Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
001. schedule	Schedule; RE: home telephone numbers (partial) (1 page)	11/11/1994	P6/b(6)	
002. memo	Vice President to the President; RE: Meeting with Governor Hickel [partial] (2 pages)	11/10/1994	P5	4024
003. memo	Stephen Silverman to the President; RE: Alaska trip (3 pages)	11/10/1994	P5	4025

COLLECTION:

Clinton Presidential Records
Communications
Don Baer
OA/Box Number: 10140

FOLDER TITLE:

APEC [3]

Debbie Bush
2006-0458-F
db1249

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

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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

rivers will be further reduced due to weathering and deposition on the riverbanks.

-- If significant remedial action is not taken soon, however, the rate of oil loss will likely increase. The continued release of oil from this pipeline system during the winter season will greatly increase the probability of a serious release of oil to the rivers during the spring breakup flooding.

Based on these conclusions and the advice of experts from various agencies in our Government, I have conveyed to Prime Minister Chernomyrdin our assessment of the situation. At the same time, I have urged the Prime Minister to explore remedial actions, offered our assistance, and warned him that delay would not only adversely affect the local environment but also could discourage foreign investment in Russia's energy sector.

Last week, the governors of the Komi Republic and the neighboring Nenets Autonomous Region invited Governor Hickel, as Chairman of the Northern Forum, a sub-national organization composed of governors of states and provinces in the countries that border the Arctic, to visit the affected areas. He subsequently assembled and led a team to the region to observe the oil spill. I talked with Governor Hickel prior to his departure for Russia and plan to speak with him again soon. He may very well offer to brief you on his mission and his recommendations. In a letter to me on November 4, the Governor recommended a three-point plan: (1) replace the leaking pipeline, which he estimates to cost $100 million; (2) take immediate action to contain the oil spillage before the Spring thaw; and (3) address the problems of the entire Russian energy production infrastructure. I also believe that he may offer to serve as an intermediary with the Russians, inasmuch as he has contact with local officials through the Northern Forum.

If Governor Hickel does raise the Russian oil spill with you, I recommend that you make the following points to him:

-- We greatly appreciate his interest and concern in the Russian oil spill situation, and we are particularly grateful for the information provided by his assessment team.

-- We have marshaled the resources of the Federal Government to learn as much as possible about the nature and extent of the oil spill and to assess the environmental implications.

-- The Vice President will be calling him next week to exchange ideas on this matter.

I want to add this caution: I think you should try to avoid leaving the Governor with the idea that he has an explicit mandate to proceed with efforts to resolve the oil spill itself or the broader problem of the Russian energy production infrastructure. Our prospects for managing this problem effectively with the Russians are significantly improved if we can retain the responsibility at the Washington level.

Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. memo	Seth Waxman to Hon. Abner Mikva, et al.; RE: Illegal Immigration (1 page)	04/28/1995	P5 6005
001b. draft	RE: Interior Enforcement Efforts (18 pages)	04/28/1995	P5 6006

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COLLECTION:

Clinton Presidential Records
Communications
Don Baer
OA/Box Number: 10138

FOLDER TITLE:

Immigration

Debbie Bush
2006-0458-F
db2178

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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U.S. Department of Justice

6005

Office of the Deputy Attorney General

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Associate Deputy Attorney General

Washington, D.C. 20530

MEMORANDUM

TO: HON. ABNER J. MIKVA
CAROL H. RASCO
RAHM EMANUEL

FROM: SETH P. WAXMAN SPW

RE: Illegal Immigration

DATE: April 28, 1995

Attached is a draft memorandum outlining options for enhanced interior immigration enforcement. This draft has not yet been approved, or even reviewed, by the Attorney General or the Deputy Attorney General.

You will note that as to several of the options, the extent to which more can be done in FY 95 depends almost entirely upon whether additional money can be found. This is particularly true for removal and deportation. Simply put, more money buys overtime, TDY, and additional detention bed space, which translates directly into more removals.

In FY 94 and FY 95, the emphasis in INS budget enhancements was on border control. The FY 96 budget request, for the first time, includes significant resources for interior enforcement efforts like detention and removal and worksite enforcement. For the balance of this year, however, INS' flexibility to reprogram existing appropriated funds is quite limited. Indeed, DOJ has already been required to reprogram moneys simply to enable INS to meet existing detention and deportation projections.

