure that their recertification be made fairly and accurately. USDA responded by issuing a memorandum to all state agencies on August 26, 1996 that waived Food Stamp regulations and allowed state agencies to extend the certification periods of all households containing participating noncitizen members up to the maximum time permitted by law -- 12 months (24 months in the cases of households with all elderly or disabled adult members), though not beyond August 22, 1997.
- The President then signed the Omnibus Consolidated Appropriations Act on September 30, 1996, which delayed implementation of the welfare law's provisions for participating legal immigrants until April 1, 1997. As a result, state agencies must redetermine the eligibility of all legal immigrant recipients between April 1, 1997 and August 22, 1997. USDA provided written guidance on implementing the new law to State agencies on October 2, 1996.
- On October 18, 1996, USDA provided written guidance to State agencies on how to implement the provision allowing legal immigrants who have worked or can be credited with 40 quarters of qualified work to receive food stamps. USDA authorized certification pending verification for immigrants who, alone or in combination with parents and/or spouse, have spent sufficient time in the U.S. to have acquired 40 quarters of coverage. These individuals need only to attest to 40 quarters of qualifying work at the time of application to meet the 40 quarters test, with subsequent verification by SSA.
- USDA has been working closely with states to develop ways to manage certification periods to ensure that legal immigrants can continue to participate in the Food Stamp Program through August 1997. Thirty-two states continue to use the certification period waiver to extend benefits.
- Finally, the President's budget includes a provision that would extend participation of certified legal immigrants through the end of fiscal year 1997, thus providing them more time to naturalize or to achieve the needed 40 quarters of work to qualify for the program.

**RECENT STATEMENTS BY
PRESIDENT CLINTON AND VICE PRESIDENT GORE
Regarding Benefits for Legal Immigrants**

"I signed the welfare reform bill, but I said when I signed it I thought we made a mistake to eliminate all aid to legal immigrants. Now, when an immigrant comes to America... they have to promise that they won't try to get on welfare and they won't take any public money. That is true. But it's also true it takes five years to become a citizen, meanwhile you work and you pay taxes. And in a country like ours that lets in a significant number of immigrants -- in your largest county now, you have people from over 140 different racial and ethnic groups. Bad things are going to happen to good people just when they show up every day. There will be car wrecks, there will be serious illnesses, there will be crime victims, and I personally think it's wrong to either dump that problem on the door of the state legislature or, in the alternative, just tell them to do without.

"This is a great nation of immigrants. I think this is unworthy of us and I'm going to try to change it, and I hope that you will support that."

President Clinton, Remarks to the Joint Session of the Michigan Legislature, March 6, 1997

"...last year when Congress passed legislation to reform America's welfare system, they included one provision that did not respect diversity and had absolutely nothing to do with moving Americans from welfare to work. The bill I refer to singled out legal immigrants -- legal immigrants -- for the harsh and unfair treatment spelled out in that provision.

"Let me state it plainly: It is wrong to tell four million people in California who work here, pay taxes here, maybe even serve in the military here in many cases, that if somebody mugs you in a dark alley or if your child suddenly falls seriously ill, or you or your spouse are injured at work, that you're not going to receive the helping hand that everyone else who is legally living here is entitled to. That is wrong, it must change. If I can use a sometimes explosive term, in my opinion it is un-American. These provisions are unworthy of a nation of immigrants. We must change them, and I ask for your help in changing them.

"These provisions will cause pain and rip away at California's budget. So we're going to do our very best to change these provisions and I appreciate the support you've indicated for this effort."

Vice President Gore, Remarks to the California Legislature, March 13, 1997

**INTERNAL Q&A's ON ADMINISTRATION'S
LEGAL IMMIGRANT PROPOSALS**

COST OF IMMIGRANT PROPOSALS

QUESTION:

How much does your Budget spend on giving immigrants welfare benefits?

ANSWER:

- ▶ The President's Budget assists those legal immigrants who, through no fault of their own, are unable to work: children and individuals who are disabled.
- ▶ The President's immigrant proposals total \$14.6 billion over five years FY 1998-2002, \$4.9 billion are Medicaid costs (see attached table). The President's budget seeks to:
 - ▶ **Restore SSI and Medicaid eligibility for the disabled immigrants (\$13.7 billion SSI and Medicaid costs).** The welfare law would discontinue SSI and restrict Medicaid benefits for legal immigrants including the disabled and children. The President's budget would continue to provide SSI and Medicaid for 320,000 legal immigrants who become disabled after they enter the country and exempt them from the deeming rules.
 - ▶ **Restore Medicaid eligibility for non-SSI immigrant children (\$.2 billion Medicaid costs only).** The Administration's budget would continue Medicaid for approximately 30,000 immigrant children, if they are otherwise eligible, and exempt them from the deeming rules.
 - ▶ **Extend the refugee assistance exemption period from 5 to 7 years (\$0.7 billion SSI and Medicaid costs).** The President's budget would lengthen the exemption period for refugees and asylees from 5 to 7 years. The 5 year exemption in the welfare law does not provide enough time for refugees and asylees to become citizens.
 - ▶ **Delay the Food Stamp ban until the end of FY 1997 (\$0.2 billion - the cost of this proposal is not included in the overall immigrant proposal cost since the costs are incurred in FY 1997) .** The welfare law denies Food Stamps to most legal immigrants currently receiving benefits and future applicants, affecting a million immigrants. Last year's Omnibus Consolidated Appropriations Act delayed the ban from January 1, 1997 to April 1, 1997 to give immigrants in the process of naturalizing more time to complete the process prior to having their benefits eliminated. Recognizing the effort that many are making to become citizens, this proposal would extend the delay to the end of FY 1997.

UNDERMINING WELFARE REFORM -- PROTECTING LEGAL IMMIGRANTS

QUESTION:

Aren't you opening up the welfare reform bill with your immigrant proposals?

ANSWER:

- ▶ The President is remain firmly committed to implementing the welfare reforms enacted last year.
- ▶ But the immigrant restrictions of the new welfare law had nothing to do with the central goal of welfare reform --moving welfare recipients from welfare to work. This is **not** an effort to "open up" welfare reform, it is an effort to restore benefits cuts that were attached to welfare reform and shouldn't have been part of the bill to begin with.
- ▶ Legal immigrants work hard, pay taxes and contribute to American society. Immigrant children and disabled immigrants who fall on hard times through no fault of their own should get medical and other vital assistance when they need it.

NGA PROPOSALS AND IMMIGRANTS

QUESTION:

The Governors asked the Administration to work with them and the Congress to "meet the needs of aged and disabled legal immigrants who cannot naturalize," but specifically stated we did not need to reopen welfare reform to do it. Why then does the Administration propose to reopen welfare reform and make costly changes that would give welfare to immigrants?

ANSWER:

- ▶ The Administration is committed firmly to the major reform of welfare enacted last year.
- ▶ But the immigrant restrictions of the new welfare law had nothing to do with the central goal of welfare reform --moving welfare recipients from welfare to work. This is **not** an effort to "open up" welfare reform, it is an effort to restore benefits cuts that shouldn't have been in the welfare bill to begin with.
- ▶ Legal immigrants work hard, pay taxes and contribute to American society. Immigrant children and disabled immigrants who fall on hard times through no fault of their own should get medical and other vital assistance when they need it.
- ▶ The Administration's immigrant proposals are responsive to the concerns noted by the Governors and we welcome the opportunity to work with them and the Congress to rectify some of the unfair burdens placed on immigrants.
- ▶ Our budget addresses the needs of immigrants disabled after entry by reinstating their eligibility for SSI and Medicaid; exempts all legal immigrant children from eligibility restrictions; extends SSI and Medicaid eligibility for refugees from 5 to 7 years; and delays the Food Stamps cut-off until the end of the FY 1997.
- ▶ These proposals would restore aide to these most vulnerable people who need assistance through no fault of their own.
- ▶ In addition, our proposal is responsive to the NGA statement that the immigrant provisions represent a considerable cost shift to state and local governments. These provisions reduce the burden on states and local governments.

IS THERE A TANF SURPLUS?

QUESTION: Won't surpluses from TANF be sufficient to allow states to provide benefits to legal immigrants?

ANSWER:

- O **It's not a surplus.** TANF block grant levels are held flat based on state AFDC, JOBS, and Emergency Assistance spending during 1992-1995. Because AFDC caseloads have gone down, we can expect that the cost to states of AFDC-type *benefit* payments over the next few years should be lower than they were in 1992-1995. However, the funds are needed to support the transition from welfare to work.

When TANF was established, the states and the Congress realized that, as compared to the AFDC system, more funds would be needed in the early years to move families from welfare to work. Because of the recent decline in AFDC caseloads, states are in an especially good position to begin the historic transformation from the welfare program to a jobs program.

This is because any decrease in the total amounts states spend on direct benefits will help states meet critical needs and afford the increased costs of providing training, child care, creating jobs in high-unemployment areas, and other assistance needed to support the transition from welfare to work. Therefore, moving recipients into the workforce will not produce short-term savings.

While the block grant levels for each state do not increase from FY 1997 through FY 2000, required work participation rates increase from 25 to 50 percent, and required hours of work per week increase from 20 to 30 over that time period. There will be increased child care costs associated with these requirements. In addition, inflation will raise costs for services and may lead to increased nominal per-capita benefit costs. Finally, if there is a recession, we can expect that the pool of families needing TANF assistance will increase.

- O **This is only the beginning of welfare reform.** To fulfill the central goal of welfare reform -- moving people from welfare to work -- we must make sure that the tools to achieve it are available to states and communities. States will have to use their financial resources to provide supports like job training and child care necessary to move large numbers of single parents from welfare to work. And it will require an unprecedented commitment from business, non-profit organizations, and religious institutions. That's why the President's budget includes over \$3 billion for grants, as well as expanded tax incentives, to support states, cities, and the private sector in creating job opportunities for the hardest to employ welfare recipients. In fact, Republicans and Democrats in Congress have agreed that one of the five priority areas of bipartisan discussion in the budget will be incentives for business to hire welfare recipients.
- O **Cuts in assistance to legal immigrants are a cost-shift to states.** As the National Governors Association has said, the welfare reform restrictions on federal assistance to legal immigrants is a considerable cost-shift to states. If states divert financial resources

to legal immigrants, they may not have sufficient resources for job training and child care necessary to move large numbers of parents from welfare to work.

- O **Even under the old system, benefits are only part of the equation.** The TANF block grant combined funds for AFDC benefits with JOBS funds, Emergency Assistance funds, and funds for administration. Although AFDC benefit expenditures have declined, funds for other activities, such as Emergency Assistance, have increased substantially. Therefore, the effect of flat-funding TANF at 92-95 levels only provides unanticipated funds under one part of the equation -- benefit payments.
- O **Different states are in very different situations.** Some states have especially great needs for services, or smaller reductions in caseloads, or other special circumstances like areas of rural poverty which might need greater investments in economic development or transportation. Similarly, about 80 percent of all legal immigrants reside in only six states -- CA, NY, TX, FL, NJ, and IL. That's why some Governors like Governors Pataki, Bush, and Chiles have been so clear about the need for additional resources. In addition, because the decline in AFDC caseloads since 1995 has not been uniform across states, the financial impact of TANF will vary considerably across states.
- O **After caseload decline, many hard-to-place recipients remain on the rolls.** Now that caseloads are down, states are likely to find that they are now reaching the harder to place people, which will lead to increased costs. The legislation says this is a critical investment for us to make -- we need to expect work, and we need to provide the supports necessary for families to move from welfare to work.

WHY NOT A BLOCK GRANT

QUESTION:

Why not just establish a block grant to the States to assist them in providing services to those non-citizens who lose SSI?

ANSWER:

- There is no infrastructure in place at the state level to deliver income support to the disabled population. In many states, it is local government that directly provides health care to the indigent.
- Charity organizations may become these immigrants' only source of income support. Under a block grant that provides funds to State governments, it is not clear how the funds would reach those private organizations that actually provide the services.
- The history of using block grants to provide services to immigrants is discouraging. It has been attempted before without good results. The block grant created by the 1986 immigration reform law was the State Legalization Impact Assistance Grants (SLIAG) program, and proved to be an inefficient method of assisting the States and very difficult for them to manage. In addition, although SLIAG was federally funded, its appropriation in the third year was reduced by almost two-thirds to support discretionary spending elsewhere. By the fifth year, SLIAG funding was reduced to zero.
- The best solution is retain eligibility for the most vulnerable immigrants -- those who become disabled after entering the United States, refugees, and immigrants-- within the existing Federal social safety net.
- The Administration takes strong exception to statements made on the Hill that a temporary block grant approach would suffice because "the death rate" of disabled legal immigrants will solve the problem. Such statements are profoundly offensive to citizens and non-citizens with and without disabilities.

WHY NOT ALL ELDERLY

QUESTION:

Why didn't the Administration request reinstatement of eligibility for all elderly non-citizens?

