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Coercive Family Planning [1]

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"EMERGENCY CHINESE IMMIGRATION RELIEF ACT OF 1989"
(H.R. 2712)

(P. 4)

SENATE AMENDMENT

HOUSE AMENDMENT

NOTES

(1) CHINESE FLEEING COERCIVE POPULATION CONTROL POLICIES.—Pursuant to paragraph (42)(A) of

[No comparable provision]

[Handwritten notes]

~~section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) that the Secretary of State shall not issue visas to any person who is a national of the People's Republic of China who~~

tions from nationals of the People's Republic of China who express a fear of persecution upon return to that country because they refuse to abort a pregnancy or resist surgical sterilization in violation of Chinese Communist Party directives on population, if such refusal is undertaken with full awareness of the urgent priority assigned to such directives by all levels of the Chinese Government, and full awareness of the severe consequences which may be imposed for violation of such directives.

(2) In view of the urgent priority assigned to the "one couple, one child" policy by high level Chinese Communist Party officials and local party cadres at all levels, as well as the severe consequences commonly imposed for violations of that policy, which are regarded as "political dissent," refusal to abort or to be sterilized, as described in subsection (a) of this section, shall be viewed as an act of political defiance justifying a "well-founded fear of persecution" sufficient to establish refugee status under paragraph (42)(A) of section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(42)(A)).

"EMERGENCY CHINESE IMMIGRATION RELIEF ACT OF 1989"
(H.R. 2712)

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(3) All other factors which may contribute to a determination of asylum or refugee status in such cases are to be given additional weight by asylum and refugee adjudicators.

...in the United States or those countries membership in an ethnic or religious minority, family background and history, or suspicion of "counterrevolutionary" activities by Chinese Communist Party Officials.

(4) Nothing in this section shall be construed to necessitate a grant of asylum or refugee status to any individual who is ineligible for admission to the United States under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)).

(5) The Secretary of State and the Attorney General shall, within thirty days of enactment of this section, promulgate regulations and guidelines to carry out the provisions of this section.

(6) Nothing in this section shall be construed as—

(A) Shifting the burden of providing, in each individual case, facts sufficient to establish a claim of asylum or refugee status as described in subsection (a) of this section, from any person making such claim of asylum or refugee status to the Attorney General; or

(B) Requiring the Attorney General to disprove such claim in the absence of proof of facts sufficient to

[reference to "section" should probably be to "subsection"]

[reference should probably be to "paragraph (1)"]

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establish a claim of refugee or asylum status as described in subsection (a) of this section by any person

[reference should probably be to "paragraph (1)"]

(7) The number of persons receiving political asylum status solely because of the provisions of this section shall not exceed 1,000 in any fiscal year.

(8) The Attorney General shall not be obligated to grant political asylum to any person claiming to qualify under subsection (a) if the Attorney General proves by clear and convincing evidence that such person has claimed such status solely for the purposes of evading the immigration laws of the United States.

"paragraph (1)"

(9) The provisions of this section shall take effect on the date of enactment of this Act, and notwithstanding the provisions of subsection (e) of this section or any other provision of law, all adjudicators of asylum or refugee status shall apply the provisions of this section to every case, administrative or judicial proceeding, or appeal that is pending on the date of enactment of this Act, and to any claim that arises on or after such date of enactment.

"subsection"

"paragraph (5)"

"subsection"

Appendix I

Memorandum



CO 208

Subject

LEGAL OPINION: Continued Viability of
the Doctrine of Imputed Political
Opinion

Date

JAN 19 1993

To

From

Jan Ting
Acting Director
Office of International Affairs

Office of the
General Counsel

Gregg Beyer
Director
Asylum Branch

Regional and District Counsel

Question Presented:

Does persecution "on account of" one of the protected characteristics set forth in section 101(a)(42) of the Immigration and Nationality Act include persecution inflicted because the persecutor erroneously imputes a protected characteristic to the victim?

Summary Conclusion:

Persecution inflicted because the persecutor erroneously imputes to the victim one of the protected characteristics set forth in section 101(a)(42) can constitute persecution "on account of" that characteristic for the purpose of asylum or refugee analysis. This view is consistent with both the plain language of the statute and its settled administrative interpretation. Nor is it inconsistent with the reasoning of the Supreme Court in INS v. Elias-Zacarias, ___ U.S. ___, 112 S. Ct. 812 (1992).

Analysis:**I. Imputed Political Opinion After Elias-Zacarias.**

It has been recognized by the Attorney General, by the Board of Immigration Appeals, and by courts of appeals that a political opinion "imputed" to the victim by the persecutor may in some circumstances provide a basis for refugee status. In Desir v. Ilchert, 840 F.2d 723 (9th Cir. 1988), for example, the Ninth Circuit considered an asylum claim by a Haitian fisherman who, in order to secure the right to fish in certain waters, was expected to pay bribes to the Haitian security forces known as the Ton

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Tons Macoute. Desir, the fisherman, introduced evidence that the Haitian government operated as a "kleptocracy" whose systematic thievery was enforced by Macoute terrorizing and extortion. Desir demonstrated that, because of his refusal to accede to Haitian governmental security forces' extortion, he "was perceived as disloyal and subversive and the machinery of the state . . . was violently engaged against him." 840 F.2d at 729. The Ninth Circuit held that the ensuing beatings constituted persecution on account of imputed political opinion and that Desir thus qualified for asylum under section 101(a)(42) of the Act. *Id.* at 728-29. See also Maldonado-Cruz v. INS, 883 F.2d 788 (9th Cir. 1989); Lazo-Majano v. INS, 813 F.2d 1432, 1435 (9th Cir. 1987); Hernandez-Ortiz v. INS, 777 F.2d 509, 517 (9th Cir. 1985); Sovich v. Esperdy, 319 F.2d 21 (2d Cir. 1963); Yiu Sing Chun v. Sava, 708 F.2d 869 (2d Cir. 1983); Matter of Izatula, Int. Dec. #3127 (BIA, Feb. 6, 1990); Matter of A-G-, 19 I&N Dec. 502, 506 (BIA 1987); 8 CFR 208.13(b)(2)(i)-(ii); 55 FR 2803 (1990) (interim rule on refugee status of persons fleeing coercive family planning policies); ___ FR ___ (1993) (final rule on coercive family planning policies).

Recognition of imputed political opinion as a ground for refugee status has sometimes been coupled with a very broad definition of what might constitute a qualifying "political" motive on the part of the persecutor, or of what might constitute a qualifying expression of political opinion on the part of the victim. For example, courts sometimes held that a decision to remain politically neutral rather than to comply with prescription laws is in general a political opinion within the meaning of the Act. See, e.g., Canas-Segovia v. INS, 902 F.2d 717, 728 (9th Cir. 1990) (Canas I); Bolanos-Hernandez v. INS, 749 F.2d 1316, 1324-25 (9th Cir. 1984).

In Elias-Zacarias, *supra*, the Supreme Court addressed the question whether a guerrilla organization's attempt to coerce a person into performing military service necessarily constitutes persecution on account of political opinion. The Court answered this question in the negative, because an asylum claimant must present some evidence, direct or circumstantial, that the alleged persecutors desire to punish him or her "on account of" their belief that the claimant holds a certain political opinion. The Board of Immigration Appeals had found no such evidence, and a Board determination that asylum eligibility has not been established "must be upheld if 'supported by reasonable, substantial, and probative evidence on the record considered as a whole.'" 112 S. Ct. at 815. The Court emphasized that the Board's conclusion could be disturbed on judicial review only had Elias presented evidence so compelling that no reasonable factfinder could fail to find the requisite fear of persecution. *Id.* at 817.

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The Elias-Zacarias Court explicitly recognized that it was not dealing with a case of "imputed" political opinion --- in which the persecutor is attempting to punish a person or a class of persons for what the persecutor perceives to be political opposition, but in which this perception may not be correct --- and therefore left the question open. 112 S. Ct. at 816 ("Nor is there any indication (assuming, arguendo, it would suffice) that the guerrillas erroneously believed that Elias-Zacarias' refusal was politically based.") (emphasis in original). Thus Elias-Zacarias did not have a great deal to say about imputation. Rather, the decision observed that neutrality does not ordinarily constitute a political opinion under section 101(a)(42), and held that a generalized "political" motive on the part of the person inflicting punishment --- such as the desire to raise an army in order to accomplish certain political objectives --- does not establish that such punishment was inflicted "on account of" the victim's political opinion. Rather, the "on account of" test is met only when the persecutor is specifically motivated by his apprehension of the victim's political opinion. Id.

Some observers have tended to confuse the broad view rejected by the Elias-Zacarias Court of what constitutes a "political" motive on the part of the persecutor with the far narrower and far more traditional view that a persecutor who is motivated (in whole or in part) by his perception that his victim is a political enemy, but who happens to be incorrect, is nevertheless persecuting his victim "on account of" political opinion.

The Attorney General has recognized on several occasions that eligibility for asylum may be established by proof of a well-founded fear that an applicant will be regarded as a political enemy of the state, or of some other person or entity with the power to persecute, and persecuted on this account. Two instances of such recognition, having to do with coercive family planning policies and with countries that persecute people who attempt to leave, are discussed in sections II and III of this opinion respectively. A more general instance is the provision of 8 C.F.R. 208.13(b)(2)(i) that an applicant may establish a well-founded fear of persecution on one of the five statutory grounds by establishing that "there is a pattern or practice . . . of persecution of groups of persons similarly situated" to the applicant; that such pattern or practice is "on account of" one of the five statutory grounds; and that his own "inclusion in or identification with such group" makes it reasonable for him to fear persecution. This provision does not explicitly address the situation in which the applicant in fact does not have the political opinion or other protected characteristic that the persecutor believes him or her to have. The rule does seem to entail grants of asylum in this situation, however, because it requires applicants to prove only that they have the trait or traits which the persecutor has used as the

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criterion for victim selection, and not that they actually have the particular political opinion or other protected characteristic the persecutor is trying to get at by persecuting persons with the selected trait. Even if such grants could be regarded as windfalls for the successful applicants, the regulation would be defensible as an administrative mechanism genuinely calculated to protect all of those for whom the statute prescribes protection, albeit at the cost of also protecting some other people. This justification is not necessary, however, for such applicants are genuinely at risk of persecution, and the persecution in question would be inflicted "on account of" the persecutor's desire to punish and/or deter certain political opinions or other protected characteristics.