Recognizing that additional funds may be scarce this year -- particularly given the increased demands for resources to combat domestic terrorism -- I have nonetheless asked INS to calculate approximately how many additional deportations could be achieved this fiscal year if, say, an additional $10 million could be found. I will let you know as soon as I receive the results of that analysis.

We look forward to discussing with you which proposals seem worth pursuing and which do not. In the interim, if questions arise, do not hesitate to call me.

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INTERIOR ENFORCEMENT EFFORTS

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To date, the overriding message of the Administration's immigration program has been control of the border. We believe that we have made substantial progress at the southwest border, both in terms of real gains in enforcement and in public perceptions of enforcement.

The February 7 Presidential Directive, in an important way, moved beyond the border to interior enforcement by calling for increased worksite enforcement and additional deportations of illegal aliens. Specifically, the Directive called for the development of "a more comprehensive coordinated package of deterrence strategies in selected metropolitan areas." The FY 96 budget initiatives would provide substantial increases in funding for operations in these "targeted deterrence areas." But these resources will not be in place for many months.

This paper provides a range of options that could be instituted now or could supplement the FY 96 budget initiative. The goal is to chart an enforcement strategy that reinforces our underlying policy objectives -- hitting hard on illegal immigration while permitting the Administration to continue its stand against measures like Proposition 187 and in favor of legal immigration.

This fiscal year, the INS will deport approximately 40,000 aliens, about half of whom are criminal aliens. (This is in addition to the more than 1 million voluntary returns made at the southwest border.) The INS projects that with the FY 96 enhancement of $178 million, it will deport 110,000 aliens in FY 96, including 58,000 criminal aliens. The numbers represent a very significant increase in alien removals, more than tripling the number of removals effected in FY 93. *

Although deportations occur on a daily basis (indeed, INS will be removing on average 300 illegal aliens a day in the next fiscal year), these removals are not "experienced" by the public. We must demonstrate that we are taking actions to make our communities safer and to restore credibility to our immigration system. ***

BENCHMARKS

Our success will be measured by our ability to define the measures of success. According to the best available estimates, there are about 4 million illegal aliens in the U.S., and approximately 300,000 net new illegal aliens are added each year. (Slightly over half of these come illegally across the southwest border; slightly under half arrive on temporary visas and fail to depart at the end of their authorized stay.) We

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should not suggest that we will be able to deport most of the illegal aliens in the country, or even that we will be able to deport more illegal aliens than enter the country each year. Rather, we should attempt to show steady and significant progress in the removal of illegal aliens. That is, each year's deportations must exceed the previous year's. In the process, deterrence in the interior of the country will be strengthened, and the public will see increased enforcement of, and compliance with, the law.

While the President could announce an overall goal for deportations, we suggest specific projects that will provide the tangible evidence that the goal is being reached. This should be accomplished by focusing removals on particular categories of illegal aliens as follows:

(1) The highest priority ought to be given to criminal aliens. These are the easiest aliens to remove because they are detained and concentrated.

(2) Our deportation efforts on non-criminal aliens should focus on two categories:

First, aliens who are more recent arrivals. Long-term illegal aliens frequently have substantial community ties and relatives who are U.S. citizens; they may also qualify for relief from deportation under the immigration laws. To focus on more recent arrivals, we could draw primarily from the pool of denied asylum-seekers -- a removal program that is, in any event, crucial to the success of our asylum reform.

Second, we should seek to deport illegal aliens apprehended in worksite enforcement operations. Under Operation Jobs, which the INS has just initiated, removal of these aliens is immediately followed by their replacement by unemployed U.S. workers. Making this program a priority provides tangible evidence that we are providing jobs for U.S. workers.

These noncriminal alien programs are organized most around the "targeted deterrence area" concept by coordinating a number of enforcement operations in major cities with high levels of illegal immigration. This concentrated approach maximizes the effectiveness of existing resources and is important for the visibility of our efforts.

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SPECIFIC OPTIONS FOR ANNOUNCEMENT AND DIRECTION

The enforcement initiatives described below are grouped into ~~three categories:~~ criminal alien removals; prosecution and deterrence of criminal aliens; and non-criminal alien deportation. Each option is described briefly, followed by further discussion of the resources or authorities involved and any limitations or other concerns. For the sake of completeness, following this section, we briefly discuss other options considered but not recommended.