ANSWER:

- The Administration proposal targets the most vulnerable legal immigrants affected by welfare reform -- disabled adults and children -- and reinstates their SSI and Medicaid eligibility.
- Approximately two-third of the non-citizens who are receiving SSI benefits because they are aged 65 can qualify on the basis of disability.
- Within the context of balancing the federal budget by FY 2002, the Administration is seeking to restore assistance only for the most vulnerable legal immigrants.

ADDITIONAL INFORMATION:

- The Administration did not propose to ban SSI eligibility for all aged non-citizens as part of welfare reform. Originally, the Administration proposed to exempt from the general ban on SSI eligibility those non-citizens who were over age 75. However, because of budget concerns, the first priority became protecting non-citizens disabled adults and children.
- Individuals who decide to sponsor aged immigrants are more likely to know, when they sign the affidavit of support, that it is unlikely that these non-citizens will be able to support themselves and that there may be age-related health expenses that they will be responsible for.

MAKING SPONSORS RESPONSIBLE

QUESTION: Why shouldn't these immigrants -- disabled and children -- be taken care of by the sponsors who agreed to take care of them?

ANSWER:

- We agree that sponsors need to be held responsible and accountable.
- However, welfare reform makes most legal immigrants ineligible for [SSI and Food Stamp] assistance, even those who have never had sponsors or whose sponsors have died.
- In fact, recent INS estimates of all FY 1994 non-refugee immigrants found that nearly half--or 44 percent--did not have sponsors.
- Also, sponsors of immigrants who arrived before welfare reform signed affidavits of support that are not legally binding and therefore do not obligate them to provide support or to reimburse for public assistance.
- The new law requires all family-based, and some employment-based, immigrants to have legally binding affidavits of support (which will be available in May 1997).
- Our proposal would exempt from these harsh new rules only those legal immigrants who become disabled after entry into the U.S. or legal immigrant children.
- Sponsors of legal immigrants who become disabled after entry have no possible way of planning for the costly care that results from a severe disability.
- We think it is unfair to impoverish such sponsors beyond regular program requirements for family income, or to withdraw assistance from disabled immigrants who have never had sponsors.
- Under the new deeming rules, not only must sponsors impoverish themselves so that immigrant family members are eligible for SSI and Medicaid assistance, but they are also liable to repay the amount of assistance received by such family members when these rules have made them least able to make repayments.
- Similarly, sponsors of immigrant children--like many working parents both citizens and legal immigrants--have difficulty maintaining affordable health insurance and will be overwhelmed by health care expenses arising from severe illnesses or injuries suffered by their children (for example, children who suffer from leukemia or serious head injuries).
- Denying Medicaid to legal immigrant children whose families have fallen on hard times threatens the health and well-being of an extremely vulnerable population, and likely leads to more costly health care in the future.

STATE AND LOCAL IMPACTS OF NEW IMMIGRANT RESTRICTIONS

QUESTION:

What is the impact of the new immigrant eligibility restrictions on state and local governments and other service providers?

ANSWER:

- ▶ Similar to other estimates in this area, it is difficult to predict with any precision.
- ▶ However, CBO estimated total federal budget savings (through FY 2002) of nearly \$24 billion from the passage of welfare reform, and state and local governments will now have to decide how much of their own assistance they will provide to legal immigrants in order to replace this huge withdrawal of federal assistance.
- ▶ Even though states and localities are provided options to deny various assistance to legal immigrants similar to that enacted for federal programs, it is unclear whether they will take such a course. Many of the legal immigrants are likely to remain residents of the state and denying them fundamental safety net assistance will merely result in other costs such as increased public health threats, increased homelessness and hunger, etc.
- ▶ States (and localities) with large immigrant populations will be affected disproportionately by the new restrictions (e.g., California, New York, Texas, Florida, Illinois, New Jersey, and Massachusetts).
- ▶ Therefore, these provisions represent a significant cost-shift from the federal government to state and local governments.
- ▶ The Medicaid restrictions in particular, but also the SSI restrictions, could adversely affect the revenues of hospitals and other health providers (such as nursing homes and doctors) in high-immigrant communities.

IMMIGRANTS WHO LOSE SSI—EFFECT ON MEDICAID ELIGIBILITY

QUESTION:

Do immigrants who lose SSI lose Medicaid as well?

ANSWER:

- ▶ Not necessarily. The welfare bill specifically cuts off SSI cash assistance to qualified immigrants. The question of which immigrants retain Medicaid eligibility is a complicated one, because of the considerable variation that exists in Medicaid programs across the States, Territories, and the District of Columbia.
- ▶ In most states, receipt of SSI automatically makes an individual eligible for Medicaid. Therefore immigrants who lose their SSI and are not otherwise eligible for Medicaid under an optional eligibility category, may lose their Medicaid coverage.
- ▶ However, many states have optional eligibility categories to cover immigrants who lose their SSI. Specifically some states can cover individuals who meet SSI criteria but are not actually receiving cash assistance. In addition, some states can cover immigrants if they have a medically needy program.
- ▶ States that have a medically needy category and no other optional eligibility category may face difficulties in covering immigrants who lose SSI due to current Medicaid eligibility rules.¹ We realize that the medically needy rules pose a problem for some states and are exploring both administrative and legislative possibilities to give states the most flexibility to cover immigrants.
- ▶ Thus, whether or not an immigrant can continue to receive Medicaid coverage after they lose their SSI depends on what other optional eligibility categories each state covers for Medicaid.
- ▶ Immigrants in states that do not have an optional eligibility category may lose their Medicaid when they lose their SSI cash assistance.² We are exploring both administrative and legislative possibilities to give states the most flexibility to cover immigrants.
- ▶ As always, states can amend their plan to include this option, but coverage would be expanded to all individuals meeting the criteria, not just legal immigrants.
- ▶ Of course, all states have the option to decide not to offer Medicaid to qualified immigrants.

¹Arkansas, California, Georgia, Kansas, Kentucky, North Carolina, Wisconsin, and Illinois.

²Alabama, Delaware, Louisiana, Nevada, New Mexico, Texas, Wyoming, and South Dakota.

INCREASE OF NON-CITIZENS ON SSI ROLLS

QUESTION:

What explains the increase in the number of non-citizens on the SSI rolls?

ANSWER:

The number of non-citizens on the SSI rolls has increased along with the number of legal immigrants admitted into the United States. In 1980 there were 9.5 million foreign born persons living in the U.S.- slightly less than 4 percent of the U.S. population. Since then, the number has increased by 15 million. Today we have 24.5 million foreign born residents in the U.S.-- almost 9.5 percent of the U.S. population, according to the Bureau of the Census.

Given the increase in immigration it is not surprising that there has been an increase in the numbers of non-citizens on the SSI rolls over the past 13 years. However, the number remains a small percentage of the total SSI rolls, rising from 3 percent in 1982 to a little over 12 percent in 1995. The number of sponsored non-citizens receiving SSI has risen more slowly, from about 2 percent to only about 8 percent over the same period.

Statistically, the largest increase in noncitizen participation has been seen in the aged recipient population. But this increase should be viewed in the same context. Over this same 13-year period, the number of aged citizen recipients has been declining, because most citizens aged 65 and older now receive Social Security benefits that are large enough to preclude SSI eligibility. Participation of aged citizens has dropped from almost 1.5 million in 1982 to a little over 987,000 in 1995, a decline of 32 percent. In addition, the number of aged non-citizens newly awarded benefits has declined from about 73,000 in 1993 to just a little over 46,000 in 1995, a decline of 37 percent.

REFUGEE ELIGIBILITY EXTENSION

QUESTION:

What accounts for the high welfare utilization rates among refugees?

ANSWER:

- By definition, refugees and asylees are individuals who come to our country to escape persecution in their country of origin. These individuals have generally experienced war or other violent trauma and often need more time to put their lives together and become self-supporting than other legal immigrants.
- About one-half of refugees speak little or no English at arrival; only about one-tenth speak English fluently.
- Therefore, we believe refugees and asylees need a longer eligibility period for assistance than other qualified aliens because of the unique circumstances that bring refugees and asylees to the U.S.
- Specifically, refugees and asylees need an additional two years to address their special needs and to provide sufficient time to enable them to achieve stable self-support. The President's budget proposal would extend refugees' eligibility for SSI and Medicaid benefits from 5 to 7 years.
- The longer time period is particularly important because more recent refugee populations have included larger numbers of older and elderly individuals who require a longer time to adjust.
- Finally, refugees are not even eligible to apply for naturalization until they are near the end of their 5 years residence. Since the processing time for naturalization applications is now about 1 year, this extension from 5 to 7 years is necessary to physically permit refugees to comply with INS procedures without being denied crucial services during the interim.

CUBAN/HAITIAN ENTRANTS

QUESTION:

Are Cuban/Haitian entrants eligible for assistance under the new welfare reform rules?

ANSWER:

- They are specifically eligible for the special refugee assistance programs under the Office of Refugee Resettlement.
- Even though Cuban/Haitian entrant status is not specifically included in the list of immigration categories which define who is a "qualified alien", most entrants have been given parole status for a period of at least 1 year or legal permanent resident status which does make them qualified aliens.
- If entrants are qualified aliens, they would be treated the same as other qualified aliens under the state eligibility options in TANF and Medicaid (if they entered the U.S. before enactment of the welfare law in August 1996), or denied TANF and Medicaid for 5 years after entry (if they entered after enactment in August 1996).
- Under welfare reform, Cuban/Haitian entrants are not specifically exempted from eligibility restrictions as refugees are.

Background

Under bilateral agreement between U.S. and Cuba it is estimated that about 20,000 Cubans will be allowed to enter the U.S. annually, the majority of whom will be parolees or legal permanent residents (i.e., qualified aliens), with an estimated 6,000-7,000 likely to be refugees.

IMMIGRATION BILLS INTRODUCED RELATING TO IMMIGRANT'S ELIGIBILITY FOR BENEFITS

H.R. 601

SPONSOR: Rep Frank, (introduced 02/05/97)

TITLE: A bill to amend the Immigration and Nationality Act to permit local educational agencies to waive the reimbursement of the agency otherwise required for an alien to be accorded nonimmigrant status to study at a public secondary school administered by the agency.

H.R. 663

SPONSOR: Rep Meek, (introduced 02/10/97)

TITLE: A bill to amend the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to provide for an exception to limited eligibility for the supplemental security income program for permanent resident aliens.

DIGEST: Legal Immigrants' Fairness Act of 1997 - Amends the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to permit legally admitted permanent resident aliens to receive Federal Supplemental Security Income (SSI) (and Medicaid) payments.

H.R. 666

SPONSOR: Rep Ros-Lehtinen, (introduced 02/11/97)

TITLE: A bill to amend the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 relating to welfare and public benefits for aliens.

DIGEST: Provides for an exception to limited eligibility for SSI and Food stamps for permanent resident aliens who are unable to naturalize because of a disability and for aliens who have an application pending for naturalization.

H.R. 667

SPONSOR: Rep Diaz-Balart, (introduced 02/11/97)

TITLE: A bill to amend the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to provide for an exception to limited eligibility for SSI and Food Stamps for totally and permanently disabled permanent resident aliens.

The Coalition's Common Sense Balanced Budget for FY98

SPONSOR: Rep. David Minge for The Coalition, (*released 02/26/97*)

DIGEST: Reserves funding to allow vulnerable immigrants who were legally residing in the United States prior to the enactment of the welfare reform bill to continue to receive SSI and food stamps for two years before losing benefits to provide time for state and local governments to prepare for the impact of this provision, reducing savings from the denial of benefits by \$3.5-4 billion.

IMMIGRATION BILLS INTRODUCED RELATING TO EXEMPTION FROM
NATURALIZATION REQUIREMENTS OR EXPEDITED NATURALIZATION

S.118

SPONSOR: Sen Inouye, (introduced 01/21/97)

TITLE: A bill to provide for the completion of the naturalization process for certain nationals of the Philippines.

DIGEST: Amends the Immigration and Nationality Act of 1990 with respect to the naturalization of certain Philippine World War II veterans.

H.R.371

SPONSOR: Rep Vento, (introduced 01/07/97)

TITLE: A bill to expedite the naturalization of aliens who served with special guerrilla units in Laos.

DIGEST: Hmong Veterans' Naturalization Act of 1997 - Waives the English language naturalization requirement for certain aliens (or their spouses or widows) who served with special guerilla units in Laos. Provides for naturalization under the Immigration and Nationality Act through such service.

H.R.574

SPONSOR: Rep Mink, (introduced 02/04/97)

TITLE: A bill to amend the Immigration and Nationality Act to provide for less restrictive standards for naturalization as a citizen of the United States for certain categories of persons.

DIGEST: Amends the Immigration and Nationality Act to exempt from certain naturalization requirements persons who: (1) have lived in the United States for at least 20 years; (2) are eligible for Social Security benefits; (3) are U.S. veterans; or (4) are at least 70 years old.