The opposite result --- requiring a victim or prospective victim to prove not only "inclusion or identification with" a group possessing a protected characteristic, such that it is reasonable for him to fear persecution aimed at this group, but also that he or she actually does possess the characteristic --- would not only contravene the regulation but also lead to results that seem clearly inconsistent with the language and evident purpose of the asylum and refugee statutes. It should be emphasized that a denial of refugee status to persons who fear persecution on account of imputed political opinion would also entail denial of such status to persons who fear persecution on account of imputation of one of the other four grounds. This is so because the "on account of" language which precedes "political opinion" also precedes the other four grounds. 8 U.S.C. § 1101(a)(42)(a); see Canas-Segovia v. INS, 970 F.2d 599, 601 (9th Cir. 1992) (Canas II). Thus, for instance, a Mr. Rosenberg whom the Nazi government of Germany had sentenced to the gas chamber because it erroneously believed him to be a Jew, but who had somehow made it to the United States to apply for asylum, would not qualify for asylum. No matter how clear it might be that the government was going to kill him upon his return, and that the killing would be specifically motivated by a desire to do unpleasant things to Jews, such persecution would not be "on account of . . . religion" unless the government happened to be correct about Rosenberg's religion. This result is hardly compelled by the language of the statute; the most straightforward meaning of the words "persecution . . . on account of . . . religion" would appear to encompass a program specifically intended to stamp out Judaism even though implementation of the program should lead to some persecution of non-Jews. Nor does it seem appropriate to ascribe to Congress an unarticulated intention to generate such harsh results.

Nevertheless, as the Court underscored in Elias-Zacarias, prosecution and punishment under a law of general applicability will not ordinarily constitute persecution "on account of" one of the five statutory grounds. The "imputed political opinion" exception to this rule arises only when there is evidence that

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the law and/or its enforcement are motivated in whole or in part by a desire to punish or deter one of the five characteristics protected by the asylum and refugee laws.

Such evidence may be either direct or circumstantial. Direct evidence would consist of statements by the persecutor to the effect that violators of the law are to be regarded and punished not just as ordinary lawbreakers but as political enemies. (See, for example, section II of this opinion, discussing the characterization by organs of the Chinese government of violators of the family planning laws as saboteurs, anarchists, and "class enemies.") Circumstantial evidence has most commonly consisted of punishment so severe as to seem obviously directed at real or perceived enemies rather than at ordinary lawbreakers. See Canas I, 902 F.2d at 728; Matter of Izatula, Int. Dec. #3127 (BIA, Feb. 6, 1990); Matter of A-G-, 19 I&N Dec. 502, 506 (BIA 1987). Applying the doctrine of imputed political opinion in either of these two situations is not inconsistent with the holding in Elias-Zacarias; in both cases, unlike the case before the Court in Elias-Zacarias, the persecution is motivated not just by a general desire to achieve certain political goals, but by a conscious and specific (albeit perhaps erroneous) belief that the victim's behavior reflects a political opinion.

A third situation in which punishment for violation of a law of general applicability has sometimes been regarded as persecution of political opponents is where compliance with the law would infringe what is generally regarded as a fundamental right. See J. Hathaway, The Law Of Refugee Status 43, 173 (1991); cf. Matter of Izatula, *supra* (punishment for an attempt to overthrow a lawfully constituted government may be persecution, even though imposed under a law of general applicability, where democratic change is prohibited and a coup or revolution is therefore the only means of effecting political change). In such a situation, unwillingness to sacrifice this right in order to comply with the law might fairly be understood or regarded by the authority enforcing the law as necessarily entailing political opposition. Finally, it has been recognized that prosecution for refusal to obey a law or command which would require the applicant to persecute others, or "to engage in inhuman conduct," is persecution on account of political opinion even though the law or command is of general applicability. See Matter of A-G-, *supra*, at 506-07; Matter of Salim, 18 I&N Dec. 311 (BIA 1982); United Nations High Commissioner on Refugees, Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to Status of Refugees 39-41 (Geneva, 1979).

It is arguable that the last two situations ("fundamental rights" and "inhuman acts") extend the doctrine of imputed political opinion beyond the limits of its logic, and that in any

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event the application of the doctrine in these situations would be inconsistent with the rationale of Elias-Zacarias. In both cases the authorities have some obvious motives for enforcing the law that need not be related to the actual or imputed opinions of the violators. Nevertheless, both are distinct from the conscription laws addressed in Elias-Zacarias; military conscription, far from being regarded as the infringement of a fundamental right, is generally regarded as a prerogative of all sovereign nations, and this prerogative is still exercised by many civilized nations. Although the Elias-Zacarias Court did not rest its holding on this narrow ground, it should not be assumed that the Court would not distinguish a future case involving punishment for the exercise of a fundamental right or for the refusal to engage in persecution or inhuman acts. One possible distinction is that such laws are far more likely than other laws to become political loyalty tests. See, e.g., Sovich, supra, 319 F.2d at 21 (Exit controls are the product of modern dictatorships, and "[d]evotees of such regimes do not risk life and limb to violate statutes prohibiting departure. It would be naive to suppose, therefore, that punishment for illegal departure, under these circumstances, is not politically motivated, or does not constitute punishment 'because of . . . political opinion.'")

It should be noted that not all punishment, even for political opinion or one of the other four protected characteristics, necessarily constitutes persecution. A brief period of detention, or a fine that is not so high as to be calculated to inflict economic ruin, will not generally amount to persecution even though it is imposed on account of race, religion, nationality, membership in a particular social group, or political opinion. See, e.g., Sovich, supra, 319 F.2d at 29. When the punishment is sufficiently severe as to constitute persecution, however, a persecutor should be regarded as acting "on account of" one of the five statutory characteristics when he is motivated at least in part by a desire to eliminate or punish persons having this characteristic. Applicants who can establish a well-founded fear that they will be persecuted for having such a belief or other characteristic are eligible for asylum, even though the persecutor may be incorrect in attributing the belief or characteristic to them.

II. Coercive Family Planning Policies

Whether a persecutor may impute a protected characteristic to a person who does not in fact have it, like other questions of fact, typically depends on the circumstances of each individual case. There are, however, several frequently recurring situations in which the question of persecution on account of imputed political opinion is presented. The Attorney General has provided by regulation for one such situation. An applicant who

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establishes a well-founded fear that he or she will be forced to undergo abortion or sterilization pursuant to the implementation of a coercive family planning policy, or will be persecuted for failure to do so, shall be regarded as having established a well-founded fear of persecution on account of political opinion. The applicant is not required to make a separate showing that the persecutor will impute a political opinion to him or her. 55 FR 2803 (1990) (interim rule); ____ FR ____ (1993) (final rule). The coercive family planning regulation arose out of experience with the coercive family planning policy imposed by the People's Republic of China.

On August 5, 1988, the Attorney General issued a memorandum to the Commissioner of the Immigration and Naturalization Service (INS) directing that INS asylum adjudicators give "careful consideration" to applications from nationals of the PRC who express a fear of persecution upon return to the PRC because they refuse to abort a pregnancy or resist sterilization after the birth of a second or subsequent child in violation of Chinese Communist Party directives on population. The Attorney General found that "there is evidence to support the assertion that such an act is viewed by PRC officials as 'political dissent.'"

On November 30, 1989, the President directed that the Attorney General give enhanced consideration under the immigration laws to persons from any country who express a fear of persecution upon return to their country related to that country's policy of forced abortion or coerced sterilization. Memorandum of Disapproval for the Emergency Chinese Immigration Relief Act of 1989, 25 Weekly Compilation of Presidential Documents at 1853-54 (1989).

On January 29, 1990, the Attorney General incorporated this directive into regulatory form by publishing an interim rule with request for comments at 55 FR 2803. The interim rule provided that an asylum officer or immigration judge shall find an applicant (and the applicant's spouse, if also an applicant) to be a refugee on the basis of past persecution on account of political opinion if the applicant establishes that he or she has been forced to abort a pregnancy or undergo involuntary sterilization pursuant to the implementation of a country's family planning policy. The same protection was extended to those who establish a well-founded fear of being forced to undergo an abortion or involuntary sterilization.

The President incorporated and reinforced the provisions of the interim rule in Executive Order No. 12711, § 4, which was published on April 13, 1990 at 55 FR 13897 (hereinafter "the Executive Order"). Section 4 of the Executive Order directed the Secretary of State and the Attorney General to provide for "enhanced consideration under the immigration laws" for persons expressing fear of persecution related to forced abortion or

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coerced sterilization policies and further directed that such enhanced consideration be provided "as implemented by the Attorney General's regulation effective January 29, 1990." In accordance with this directive, and based on the premise that the doctrine of imputed political opinion remains viable after Elias-Zacarias, the Attorney General signed a final regulation on January 15, 1993, under which an alien fleeing coerced population control policies that involve or result in forced abortions or involuntary sterilizations may be considered to have established a clear probability (for withholding of deportation) or well-founded fear (for asylum) of persecution on account of political opinion.