I. Criminal Alien Removals

A. Institutional Hearing Programs (IHPs)

- The President could direct DOJ/INS to fully implement the Enhanced Institutional Hearing Program in the federal prisons and in the seven states with the largest criminal alien prison populations.

Discussion: Under programs already approved and implemented at least in part, virtually all criminal aliens in prisons in the five big states (CA, FL, IL, NY, TX) will complete immigration proceedings and receive final orders of deportation before their criminal sentences have been completed. These "enhanced" IHP plans, which will cover 71% of all criminal aliens in state prisons, save the American taxpayer millions of dollars, and make our communities safer by ensuring that criminal aliens are deported at the end of their criminal sentences. Additional resources are already in place in New York and Texas, and all plans should be fully implemented by the end of the calendar year.

A federal plan will be approved by the INS and BOP in early May, and will be fully implemented in 1996. The FY 96 budget initiative will provide funds for "enhanced" plans in Arizona and New Jersey. Together, the seven states incarcerate 81% of all criminal aliens. This option has no resource implications this year for INS. INS believes that even if more money were made available for IHP programs in FY 95, it would not affect the speed of implementation.

- The President could also encourage states to join in efforts with the INS to make IHPs more efficient.

Discussion: States can materially advance the deportation of the criminal aliens resident in their prisons by agreeing to hold criminal aliens in a limited number

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of facilities or to ensure that criminal aliens enter and leave the prison system through a very limited number of facilities. A recent example is an agreement between the State of Pennsylvania and the INS Philadelphia District, enhancing the IHP within existing resources. The Deputy Attorney General has requested that INS make such appeals to states, which the President could support by doing so himself. This option requires no additional resources; indeed, it conserves INS and EOIR resources.

B. Deporting Criminal Aliens in Local and County Jails

- The President could direct the Attorney General to implement programs to identify and deport criminal aliens from county and local jails in the major cities most affected by illegal immigration.

Discussion: There are thousands of aliens in local and county jails. In the past, INS has not had the resources to identify and remove them, and most county and local facilities have identified for the INS which of their inmates are foreign-born and therefore may be illegally in the country. The FY 96 budget contains substantial additional resources that will enable INS to tackle this population in a significant way, and provisions in the President's soon-to-be-introduced immigration bill will provide county and local institutions a major incentive to report their foreign-born population.

It is not necessary, however, to wait for FY 96 to begin. One project that will concentrate and increase the effort to locate criminal aliens in the local jails is scheduled to begin this summer in Los Angeles. Under this program, hundreds of criminal aliens will be deported instead of being released to the streets. INS will identify deportable aliens at intake, place detainers on them, and take them into custody upon completion of their sentence or their release on parole or probation.

If other resources are available, similar efforts could be mounted in other major jails within targeted deterrence areas. INS is currently investigating other locations, such as New York City, for program feasibility.

- In support of the foregoing, the President could also encourage county and local prisons to report their custody of foreign-born prisoners who may be illegal aliens to the INS.

Discussion: As noted above, the President's proposed immigration bill itself

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will provide counties and municipalities with a significant incentive to report these aliens because only if they do so will they be eligible for State Criminal Alien Assistance Program (SCAAP) funding, which this year is only available to states. The risk in a Presidential call at this point is that INS simply does not have the manpower to accommodate every county and local facility -- or even a significant number of them.

C. Removal of Criminal Alien Absconders

- The President could direct the INS to locate, apprehend, and deport criminal aliens who have been released on bond and fail to show up for their deportation hearings or abscond after having been ordered deported. Tracking and removing absconders will result in safer streets and greater respect for the rule of law.

Discussion: There is a significant backlog of aliens who have absconded during proceedings or after receiving final orders of deportation, some of whom have been convicted of criminal offenses. In the past, the INS has run pilot projects or temporary operations to apprehend a significant number of these aliens in a short period of time. The Service could plan a number of these efforts in targeted deterrence areas. They could be widely publicized and would be likely to attract public interest. A pilot project is currently planned for New York City, in cooperation with the NYPD. We estimate that, by redirecting some existing INS resources, the Service could identify and remove hundreds of absconders by the end of this calendar year. If additional moneys were available to pay overtime and TDY, these numbers could be increased, even in 1995.