H.R.602

SPONSOR: Rep Frank, (introduced 02/05/97)

TITLE: A bill to amend the Immigration and Nationality Act to require the Attorney General to provide for special consideration concerning the English language requirements with respect to the naturalization of individuals over 65 years of age.

H.R. 662

SPONSOR: Rep Meek, (introduced 02/10/97)

TITLE: A bill to amend the Immigration and Nationality Act relating to fulfillment by elderly persons of the requirements for naturalization.

DIGEST: Naturalization of Older Persons Act of 1997 - Amends the Immigration and Nationality Act to exempt certain older persons from the U.S. knowledge naturalization requirement, and to permit certain other older persons to fulfill such requirement in another language.

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ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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April 1, 1998

Private, Public -

FYI

*Immigration
JMS*

The Honorable Lamar Smith, Chairman
 Subcommittee on Immigration and Claims
 B-371 Rayburn House Office Building
 Washington, D.C. 20515

Dear Chairman Smith:

In its report accompanying the fiscal year '98 Appropriations Act, the House Appropriations Committee directed the Attorney General to review the recommendations of the Commission on Immigration Reform and to develop a plan by April 1 to improve the functions of the Immigration and Naturalization Service (INS). In compliance with that requirement, the INS issued its report and plan yesterday and Commissioner Doris Meissner testified before the Commerce-Justice-State (C-J-S) Appropriations Subcommittee regarding it.

While it is appropriate for us to consider C-J-S Appropriations Subcommittee input in our evaluation of proposals to restructure the INS, I believe the ultimate recommendations about whether to restructure and the extent of any such restructure should be made by the Immigration and Claims Subcommittee of the House Judiciary Committee, the authorizing committee for the INS. I, therefore, urge you to hold a Subcommittee hearing on this matter as soon as possible after our return from the April recess.

Sincerely,

Melvin L. Watt, Ranking Member
 Subcommittee on Immigration Claims

cc: Doris Meissner, Commissioner
 Immigration and Naturalization Service

The Honorable Harold Rogers, Chairman
 Commerce-Justice-State Appropriations Subcommittee

The Honorable Alan B. Mollohan, Ranking Member
 Commerce-Justice-State Appropriations Subcommittee

THE WHITE HOUSE
WASHINGTON

March 30, 1998

cc: DO Official
DO Chron
Reed (DPC)
Kagan (DPC)
Fernandes (DPC)
Damus
Kieffer
Deich
Schwartz
Haun
Mertens
GG/Official
GG/Chron
3/30/98

The Honorable Harold Rogers
Chairman
Subcommittee on Commerce, Justice, State,
and the Judiciary
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

For the last several years, the Administration and Congress have shared the goal of significantly strengthening the Nation's immigration system. While the Immigration and Naturalization Service (INS) has made important progress, the Administration recognizes that the recent changes in the breadth and scope of the agency's mission require a rethinking of its structure.

In its report accompanying P.L. 105-119, the House Appropriations Committee directed the Attorney General to review the recommendations of the Commission on Immigration Reform (CIR) and develop a plan that would result in greater effectiveness and efficiency in the performance of the core functions of the Federal immigration system. The President, also responding to the CIR report, asked the Domestic Policy Council (DPC) to "evaluate carefully the [CIR] proposal and other reform options designed to improve the executive branch's administration of the Nation's immigration laws." In conducting this review, the DPC, working closely with the Office of Management and Budget, consulted with the Departments of Justice, Labor, and State, the INS, staff of the CIR, immigration experts and advocacy groups, and other White House offices, including the National Security Council.

The Administration review concluded that the CIR report correctly diagnosed many of INS' longstanding problems -- insufficient accountability between field offices and headquarters, competing priorities within field offices, lack of consistency, a need for greater professionalism, overlapping organizational relationships, and significant management weaknesses. These problems have hampered the ability of the INS to more effectively pursue the principal tasks that Congress and the Administration expect the INS to perform: effective enforcement of our immigration laws both at our borders and in the interior and the efficient provision of immigration and citizenship services. Improving the ability of the INS to pursue these critical priorities must be the guiding principle of any reform plan.

After careful consideration and study, we have concluded that the most effective way to adhere to this guiding principle is to implement dramatic and fundamental reforms *within* the INS. The Administration's reform plan will untangle the INS' overlapping and confusing organizational structure and replace it with two clear organizational chains of command -- one to accomplish its enforcement mission and the other to provide immigration-related services. By retaining both of these functions within a single agency, the Administration's reform plan will ensure that both the enforcement and service operations are appropriately coordinated and supported by headquarters. The Administration's reform plan will strengthen accountability and improve efficiency and effectiveness by allowing each of the two chains of command to focus on its unique requirements.

The key features of the Administration's plan are to:

- Effect an operational split between enforcement and services, resulting in two distinct, clear lines of authority from the field to headquarters, with an INS Commissioner continuing to be responsible for overall agency operations.
- Eliminate the current field structure in which district offices serve both enforcement and service functions, and replace it with separate enforcement and service offices that bring the right mix of staff and skills to local service caseloads and enforcement needs.
- Improve the quality of the workforce by creating separate enforcement and service career paths for INS employees, so that the best employees can move up the ladder and be rewarded for high performance.
- Restructure management operations to ensure an effective "shared support" operation (e.g., records and data management, technological support, employee relations, and administrative support) that will serve both the enforcement and the service sides of the agency.
- Establish a Chief Financial Officer to improve financial, accounting, and budget execution systems.

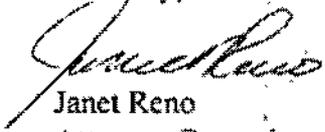
In addition to implementing the restructuring plan noted above, the Administration will continue its efforts to identify and take appropriate remedial action to eliminate any remaining areas of duplication or inadequate coordination between the INS and the Departments of Labor and State.

During its review, the Administration carefully evaluated the CIR recommendations. The CIR concluded that the INS' dual responsibility of welcoming legal immigrants and deterring illegal immigration has resulted in "mission overload." To address this issue, the CIR recommended disbanding the INS and reallocating its primary responsibilities to the Departments of Justice, State and Labor. We believe those recommendations would only compound the current problems with the Nation's immigration system.

First and most important, this reallocation would hinder the coordination and communication necessary to maintain the integrity and efficiency of both immigration enforcement and immigration service operations. To be most effective, all immigration policy and management should remain within one agency at the Justice Department. Second, such a substantial reallocation of authority could require a lengthy transition, exacerbating existing concerns about long delays in immigration activities.

The Administration's plan is a fundamental change in the way the INS conducts business. The restructuring -- from top to bottom -- will address long-standing concerns about lines of authority and responsibility, consistency of policies and procedures, and performance within the INS. It will result in improved enforcement coordination, career paths that support greater professionalism, and measurable changes in the way INS provides services to the immigration community. Most important, it will greatly improve the ability of the INS to effectively and efficiently perform its duties. We look forward to working with you and other members of Congress to implement this restructuring plan and to ensure successful, long-term improvements in the Nation's immigration system.

Sincerely,



Janet Reno
Attorney General



Bruce N. Reed
Assistant to the President for Domestic Policy



Franklin D. Raines
Director
Office of Management and Budget

Enclosures

Identical Letters Sent To:

The Honorable Spencer Abraham
The Honorable Judd Gregg
The Honorable Ernest Hollings
The Honorable Edward Kennedy
The Honorable Alan Mollohan
The Honorable Lamar Smith
The Honorable Melvin Watt

A FRAMEWORK FOR CHANGE: The Immigration and Naturalization Service

Background

America has always been a nation of immigrants, and this Administration is proud of the significant progress we have made toward improving this Nation's immigration system. Over the last five years, the INS has worked hard to curtail illegal immigration through tougher border control, reform of a badly abused asylum system, and removing record numbers of criminal and other illegal aliens. The agency has also worked to redesign and strengthen the naturalization process. While the INS has made important progress, the Administration recognizes that the recent changes in the breadth and scope of the agency's mission require a rethinking of its structure.

In its final report to Congress last fall, the Commission on Immigration Reform (CIR) called for significant reform to our Nation's immigration system. The major thrust of the CIR's proposed reform would move many immigration functions to the Department of State and Labor and would consolidate all immigration enforcement into a new Federal law enforcement agency within the Department of Justice.

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

The Administration's Framework for Change

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

After careful consideration and study, the Administration concluded that the most effective way to achieve this goal is to implement dramatic and fundamental reforms *within* the INS. The Administration's reform plan untangles INS' overlapping and frequently confusing organizational structure and replaces it with two clear organizational chains of command -- one for accomplishing its enforcement mission and one for providing services. Each operation would be headed by an Executive Associate Commissioner (EAC) who would report directly to the Commissioner through the Deputy Commissioner.

The plan will eliminate the current field structure in which regional district offices serve both enforcement and service functions and will replace it with separate enforcement and service offices that bring the right mix of staff and skills to local service caseload and enforcement needs. The result will be an INS organization with strengthened accountability and improved efficiency and effectiveness. The plan will allow each operation to focus its unique knowledge, skills, and abilities, while also retaining the essential integration functions needed to coordinate these operations.

Improved Customer-Oriented Services

- **Creates new local service offices.** The new immigration services operation would locate new service offices in immigrant communities around the country. These offices would focus on providing efficient and effective service, while maintaining the integrity of application processing. The offices would provide a range of services including: providing information to applicants, taking fingerprints and photographs, testing, and interviewing. Depending on community needs, some offices would be configured as full-service centers and others could serve as satellite locations to perform specific functions. These new service facilities would have a standard "look and feel" with clear signs, comfortable waiting rooms, evening and weekend hours, and other customer-friendly features.
- **Establishes accountability and clear lines of authority.** The heads of the local service offices would report to an Area Service Director. The Area Service Director would report directly to the Executive Associate Commissioner for Immigration Services. Area Service Directors would have the flexibility to move case processing responsibilities among offices within their area to maximize efficiency.
- **Establishes clear standards for customer service.** The Area Service Directors would be held accountable for meeting a nationally-established standard for timely processing and courteous service at all locations throughout the area.

- **Offers high-tech answers.** This new framework provides high-tech ways for people to receive better service through remote service centers. As part of this restructuring effort, INS will re-examine the capabilities of the four service centers that handle the automated, bulk processing workload of the current district offices. These centers currently take applications, create electronic records of them, and conduct the pre-processing necessary before an examination is administered. Under the new structure, more work would be shifted to the service centers, thus allowing local offices to focus on core activities which require interaction with customers. In addition, the capabilities of the centralized phone centers which will provide information to applicants and the public will also be examined.

A Strengthened and Integrated Enforcement Operation

- **Establishing a single, coordinated enforcement function.** The plan creates an operational chain of command dedicated solely to immigration enforcement, focuses comprehensively on illegal immigration problems at the border, and establishes better linkages with interior enforcement through a single point of accountability for performance. This approach would strengthen professionalism and improve results. This structure also would ensure priorities are shared and allow close coordination of day-to-day operations among each enforcement discipline.
- **Integrating enforcement and strengthening accountability.** The new enforcement operations areas would combine all functions related to the enforcement of immigration laws. Each enforcement area would be organized according to four functions, and led by a single director. The Area Enforcement Director would report directly to the Executive Associate Commissioner for Enforcement.
- **Organizing enforcement areas by function.** The enforcement areas would be organized around four functional goals: managing the border; inspections and management at ports of entry; investigations and removals; and detention.

1) **Border Patrol.** The Border Patrol would perform its current border management functions of deterring illegal immigration, apprehending illegal aliens, and working to dismantle smuggling rings.

2) **Inspectors.** By putting inspectors in the enforcement chain of command, the plan recognizes the critical role that ports of entry play in INS' border management strategy. This would give the ports a stronger role in the enforcement side of the agency and inspectors a direct reporting relationship to the Area Enforcement Director.

3) Investigations and Removals. This plan would also bring investigators, intelligence officers, and deportation officers into one multi-disciplinary component to focus on removals and the pursuit of fraud, smuggling, and illegal employment at the workplace. Offices in the field would be located in areas with the greatest demand for those functions -- similar to the traditional Special or Resident Agent-in-Charge (SAC/RAC) law enforcement model used by the FBI.

4) Detention and Enforcement Support. This framework would improve the logistical coordination of transporting criminal and illegal aliens and detaining them in long-term facilities by centralizing the current district office detention and transportation operations. Under the new framework, this component would be better able to manage open bed space at INS and contract facilities and improve and monitor conditions at these facilities.

Shared Support

- **Providing the right tools.** The "shared support" operation (e.g., records and data management, technological support, employee relations, and administrative support) would serve as the administrative and technological backbone upon which both enforcement and service operations depend under the new framework. Under this new structural framework each side of the agency has the appropriate administrative and technological tools to do its jobs in the most efficient and cost-effective way. These would range from new computer software systems that are "user-friendly" for enforcement agents and service officers, to appropriate training to strengthen professionalism.
- **Improving accountability.** Under this restructuring plan the shared support function will be held accountable for meeting the needs of the enforcement and service operations in a timely and effective manner.
- **Managing essential records.** An important cohesive function of the shared support operation is the management of all of INS' files and electronic databases. INS' records are the foundation of its work -- whether in law enforcement or the provision of services to its customers. For example, the information contained in those records tells an INS deportation officer that an individual has overstayed his visa and the last address at which he might be found. It also tells an adjudicator whether a person has ever entered without inspection, therefore jeopardizing the alien's eligibility to become a legal permanent resident.