To accord political refugee status to victims of coercive family planning policies --- or of various other sorts of repression that might serve some purpose other than to punish dissent --- is consistent with Elias-Zacarias so long as there is evidence that the authorities who impose such policies regard obedience to them as a test of loyalty to the government, and that punishment is therefore motivated at least in part by a desire to punish and/or to deter such disloyalty. As noted by the Attorney General in 1988, there is substantial evidence that violation of the PRC coercive family planning policy is regarded as an ideological crime, and that the harsh punitive and/or deterrent measures taken to enforce the policies are motivated at least in part by the desire to punish or deter political dissent.

First, the PRC family planning policy is one of those rare cases in which the persecutors have publicly declared that they regard their victims not just as lawbreakers but as political enemies. It is clear from a number of such declarations that compliance with the policy is regarded as an important test of loyalty and that those who wilfully fail to comply with the policy are "guilty of an ideological offense" Banister, China's Changing Population 200 (1987); see Directive of Attorney General Edwin Meese to Commissioner Alan Nelson, August 5, 1988, § 1. Government officials have been unusually explicit in their determination to treat opposition to the program as a form of political sabotage. "Planned parenthood work, like other work, also suffered from interference and sabotage by Lin Piao and the 'gang of four.' Lin Piao, the 'gang of four,' and their followers incited anarchism in marriage and childbirth." Foreign Broadcast Information Service Daily Report --- People's Republic of China, Vol. I, 239 (July 13, 1978): E10. Opposition to coercive family planning is thus often treated as a crime against the state. "We must expose and deal resolute blows at class enemies who sabotage planned parenthood." Id. at 135 (Aug. 7, 1978): G4. See also Banister, supra, at 196-201.

Second, there is strong evidence that punishment for violation of the coercive family planning policy in the PRC is disproportionately severe. Reliable published reports covering

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the period from 1978 through 1992 relate that punishment for those who resist the PRC family planning program may take several forms: fines that amount to as much as three times an average annual salary; abductions of pregnant women to clinics where abortions are performed against their will; compelling both men and women to undergo sterilization operations which are often debilitating in ways unrelated to reproductive functions; revocation or denial of business licenses, crop permits, and other means of livelihood; and the destruction or appropriation of property, sometimes including the family home.

Third, in order to be effective, a regime of coercive family planning must be carried out by means of comprehensive and unrelenting control over the most intimate aspects of family life. In the PRC, for example, local family planning authorities record individual women's menstrual cycles and couples' methods of birth control, and unauthorized pregnancies are dealt with by "work units" which also exercise almost unlimited control over the economic and personal lives of unit members. Both the right to bodily integrity and the right to procreate are universally recognized as fundamental human rights. See, e.g., Universal Declaration of Human Rights arts. 12, 16(3); Skinner v. Oklahoma, 316 U.S. 535 (1942). As discussed above, it is arguable that punishment for resistance to a law whose whole purpose and effect is to infringe such fundamental rights cannot fairly be characterized as mere prosecution.

Finally, in many cases the PRC program may require its victims to engage in "inhuman conduct." See Matter of A-G-, supra, at 506-07; United Nations High Commissioner on Refugees, Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to Status of Refugees 39-41 (Geneva, 1979). A pregnant woman who wishes to carry her child to term but who is compelled (either by physical force or by threats of severe punishment) to terminate her pregnancy becomes not only a victim but also an unwilling participant in an almost uniquely violent and intrusive violation of bodily integrity and family privacy. Indeed, coerced pregnancy termination under the PRC program has been reported to occur even during the process of birth. Because the killing of a child still partly in the womb is regarded as an abortion rather than as an infanticide, and because the obligation to prevent unauthorized births is imposed not only on parents and local officials but also on physicians, it has been reported that doctors routinely kill newborns by crushing the skull with forceps or by injecting formaldehyde into the soft spot on the head. M. Chang, "Women," in Human Rights in The People's Republic of China (Yuan Li Wu ed. 1988). See also Birth Control Regulations of Canton Municipality's Tianhe District, Dongpu Precinct, reprinted in China Spring Digest, September/October 1987, 60-61 ("G. If any unauthorized baby dies

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within three months of birth, the penalty assessed will only be 300 yuan.")

III. Punishment for Attempting to Leave the Country

Another instance in which the Attorney General has recognized that a government may use a law of general applicability as a means of punishing or controlling its enemies has to do with laws punishing unauthorized departure from the country. 8 CFR 208.13(b)(2)(ii) provides that asylum officers and immigration judges shall give "due consideration" to evidence that a nation persecutes persons who violate departure control laws or who seek asylum in another country. See also Sovitch, supra. Although an exit control law of general applicability may be imposed for reasons unrelated to the actual or perceived political opinions of the persons being controlled, some governments do seem to regard violators of such laws as subversives. This attitude may be evidenced either by explicit statements or by disproportionately severe punishment.

For example, Article 14 of the Law of the People's Republic of China on the Control of the Entry and Exit of Citizens provides that a person who violates PRC exit control laws is either to receive a warning or to be placed in administrative detention for up to ten days. If, however, "the circumstances of the case are serious enough to constitute a crime, criminal responsibility shall be investigated in accordance with the Law." Id. The penalties can increase to one year for more serious exit control violations or to five years for smuggling. See Articles 176, 177. Nevertheless, there exists a range of statutes carrying far more severe penalties for vaguely defined offenses against the state. Article 4 of the Criminal Law and the Criminal Procedure Law of the People's Republic of China specifically outlaws "counterrevolution" committed outside of PRC territory. Article 4 of the exit and entry laws prohibits Chinese citizens upon leaving the country from committing "any act harmful to the security, honor, or interests of their country." Article 94 of the criminal code imposes a harsh penalty upon those engaged in conduct viewed as counterrevolutionary:

Whoever defects to the enemy and turns traitor is to be sentenced to not less than three and not more than ten years of fixed-term imprisonment; when the circumstances are serious or it is a case of leading a group to defect to the enemy and turn traitor, the sentence is to be not less than ten years of fixed-term imprisonment or life imprisonment.

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While under the standard of Matter of Nagy, 11 I&N Dec. 888 (BIA 1966), imprisonment for violating exit control laws does not necessarily constitute disproportionate punishment, ten years of fixed-term imprisonment or life imprisonment presumably would. According to the Department of State, China accepts the return of citizens who have left without authorization, "in most cases apparently without punishment." Country Reports on Human Rights Practices for 1991 at 825. Yet such persecution need not take place "in most cases" in order for a person to hold a well-founded fear that it will take place in his. Sae INS v. Cardoza-Fonseca, 480 U.S. 421, 431 (1987). The State Department materials appear to leave open the possibility that punishment is administered in some cases, and a fear of persecution may be well founded upon even a relatively small chance that the feared event could take place. Id. Nevertheless, in the absence of evidence that punishment for violations of the exit control laws in the PRC or any other nation exceed the relatively brief terms of confinement discussed in Nagy, an applicant should not be regarded as having established a well-founded fear of persecution on the sole ground that he or she may be punished for violating a departure control law.

IV. "Conscription Plus"

Prior to Elias-Zacarias, most imputed political opinion claims arose in the context of resistance to military conscription. Because Elias-Zacarias has narrowed the scope within which courts may find that an alleged persecutor's motive was "political," and because penalties for draft evasion do not generally depend on whether one is a supporter or opponent of the government, it is unlikely that many such claims will be successful. However, in one post-Elias-Zacarias case the Ninth Circuit has upheld a conscription-related asylum claim based on imputed political opinion.

Canas II, supra, was a case in which the Supreme Court had granted certiorari and then remanded for reconsideration in light of Elias-Zacarias. The original imputed political opinion holding in Canas I had rested, at least in part, on the evidence presented by the petitioner of disproportionately severe punishment of draft evaders in El Salvador. The most dramatic evidence was an eyewitness account of a deserter having had his arms cut off after having been accused of being an antigovernment guerrilla.

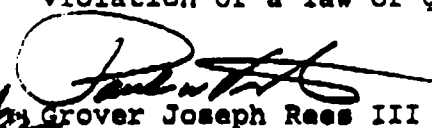
The Canas I opinion had also noted, however, that the petitioners' refusal to do military service "necessarily place[d] them in a position of political neutrality," and that such neutrality can amount to a political opinion. 902 F.2d at 728. If the disproportionate-punishment and neutrality-as-opinion statements are read as necessary elements in a single holding,

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rather than as two alternative bases for finding imputed political opinion, then the original Canas holding was arguably inconsistent with the Supreme Court's observation in Elias-Zacarias to the effect that political neutrality is not "ordinarily" an affirmative expression of political opinion, since "we do not agree with the dissent that only a 'narrow, grudging construction of the concept of political opinion,' . . . would distinguish it from such quite different concepts as indifference, indecisiveness and risk-averseness." 112 S. Ct. at 816. However, the petitioner in Canas was not arguing that merely refusing to join a side would be viewed as an expression of political opinion, but only that his own status as a conscientious objector would be so viewed. The panel agreed with this contention, and found that this was "one of those rare cases" in which punishment for refusal to join the military would amount to political persecution. 902 F.2d at 728.

On remand, the panel reversed its earlier determination that the petitioner had demonstrated likelihood of persecution for his religious beliefs (see the discussion in Part I of this opinion) but remanded the case to the BIA with instructions to grant his "petition based on a showing of imputed political opinion," holding that Elias-Zacarias did not change its determination of his eligibility for this relief.