- In support of the foregoing, the President could encourage states to provide addresses and other locators for criminal alien absconders.

Discussion: Criminal aliens with final orders of deportation who have absconded may frequently be located through addresses provided to state and local parole and probation officers. In the past, the INS has worked effectively with these state officers. The President could urge further cooperative efforts.

D. Prisoner Transfer Treaties

- The President could direct the Department of Justice to take necessary

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steps to increase the number of alien prisoners transferred back to their home countries to serve the balance of their sentences there.

Discussion: The United States has agreements in place with Mexico, Canada, and over fifty other countries that provide for the return of state and federal alien prisoners to their home countries to serve their sentences. The vast majority of prisoners transferred from the U.S. are Mexicans (373 of a total of 424 in FY 1994).

The Department could increase prisoner transfers under these agreements somewhat by streamlining the transfer process and dedicating additional resources to process transfer requests more promptly. However, there are two important constraints.

First, and most significantly, the treaty only allows transfers with the prisoner's consent. The Department is seriously considering a proposal to renegotiate the treaty with Mexico to allow nonconsensual transfers, and perhaps to build a binational prison in Mexico to house Mexican nationals sentenced to prison by U.S. courts. The Office of Legal Counsel has recently issued an opinion that nonconsensual transfers are constitutionally permissible, although transferred prisoners would retain rights under the Eighth and Sixth Amendments. No proposal has been finalized, however, and the issue has not been broached with the Government of Mexico. Therefore, we suggest that it would be inappropriate to make specific reference to it at this time. ?

Second, at present Mexico has limited prison capacity, and it has not complied with its obligations under the existing treaty to inform the U.S. regarding the custody status of prisoners following transfer. For this reason, the Department generally denies transfer requests from serious offenders because of our concern that they will be released in Mexico and return to the U.S. to commit more crimes.

As a result of these obstacles, the actual number of transferred prisoners is small (424 in FY 94) and cannot grow significantly unless Mexico's cooperation improves.

E. **Judicial Deportation**

- The President could direct [ask] the Attorney General to seek judicial deportation at the sentencing of deportable alien defendants whenever possible.

Background: Federal prosecutors can ask judges to seek judicial deportation at sentencing, either as a condition of a defendant's supervised release following completion of a sentence (under 18 U.S.C. § 1251(a)(2)(A)) or, for aggravated felons, under a new statute passed as part of the Immigration and Nationality Technical Corrections Act of 1994 (8 U.S.C. § 1252a(d)). The President's 1995 immigration bill will make important corrections to the legislation passed last year; these corrections will make use of judicial deportation much more likely.

The Attorney General will soon release a "blue sheet" to provide guidance to the United States Attorneys in utilizing these authorities. A few U.S. Attorneys' offices are already using the procedures, with significant results.

F. Stipulated Deportation Programs

- The President could direct [ask] the Attorney General to obtain consent to deportation from deportable alien defendants in their plea agreements. Aliens who plead guilty to crimes against the United States should be required as part of their plea agreements to return to their home countries directly from prison after serving their sentences.

Background: Stipulated deportation is a very effective method of ensuring criminal alien deportation, and has been particularly useful in targeting aliens who reenter the U.S. after having been previously deported. Some United States Attorneys are working closely with INS and the immigration judges to ensure that criminal alien defendants who consent to deportation as part of their plea agreements are issued deportation orders and are promptly deported upon completion of their sentences. The United States Attorney for the Southern District of California, for example, has developed an extremely efficient program that is expected to convict and provide for deportation of between 800 and 1,000 criminal aliens this year. The Attorney General is already working to encourage similar programs in other districts with large numbers of alien reentries.

G. Cooperative Arrangements with States To Obtain Early Deportation of Nonviolent Alien Criminals

- The President could encourage states to adopt policies that would enable INS to send criminal aliens home early by obtaining deportation orders and effecting their speedy removal.

Background: Last year, the INS entered into an MOU with the state of Florida under which the INS immediately deports aliens who are granted "conditional clemency" by the Governor in exchange for agreement to immediate deportation. The decision as to which alien prisoners to include in the program rests completely with the state and its local jurisdictions. So far, more than 200 non-violent criminal aliens

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have been deported under the MOU.