New "Strategy" Office

- **Setting priorities and assessing results.** The Administration's proposed structure includes the creation of a small, new "strategy" unit that would focus on setting priorities, long-range strategic planning, and policy development, as well as analyzing the effectiveness of their implementation. The unit would draw heavily on staff from headquarters and the field, as well as create subject area task forces to draw on the expertise of individuals accountable for each program.

New Chief Financial Officer Role

- **Enhancing accountability and efficiency.** The new structure establishes a Chief Financial Officer to ensure effective allocation, control, and monitoring of the agency's finances. This would enhance accountability for managing the agency's resources and ensure that immigrant services and enforcement have clearly separated and defined resource streams.

Other Management Improvements

INS recognizes that a fundamental restructuring is only one aspect of improving its ability to build a more effective organization. As part of its reform efforts, the agency also is planning management initiatives such as fundamentally redesigning outdated business processes and the creation of new training opportunities for employees.

Conclusion

Preserving our country's tradition as a Nation of laws and a Nation of immigrants requires one agency with clearly defined operational lines of authority and accountability. This new structure will allow our Nation to better control its borders and provide improved service and benefits to the immigrant community. The Administration's plan is a bold initiative to strengthen the INS' capacity to accomplish this critical mission.

***Restructuring and Reform of the Immigration and Naturalization Service (INS)
Comparison of the Administration and Commission on Immigration Reform (CIR) Proposals***

<i>CIR Recommendation</i>	<i>Administration Restructuring Proposal</i>	<i>Rationale</i>
<p><i>Immigration Enforcement:</i> Places responsibility for immigration enforcement at the border and in the interior of the U.S. in a new Bureau for Immigration Enforcement at the Department of Justice (DOJ).</p>	<p>Within the INS an Executive Associate Commissioner (EAC) for Enforcement Operations will be established with line responsibilities for all enforcement functions (Border Patrol, inspections, investigations, detention, and intelligence) reporting directly to the INS Deputy Commissioner/Commissioner. This functional split between enforcement and service operations extends from the field right to headquarters.</p>	<p>Consolidates border and interior enforcement into a single enforcement unit, while preserving integration/synergy between enforcement and service functions by keeping them within the INS. Establishes clear lines of authority and divisions of responsibility between these two operations. Maintains a single immigration focal point within the Department of Justice.</p>
<p>Bureau Director appointed for a set term (5-years).</p>	<p>INS Commissioner remains a Presidential appointee with no set term.</p>	<p>Ensures agency-head has the confidence of the Attorney General and President.</p>
<p>Bureau personnel should be upgraded to receive law enforcement pay and benefits commensurate with those of other DOJ law enforcement components.</p>	<p>The INS is reviewing pay options to ensure law enforcement officers, with similar duties, receive comparable pay and benefits.</p>	<p>The study will provide a clear assessment of pay disparities between enforcement agents performing similar tasks and provide guidance to promote increased professionalism and positive morale.</p>
<p>Establish a Uniformed Service Enforcement Branch that merges INS Inspectors, Border Patrol and detention offices into one uniformed service. Investigations/intelligence would constitute a "white-collar" division within this new bureau.</p>	<p>Consolidates all enforcement functions under area enforcement directors, but maintains distinct functions of Border Patrol agents, inspectors, investigators, and detention officers.</p>	<p>Union representatives and affected employees will be involved in the development of any pay reform proposal, which will require legislation and a phased implementation process. The Administration is also studying options for common entry level training and career paths for enforcement officers.</p>
<p>All uniformed officers (Border Patrol, inspections, and detention) within a particular geographic area would be under the authority of a single integrated enforcement manager.</p>	<p>All functional enforcement operations (Border Patrol, inspections, investigations, detention, and intelligence) will be consolidated into enforcement units under a single chain of command and report to an area enforcement director and EAC for Enforcement Operations.</p>	<p>Provides a single point of responsibility and accountability for enforcement operations and allows the agency to focus on integrated enforcement on a national or global scale. This approach is similar to a traditional law enforcement organizational model.</p>
<p>Establish a "Removal Officer" position that integrates the functions of investigations and deportation.</p>	<p>Investigations and deportation officers will be merged into an investigation and removal unit under an enforcement area director. The merits of merging the two occupational series are still under consideration.</p>	<p>Close coordination, oversight, and management will ensure the best use of this staff to expedite the removal of illegal aliens.</p>

<i>CIR Recommendation</i>	<i>Administration Restructuring Proposal</i>	<i>Rationale</i>
Field offices structured to address comprehensively the immigration enforcement challenges within that locality.	In place of the current district office structure, the plan consolidates all enforcement operations under an area enforcement director. The area enforcement director will report directly to the EAC for Enforcement Operations. Border Patrol agents will report to Border Patrol chiefs; inspectors will report to port-of-entry directors. These enforcement officers, along with investigation and removal personnel, will report to an area enforcement director who coordinates enforcement activities within a geographic area.	Creates an unambiguous enforcement chain of command with well-defined reporting relationships and a manageable span of control.
Regional offices would be retained for administrative and management oversight of field office operations.	Regional offices will be restructured to be operational rather than administrative. Instead of three regional offices, the plan creates geographic enforcement areas. Each area enforcement director will report directly to the EAC for Enforcement Operations.	Provides direct operational oversight of enforcement activities to better achieve coordination and execution of enforcement priorities.
<p><i>Immigration Services:</i> Adjudication of eligibility for immigration-related applications (immigrant, limited duration admissions, asylum, refugee, and naturalization) in the Department of State under the jurisdiction of a new Undersecretary for Citizenship, Immigration, and Refugee Admissions.</p>	Within the INS an Executive Associate Commissioner (EAC) for Immigrant Services will be established consisting of all immigrant benefit and service functions reporting directly to the INS Deputy Commissioner/Commissioner. This functional split between immigrant service and enforcement operations extends from the field to headquarters.	Establishes a single immigration service organization but preserves integration/synergy between enforcement and service functions by keeping them within the INS. Establishes clear lines of authority and divisions of responsibility between these two operations. Maintains a single immigration focal point within the DOJ.
Establish a Bureau of Immigration Affairs at the Department of State to manage the immigration process including domestic adjudication/examination (work authorization/adjustment of status) and employment verification.	Naturalization functions included within a restructured EAC for Immigration Services.	Immigration enforcement responsibilities are integral to the benefit review and adjudication process. Neither mission can be conducted effectively if placed in separate agencies. Both enforcement and service operations enforce the same law (Immigration and Nationality Act) and consistent outcomes, require common processes, data collection, and employee cross-training.

<i>CIR Recommendation</i>	<i>Administration Restructuring Proposal</i>	<i>Rationale</i>
Establish a Bureau of Refugee Admissions and Asylum Affairs at the Department of State responsible for overseas refugee admissions and refugee and asylum functions conducted by the INS.	Functions included within a restructured EAC for Immigration Services.	Same as above. INS and State will initiate an operational review to minimize overlap and duplication within INS and State-run visa, refugee, and asylum programs.
Establish a Bureau of Citizenship and Passport Affairs at the Department of State responsible for naturalization and determinations of citizenship and passport issuance.	Functions included within a restructured EAC for Immigration Services.	The State Department is not equipped to conduct the service and enforcement processes required in the naturalization program. Moreover, this reallocation of functions to State may conflict with its foreign policy mission. The naturalization redesign addressed the concerns raised by the CIR while retaining this responsibility within the INS.
Establish Quality Assurance Officers to oversee records management, procedure monitoring, fraud investigations, and internal review.	INS has expanded its INSpect program to assist in internal review and audits. The EAC for Immigration Services will establish an office to monitor and ensure quality service, benefit processes, products, and operations.	The naturalization redesign has established quality assurance checks throughout the process. The redesign incorporates sweeping changes in processes, records management, data flow and retention, and customer service as measures of integrity.
Establish a field structure that uses existing INS Regional Service Centers and State's National Visa Center and create a local office structure that is separate from immigration enforcement offices.	Local service offices will move from the current district office configuration to a community-based operation modeled on immigrant population density data. Service offices will not necessarily be located in the same location as enforcement operations. The EAC for Immigration Services will also rely heavily on direct mail to existing INS service centers.	The naturalization redesign study has recommended direct-mail to service centers for benefit processing and INS is implementing these recommendations. Beginning April 15 all naturalization processing will be direct-mail and phased implementation of direct mail processing for all other benefit applications is planned for completion over the next two years.
<i>Immigration-related Functions:</i> Consolidate enforcement of immigration-related employment standards in the Department of Labor.	Enforcement of immigration-related labor and employment standards will be shared between the Department of Labor (DOL) and INS. DOL and INS will develop an MOU to improve coordination and promote more effective worksite enforcement and worker protection.	Will provide a mechanism for more effective enforcement of immigration-related labor laws.

<i>CTR Recommendation</i>	<i>Administration Restructuring Proposal</i>	<i>Rationale</i>
All worksite investigations to ascertain employers' compliance with employment eligibility verification requirements should be conducted by the Department of Labor.	The authority to verify compliance for violations of employment eligibility will be shared between INS and DOL. The Administration is studying options for more effective DOL involvement in worksite enforcement of immigration-related labor standards.	Will provide a mechanism for the more effective enforcement of employment verification requirements.
Upon the adoption of an expedited process for the admission of both immigrant and temporary workers, DOL should be given responsibility and resources for enhanced monitoring of employers' fulfillment of the attestation terms they filed to bring in workers.	DOJ and DOL will work together to develop reforms to the current immigration-related employment programs to streamline the certification process and strengthen employer monitoring.	DOL is evaluating its immigration structure in order to streamline the current processes while ensuring labor protections. With sufficient delegation of authority from DOJ, DOL will further streamline the certification process and increase its enforcement of employer obligations.
Administrative Review: Administrative review of all immigration-related decisions should be consolidated and considered by a newly-created independent agency, the Agency for Immigration Review.	Maintains the current review and appeals mechanism.	The Administration is studying options to consolidate some review and appeals functions currently in the INS and DOL into the Executive Office of Immigration Review under the Attorney General.
Organization headed by a Presidentially appointed Director with no say in the substantive decisions reached on cases considered by any division or component of the agency.	Maintains the existing Department-head appeal process/final decision.	Placement of the adjudication process within a Department ensures executive oversight of administrative appeals and uniform and consistent national immigration policy.
Agency-wide Reforms: The Commission urges the Federal Government to make needed reforms to improve management of the immigration system.	Significant management improvements have been accomplished at INS over the past five years. This restructuring plan addresses a number of management and process weaknesses that remain within INS.	INS has accomplished major management, system, and process improvements in the face of a highly visible and growing mandate, large increases in resources and staffing, and unceasing historic demands for immigrant services.