Canas may be best explained as a case in which the Service let the asylum applicant make the whole record before the immigration judge and the BIA, essentially relying on the applicant's status as a draft resister to ensure a holding adverse to him. On the record before the Ninth Circuit, however, the decision on the imputed political opinion issue was consistent with Elias-Zacarias and with the prior administrative interpretation. Evidence of disproportionately severe punishment, together with the applicant's membership in a subclass of violators whom the authorities might plausibly wish to single out for persecution, may establish eligibility for asylum even when the punishment feared by the applicant is for violation of a law of general applicability.



Grover Joseph Rees III
General Counsel

Appendix I, continued

Memorandum



CO 208

Subject	Date
LEGAL OPINION: Continued Viability of the Doctrine of Imputed Political Opinion -- Addendum	MAR - 4 1993
To	From
John Cummings Acting Director Office of International Affairs	Office of the General Counsel
Gregg Beyer Director Asylum Branch	
Regional and District Counsel	

On January 19, 1993, this office issued a legal opinion on whether persecution "on account of" one of the protected characteristics set forth in section 101(a)(42) of the Immigration and Nationality Act includes persecution inflicted because the persecutor erroneously imputes a protected characteristic to the victim. The opinion concluded that persecution on account of an imputed characteristic is included within the definition of the Act.

Among several instances of recognition by the Attorney General that imputed political opinion can give rise to the protections of the Act, the legal opinion cited a final rule signed by the Attorney General on January 15, 1993. That rule provides that an applicant who establishes a well-founded fear that he or she will be forced to undergo abortion or sterilization pursuant to the implementation of a coercive family planning policy, or will be persecuted for failure to do so, shall be regarded as having established a well-founded fear of persecution on account of political opinion.

That rule has not yet been published in the Federal Register, pending a general review by the Office of Management and Budget of all regulations signed before January 20, 1993, but not published on or before January 22, 1993. The final rule is substantially identical to the January 29, 1990 interim rule discussed on page 7 of the legal opinion. See also Executive Order No. 12711 section 4, 55 FR 13897 (1990), directing the Attorney General and the Secretary of State to provide for

Appendix I, continued

"enhanced consideration under the immigration laws" for persons expressing fear of persecution related to forced abortion or coerced sterilization policies, and that such enhanced consideration be provided "as implemented by the Attorney General's regulation effective January 29, 1990." The provisions of the interim rule, as incorporated by the Executive Order, remain binding on the Service. It should also be noted that the coercive family planning regulation was only one of a number of sources cited in support of the proposition that the protection of the Act extends to persecution on account of imputed characteristics. Even in the absence of the regulation, the authorities would be overwhelmingly in favor of this proposition.

One purpose of the legal opinion was to examine the effect, if any, of the Supreme Court's decision in INS v. Elias-Zacarias, ___ U.S. ___, 112 S. Ct. 812 (1992), on the scope of protection afforded to persons who fear persecution on account of characteristics imputed to them by their persecutors. Since the publication of the opinion, we have learned that the Board of Immigration Appeals has recently issued a decision based in large part upon Elias-Zacarias. Matter of R-, Interim Decision #3195 (December 15, 1992). In Matter of R-, a member of the Sikh religion from the state of Punjab in India claimed to have suffered past persecution and to fear future persecution on account of imputed political opinion. The applicant testified that Sikh militants beat and threatened to kill him after he refused their demands to join their endeavors and to offer material support. In addition, based upon his contact with this group, local police beat him because they suspected him of being "involved with those engaged in a violent struggle against the government." Id., slip opinion at 6 n.3.

The Board concluded that the applicant had failed to establish that either the militant Sikhs or the police had harmed him on account of any real or imputed political opinion. Following Elias-Zacarias, the Board concluded that, to the contrary, the record indicated that the militant group harmed him simply because of his refusal to assist them, not to overcome any political opposition they rightly or wrongly perceived. Likewise, the police punished him not because they perceived him to possess any particular political opinion, but because they sought information about "a violent struggle against the government" in which they believed him to be involved.

Neither part of the Board's decision appears to be inconsistent with the conclusions of this office's legal opinion about the doctrine of imputed political opinion. The Board explicitly noted that this doctrine formed part of the basis for the applicant's claim, and the Board opinion seems clearly to imply that its result would have been different if the record had shown that either the police or the revolutionary group had been

Appendix I, continued

motivated by a desire to punish the applicant for his "actual or imputed" political opinion. Id. at 5; see id. at 6.



Grover Joseph Rees III
General Counsel

Appendix II

VISA PREFERENCE NUMBERS FOR MAY 1993

	All Charge- ability Areas Except Those Listed	CHINA- mainland born	DOMINICAN REPUBLIC	INDIA	MEXICO	PHILIPPINES
FAMILY PREFERENCES						
1st	C	C	C	C	15APR92	03JUL85
2A Exempt from per- country limit	08FEB91	08FEB91	08FEB91	03FEB91	08FEB91	08FEB91
2A Subject to per- country limit	01MAR91	01MAR91	01MAR91	01MAR91	U	01MAR91
LB	08MAR91	08MAR91	08MAR91	08MAR91	08MAR91	08MAR91
2B	08OCT89	08OCT89	01OCT88	08OCT89	08OCT89	01SEP86
3rd	01JUL91	01JUL91	01JUL91	01JUL91	08DEC84	28DEC82
4th	08FEB84	08FEB84	08FEB84	26NOV82	08MAY81	12MAY77
EMPLOYMENT PREFERENCES						
1st	C	C	C	C	C	C
2nd	C	01OCT91	C	C	C	C
3rd	C	01AUG91	C	15MAR92	C	01DEC91
Other Workers	22NOV87	22NOV87	22NOV87	22NOV87	22NOV87	22NOV87
4th	C	C	C	C	C	29AUG92
Certain Religious Workers	C	C	C	C	C	29AUG92
5th	C	C	C	C	C	C
Targetted Employment Areas	C	C	C	C	C	C

THE WHITE HOUSE
WASHINGTON

November 22, 1993

MEMORANDUM FOR MARK GEARAN
DAVID GERGEN
TONY LAKE
BRUCE LINDSEY
HOWARD PASTER
JACK QUINN
CAROL RASCO
GEORGE STEPHANOPOULOS
CHRISTINE VARNEY

FROM: BERNARD W. NUSSBAUM *BN*
COUNSEL TO THE PRESIDENT

CLIFFORD M. SLOAN *CS*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Questions regarding validity of a 1990
Executive Order concerning asylum claims
based on China's population control policies

There will be a meeting at 4:00 p.m. on Tuesday, November 23, 1993 in the Roosevelt Room to discuss challenges to Executive Order 12711 (April 11, 1990), which concerns asylum claims based on personal opposition to compliance with China's restrictive population control policies.

The issue is pending at the Justice Department. Assistant Attorney General Walter Dellinger will discuss DOJ's role and perspective on this issue. Action may be required very soon.

A brief background summary is attached.

SUMMARY OVERVIEW

Background

The asylum statute provides that asylum is appropriate if an applicant establishes "well-founded fear of persecution on account of" one of five specified grounds -- race, religion, nationality, membership in a particular social group, or political opinion.

In April 1990, President Bush issued Executive Order 12711. It requires "enhanced consideration under the immigration laws for individuals from any country who express a fear of persecution upon return to their country related to that country's policy of forced abortion or coerced sterilization." The Executive Order also relies upon a prior interim regulation, which states that "[a]liens who have a well-founded fear that they will be required to abort a pregnancy or to be sterilized because of their country's family planning policies may be granted asylum on the ground of persecution on account of political opinion."

Both before and after the Executive Order, however, the Board of Immigration Appeals has repeatedly found that an individual's personal desire not to be subjected to China's policy, including forced abortions and sterilization, is not in itself a ground for asylum under the statute. The BIA's view is that a personal desire not to comply with the generally applicable policy, without more, does not establish a "well-founded fear of persecution on account of . . . political opinion."

In January 1993, the Bush Administration sought to formalize the Executive Order policy in final regulations, but OMB prevented their promulgation as part of the broader effort to give further review to pending regulations.

Recent developments

This issue is now moving swiftly on two tracks. First, in June, the Board of Immigration Appeals asked the Attorney General to decide whether the BIA precedents or the Executive Order represents a correct reading of the statute. The issue is pending at Justice. Second, in litigation in federal courts, asylum applicants are challenging the BIA decisions and relying on the Executive Order. DOJ is currently required to file a brief on the issue in federal district court on November 29.

The issue is obviously sensitive. In the summer of 1989, Congress overwhelmingly approved legislation to reject the BIA's position and ensure an opportunity for asylum on the basis of a personal desire not to undergo abortion or sterilization. Indeed, the amendment passed the Senate on a 95-0 vote. The measure was part of broader post-Tianemen Square China legislation.

President Bush ultimately vetoed the legislation, Congress narrowly failed to override the veto, and the Executive Order

represented President Bush's effort to implement certain provisions of the vetoed legislation by administrative actions.

Particularly in the wake of news account of Chinese immigrant smuggling boats, the political context has grown more complex. Senator Feinstein has publicly decried the Executive Order. "One reason . . . for the increase in smuggling," she has written, "is the executive order that grants 'enhanced consideration' for those fleeing their country's strict birth control policies. This may serve as an incentive for those fleeing China to climb aboard a dangerous, and even deadly, smuggling vessel headed for the United States." (San Francisco Chronicle, Aug. 2, 1993).

Last month, moreover, Senator Feinstein introduced an immigration bill which includes a provision to reverse the Executive Order. She explained that the measure "complements the President's asylum reform efforts by revoking part of the 1990 Executive order granting enhanced consideration in the political asylum process for persons claiming that they are fleeing restrictive birth control policies. In other words, now all somebody has to do is say 'abortion,' and they are granted political asylum. That is not what political asylum was meant to be. Such persons, in my opinion, are not the refugees that the asylum process was meant to shelter." (Cong. Rec. S14014, Oct. 20, 1993).