Because these operations involve stipulated orders of deportation, they impose little burden on the INS and EOIR. They are, however, somewhat controversial in the states: local prosecutors often object to the early release of convicted criminals and the disparate treatment afforded citizen and alien criminals. Nonetheless, it is to our advantage, and the states', to encourage the states to emulate the Florida model.

H. National Detention, Transportation, and Removal Plan

- The President could direct the Attorney General to speed implementation of the National Detention, Transportation, and Removal Plan.

Discussion: The President's February 7 Memorandum directed INS to develop a "National Detention, Transportation and Removal Plan" by April 30. The plan has just been finalized. The FY 96 budget initiative will provide the resources to make the plan a reality -- allowing INS to double the total number of deportations in FY 96. Certain aspects of the Plan are embraced in the operations described above (additional detention space, absconder removal teams).

Implementation of the Plan need not await receipt of the FY 96 resources, and indeed it has already begun. Last month, the INS and the U.S. Marshals Service initiated an Air Transportation System under which the two agencies' airfleets are being combined to enhance the movement of criminal aliens within the U.S. so that the Department can locate detention space for criminal aliens that otherwise might be released. The Transportation Plan has already been implemented on a trial basis in the Eastern Region. Operations in the Central Region will begin this summer and in the Western Region in October.

Additional funding in FY 95 would accelerate implementation of certain portions of the National Detention, Transportation, and Removal Plan. Specifically, this additional funding could: (a) speed establishment of "bag and baggage" pilot programs for locating and removing criminal alien absconders; (b) increase the currently funded capacity of INS Service Processing Centers; and (c) permit INS to acquire additional detention bed space in state or local contract facilities. These uses would all result in an increased number of criminal alien removals.

I. Entering Deportation Orders Into National Criminal Database

- The President could direct the INS and the FBI to increase the number of outstanding warrants and final deportation orders entered into the

National Crime Information Center (NCIC) so that NCIC can assist with identification of more deportable aliens and so that previously deported aliens who reenter illegally can be prosecuted.

Discussion: INS has been developing its use of NCIC, and has entered INS records into NCIC in three phases. In 1991, INS entered case information relating to 2,027 aggravated felons with warrants of deportation. In the next phase, INS entered information on 1,110 "Other-than-Mexican" aliens who entered the United States without inspection. Most recently, in January 1995, INS entered case information on individuals wanted by INS for criminal violations.

The INS recently proposed that the FBI enter names of aggravated felons who have been formally deported, in a Deported Felon sub-file. These names will enable NCIC to identify deported felons who are apprehended upon or subsequent to reentry. The FBI has indicated that it will agree to this proposal, which would affect approximately 8,000 NCIC records, though no formal agreement has been reached.

This proposal to use NCIC to locate deportable aliens could be expanded further, but at present INS lacks the necessary resources to make effective use of further expansion, and the FBI has not studied whether NCIC could feasibly accommodate additional significant expansions.[1]

II. Prosecution and Deterrence of Criminal Aliens

A. Increase Prosecutions for Document Fraud

- The President could direct [ask] the Attorney General to vigorously

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[1] For example, all outstanding warrants for deportation for persons who have absconded could be entered, enabling the NCIC to identify all aliens known to be subject to deportation. Alternatively, INS could enter deportation orders for all persons formally deported, not just aggravated felons. The problem with these expansion proposals is that when a person with an NCIC record is picked up, the law enforcement agency that apprehends the person expects the agency that has issued the warrant to take the individual into custody for prosecution. The INS does not remotely have the resources to pick up all aliens who would be NCIC "hits" if all outstanding warrants and final deportation orders were entered. This would disrupt the normal processing that makes NCIC so valuable and effective for federal, state, and local law enforcement agencies.

prosecute alien document fraud cases that will provide substantial deterrence benefits.

Discussion: Many aliens enter the United States every day by presenting false or fraudulent documents at a point of entry. Under federal law, aliens who present false documents at the border can receive a felony conviction. Prosecuting alien document fraud cases benefits the federal government in two ways. First, a prosecution sends a clear message to the alien and others contemplating similar criminal conduct that the United States will punish those aliens who attempt to enter the country illegally using false or fraudulent documents. Second, a successful prosecution creates a criminal history for an illegal alien that can be used as part of a future prosecution if the alien attempts to or successfully enters the United States at a later date.