<i>CIR Recommendation</i>	<i>Administration Restructuring Proposal</i>	<i>Rationale</i>
<p>Set more manageable and fully-funded priorities (realistically-achievable short and long-term goals and greater numerical specificity on expected annual outcomes to which agencies should be accountable).</p>	<p>The INS has developed strategic performance plans and measures in both enforcement and service operations. We believe that these plans and measures are manageable and will accurately capture agency performance. As measures are refined, annual outcomes can help judge performance and highlight strengths and weaknesses that require management attention.</p>	<p>INS' FY 1999 Budget justification provides measurable performance goals in enforcement and service operations. The goal is result-oriented performance measures that allow management to judge performance in the aggregate and provide line-managers with the data necessary to do their job effectively.</p>
<p>More fully develop the capacity for policy development, planning, monitoring, and evaluation. Domestic Policy Council (DPC) responsible for overseeing Federal immigration policy development.</p>	<p>The Administration plan will consolidate long-term immigration planning within its strategic planning office reporting to the Commissioner. This group will coordinate agency-wide policy development. The DPC has established a policy-level group that includes immigration-related agencies and Executive Office of the President staff. This group looks at short and long-term immigration policy issues and concerns and coordinates the development of the Administration's position on immigration matters.</p>	<p>Will improve Government-wide immigration policy development and oversight.</p>
<p>Improve systems of accountability and measures of performance.</p>	<p>The key feature of this restructuring plan is to build clear lines of responsibility and accountability within the INS. The restructuring will ensure that line managers have the necessary tools to do the job effectively and performance can be measured. Current confusing and overlapping organizational relationships will be eliminated and replaced with clear lines of command in enforcement, services, and within the administrative support functions -- vital to INS' operational effectiveness.</p>	<p>Much of the work INS performs requires close coordination between enforcement and services. Under this restructuring coordination is maintained while reporting relationships remain clear so that policy can be developed, coordinated, and applied consistently.</p>

<i>CIR Recommendation</i>	<i>Administration Restructuring Proposal</i>	<i>Rationale</i>
<p>Improve the recruiting and training of managers. Expand the ranks of skilled and properly trained supervisors and managers.</p>	<p>INS has consolidated its recruitment effort to ensure consistency and quality and has emphasized the importance of basic, advanced, and management training. Training is a core element of the Commissioner's professionalism initiative. Performance in meeting training goals is measured by INS and DOJ. INS has sought to infuse new skills and thinking by hiring from both public and private sectors.</p>	<p>Consolidated and consistent recruiting has been achieved by establishing a central operation in Minneapolis, MN for hiring. Similarly, INS has established a management training facility in Dallas, TX, and equipped the Border Patrol training facility in Charleston, S.C. In concert with the establishment of these facilities is the creation of advanced and management training modules for enforcement, service, and professional staff.</p>
<p>Strengthen the customer service orientation. Establish a separate career track for benefit and service operation employees.</p>	<p>This restructure establishes separate career paths for enforcement and service personnel.</p>	<p>Lack of a clear career paths for enforcement and service personnel means INS often loses its best employees. By creating a separate career path for enforcement and service operations, this restructuring will increase retention and, therefore improve overall morale.</p>
<p>Use fees for immigration services more effectively. Fees should reflect true costs, cover the costs of services provided, result in timely and courteous service, and provide flexibility in their use to meet changing service requirements and demands.</p>	<p>This restructuring, combined with the naturalization redesign, should address this concern. INS completed an activity-based-costing (ABC) review of its benefit fee structure which has resulted in a proposed fee increase that accurately estimates the cost of providing benefits. INS will begin to conduct a "base" funding examination of its fee structure in FY 1998 to ensure benefit and service fee receipts support service-related operations. The establishment of a Chief Financial Officer within INS, combining budget and financial operations, will also strengthen its ability to manage appropriated and fee-receipt funds.</p>	<p>Fees should reflect true costs, cover the costs of services provided, result in timely and courteous service, and provide flexibility in their use to meet changing service requirements and demands. The base funding review of its fee structure and the ABC review should help assure all interested parties that fees reflect true costs and that they support fee services.</p>

**OFFICE OF MANAGEMENT AND BUDGET
CORRESPONDENCE TRACKING SHEET**

HANDLING

<input checked="" type="checkbox"/> Urgent! (Hand-carry)	<input type="checkbox"/> Expedite (Time sensitive)	<input type="checkbox"/> Regular Handling
<input type="checkbox"/> Decision Memo	<input type="checkbox"/> Information Memo	Control #
<input type="checkbox"/> Correspondence		

SHORT SUMMARY OF MATERIAL

Attached are letters to Senators Gregg, Hollings, Abraham and Kennedy and Representatives Rogers, Smith, Mollohan and Watt transmitting the Administration's Immigration and Naturalization Service (INS) restructuring proposal.

These letters are to be signed by the Director; Bruce Reed, Assistant to the President for Domestic Policy; and Attorney General Janet Reno. The package contains a cover letter outlining the Administration's restructuring plan, executive summary, side-by-side comparison of the Administration's plan and the recommendations of the Commission on Immigration Reform, and a consultant report on INS restructuring by Booz-Allen & Hamilton.

INS Commissioner Meissner will officially transmit this plan to House Appropriations Subcommittee Chairman Roger in her testimony on Tuesday, March 31.

THESE LETTERS MUST BE CLEARED BY COB MONDAY -- EXPEDITED CLEARANCE IS NEEDED !

	PREPARE	CLEARED	CLEARED	CLEARED	CLEARED	CLEARED	CLEARED
Name/ Division	Mertens Justice	Haun DOJ/GSA	Schwartz TCJS	Deich PAD/GGF	Keller LA	Damus GC	Raines Director
Initials/ Date	<i>[Signature]</i> 3/28	<i>[Signature]</i> 3/28	<i>[Signature]</i> 3/28	<i>[Signature]</i> 3/28	<i>[Signature]</i> 3/28	<i>[Signature]</i> 3-30	

Name/ Division	Fernandes DPC	Kagan DPC	Reed DPC	Castello DOJ/DAG	Reno Attorney General		
Initials/ Date	<i>[Signature]</i> 3/20/98	<i>[Signature]</i> 3/20	<i>[Signature]</i> 3/20	<i>[Signature]</i> 3/30	<i>[Signature]</i> 3/30		

THE WHITE HOUSE

WASHINGTON

March 30, 1998

MEMORANDUM FOR DPC/NEC PRINCIPALS

FROM: ELENA KAGAN AND SALLY KATZEN

SUBJECT: BACKGROUND ON H-1B VISA ISSUES

A number of industries -- and especially the information technology (IT) industry -- claim that they are suffering from "skills shortages." Though the IT industry is the most vocal and visible industry to claim a shortage, shortages have also been argued for truckers, welders in shipyards, and other such occupations. A study by Virginia Tech (for the Information Technology Association of America) claims that there are 350,000 job vacancies in the information technology industry nationwide; the *Washington Post* reported there are 19,000 such jobs unfilled in Virginia. Several informed observers have questioned the severity of the short-term "crisis," but there is little doubt that the demand for workers with IT skills is increasing. Indeed, some of our federal agencies are reporting difficulties hiring IT workers (for Y2K and other IT projects).

One way in which companies can alleviate such short-term skills shortages is through the H-1B visa program. The H-1B visa category allows foreign "specialty workers" (those with a BA or equivalent) to work temporarily in the U.S. The visas are issued for a 3-year period, and almost always renewed for an additional three years. More than forty percent of those who enter the U.S. through the H-1B visa program end up in a permanent visa program. There is no way to determine how many overstay their visas, and thus remain to work illegally. The H-1B visa cap of 65,000 per year was reached for the first time last year. INS estimates that the cap will be reached by May or June of this year.

The top ten users of H-1B visas are job contractors who employ foreign workers and who provide personnel to the high-tech industry. Nevertheless, INS estimates that only about one-half of the applications submitted are for computer-related jobs; other occupations include physical and occupational therapists, academic researchers, and other occupations where there is not necessarily evidence of a skills shortage. Currently, there is only a nominal processing fee for each application and there is no requirement that the employer recruit U.S. workers or agree not to lay-off a U.S. worker prior to hiring a foreign worker for the same position.

In thinking about how to address the question of raising the H-1B cap to meet the demands of the IT industry for more skilled workers, the Administration has developed three guiding principles:

- We must train American workers to meet the demands of our rapidly changing economy;
- We must reform the H-1B visa program to protect American workers, by targeting it to industries with genuine skill shortages; and
- We will consider temporarily raising the annual H-1B cap as part of a comprehensive package that includes reform of the H-1B program and a long-term solution to employer needs for skilled workers.

Action Forcing Events

On March 6, Senator Abraham introduced a bill (S. 1723, "The American Competitiveness Act," co-sponsored by Hatch, McCain, DeWine, and Specter) that would permanently increase the annual H-1B cap. His bill also contains a scholarship program. This bill is scheduled for mark-up on Thursday, April 2.

On Friday, March 27, Senator Kennedy (along with Senator Feinstein) introduced a bill that would temporarily increase the H-1B cap to 90,000 (phased back to 65,000 after three years). In addition, the Kennedy proposal includes (1) a loan program designed to address the need to increase high-tech skills of American workers and (2) reforms to the H-1B program that would target it to industries with genuine skill shortages. At the time of Kennedy's announcement, we provided the White House Press Office with the attached Questions & Answers.

Current Legislation

The three major components of the Abraham and Kennedy bills relate to the size and duration of the increase in the H-1B cap; reforms in the H-1B visa program; and education and training.

Facts on the Abraham Bill (S. 1723)

Increase in the Cap

- Permanently increases the annual cap on H-1B visas to about 100,000 in FY 1998 and about 125,000 in FY1999 (taking into account the 10,000 visas under the new H-1C category).
- Creates a new temporary visa category (H-1C) with a cap of 10,000 specifically for health care professionals.

Reforms to H-1B Program

- No reforms to the H-1B program.

Enforcement

- Increases the penalty for willful violations of the H-1B program, but eliminates penalties for less than willful violations.
- Allows DOL to conduct random inspections of willful violators (for 5 years), but does not appropriate additional money to do so.
- Weakens the current "prevailing wage determination," which requires that H-1B visa holders be paid the higher of the prevailing or actual wage to similarly employed workers. The bill stipulates that factors such as years of experience, academic degree, institution attended, grade point average, publications, and personal traits deemed essential to job performance be considered.

Education/Training

- Authorizes \$50M be added to the State Student Incentive Grant (SSIG) program to create scholarships for low-income students majoring in mathematics, computer science, and engineering.
- Authorizes \$8M for the Secretary of Labor to create an Internet talent bank.

Facts on the Kennedy Bill

Increase in the Cap

- Increases the cap *temporarily* (to 90,000 for three years beginning in FY 1998, and back to 65,000 in FY 2001 and thereafter).
- Off sets the increase in the H-1B program (over 65,000) with decreases in the H-2B visa program (for temporary unskilled, non-agricultural workers). The H-2A program has never reached its cap.
- Caps the number of health care workers in the H-1B visa program at 5,000.

Reforms to H-1B Program

- Requires that prior to obtaining an H-1B visa, employers must attest to having attempted to recruit U.S. workers.
- Requires that prior to obtaining an H-1B visa, employers must attest to not having laid off a U.S. worker within 6 months of having filed for the visa, and to commit to not doing so for another 90 days.
- Reduces the maximum length of stay on an H-1B visa from 6 to 3 years.

Enforcement

- Includes benefits and other non-wage compensation in the determination of the prevailing

wage.

- Provides additional enforcement power to the Secretary of Labor.

Education/Training

- Establishes a loan program (\$10,000/person) to enable individuals to obtain training necessary for high-tech industries.
- Provides seed grants to assist in creating "Regional Skills Alliances" between employers, labor organizations, state and local government, training institutions, etc. These Alliances are designed to help industry organize the labor market to meet their needs by increasing the skills required for employment in specific industries or occupations and/or assessing and developing strategies for addressing critical skill needs at broad geographic levels.
- Levies a user fee of not more than \$250 per application to administer the H-1B visa program. This fee would also be used to fund the loan program and the Regional Skills Alliances, and would help fund enforcement activities associated with the program.

The differences between these two proposals are significant. First, while the Kennedy proposal provides a temporary increase of the H-1B cap to 90,000 in the first year (to be phased out after three years), Abraham proposes a permanent increase to 125,000 (after two years). Second, while the Kennedy proposal includes all of the reforms to the H-1B program previously endorsed by the Administration (no lay-off provision; recruitment requirement; and reduction in maximum length of stay from six to three years), the Abraham bill does not contain any reforms of the H-1B visa program. In fact, the Abraham bill weakens the existing program by eliminating penalties for less than willful violations and by essentially repealing the prevailing wage determination requirement.

Legislative Setting

Kennedy's legislation is intended to offer a credible substitute to the Abraham bill. Kennedy will try to attract all Democrats on the Committee, along with Senators Kyl and Grassley. However, Feinstein, Kyl, and Grassley are reportedly discussing a possible compromise position between Abraham and Kennedy. Apparently, Kyl, Grassley, and Feinstein are opposed to a permanent increase in the H-1B visa cap (as reflected in Abraham's bill), but are also opposed to the H-1B reforms contained in Kennedy's proposal.

There are two schools of thought on the position of the IT industry -- (1) that the companies really want an increase in the cap, and thus would be willing to cut a deal with Kennedy if the Abraham bill stalls; or (2) that the companies want the increase, but not at the cost of H-1B reforms and so will not deal with Kennedy, even if that risks a veto.

The AFL-CIO has indicated that it will not oppose a small, temporary increase in the cap as long as it is accompanied by increased training and education and reform of the H-1B

program. At the same time, the AFL-CIO has made clear that it will not accept a legislative alternative that does not include H-1B reforms.

Issues for Consideration

In addressing the H-1B visa issue, the Administration must consider three issues: increasing the number of H-1B visas, training, and reforms to the H-1B visa program.

Increasing the Number of H-1B Visas

The IT industry is pressing hard to increase the number of H-1B visas. In contrast, organized labor will accept an increase in the number of visas only if it is accompanied by reforms to the H-1B visa program and education and training of American workers; even then, labor is insisting that the increase be both small and temporary. We also need to consider whether the additional visas can or should be targeted to the IT industry. Targeting of this kind might be difficult because many IT positions are actually in non-IT industries, such as banking and finance.

Training

Almost everyone agrees that an increase in the number of H-1B visas should be accompanied by a substantial education and training effort. Both the Abraham and Kennedy bills include attempts to encourage more Americans to obtain such training (particularly for jobs in the IT industry). Currently, the Kennedy bill includes a \$250 application fee for H-1B visas that would fund a loan program and the creation of Regional Skills Alliances. Questions to consider include: Is it appropriate to impose a fee to be used for training? Is the training component in the Kennedy bill substantial enough to "compensate" (either alone or in conjunction with the H-1B reforms) for the increase in the cap? Most importantly, will the \$250 application fee generate additional funds for training or will there be an off-set in existing training funds?