Press comment has also been mixed in recent months. In an editorial, the Sacramento Bee described the Bush Executive Order as "a huge loophole for Chinese immigrants . . . [which is] humane, but, in theory at least, opens the door to a majority of the Chinese population." (June 22, 1993) The San Francisco Chronicle likewise reported that the Bush policy "has come under attack by some critics who say the policy has served as a magnet for Chinese emigrants who are leaving their country for economic reasons." (June 15, 1993) It also reported "growing sentiment in Congress that Clinton should reverse" the Bush Executive Order and noted that "[e]ven Republican are having doubts about this policy" (June 9, 1993).

On the other hand, a wide range of human rights groups -- and presumably many in Congress -- continue to strongly support the policy contained in the Executive Order, and would be likely to react vigorously to a change in that policy.

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

December 13, 1993

MEMORANDUM FOR ALAN KRECZKO
DONNSIA STRONG
CLIFF SLOAN

FROM ERIC SCHWARTZ 
SUBJECT Draft Memorandum: China/Asylum

Here is a very rough draft. In it, I describe what I believe to be Justice Department positions based on my conversations with Alan. There are two problems with doing that:

- 1) I'm not certain I've described the positions accurately; and
- 2) if I have, I wonder whether we shouldn't have input into just what those policies are. These are legal/policy calls in which I think the White House has a legitimate interest. (In other words, are we putting the cart somewhat before the horse in this memo?)

Let me know what you think.

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ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
CAROL RASCO
BERNIE NUSSBAUM

SUBJECT: U.S. Law on Refugees and Asylum and Abusive Family
Planning Practices in China

Purpose

To obtain preliminary decisions on U.S. policy toward protection of Chinese asylum-seekers in the U.S. who fear abusive family planning practices upon return to China.

Background

I. U.S. REFUGEE LAW AND PROTECTION AGAINST RETURN TO CHINA OF
THOSE WHO FEAR ABUSIVE FAMILY PLANNING PRACTICES

As a general matter, U.S. refugee and asylum law incorporates the standards of the 1951 Convention on the Status of Refugees. Under U.S. law applying the Convention standards, those who demonstrate a "well-founded fear" of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion are entitled to protection against return to their country of origin.

The Bush Administration's Justice Department believed that our laws on refugee and asylum could be used to protect Chinese fleeing coercive family planning practices, such as involuntary sterilization or forced abortion. Their theory was that those who opposed abusive family planning practices were considered "enemies of the state" in China, and that the persecution they suffered upon return was therefore based on political opinion imputed to them by the authorities.

The Clinton Justice Department does not agree with this legal theory, and contends that our refugee and asylum laws by themselves do not provide protection from return for most claimants who fear that they will be compelled to abort a pregnancy or to undergo sterilization if returned to China. To be sure, involuntary sterilization or forced abortion is fairly described as persecution. However, these practices, while clearly abusive, apply to all Chinese and do not appear to be based on "race, religion, nationality, membership in a particular

cc: Vice President
Chief of Staff

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social group or political opinion." Thus, according to Justice, they fall outside of the protections of U.S. refugee and asylum law.

II. ACTIONS OF THE BUSH ADMINISTRATION

Consistent with the Bush Administration's orientation, Attorney General Thornburgh issued an interim rule in January 1990 that provided that "an alien fleeing coerced population control policies of forced abortions or sterilization may be considered to [have a well founded fear of persecution] on account of political opinion."

On April 11, 1990, President Bush issued an executive order that reaffirmed these protections for Chinese in the United States. That order included an instruction to the Attorney General--

to provide enhanced consideration under the immigration laws for individuals from any country who express a fear of persecution on return to their country related to that country's policy of forced abortion or coerced sterilization, as implemented by the Attorney General's regulation effective January 29, 1990.

With this "enhanced consideration" in effect, matters remained settled until July 1990. Up to that date, applicants who had been subjected to involuntary sterilization or abortion, or who demonstrated a well-founded fear that such measures would be applied to them upon return, were eligible for asylum.

In July 1990, however, the Attorney General -- in an apparent drafting error -- issued new regulations that seemed to supersede the January 29, 1990 regulation but did not incorporate any of its provisions. To compensate for this seeming oversight, INS issued a written instruction to its officials along the lines of the earlier regulation, reaffirming enhanced consideration for Chinese claimants.

Despite the INS action, the Board of Immigration Appeals (the administrative body that reviews asylum decisions of immigration judges) has not recognized the INS instruction and, adopting the more narrow interpretation of refugee and asylum law, has denied asylum status to applicants claiming fear of abusive family planning practices. The judges claim that the Executive Order is not binding on their decisions without some sort of regulation coming from the Attorney General and that the regulation referenced in the Executive Order has been superseded.

III. DOES THE BUSH EXECUTIVE ORDER PROVIDE ADDITIONAL PROTECTIONS FOR CHINESE WHO FEAR ABUSIVE FAMILY PLANNING PRACTICES?

This issue is relevant to a number of cases that are expected to enter the courts. In these cases, the Justice Department will adopt the following positions:

- the January 1990 regulations were indeed superseded by the July 1990 regulations; thus there are no current regulations

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providing "enhanced consideration" for Chinese who express fears relating to abusive family planning practices;

- the Bush Executive Order by itself is vaguely worded and does not change the standards for granting or denying asylum status.
- our refugee and asylum law does not provide protection for most Chinese who fear they will be subjected to abusive family planning practices and the President is without the authority to change such standards under the refugee and asylum laws even if he wanted to.

If the Courts rule on behalf of the Administration position, you will have to decide what protections, if any, should be accorded to Chinese nationals who make bonafide claims that they fear being subjected to abusive family planning practices. And if the Courts rule that the Bush Executive Order does indeed provide additional protections and is a valid exercise of executive authority, you will have to consider whether to rescind the order or to maintain it and issue new implementing regulations.

IV. SHOULD WE PROTECT CHINESE ASYLUM-SEEKERS WHO EXPRESS A FEAR OF PERSECUTION BASED ON INVOLUNTARY STERILIZATION OR FORCED ABORTION?

While Chinese officials at the national level do not condone these kinds of abuses, it is undeniable that involuntary sterilization and forced abortions do occur in China. Moreover, while international and U.S. refugee law might not provide protections for most who might suffer such treatment, such action certainly seems to violate human rights. In this respect, the UN High Commissioner for Refugees has commented that--

even where the requirements of the [International Refugee] Convention may not be fulfilled[,] the case could nevertheless give rise to important human rights considerations justifying permission to remain or at least refusal to return [to China] on humanitarian grounds.

Moreover, in view of past protections provided by the Bush Administration to asylum-seekers under these circumstances, a decision not to extend protections would be politically controversial.

On the other hand, it also clear that the possibility of making a asylum claim based on abusive family planning practices creates incentives for fraud perpetrated by alien smugglers and their human cargo. These concerns suggest that any protections that may be provided should be designed to minimize the chance of abusive claims while providing important protections.

V. WHO SHOULD BE PROTECTED?

Should you decide to provide protection for those fleeing abusive family planning practices, the protected classes could include all, or only some, of the following:

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- those who had suffered forced abortion or involuntary sterilization;
- those who had refused to undergo abortion or sterilization and who might be at risk of such procedures (or other reprisals) upon return;
- those who had resisted application of coercive population control policies to persons other than themselves and who had a well-founded fear of being prosecuted for such resistance upon return;
- those who had a well-founded fear that, if returned, they would suffer involuntary sterilization or forced abortion or severe mistreatment for refusing to undergo such procedures.

The first three categories are relatively straightforward. If you accept that such persons should be protected, the issue for the adjudicator becomes one of credibility -- is the claimant telling the truth (such a determination would be based on whether these practices are common in the claimant's home county, whether the claimant has any documentary evidence, etc.).

The final category is more difficult. It is certainly the case that many Chinese asylum-seekers would prefer to have more than one child and that, upon return to China, their fear of the consequences would deter them from attempting to do so. If, however, this standard were used to determine who would be eligible for U.S. residence, it would open the door to a large, if not massive, number of claimants. In our view, it is neither reasonable nor necessary to provide protection for all such persons.

A more reasonable approach toward the applicant in the final category -- an applicant who has not previously manifested any opposition to China's family planning practices -- might generally require the applicant to show that--

- 1) he or she comes from an area where involuntary sterilization and forced abortion (as well as severe mistreatment for refusal to submit to such procedures) is common;

- 2) in the case of a claim related to involuntary sterilization, the claimant has a reasonable expectation that the procedure will be applied to him or her (or that he or she will be severely punished for attempting to avoid the procedure) and makes a credible showing that he or she regards such a procedure as an intolerable interference in his or her personal freedom (which might be accomplished, for example, by demonstrating that avoidance of abusive family planning procedures was a principal reason for leaving China);

- 3) in the case of a claim related to forced abortion, the claimant credibly shows that another pregnancy would subject her to forced abortion (or severe mistreatment for seeking to avoid the procedure), that ~~life~~ without another child

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would be intolerable for her and that, if permitted, she would have another child.

An approach of this sort would be narrower than the approach used by INS during the Bush Administration but would still provide claimants with standards designed to protect against practices that appear to violate basic human rights.

VI. HOW DO YOU PROVIDE PROTECTION ASSUMING THE JUSTICE DEPARTMENT'S POSITION IS UPHOLD IN THE COURTS?

If the Justice Department's position is upheld in the Courts,¹ we see several options for protection of Chinese and others who have well-founded fears that they would be subjected to coercive family planning. We examine and evaluate each, below.

A. PROVIDING SUCH PROTECTION BY REGULATION, UNDER LAWS RELATING TO REFUGEE AND ASYLUM

The problem with this option is that the Attorney General is likely to determine that she is without the authority to provide such protection by regulation, in view of her position that laws relating to refugees and asylum do not generally encompass abusive family planning practices.