No uniform national prosecution policy is desirable or feasible. Some districts, like San Diego and Miami, have literally hundreds of cases per week, and sufficient resources (prosecutors, courts, INS agents, or prisons) do not exist to accommodate a policy of universal prosecution. In other districts, universal prosecution of all cases, or certain categories of cases, makes good sense. In every district, however, federal prosecutors and the INS can work together to increase the number of alien document fraud cases. Even a slight increase in the number of prosecutions could have a substantial deterrent effect in those communities that have serious immigration problems.

B. Prosecutions for Reentry After Deportation

- The President could direct [ask] the Attorney General to increase the number of prosecutions of criminal aliens who reenter the United States after being deported, utilizing the new penalties available under the Violent Crime Control Act of 1994

Discussion:. The Violent Crime Control Act of 1994 increased the exposure to incarceration faced by aliens who have been convicted of a felony, are thereafter deported, and who reenter the United States illegally. United States Attorneys are taking advantage of these enhanced penalties to deport record numbers of criminal aliens.

In the Southern District of California, for example, the United States Attorney has implemented a pioneering initiative to prosecute record numbers of alien felons under 8 U.S.C. § 1326. During 1994, the district prosecuted and convicted approximately two hundred such cases, but under the new statute, and with tougher prosecution guidelines, that figure will rise to at least four-fold this year. United States Attorneys in Arizona and Texas have initiated similar programs. In the Northern District of California, the U.S. Attorney is using the new penalties to target particularly violent criminal aliens. The Special Assistant United States Attorneys (SAUSAs) that the Attorney General detailed to the Southwest border area districts have been instrumental in achieving these tremendous increases in the number of § 1326 convictions (mostly obtained by plea agreement). With new prosecutors now coming on line to prosecute immigration cases, the Department hopes to dramatically raise the number of § 1326 convictions in all the Southwest border states.

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C. Major Fraud Investigations

- <u>The President could direct [ask] the Attorney General to make major document fraud investigations and prosecutions a priority</u>.

Discussion: Phony documents allow illegal aliens to obtain work and benefits in the United States. The Attorney General has already directed the INS to concentrate on major makers and suppliers of fraudulent documents. These efforts will bring scores of big-time purveyors of fraud to justice.

Additional INS investigative resources can be redirected toward actions against major suppliers of fraudulent documents used for obtaining work and benefits. The concentration of enforcement resources on large-scale fraud facilitators within the deterrence areas can be expected to yield more than 250 completed criminal investigations by January 1996.

In FY 94, INS targeted $300,000 to document and benefit fraud task force investigations across the country. In FY 95, budget reductions decreased task force funding to $225,000 for all INS investigative functions (including anti-smuggling, OCDETF, employer sanctions, and criminal aliens). The task-force funding decrease has reduced by 75% the amount available for fraud investigations this year. A portion of this reduction could be made up this year if additional funds were available. This would result in more completed criminal investigations of the document providers and more apprehensions by INS of the document users.

III. <u>Noncriminal Alien Deportation Programs</u>

A. Aliens Apprehended in Worksite Enforcement Actions

- <u>The President could direct INS and the Department of Labor to expand enforcement actions to target illegal employers for employment violations and to deport or remove illegal alien workers</u>.

Discussion: The February 7 Memorandum directed INS and the Department of Labor to work together to target industries that have traditionally hired and exploited undocumented labor. The program imposes penalties on employers who violate the law and provides for initiation of deportation proceedings against the illegal aliens.

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INS and DOL are already working to enhance coordination of enforcement efforts, targeting industries historically dependent on an illegal work force. New officers will be hired this year in Los Angeles and New York. INS will re-emphasize lead-driven investigations in these industries. An effort will be made not only to impose sanctions on the employer, but to ensure the removal of the aliens as well. This will require setting aside some detention space in major cities for undocumented aliens arrested at the worksite. Additional funds in FY 95 would help raise the number of aliens detained and deported.

- <u>In support of the foregoing, the President could also encourage state and local governments to cooperate with INS' Operation Jobs to replace illegal alien workers with citizens and lawful resident aliens</u>.