In addition, we might consider whether we should pursue a non-legislative training strategy. The IT industry already does a considerable amount of education and training (for example, several companies have partnered with community colleges, or adopted an elementary or secondary school to upgrade their science and technology equipment). Can, or should, we make our willingness to sign any bill contingent on IT companies investing more in developing long-term solutions to the growing demand for IT workers? Such efforts might include expanding the current efforts of the IT industry, expanding the involvement of the IT industry in "school-to-work" efforts, and/or encouraging underrepresented groups to pursue careers in information technology. And, how can we leverage the training that organized labor is doing to get results in this area?

Finally, we need to consider whether it is appropriate to impose more training obligations on firms not in the IT industry. If not, should the IT industry get an advantage in receiving H-1B visas? If we should impose more training on non-IT firms, how do we accomplish it?

Reforms to the H-1B Visa Program

The crux of the negotiations with the IT industry over the Kennedy bill will be the H-1B reforms. The Administration's position has been that these reforms are critical to our three-part strategy. These reforms would protect U.S. workers while reducing the pressure on the H-1B cap by ensuring that the visas be used only when there is a genuine labor shortage. Many view the reforms as essential if the cap on the number of visas is raised.

The IT industry is very opposed to these reforms. It argues that a no lay-off-provision could disrupt normal, non-abusive hiring and firing decisions. And the industry objects to a recruit-and-retain requirement because it will then be subject to the Labor Department's views on what is, or is not, proper recruitment.

The three reforms currently contained in Kennedy's bill were sought by the Administration in 1993. Should we continue our insistence on these reforms? Are there others that we have not considered?

Question & Answer on Immigration: H1B visas
March 26, 1998

Q: This morning Senators Kennedy and Feinstein held a press conference outlining a proposal to increase the cap on temporary visas for foreign workers (H-1B visas). Does the Administration support their proposal?

A: We are still reviewing the Kennedy/Feinstein proposal. We have heard a lot recently about the shortage of trained workers in the information technology (IT) industry. We believe that the first response to increasing the availability of IT workers must be increasing the skills of American workers and helping the labor market work better so there is a supply of skilled workers where there is a demand for skilled employees. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers (under the H-1B program), this must be done only in conjunction with additional efforts by the IT industry to increase the skill level of American workers and with needed improvements in the H-1B program. Key components of that strategy are our HOPE scholarships, the Lifetime Learning Tuition Credit, and the expansion of Pell Grants. It is also critical that Congress pass the G.I. Bill for America's Workers this spring.

Any temporary increase in the H-1B visa program should be limited to the minimum amount necessary. Also, expanding the number of visas, even temporarily, must be accompanied by needed improvements to the H-1B program. Since 1993, this Administration has sought reforms of the H-1B visa program, including requiring employers to "recruit and retain" U.S. workers before hiring temporary foreign workers, prohibiting lay-offs of U.S. workers to replace them with foreign temporary workers, and reducing the maximum stay for H-1B workers from 6 to 3 years. These reforms, if enacted, would help target H-1B usage to industries and employers that are exhibiting genuine labor shortages.

Q: Does the Administration support Senator Abraham's bill, "The American Competitiveness Act," that also increases the number of H-1B visas?

A: Regrettably the Abraham bill emphasizes providing opportunities for foreign workers rather than providing for and protecting U.S. workers. For example, the bill's increase in the number of H-1B visas is permanent. Second, the bill does not require that employers "recruit and retain" U.S. workers before hiring temporary foreign workers and it does not prohibit employers from laying-off U.S. workers in order to replace them with foreign temporary workers.

THE WHITE HOUSE
WASHINGTON

Agenda for NEC/DPC H-1B Principals Meeting
Tuesday, March 31, 1998
Roosevelt Room, 5:30pm

1. General Comments or Questions Regarding the H-1B Background Memo
2. Update on the Legislative Situation
3. Issues for Consideration
4. Administration's Position

 3,250,000

125
250

6250

250



X Wyden

- Budgetary mtg.
- CRice re Wellington-Webb
- EB re Shalata mtg.
- M. Moore?

THE WHITE HOUSE
WASHINGTON

March 19, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: INS Structural Reform

In its final report to the Congress last fall, the United States Commission on Immigration Reform (CIR) called for significant reforms to our nation's immigration system, including dismantling the Immigration and Naturalization Service (INS) and reallocating its major functions to other federal agencies. The FY 98 Commerce, Justice, State (CJS) appropriations bill required the Attorney General to report back to the Congress on the CIR proposal by April 1.

At your request, the DPC led an extensive interagency review process of the CIR's recommendations and other immigration reform proposals. We worked especially closely with OMB because of its expertise in managerial issues. We also included OVP, OPL, Counsel's Office, NSC, INS, and the Departments of Justice, State, and Labor. We had many discussions with immigration experts and advocates, as well as with members of the CIR.

Based on this process, we recommend that the Administration (1) reject the CIR proposal to dismantle the INS, but (2) fundamentally restructure the INS to respond to problems that the CIR rightly identified. The principal feature of this restructuring plan would be a clear separation of enforcement and service operations within the INS. All participants in the review process concur with this recommendation, and we propose submitting our plan to Congress in response to the April 1 deadline.

Policy Discussion

The CIR charged that the INS's dual responsibility of welcoming immigrants who enter legally and deterring or punishing those who attempt to enter or stay illegally has resulted in "mission overload." To address this problem, the Commission proposed to move all immigration service functions to the Department of State, while consolidating all immigration enforcement activities into a new federal law enforcement agency within the Justice Department.

Nearly everyone consulted about this proposal raised serious concerns about it. People both inside and outside the Administration noted the disruption involved in reassigning immigration functions, especially to an agency (State) that has a different primary mission. They

also emphasized the inefficiencies created by placing immigration service and enforcement functions in two wholly distinct agencies.

Our review process identified serious risks in transferring authority over immigration service operations to the State Department. Some immigration advocates predicted that such a substantial transfer of authority would require a six or seven-year transition, thereby exacerbating the current long delays in processing basic immigration services. The State Department echoed these concerns, in part because it is already in the process of absorbing two other agencies: the United States Information Agency and the Arms Control and Disarmament Agency. The Department and immigration advocates alike also expressed the view that the domestic focus of many of INS's services conflicts with the Department's foreign policy mission. Finally, immigration advocates fear that Congress will short-change immigration service activities in the appropriations process if they are in a wholly separate agency from enforcement functions.

Our review also found real inefficiencies -- and a potential weakening of both enforcement and service functions -- in a scheme that places these activities in separate departments. Many experts pointed out the variety of ways in which service officials depend on data collected by enforcement officers, and vice versa, to ensure the integrity and effectiveness of both functions. Likewise, they noted the opportunities for coordination between these officials to enhance enforcement and service activities alike -- as when, for example, a service officer discovers that a person has overstayed his visa and become an illegal alien. For these reasons, almost all experts and advocates recommended keeping enforcement and service activities within a single agency.

At the same time, however, our review process found widespread agreement with the Commission that immigration policy has suffered from the INS's failure to delineate clearly between its service and enforcement operations. Advocates and experts consistently remarked on the absence of any lines of authority within INS reflecting this division in function. They particularly noted that many INS employees at both the headquarters and field levels have responsibility for both enforcement and service activities, notwithstanding the fundamental difference in knowledge, skill, and ability necessary to perform these functions effectively.

Our review process concluded that we have the best chance of achieving the optimum mix of separation and coordination by dramatically restructuring the INS itself. This fundamental reform would create two distinct lines of authority -- one for services, one for enforcement -- running from the field offices all the way up through headquarters. Under this model, each function would be organized in the way best suited to its core responsibility. Enforcement operations, for example, would be organized regionally (e.g., Southwest border, Northwest border), while the benefits operations would be located in areas of high immigrant concentration.

We are attaching two organization charts -- one showing the current INS structure, the other the proposed INS structure -- to give you a clear idea of the magnitude of this reform. We believe that the proposal would greatly enhance the effectiveness of immigration activities by encouraging the development of function-specific knowledge and skills and creating clear lines

of accountability throughout the organization.

Congressional Reaction

We have met with key Hill staff to try to get a sense of where the Congress is going on the INS reform issue, and how it would respond to our proposal. Chairman Rogers of the House CJS appropriations committee is trying to garner support to dismantle the agency along the lines of the CIR recommendations. Our conversations with Congressional staff from other offices, however, suggest that most members of Congress are approaching the issue cautiously. The key Senate authorizers and appropriators -- Sens. Abraham, Kennedy, Gregg, and Hollings -- appear dubious of the CIR's proposal and receptive to our alternative. The situation in the House is more uncertain. Rep. Lamar Smith, who will be critical to the outcome, is playing his cards very close to the vest, indicating a desire to deal with structural reform issues, but no preference for any particular proposal.

Recommendation

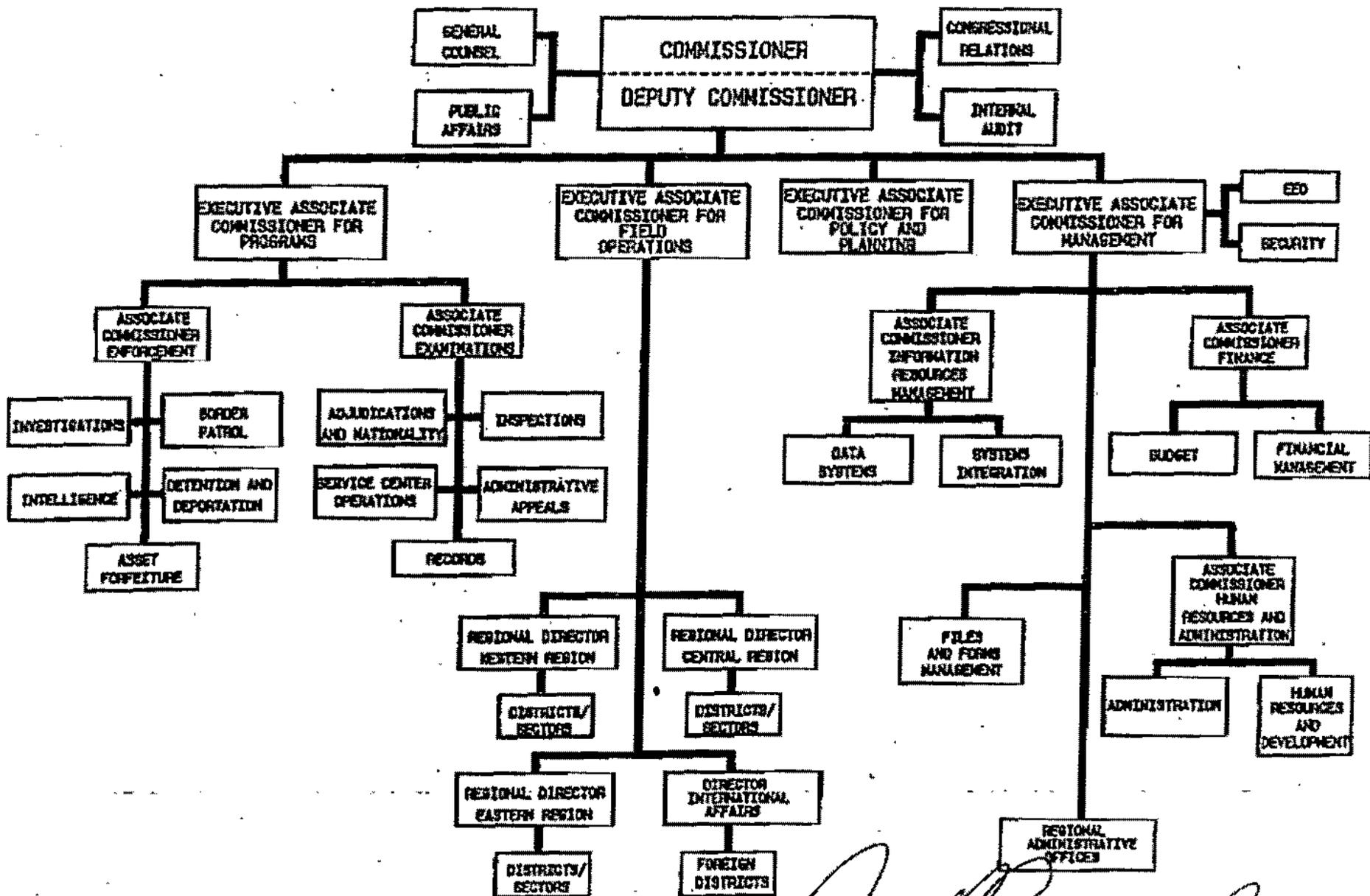
We recommend that the Administration propose a reform model that clearly separates enforcement and service operations within the INS, while retaining the INS as a single entity.