B. PROVIDING SUCH PROTECTION THROUGH "TEMPORARY PROTECTED STATUS"

Under the Immigration Act, the Attorney General may grant "temporary protected status" and not deport an alien if she finds that "there exist extraordinary and temporary conditions in the foreign state that prevent aliens" from returning. There are, however, several reasons why this would be an awkward alternative to use to protect Chinese fleeing abusive family planning practices --

- it is unclear whether the Attorney General could specify a "subcategory" of protected nationals under the TPS status, or whether she would have to authorize TPS for all Chinese in the U.S.
- if she did authorize a subcategory of those fleeing abusive family planning practices, it is unclear how such persons would be chosen;
- it is not clear that current abuses in Chinese family planning practices constitute a temporary condition as required under the TPS statute;

¹If the Department's position fails in the Courts and, in particular, if the Courts determine that, pursuant to the Bush Executive Order, opposition to coercive family planning is a form of imputed political opinion, we may confront several issues: whether to rescind or modify the Order, whether to issue new implementing regulations, etc. The policy issue, however, is likely to be the same: just what protections should we provide to those fleeing coercive family planning practices.

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- under TPS, protections would have to be country-specific, and while China is the principal (and probably exclusive) focus on concern, you may not want to limit a protection such as this one to nationals of any one country.
- the TPS relief might be too narrow -- for example, under the terms of TPS, protection from return only applies to those who have "continuously resided in the United States since such date as the Attorney General may designate."

C. PROVIDING SUCH PROTECTION BY STATUTE

We could, however, seek to provide protection by statute to those fleeing abusive family planning practices. This is what the Congress attempted to do after the Tiananmen massacre, in legislation that was vetoed by President Bush. By presenting our own legislation, we could frame the debate, structure the solutions and avert unwelcome legislative initiatives. On the other hand, Congress does act slowly and the proposed legislation could be subjected to undesirable amendments.

We might limit undesirable amendments by drafting a generic (rather than a China-specific) bill providing the Attorney General to designate categories of persons who are likely to suffer serious human rights violations upon return but who are not eligible for asylum under our refugee and asylum law. The bill could empower the Attorney General to designate by regulation such categories and establish an appropriate adjudicatory mechanism to implement such a policy.

D. WHAT TO DO UNTIL LEGISLATION IS ENACTED: A
PRESIDENTIAL MORATORIUM ON ENFORCEMENT

Until enactment of legislation and implementing legislation, you could declare a moratorium on the enforcement of the Act's exclusion and deportation provisions with respect to victims of China's (or other nations') coercive population control policies. The moratorium might be limited in scope, focussing on those cases where credible claims have been made along the lines outlined above.

As a general matter, the Executive has considerable discretion to decide what cases to prosecute, and, on balance, we believe you could declare such a moratorium and be on relatively solid legal ground.

E. WHAT TO DO WITH THE BUSH EXECUTIVE ORDER

If the Courts accept the Justice Department's position without explicitly striking down the Bush Executive Order, we see no need to rescind the Order. Such action would only provoke controversy and would be unnecessary.

RECOMMENDATION

That, presuming that the Justice Department's position will be upheld by the courts, you approve the drafting of new legislation that would provide protections for those who are likely to suffer

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serious human rights deprivations upon return but who cannot obtain protection under our asylum laws.

Approve _____ Disapprove _____

That, in the meantime, you approve a Presidential moratorium on enforcement of deportation against Chinese applicants who make credible claims (along the lines described above) that they fear return to abusive family planning practices.

Approve _____ Disapprove _____

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DRAFT MEMORANDUM

Subject: Asylum Claims Based on Coercive Family Planning Practices

PURPOSE

To establish a policy concerning undocumented aliens who seek to avoid deportation because of their home country's coercive family planning practices.

I. INTRODUCTION

The issue has arisen in recent months in the context of criminal alien smuggling from the People's Republic of China. Several hundred Chinese nationals were smuggled by organized crime syndicates into the United States this spring; they were detained and put into deportation proceedings. In response, many of the Chinese aliens have claimed asylum, principally on the ground of Chinese coercive family planning practices. The adjudication of their claims has brought to the forefront unresolved legal issues surrounding the application of U.S. asylum law and a 1990 Bush Executive Order concerning coercive family planning practices.

II. LEGAL AND POLITICAL BACKGROUND

→ A. ACTIONS DURING THE BUSH ADMINISTRATION

Following the Tiananmen Square massacre, Congress passed by wide margins the Emergency Chinese Immigration Relief Act of 1989. During consideration of the measure, Congress added a section that would have provided asylum for a person fleeing coercive family planning practices if the individual would be persecuted upon return. President Bush vetoed the bill, but, to avoid a Congressional override he issued an Executive Order directing the Attorney General give enhanced consideration under the immigration laws to persons fleeing such practices and fearing persecution upon return to their home country.

While INS acted in accordance with the E.O., the Board of Immigration Appeals (an administrative component of the Justice Department which reviews immigration cases) did not. In a 1989 case entitled Matter of Chang, the Board had ruled that coercive family planning, while abusive, applies to all Chinese and does not appear to be based on "race, religion, nationality, membership in a social group or political opinion," as required by U.S. law. The BIA rejected the Bush Administration's theory that those who opposed abusive family planning practices were considered "enemies of the state" in China and that the persecution they suffered upon return was therefore based on political opinion "imputed" to them by the Chinese authorities.

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Moreover, the Board maintained its position even after the 1990 E.O., holding that the Order was not enforceable in court, as regulations to implement the Order were improperly issued.

Thus, at the close of the Bush Administration, the adjudication of Chinese asylum claims was inconsistent, depending upon whether they were resolved by BIA or INS adjudicators.

B. CURRENT LITIGATING POSTURE.

A large number of cases in which the BIA denied asylum on the basis of Matter of Chang have now reached the federal courts. In that litigation, Justice has defended Chang. Justice decided on this approach for two reasons:

- it believes Matter of Chang is the better interpretation of our own asylum law/;
- its traditional view that BIA decisions are entitled to deference by the courts.

As mentioned, Justice has also concluded and argued that Bush's Executive Order did not create enforceable rights, and that the AG's implementing regulations were not properly issued. It has, however, stopped short of finding the Bush Executive Order to be an invalid exercise of Presidential authority.

III. Policy Context

If Justice prevails with its current litigating posture, it means that individuals deemed to have a well-founded fear of being subjected to coerced abortion or sterilization could be returned to China unless they can demonstrate that they are being singled out for such punitive action because of their race, religion, membership in a social group or political opinion. We have made clear to the press that DOJ's litigating posture was without prejudice to Administration policy on whether such individuals will actually be returned.

Our policy in this regard needs to take into account several factors:

- Human Rights. There is little question that very abusive family planning practices take place in parts of China. While they are not officially condoned at the central level nor pervasive throughout the country, a "responsibility" system imposing family planning targets on local officials has led to severe abuses in many cases. These have included forced abortions and involuntary sterilizations, as well as destruction of homes, detention and loss of employment. (It should be noted that certain economic penalties against those who fail to comply with family planning targets are part of central government policy.) *as are incentives for those who do comply*
- CIA Beijing*
voluntarily

- Immigration Policy. Any policy to provide protection must be sensitive to the magnet effect and the potential for fraud. Chinese alien smuggling has increased dramatically in the past two years. Whereas in 1990 a small number of persons arrived without documentation on commercial airlines and fishing boats, there has since been a sharp increase in the numbers of Chinese nationals arriving aboard fishing boats and rusting ocean freighters. Since January 1993, the Coast Guard has interdicted 11 ships carrying over 2500 Chinese migrants. Substantially more Chinese nationals entered the U.S. illegally in 1992, most by air or land across our border with Mexico. According to INS estimates, more than 14,000 Chinese nationals applied for asylum in FY '93, up from roughly 3400 the previous year.
- Precedent. Granting relief to Chinese who can not demonstrate persecution on one of the five grounds identified in our asylum statute could set a precedent for other illegal aliens who fear being subjected to generalized human rights abuses if deported (e.g. African women fearing forced female circumcision). *gender bias
prompts in
some cultures* On the other hand, we have already accepted in the Torture Convention an absolute obligation not to return individuals to torture (without regard to the five asylum bases) and forced abortion/sterilization is arguably at a similar level of human rights abuse.
- Congressional and Public Reaction. To be sure, a restrictive approach will result in strong expressions of opposition from some in Congress, the media and human rights groups, who would accuse you of undermining protections afforded by President Bush. On the other hand, Congressional views will be less uniform than in 1989 when overwhelming pressure forced the Bush E.O. That action came in the immediate aftermath of Tiananmen Square; also there is now much greater Congressional and public concern about illegal alien smuggling.
- China Policy. A policy that narrows protections for Chinese in the United States might be perceived by the Chinese and others as a weakening of U.S. resolve on human rights issues. However, this does not seem to be a major risk, as the issue of large-scale migration has not thus far been linked by either side to the MFN discussions.

On the other hand, the Chinese, who claim that our asylum policies encourage large outflows, might react negatively to a liberal approach to protecting asylum-seekers. They could conceivably slow their cooperation on accepting returnees. We believe, however, that this issue can be managed and that broader protections by themselves will not be the cause of an end to Chinese cooperation.

IV. Options.

~~Coercion of the applicant by~~
threat of physical harm to
a family member or harm
other than physical harm.

A. Policy

We have identified four options for addressing those individuals who have a credible fear of application of China's coercive planning policy but who cannot meet the requirement in Matter of Chang that this fear arises from their race, religion, membership in a social group or political opinion.