Discussion: Under the newly-organized Operation Jobs, INS notifies state and local employment agencies of worksite enforcement actions in order to make vacated jobs immediately available to U.S. citizens and aliens authorized to work. Operation Jobs has been both successful and popular. The President could urge state and local governments, through their employment offices, to participate in these efforts. Additional state and local efforts would enhance the effectiveness of the program.

B. **Deportations of Failed Asylum-Seekers**

- <u>The President could direct the INS to dedicate the necessary resources to prioritize deportations of failed asylum-seekers</u>.

Discussion: In January of this year, INS announced a major reform of the asylum process. The early evidence is that reform is working -- deterring the filing of frivolous cases and facilitating faster identification of aliens with true fears of returning to their home countries. To restore full credibility to our asylum process, however, the INS must remove aliens who, after a full and fair opportunity to present their claims, are found ineligible for asylum.

In the past, little effort was made to apprehend and deport failed asylum seekers, primarily due to a shortage of manpower and detention space. Any additional funds available this year would allow the INS to make detention space available for these cases. INS believes that there is sufficient funding in the FY 96 budget to accommodate the removal of failed asylum seekers next year (specifically, $9.9 million of the FY 96 budget is targeted for removal of failed asylum seekers).

C. Additional Immigration Judges and INS Attorneys

- <u>To reduce or eliminate serious backlogs in the deportation adjudication process, the President could seek a budget amendment for FY 96 to increase the number of immigration judges, support staff, and INS attorneys</u>.

Discussion: The Executive Office for Immigration Review, which includes the immigration courts and the Board of Immigration Appeals, has a large and growing caseload. The average time for case processing before an immigration court in a major city is now twelve months, and many appeals take years. With the increased emphasis on criminal aliens and deportations in general, and with the expected influx of cases under the new asylum regulations, the backlog is expected to grow.

With the FY 95 budget and the requested FY 96 budget, EOIR will receive an additional 100 judges, but these resources will not be enough to eliminate the asylum backlog or improve case processing time at either the trial or appellate level. A $26.5 million amendment could fund 50 new Immigration Judges; 100 support staff; 50 law clerks; 40 Board staff attorneys; and 14 Board support staff.

An increase in the immigration judges would need to be accompanied by an increase in INS attorneys who could bring the additional cases for EOIR to process. INS estimates that an additional $11 million would be necessary to handle the cases an enhanced EOIR staff could accommodate.[2]

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[2] Note, however, that while a greater number of immigration judges and INS lawyers would facilitate more prompt adjudication of a large and growing caseload, EOIR already issues a greater number of deportation orders and asylum denials than INS has the resources to respond to. An even more efficient system, if not implemented in conjunction with a vastly improved deportation and removal initiative at INS, would open up the INS to further criticism for failing to enforce a greater number of judicial orders. The requested funding increase of $176 million for FY 96 will enable INS to execute orders currently processed by EOIR, as well as to remove aliens whose orders have been issued by EOIR in the past and who are currently in the INS backlog for removal.

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D. **Encourage Pro Bono Representation of Aliens**

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- The President could encourage bar associations and law schools to increase programs and clinics to provide pro bono counsel to aliens in immigration proceedings. Increased representation can significantly reduce the time necessary for case processing and help the immigration judges reduce the case backlog.

Discussion: At present, aliens are represented by counsel in only 30 percent of deportation proceedings and 47 percent of exclusion proceedings. There is significantly greater delay in processing cases without counsel, for two reasons. First, judges often grant up to three extensions of time at hearings in order to allow aliens to attempt to obtain counsel, which requires repeat appearances that clog their dockets. Second, appearances without counsel are considerably slower than represented appearances -- appearances that could be limited to five minutes with counsel can be drawn out to fifteen or twenty minutes without counsel. A pro bono project currently operating in Florence, Arizona, has been very effective in improving case processing and could be replicated at other sites with heavy immigration caseloads. A provision in the proposed 1995 immigration bill would authorize appropriations for such projects. (These programs would benefit from grant money not to fund salaries, but to provide training or fund law school clinics.)