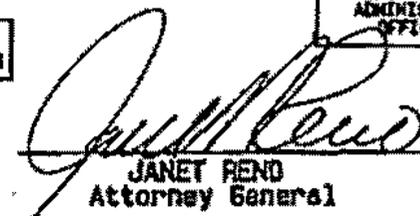
Agree: _____

Disagree: _____

Let's Discuss: _____

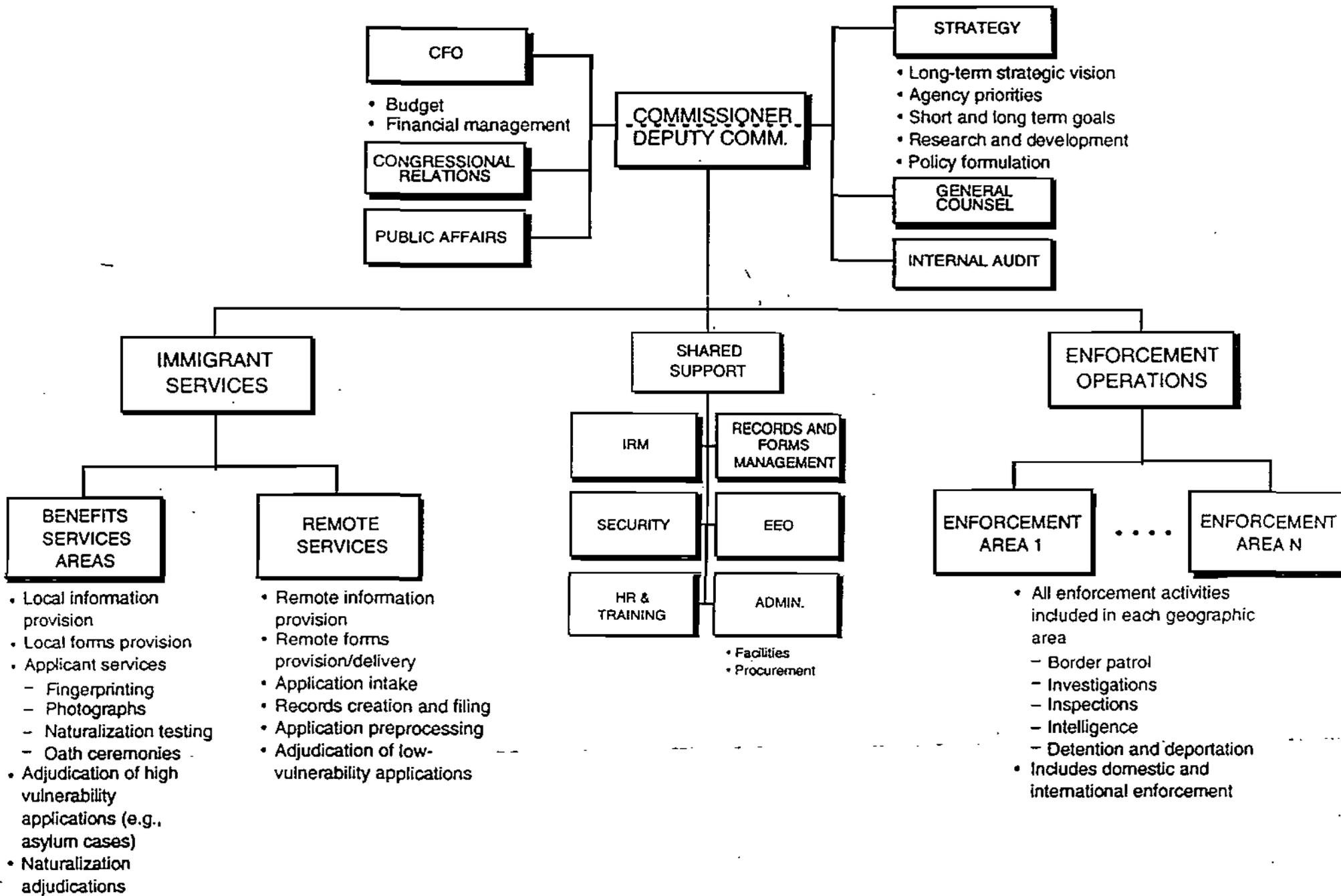
IMMIGRATION AND NATURALIZATION SERVICE



Approved:  Date: July 14, 1994

JANET RENO
Attorney General

PROPOSED INS ORGANIZATION



LMM

STATEMENT OF THE PRESIDENT ON THE FINAL REPORT OF THE COMMISSION ON IMMIGRATION REFORM

The Commission on Immigration Reform, chaired by the Honorable Shirley Hufstедler, and the late Barbara Jordan, issued its final report today. This report, which reiterates many of the excellent recommendations contained in the Commission's interim reports, further contributes to our country's understanding of the role of immigration in the United States. I commend the Commission's work and its contribution to the national dialogue on immigration policy.

America has always been a nation of immigrants, and I am proud of the significant progress my Administration has made toward improving America's immigration system. My Administration has curtailed illegal immigration through tougher border control, strengthened worksite enforcement, and the removal of record numbers of criminal and other illegal aliens. We have also worked to improve and tighten the naturalization process, and have made needed reforms to our asylum system for refugees fleeing persecution.

One of the Commission's recommendations is to restructure the immigration system by reallocating the main functions of the Immigration and Naturalization Service to other agencies. This proposal raises difficult and complex issues, which need further consideration. I have asked the Domestic Policy Council to coordinate with the affected federal agencies to evaluate carefully the Commission's proposal and other reform options designed to improve the executive branch's administration of the nation's immigration laws.

With this report, the Commission completes its work. I want to thank all of its members and staff for their service and contribution on these important issues.

File: Immigration - deportation issue

Bruce -

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

Etan

cc: Tom, Leanne

ACTION

MEMORANDUM FOR THE PRESIDENT

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

SUBJECT: Central American Migrants

Purpose

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

Background

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

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

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

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

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

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

Forms of Relief

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

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

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

Proposed Course of Action

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

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

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

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

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

RECOMMENDATION

That you approve the proposed course of action.

APPROVE _____

DISAPPROVE _____

File: Immigration - deportation issue

Prince -

Draft 7/2/97, 10:40 AM

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

Strategy regarding suspension

Elena

1. The "Stop-Time" Rule

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

AG decision is issued several weeks or months later

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

2. The 4000 Cap

Congressional approach:

Overarching objective: legislation essentially as in INS draft:

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

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

President's foreign policy objectives, though it has many disadvantages [limbo status for DED group, with no fixed end date and no avenue for adjusting to lawful permanent resident status; also a wider group of beneficiaries than would be covered if all designated persons could be judged by pre-IIRIRA suspension rules]; therefore we greatly prefer legislative fix

Then discuss the issue with Chairman Smith; stating our desire to work with him for a legislative fix but indicating President's intention to proceed with DED as outlined if no prompt solution; willing to work with him on shape of fix, but not willing to accept trade-off against legal immigration numbers -- perhaps try to tie in with Kyl/Abraham/Smith meeting week of July 7

"Back pocket" strategy:

Indicate informally that we conclude that cap must apply as cap on suspensions and cancellations, not just adjustments -- but President is prepared to order "deferred enforced departure" (DED) at the end of the deportation process for people who have been in the Nicaraguan Review Program (NRP) or the ABC class but don't get suspension (or other relief) IF:

they have a prima facie case for relief under pre-IIRIRA rules (i.e. 7 years physical presence, no crime or other act that vitiates good moral character) and have not been denied suspension by an IJ applying the pre-IIRIRA rules [this means that a pre-April 1 ABC applicant will not get DED if denied by IJ for failure to show "extreme hardship"; whereas a post-April 1 ABC applicant denied by IJ will get DED, if 7 years and no crime -- because IJ will not have applied the pre-IIRIRA extreme hardship standard]

Rationale: these are the key groups the President wishes to address on basis of foreign policy reasons that arose during Central America trip; also these are the groups that were the subject of special legal measures during the civil wars in Central America (i.e. NRP for Nicaraguans, ABC settlement for Salvadorans and Guatemalans)

Prima facie standard used in many instances because we cannot get an IJ decision under pre-IIRIRA (7 year) rules for the post-April 1 cases, and we cannot practicably reproduce in INS a decision-making capacity to apply such rules for purposes of DED

Need not issue Executive Order decreeing DED, defining exact classes of beneficiaries, and ordering work authorization until mid-fall, to allow time for primary strategy on legislation to proceed. (Beneficiaries are protected from deportation until then by other INS guidance.)

Regulations:

Proceed now with the conditional-grant-only regulation, stating nothing for now about lottery or other ultimate mechanism for assigning the 4000 spaces (but we probably must indicate informally during Hill discussions that that is the likely direction if no legislative fix -- at the very least, legislative consultations must make clear that the executive branch reads the cap as a cap on suspensions/cancellations, not just on adjustments).

Separate reg on 212(a)(9) (to be issued in proposed form in July) and related guidance specify that "unlawful presence" time (toward the 3- and 10-year bars) does not run for persons who have conditional grants, DED, or pending asylum applications.

Timetable

July 3-11	Issue order taking AG referral of <i>NJB</i> and vacating BIA decision; motions filed in pending litigation asking courts to hold actions in abeyance pending AG ruling; INS guidance on motions to reopen is issued.
July 7	<i>Barahona</i> appeal brief filed, concentrating on jurisdictional issues
mid-July	<u>OLC</u> finishes work on statutory and constitutional limits on use of DED in this setting Interim rule promulgated allowing IJs to issue conditional grants of suspension pending final DOJ decision on how to implement the 4000 cap (thus ending current practice of reserving decision, which is under challenge in <i>Barahona</i> case)
July	Congressional consultations begin to press for preferred legislative fix, perhaps launched by Presidential meeting with key congressional players
late July	NPRM and related guidance clarifying application of 212(a)(9) to conditional grantees, DED, etc.
September	If insufficient movement toward legislative fix, prepare regulation (to be issued as NPRM in October) implementing cap by providing mechanism to select ultimate suspension beneficiaries from among the pool of conditional grantees; also prepare Executive Order or other Presidential document providing for DED
early Oct.	Issue both NPRM and Executive Order
December	Comment period closes on proposed reg
January	Issue final reg for selection mechanism; do first selection under reg and begin applying Exec Order for DED (resulting, as appropriate, in suspension grants with immediate adjustment to LPR status, deportation orders, or DED)

[Oct - Jan steps are displaced or modified if legislation passes that meets the major objectives]

Draft 7/2/97, 10:45 AM

Steps to Assure Against Deportation Pending Legislation or DED

Upon the Attorney General's taking of referral in *NJB*, INS field guidance will protect against deportation (pending the AG's final ruling) persons who might have been able to claim suspension but for the stop-time rule. Not protected will be persons who lack good moral character (primarily because they were convicted of a crime) or persons already denied suspension on a ground other than the stop-time rule. If the AG reverses the BIA decision, the affected persons will then have an opportunity to make their suspension claims in reopened proceedings. INS attorneys will join in motions to reopen for these purposes, from the time the AG takes referral through a period six months past her ruling on the merits; a joint motion overcomes the normal time limit (90 days from a final order) that applies to motions to reopen. These steps will protect anyone in proceedings before April 1, 1997, the effective date of the new rules under the 1996 immigration reform legislation. All Nicaraguans who were in the Nicaraguan Review Program, plus approximately 40,000 of the *ABC* class members (Salvadorans and Guatemalans) will be protected in this fashion.

Other pre-April 1 cases might not be blocked by the stop-time rule, but could conceivably be affected by the 4000 cap. The Executive Office for Immigration Review is not currently issuing deportation orders, however, for persons who would have received suspension under the old rules, pending final decisions by the Department on how to apply the cap. Those cases are currently being taken under advisement by the immigration judges, but a regulation will be issued in mid-July permitting conditional grants of suspension in these circumstances, with the conditional status to be resolved under procedures to be defined in a later regulation. All persons with conditional grants will have work authorization and protection against deportation. Their conditional status will last until the later reg issues; that issuance is planned for October, if not overtaken by legislative developments.

Most of the remaining *ABC* class members (those who were not in proceedings before April 1, 1997) are currently having their asylum claims reviewed by INS. They all have work authorization and protection against deportation as pending asylum applicants. As the INS asylum office finishes cases, however, those not granted asylum are placed in removal proceedings. There they can renew their asylum claims and pursue cancellation of deportation, thereby continuing the previous benefits until the order of the IJ. Very few, if any, of these post-April 1 *ABC* cases are expected to receive IJ orders before the winter -- by which time we will either have legislation or will have issued the Executive Order providing for DED. If any do reach that stage, they can preserve their protection against deportation and their right to work authorization by appealing to the BIA.

INS guidance and eventually regulations will reiterate that persons with a conditional grant of suspension or cancellation, DED, or a pending asylum application are not running "unlawful presence" time for purposes of the 3- or 10-year bars that apply under INA section 212(a)(9).