1. No protection (i.e., deport them).

This option maximizes our anti-illegal immigration interests. We would argue that our immigration law does not provide relief in these cases, and that while we strongly condemn China's policy, we can not rectify it by taking in all Chinese who flee it.

On the other hand, this option subjects individuals to severe human rights abuse. You would be criticized as more indifferent than the Bush Administration, whose policies on promotion of human rights in China you described as callous.

2. Protection of those who can demonstrate they will be subjected to imminent forced abortion or sterilization.

This would provide protection to the most extreme cases (e.g., a pregnant woman, or a man who can show that he has been threatened personally with forced sterilization). It would offer little "magnet" effect and relatively little opportunity for fraud. It would however constitute a narrowing in the human rights protections provided during the Bush Administration and would involve a very small number of persons. How?

Ass't Atty Gen State appears to favor this option. (It would be implemented by reference to categories 1a, 1b, 2a and 2b in Attachment 1). It would be explained publicly on the same basis as option 1, but with the additional comment that we are taking administrative steps to protect those individuals in imminent danger of forced abortion or sterilization.

3. Offer Roughly the Same Protection offered by Bush.

are these people who simply monetize penalties Under this approach, we would continue to protect from return any individual who can demonstrate a credible fear of forced sterilization or abortion, or of imposition of severe mistreatment or punishment to coerce such an operation. Protection might also be extended to individuals who could demonstrate that had been subjected to forced abortion or sterilization. (This option would encompass categories 1, 2 and 5 in Attachment 1).

We should pay something about those who took incentives to abort -
who is this NSC (and DPC) favor this approach, as to do working level officials at Justice. State appears concerned about the magnet effect and the potential for fraud. We believe the magnet effect can be minimized by making clear that there is no change in

policy, and that fraud can be minimized through tightly written guidelines to adjudicators. (It is our understanding that during the Bush Administration, roughly 10-15 percent of Chinese who claimed asylum on the basis of coercive family planning were approved. This is a very manageable percentage.)

4. Broaden the Protection offered by Bush.

We could go beyond the Bush guidelines, and decline deportation in any case where an individual expresses an intention of having a second child and a fear of China's family planning policies. (This option would encompass all categories in Attachment 1.) While strongly protective of human rights, this option might well immunize most Chinese from deportation and would almost certainly attract additional Chinese migrants.

II. Implementation

If you approve the State recommendation, it would be implemented through an INS directive. Justice would maintain its current litigation posture that Matter of Chang correctly concluded that our asylum law only protects Chinese who can show that China's policy would be applied to them because of their religion, membership in a social group or political opinion. (This option could involve appeal of any adverse district court decisions, which would amount to our arguing the more narrow position in higher-visibility, higher-court cases.)

If you approve the NSC/DPC recommendation (which is also favored by those at the working level in Justice), two mechanisms exist to implement it:

1. Defend the Bush Executive Order.

Under this option, we would be arguing that Chinese who show a credible fear of forced sterilization are entitled to asylum as a matter of law. Justice would reverse its current litigating posture. The AG would reverse Matter of Chang, and any procedural defects in the Bush E.O. or implementing regulations would be remedied.

2. Provide Administrative Relief.

Under this option, Justice would maintain its current litigating posture concerning which applicants are entitled to relief as a matter of law. However, the AG would instruct INS that as a matter of policy, Chinese with a credible fear would not be deported.

Option 1 -- defending the Bush Order -- would spare us litigation of a politically sensitive issue. Justice's litigation posture, which to date has not attracted much interest, will be attacked by human rights advocates, particularly as it moves up our court system. This would probably be the case even if we indicate our

intention to provide protections administratively. No matter how worded, an administrative policy is likely to be portrayed by conservative critics as offering narrower protection than that offered by Bush.

^{NSC/DPC}
Nonetheless, ~~we~~, State, and Justice recommend option 2, administrative relief. Its main advantage is that it allows us to calibrate relief, if alien smuggling increases or substantial fraud occurs. It also comports with Justice's strong (although not undebatable view) of what our asylum law protects and avoids an embarrassing Administration reversal of litigating posture. Finally, discretionary administrative relief provides less incentive for fraudulent claims, since it does not carry with it all the benefits of asylum.

We would therefore proceed on the basis of option 2, reserving the right to revisit our position as the issue moves up the courts (i.e., you would not be deciding here that we would advance the current DOJ position all the way to the Supreme Court.)

III. The Executive Order

If you agree that we should use administrative means to provide protection to Chinese, you must decide whether to leave the Bush Executive Order on the books, unamended. The relevant section of the E.O. does two things: it calls for enhanced consideration of Chinese asylum claims and it incorporates by reference an interim INS rule which defined as eligible for asylum any Chinese with a credible fear of forced sterilization or abortion.

Justice is arguing in court that the E.O. does not create enforceable rights, in part because the incorporated interim rule was never made permanent. Justice thinks its argument is a solid one; on that basis, and to lower the visibility of Presidential action on the China asylum issue, you could leave the E.O. untouched.

The risk in this approach is that a court could find that the E.O. accords a broader protection than you have as a policy matter endorsed. At that point, you will either need to accept the broader policy protection, or, in a high-visibility setting, amend it. To avoid this possibility, we recommend that you amend the E.O. now. (The portion of the E.O. calling for enhanced consideration of Chinese asylum claims would not need to be amended; only the reference to the 1990 interim rule would be deleted.)

RECOMMENDATIONS

1. That we provide protection to substantially the same class of Chinese as protected by the Bush E.O. (NSC/DPC and Justice, at the working level, recommend)

which is

Approve _____ Disapprove _____

Alternatively, that we provide protection only to those Chinese who face imminent danger of forced abortion or sterilization if returned. (State recommends)

Approve _____ Disapprove _____

2. If you choose the NSC/DPC option, that we implement it through administrative steps, while DOJ maintains its current litigation posture.

Approve _____ Disapprove _____

3. If you agree to implement the NSC/DPC/Justice-working level option through administrative steps, that we move now to amend the E.O. to eliminate reference to the Bush-era interim rule.

Approve _____ Disapprove _____

ATTACHMENT 1

POSSIBLE CATEGORIES OF PROTECTION

1. THOSE FACING COERCED ABORTION, INCLUDING --

- a. Individuals likely to be physically coerced against their will to abort a current pregnancy.
- b. Individuals likely to be coerced to abort a current pregnancy, with coercion amounting to threat of severe harm to a family member.
- c. Individuals likely to be coerced to abort a current pregnancy through threat of severe mistreatment short of physical harm, but which might include imprisonment, ~~destruction of a home, loss of employment and/or a combination of such abuses.~~

Don't agree

All those in this category (1) would have been protected from return under the terms of the Bush Executive Order as previously interpreted by INS. INS notes, however, that the numbers of persons likely to be in this category are very low. For example, INS knows of no asylum case involving a pregnant woman seeking protection from return.

2. THOSE FACING DANGER OF COERCED STERILIZATION, INCLUDING --

- a. Individuals likely to be physically coerced to undergo sterilization.
- b. Individuals likely to be coerced to undergo sterilization, with coercion amounting to threat of severe harm to a family member.
- c. Individuals likely to be coerced to undergo sterilization, with the coercion amounting to threat of severe mistreatment short of physical harm, but which might include imprisonment, destruction of a home, loss of employment and/or a combination of such abuses.

All those in this category (2) would have been protected from return under the terms of the Bush Executive Order as previously interpreted by INS.

3. THOSE WHO WOULD BE OTHERWISE PUNISHED FOR VIOLATING POPULATION CONTROL RULES.

This category would include persons who faced penalties -- such as fines or seizure of personal property -- for violating population control rules, where the punishments do not amount to the kind of severe mistreatment that might be fairly considered persecution.

Those in this category (3) would not have been likely to obtain protection from return under the terms of the Executive Order as previously interpreted by INS.

4. THOSE WHO CLAIM THEY WANT IN THE FUTURE TO HAVE MORE CHILDREN THAN PERMITTED BY THE AUTHORITIES, AND WHO THEREFORE FEAR BEING SUBJECTED TO POPULATION CONTROL MEASURES IN THE FUTURE.

Those in this category (4) would not have been likely to obtain protection from return under the term so the Bush Executive Order as previously interpreted by INS. [Need to double check.]

5. THOSE WHO HAVE IN THE PAST BEEN SUBJECTED TO COERCED ABORTION, FORCED STERILIZATION OR SOME OTHER EGREGIOUS PENALTY.

Because of the severity of past trauma, relief on humanitarian grounds might be appropriate for these persons. On the other hand, a policy of no return would not reverse the harm these persons have suffered. It should be noted that a large number of asylum claims made to date have fallen into this category and that persons protected under this category would also have obtained protection under the 1993 regulations.

Those in this category (5) would have been protected from return under the terms of the Bush Executive Order as previously interpreted by INS.

CC: Records
CC: Randy R. Beers
CC: Kent M. Wiedemann

(RECORDS)
(BEERS)
(WIEDEMANN)

tive relief by applying the full range of remedies available under law, including remedies that have previously been employed by the Department of Justice or approved by the courts. I also look forward to working with Attorney General Reno and Members of Congress to enact legislation, as needed, to clarify and reinforce the protections of the Voting Rights Act.

In 1965, President Johnson hailed the Voting Rights Act as "a triumph for freedom as huge as any victory that has ever been won on any battlefield." Effective enforcement of the Voting Rights Act will allow us to continue that triumph. Inclusion of all Americans in the political process is necessary if we are to work together as communities, States, and a Nation to address the difficult challenges that confront us all.