E. **Invitations for State Cooperation**

In addition to the points already addressed above, the President could invite the states to join the federal government in helping to remove illegal immigrants in the following ways. Of course, it would be crucial to cast the states' role in such a way that appears neither to approve of Proposition 187-like measures nor to urge direct state enforcement of federal immigration law. The following proposals could be made without necessarily implicating those concerns.

1. **Removal of State Laws Prohibiting Cooperation Between State Authorities and the INS**

- The President could recommend that states and localities remove laws or ordinances that prohibit cooperation with INS. Such laws are still in effect in several states and communities.

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Discussion: This proposal must be distinguished from earlier ~~proposals in~~ Congress, which the Administration opposed, that required state officials to report illegal aliens to the INS.

2. **Improving State Cooperation with Immigration Enforcement through Driver's License Verification**

- The President could encourage the states to reduce the value of fraudulent driver's licenses or the misuse of valid licenses by cooperating with INS and the Social Security Administration to prevent illegal aliens from obtaining lawful permits.

Discussion: Although INS is not presently equipped to respond to verification checks for every driver's license applicant in every state, its verification experience with the State of California has proven to be successful and may be replicated in other states. Since July 1994, pursuant to a Memorandum of Understanding with the State of California, INS has provided California with on-line access to its Alien Status Verification Index. California makes an initial inquiry of the index and INS reports on the immigration status, country of birth, identity, date of initial entry, and expiration of authorized stay of the individual. Where information does not "match", the state waits 40 days and makes another inquiry and, subsequently, a paper document verification request. California indicates that it has had a 28% reduction in requests for identification cards from aliens since the adoption of the Memorandum of Understanding and attributes the reduction directly to this cooperative effort.

Presently, only about one-quarter of the states require proof of citizenship or legal presence in the United States as a condition of granting a driver's license or other state identification card. Only California systematically checks the validity of INS documents. Given the success of the program, it should be encouraged in other states, assuming INS has the resources necessary to respond to the states. There is currently no funding in the President's FY 96 budget to establish new programs for driver's license verification. Funding for the California program is included in the FY 96 budget.

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IV. Options We Do Not Recommend

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A. New proposals to expedite deportation procedures

There is an understandable interest among the public in expeditious deportation procedures. The Administration's legislation provides a number of provisions that will expedite the process, remove delaying tactics, and impose sanctions on aliens ordered deported who fail to depart. Other possible changes could include removing (or further limiting) judicial review of deportation orders or immediately detaining aliens who receive orders of deportation. We do not at this time support such measures. Only 10% of those aliens receiving orders of deportation appeal their cases to the federal courts, and detaining all aliens at the conclusion of their deportation proceedings is not possible today, given limited detention space and funding.

B. Additional programs regarding "visa overstayers"

Slightly under half of the illegal aliens in the U.S. arrive with legal visas but fail to depart at the end of their authorized stay. There is now increasing attention to this group in Congress and among outside groups who argue that single-minded focus on the border ignores half the problem. To date, INS has stated that the primary weapon against overstayers is timely asylum processing (which the asylum reform instituted in January 1995 is achieving) and an effective worksite enforcement program.

Pursuant to the President's February Directive, a working group is considering additional enforcement measures, but it is too early to report new initiatives (and, in any event, the INS does not have resources for a major new effort). We also believe that the other actions proposed in this paper, if undertaken, will show a serious commitment to interior enforcement and therefore make less compelling specific actions targeted at overstayers.

If action on overstayers is deemed important, an option is to accelerate the work of the working group and announce its preliminary findings.

C. Removing the prohibition on use of SAVE information for enforcement purposes

The SAVE program enables states to verify the eligibility of aliens for certain federal benefits by accessing INS databases. Under current law, information provided under SAVE may not be used for law enforcement purposes -- that is, INS may not pursue aliens identified through SAVE as unlawfully in the U.S. Arguably, this prohibition is an anomaly. The usual justification offered is that bona fide benefit

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seekers might be deterred from applying if they believe that their names (or the names of family members) might be given to the INS.

Although we believe that the prohibition is hard to justify today, its removal might present the INS with a large number of referrals that could not be handled with current resources. (INS is already facing this problem with referrals from the State of California for persons denied motor vehicle licenses.) Furthermore, these cases are less likely to fit within the highest removal priorities. Moreover, before any legislative reform is sought in this area, HHS should be heard.