Description of Proposed Deferred Enforced Departure (DED)

[Note: The Office of Legal Counsel (OLC) has not completed its analysis of the statutory and constitutional limitations on DED use in this context. The outline below may need to be modified in light of OLC's final opinion. The description here should be sufficient for purposes of initial congressional consultations, serving as a general outline of what the President contemplates accomplishing, via Executive Order in approximately October, if a legislative fix, our preferred solution, has not been enacted.]

Deferred enforced departure (DED) is based on Presidential authority over foreign affairs and represents, in essence, a use of the executive branch's enforcement discretion in the immigration field in service of foreign policy objectives. It has previously been used to provide relief to Chinese students in 1990 in the wake of the Tiananmen Square incident and in 1992 and 1993 for Salvadorans (upon the expiration of a specific statutory provision granting them Temporary Protected Status (TPS)). The range of application must be linked to the foreign affairs objectives, and DED should be issued in time-limited increments, subject to renewal.

DED here is based on the President's foreign policy objectives with regard to Central America, reinforced during the May 1997 trip to the region, including a desire not to saddle key friendly countries with large numbers of returning residents nor to bring about the sudden end of large flows of remittances, at a time of economic recovery. It also is based upon judgments about the appropriate way to phase out the special legal measures undertaken in 1987-91 for certain nationals of Nicaragua, El Salvador, and Guatemala -- measures that themselves related to U.S. foreign policy objectives toward those countries while they were mired in civil war. At the same time, the extent of DED protection here is somewhat limited by counterbalancing concerns to advance the enforcement of U.S. immigration law.

Those special legal measures were: (1) The Nicaraguan Review Program, providing for special DOJ review of orders denying asylum to Nicaraguans. It was instituted in 1987 and was formally ended in June 1995. (2) The settlement of the *American Baptist Churches (ABC)* class action, which provided special measures for INS consideration or reconsideration of asylum applications filed by Salvadorans and Guatemalans present in the United States at specified dates in 1990. The settlement was entered into in 1991 and INS expects to be conducting the special asylum reviews on through 1999. [check] If not granted asylum, the individuals then ordinarily go on into immigration court where they can pursue their asylum claims and other forms of relief.

DED will be applied to persons at the end of the deportation process, because those who obtain relief during that process in some other fashion of course will not need protection. DED

will be given to nationals of El Salvador or Guatemala who were *ABC* class members or nationals of Nicaragua who were in the Nicaraguan Review Program if they are denied suspension because of the application of the 4000 annual cap or other new and tighter suspension rules adopted in the 1996 immigration reform legislation. Denial of suspension for another reason, such as commission of a crime that blocks a finding of good moral character or failure to meet the earlier law's "extreme hardship" requirement, will result in the person's ineligibility for DED.

The Executive Order providing for DED will recite the legal basis for the order, including reference to the foreign policy objectives. It will spell out the criteria for INS to provide DED and specify the time limit of the grant.. It will also provide that work authorization be issued to the persons given DED.

Proposed Amendments Regarding Suspension of Deportation

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Background

This legislation provides a better transition to the new rules applicable to relief formerly known as suspension of deportation. In particular, it avoids any unfairness that could come from applying new rules to pending cases, and it recognizes the continuing effects of special legal measures taken over the last decade with regard to Central American countries then mired in civil war. On the other hand, it does not provide for an amnesty — instead it merely provides that applicant's for suspension of deportation who were in the administrative pipeline, as herein described, must continue to meet the standards that applied before the 1996 immigration reform law took effect.

Under previous law (former Immigration and Nationality Act [INA] § 244), suspension could be granted, in the discretion of the immigration judge, to an alien who has been present in the United States for seven years, shows good moral character, and demonstrates that deportation would cause "extreme hardship" to the alien or to a spouse, parent, or child who is a lawful permanent resident or a U.S. citizen. Under amendments adopted by the Illegal Immigration Reform and Immigrant Responsibility Act [IIRIRA], the substantive standards are considerably tightened for this relief, now called "cancellation of removal," INA § 240A(b)(1). The alien must show ten years of continuous physical presence and good moral character, and must demonstrate that removal would cause "exceptional and extremely unusual hardship" to a lawfully resident or U.S. citizen spouse, parent, or child. Hardship to the alien alone is no longer relevant. Those tighter standards apply, however, only to removal cases initiated on or after the effective date of Title III-A of IIRIRA, April 1, 1997. Cases initiated earlier may still be decided under the previous seven-year suspension standard.

IIRIRA also imposed two other restrictions on this general form of relief, however, and both have been applied to pending suspension cases as well:

(1) "Stop-time" rule. Under pre-IIRIRA suspension rules, an individual could continue accruing time toward the needed seven years after deportation proceedings had commenced. INA § 240A(d), added by IIRIRA, adopts a new "stop-time" rule, which requires that the requisite period be achieved before the charging document is served. The Board of Immigration Appeals construed IIRIRA § 309(c)(5) as making this rule applicable as well to all cases where the grant of suspension was not final on the date of enactment. *Matter of NJB*, Int. Dec. # 3309 (BIA February 20, 1997).

(2) Annual cap. INA § 240A(e) and IIRIRA § 309(c)(7) impose an annual cap of 4000 on the total of suspensions and adjustments plus cancellations and adjustments in any given fiscal year, beginning with FY 97, which began on October 1, 1996, one day after IIRIRA's enactment. This immediate application to cases in the pipeline, which are still adjudicated

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under the previous suspension rules in most respects, has caused disruption in normal case processing in the immigration courts because it suddenly imposed a quantitative limit on what had previously been a purely qualitative determination, inescapably administered in decentralized fashion by over 200 immigration judges. The problem has been particularly acute because the imposition of the cap coincided with a higher volume of suspension applications, owing, *inter alia*, to developments in long-standing class-action litigation, especially *American Baptist Churches v. Thornburgh*, [ABC] (settlement agreement reached in 1991) and to the phasing out of the Nicaraguan Review Program initiated by the Reagan Administration.

General description of the amendments

The proposed amendments are meant to eliminate any arguably retroactive application of the new rules governing suspension-type relief. Cases in the pipeline would continue to be decided under the old suspension rules in all respects (this includes all cases previously covered by the Nicaraguan Review Program), while new, post-April 1, 1997, cases would be governed by the new standards adopted in IIRIRA § 240A(b), including the stop-time rule and the annual cap. Also, in recognition of the special circumstance of the persons covered by the Bush Administration's settlement of the ABC litigation in 1991, the proposed amendments apply to such persons the pre-April 1 rules. These are, in effect, "pipeline" cases, and the amendment specifically mandates that their relief applications be judged under the earlier substantive standards. None of the amendments, however, dictates that any of the affected persons shall be granted relief. Every application for suspension or cancellation must still be considered, case-by-case, by an immigration judge.

Section-by-section analysis

Section 1(a). This subsection amends INA § 240A(e) so that the annual cap set forth there applies only to cases commenced after April 1, 1997 (where the applicable relief is cancellation of removal, with its 10 year and higher hardship requirements, rather than suspension of deportation). The amendment exempts from the cap pre-April 1 cases (suspension cases) as well as battered spouses and children who receive cancellation under the special rules of 240A(b)(2).

Section 1(b). The repeal of IIRIRA § 309(c)(7) simply makes that section consistent with section 1(a)'s removal of the cap from pre-April 1 cases (because a cap that covers suspension cases was set forth both there and in INA § 240A(e)). The repeal of IIRIRA § 309(c)(5) makes it clear that the stop-time rule applies only to "cancellation of removal" relief (initiated on or after April 1, 1997), and does not apply to suspension cases already in the pipeline on IIRIRA's effective date.

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Section 1(c). This subsection adds a new special rule for *ABC* class members. *ABC* class members who were not in proceedings as of April 1, 1997, will still be subject to most of the *procedural* changes adopted by IIRIRA. For example, removal proceedings would be commenced by filing a notice to appear in accordance with INA § 239. If *ABC* class members wish to seek suspension-type relief, however, they will file for cancellation under the new 240A(b)(3) added by paragraph (c)(6) of these amendments. Although this is "cancellation of removal," it is governed by the same substantive standards (seven years, extreme hardship) applicable to the former suspension relief under former INA § 244. (Class members who were formerly placed in proceedings before April 1, 1997, do not need a special rule; their cases will already be governed by the earlier suspension rules in all respects under the amendments in sections 1(a) and (b).)

Section 1(d). This subsection sets forth the effective date of the preceding subsections, applying them as of September 30, 1996, as if included in the original IIRIRA.

Section 2. EOIR regulations (8 C.F.R. §§ 3.2(c)(2) and 3.23(b)(1)) and INA § 240(c)(6), added by IIRIRA, require that motions to reopen be filed within 90 days after a removal order becomes final, with highly limited exceptions. Some of the intended beneficiaries of section 1 will have passed this time limit by the time these amendments are enacted. This section specifically authorizes a 180 day period during which such persons may file one motion to reopen for these purposes, notwithstanding the normal statutory and regulatory limits on the timing or number of motions to reopen.

Proposed Legislation

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1 SEC. 1.

2 (a) Section 240A, subsection (c), of the Immigration and Nationality Act is
3 amended—

4 (1) in the first sentence by striking "this section" and inserting in lieu
5 thereof "section 240A(b)(1)";

6
7 (2) by striking ", nor suspend the deportation and adjust the status under
8 section 244(a) (as in effect before the enactment of the Illegal Immigration
9 Reform and Immigrant Responsibility Act of 1996),";

10
11 (3) by striking the last sentence in the subsection and inserting in lieu
12 thereof "The previous sentence shall apply only to removal cases commenced on
13 or after April 1, 1997.".

14
15 (b) Section 309, subsection (c), of the Illegal Immigration Reform and
16 Immigration Responsibility Act of 1996 (P.L. 104-208, Division C, 110 Stat. 3009) is
17 amended by striking paragraphs (5) and (7).

18
19 (c) Section 240A of the Immigration and Nationality Act is amended—

20
21 (1) in subsection (b), paragraph (3), by striking "(1) or (2)" in the first and
22 third sentences of that paragraph and inserting in lieu thereof "(1), (2) or (3)";

23
24 (2) in subsection (b), paragraph (3), by striking the second sentence and
25 inserting in lieu thereof "The number of adjustments of aliens granted cancellation
26 under paragraph (1) shall not exceed 4,000 for any fiscal year.";

27
28 (3) in subsection (b), by redesignating paragraph (3) as paragraph (4);

29
30 (4) in subsection (d), paragraph (1), by striking "this section" and inserting
31 in lieu thereof "subsections (a), (b)(1), and (b)(2).";

32
33 (5) in subsection (d), paragraph (2), by striking "(b)(1) and (b)(2)" and
34 inserting in lieu thereof "(b)(1), (b)(2), and (b)(3)";

35
36 (6) in subsection (b) by adding after paragraph (2) the following new
37 paragraph—

38
39 "(3) SPECIAL RULE FOR *ABC* CLASS MEMBERS.— The Attorney General
40 may cancel removal in the case of an alien who is inadmissible or deportable from
41 the United States if the alien demonstrates that—

1 (A) the alien is a member of the class of persons designated as a
2 plaintiff and covered by the settlement agreement in *American Baptist*
3 *Churches, Inc. v. Thornburgh*, 760 F.Supp. 796 (N.D. Cal. 1991), at the
4 time the application is filed and when it is adjudicated;

5 (B) the alien has been physically present in the United States for a
6 continuous period of not less than seven years immediately preceding the
7 date of such application;

8 (C) the alien has been a person of good moral character during
9 such period;

10 (D) the removal would result in extreme hardship to the alien, or to
11 the spouse, parent, or child, who is a citizen of the United States or an
12 alien lawfully admitted for permanent residence; and

13 (E) the alien is not inadmissible under paragraph (2) or (3) of
14 section 212(a), is not deportable under paragraph (1)(G) or (2) through (4)
15 of section 237(a), and has not been convicted of an aggravated felony."

16
17 (d) The amendments made by this section shall be effective September 30, 1996,
18 as if included in Illegal Immigration Reform and Immigrant Responsibility Act of 1996
19 (P.L. 104-208, Division C, 110 Stat. 3009).

20
21 **SEC. 2.**

22 Any alien who was in deportation proceedings prior to April 1, 1997, who was
23 deemed ineligible for suspension of deportation solely on the basis of Section 309(c)(5)
24 of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208,
25 Division C, 110 Stat. 3009), or who claims eligibility for suspension of deportation as a
26 result of the amendments made by section 1, may, notwithstanding any other limitations
27 on motions to reopen imposed by the Immigration and Nationality Act or by regulation,
28 file one motion to reopen for suspension of deportation. The Attorney General shall
29 designate a specific time period in which all such motions to reopen must be filed. The
30 period must begin no later than 120 days after the date of enactment of this Act and shall
31 extend for a period of 180 days.
32