Remarks on the Nomination of Doris Meissner To Be INS Commissioner and an Exchange With Reporters
June 18, 1993

The President. Thank you all very much for coming. I want to say a special word of thanks to the Members of Congress who are here from both parties, demonstrating a strong bipartisan interest in the subject of immigration. I also want to recognize Admiral John Kime, the Commandant of the Coast Guard, and Admiral Robert Nelson, the Vice Commandant, thank them for coming. And in a moment I'll recognize a couple of other people.

The immigration issue poses real problems and challenges and, as always, provides great opportunities for the American people. It is a commonplace of American life that immigrants have made our country great and continue to make a very important contribution to the fabric of American life. In one of our counties, Los Angeles County, there are today people from 150 different national and ethnic groups. But we also know that under the pressures that we face today, we can't afford to lose control of our own borders or to take on new financial burdens at a time when we are not adequately providing for the jobs, the health care, and the education

of our own people. Therefore, immigration must be a priority for this administration.

I am pleased to announce today my intention to nominate Doris Meissner for the position of Commissioner of the United States Immigration and Naturalization Service. I want to say that this nomination has the full support of Attorney General Janet Reno, who could not be here today because of a previous commitment to be at the FBI Training Academy at Quantico. But she has very strongly endorsed and supported Ms. Meissner's nomination.

She has an extensive background in immigration affairs, bringing a unique combination of management and policy experience. She served as Acting Commissioner and in other senior positions in the Immigration and Naturalization Service between 1981 and 1985. She served at the Department of Justice as Deputy Associate Attorney General from 1977 to 1980, and in a variety of other policy positions at the Justice Department where she began as a White House fellow in 1973. Since 1986, Doris Meissner has been senior associate and director of immigration policy project of the Carnegie Endowment for International Peace. She's authored numerous articles on a wide variety of immigration issues and has testified before Congress on many legislative proposals. First and foremost, she is committed to the effective management of the INS and the vigorous and fair enforcement of our country's immigration laws. Her nomination signals my efforts to ensure that we meet the immigration challenges facing our Nation and the world.

Before I call Doris up here, I also want to announce that I have today approved a plan of action to combat the problem of organized crime syndicates trafficking in alien smuggling. The plan involves the coordinated efforts of 12 departments and agencies of the United States Government working in coordination with the White House Domestic Policy Council and the National Security Council. It responds to a major crime problem which has existed for almost 2 years but to date has been dealt with only on an ad hoc basis.

Alien smuggling is a shameful practice of unspeakable degradation and unspeakable exploitation. Migrants and their families must

pledge up to \$30,000 to come to the United States. Criminal syndicates load these immigrants on ships under conditions that run the gamut from deplorable to life-threatening. The gangs then place arriving immigrants in slave-like conditions of indentured servitude to pay off their debts. Deterring this transport in human cargo and traffic in human misery is a priority for our administration.

The plan I have approved addresses this smuggling in multiple ways. We will strengthen law enforcement efforts in the United States by expanding our investigative efforts and broadening prosecution strategies. We will go after smugglers and their operations at the source. We will take measures to interdict and redirect smuggling ships when they are in transit. We will expedite procedures for processing entry claims and for returning economic migrants smuggled into the United States. And we will ask Congress to pass legislation to expedite this process further. We will also ask the Congress to increase penalties for alien smuggling to allow us to use the Racketeer Influenced and Corrupt Organizations Act to go after these smugglers and to permit us expanded authority to seize their assets.

With this plan, the United States signals its abhorrence of the trafficking in human beings for profit and its determination to combat this illegal activity. At the same time, we reaffirm our commitment to protect bona fide refugees under our law. This is a good beginning, but there is much more to do.

I'd like now to invite Doris Meissner to say a few words. But before I do, I'd like to ask her husband, Charles, and her daughter, Christine, to stand and be recognized. It's nice to have you with us today.

Chairman Brooks, I want to thank you and all the Members of Congress who are here. And I'd like to now introduce our designate to run the Immigration and Naturalization Service, Ms. Doris Meissner.

[At this point, Ms. Meissner made brief remarks.]

The President. If you have any questions of Ms. Meissner or me, we'll take a couple.

Chinese Immigrants

Q. Mr. President, you mentioned that this problem began or has been going on for 2

years. Was there some event that precipitated it?

The President. I just wanted to make it clear that we were aware of this problem before the ship came. And I don't know what event precipitated it. There have been a lot of speculation about the Chinese immigrants themselves and the irony that—it may be that the increasing prosperity in China may have something to do with this because more people at least have the ability to move into the coastal cities and to have a little bit of money to make that first step. No one knows exactly why this happened. We've heard that it may be because certain ships have been diverted from other things, because they couldn't do what they were doing before and now are more available to bring immigrants here. There are all kinds of speculations about what caused it, but that's not important. What's important is that we try to do something about it and bring it to an end.

Q. Mr. President, the Chinese problem is a—

The President. The House Members have to have a vote.

Q. —Mexican border. What are you going to do about that?

The President. The House Members have to be excused to go to vote.

Go ahead, Sarah [Sarah McClendon, McClendon News], I'm sorry. You're next.

Mexico

Q. Sir, I want to point out to you that for generation after generation, Democrats and Republicans have refused to face the problems of immigration on the Mexican border. And that's where people come through, not only from Mexico. A thousand a night at least get by at one place south of San Diego alone. And that's got to be faced up to. But people come from all over the world to Mexico to come in here. And they don't have to pay \$30,000, they just pay the—[inaudible]—about \$500.

Ms. Meissner. Well, obviously we have a—between the United States and Mexico is a border between countries with the largest income differential of any countries that have a single border. So there's going to be an effort for people to come to the United States. We obviously need to do border con-

trol, but we also need to be thinking about development to our south. And the NAFTA that is going to be debated in the next couple of months is a very, very important step in that direction, and I hope that we can support it.

The President. We did not rehearse this, but let me, if I might reinforce that. We have asked for more border guards. I asked for several hundred more in the jobs package that I asked the Congress to pass earlier. And we can do a better job. I think that's clear. We can do a better job if we have more people. But in the end, I think what Ms. Meissner said has to be looked at, the pure economic realities.

One of the arguments for having the right kind of trade agreement with Mexico is to raise incomes in Mexico and create more jobs there. They'll not only buy more of our products, but the incentive to leave home to make a decent living for one's family will go down dramatically. So that's another one of the very important benefits of NAFTA. And I swear we did not coordinate our responses. I didn't know she was going to say that.

Employer Sanctions

Q. Do you think that employer sanctions should be made in order to control better this kind of problem in the United States?

Ms. Meissner. I believe that employer sanctions is an important enforcement tool. I think when the Congress passed employer sanctions in 1986, it realized, and everybody else who was involved in the debate realized, that it was simply a first step at the kind of workplace enforcement that we would need. We may need to look at ways to perfect the law. We certainly need to look at whether we're enforcing it as effectively as we can.

Cost of Enforcement

Q. Mr. President, a couple of questions. How much is this going to cost, if you know? And on your list of priorities, and I know you have a lot, where do you place this? Is this close to the top or in the middle or someplace else?

The President. Keep in mind we have a large budget already, and we have a wonderful resource in the United States Coast Guard and a lot of other people who are working in the Immigration and Naturaliza-

tion Service. So I don't have a price tag for what else it might cost. But let me say that this basically relates to everything else we're working on. What our immigration policy is will affect our ability to create jobs for our people, will affect our ability to provide health care to our people, may affect our ability even to pass a health care program in the United States Congress. This issue will be a priority because it is so integrally a part of so many of the other things that we're dealing with in our effort to revive the American economy and strengthen the lives and the security of the people who live here.

Thank you.

NOTE: The President spoke at 10:49 a.m. on the South Lawn at the White House.

Exchange With Reporters Prior to Discussions With King Hussein of Jordan

June 18, 1993

Peace Process

Q. Your Highness, what do you think are the prospects for peace soon? Does it look any better to you now?

King Hussein. I believe that some possible ground has been covered. We are still a long way from getting there, but there is no other alternative. I believe that we must do everything we can not to let the moment pass without—

Q. What's the main stumbling block?

King Hussein. It would complicate, possibly, to attempt to try to explain what the main stumbling block is. I believe that it's one of, hopefully, the Palestinians being able to feel that they are able to speak for themselves and contribute their share in shaping the peace that is comprehensive, that is so very, very important to all of us.

Q. Do you think Israel will be amenable now to recognizing a Palestinian state?

King Hussein. I don't know what Israel would accept or otherwise, but I believe that there is one important element, and that is that people on either side of the divide feel that this is the moment and are determined

won't proceed and produce a report and the Congress won't vote on it no matter what.

Q. —Stevens says that you are holding up the whole investigation to get the budget over with.

The President. Well, you know that's not true, don't you?

Q. Well, of course, I know that's not true. We have to ask.

NOTE: The interview began at 4:07 p.m. at the Sheraton Chicago Hotel.

Exchange With Reporters Prior to a Meeting With Congressional Leaders July 27, 1993

Economic Program

Q. Mr. President, are these your "delay in gridlock" friends?

The President. These are my friends. This group had always supported an aggressive approach to deficit reduction, the balanced approach.

Middle East Peace Talks

Q. Are you sure?

Why is Secretary Christopher coming back?

The President. Because I want to talk with him about the Middle East before he goes there.

Q. Do you think the peace process is in jeopardy, sir?

The President. Well, I hope not. I certainly have no reason to believe that it is, but obviously I'm concerned about it. I think the Syrians have shown commendable restraint so far. And I don't think we should let Hezbollah and all these groups that don't want anything good to happen in the Middle East derail the peace process by what they do. I don't think we should, any of us, should allow that. I mean, I really want something to happen there. So I'm very hopeful. But I thought that in view of the events there, that he ought to come home, and we ought to have a conversation about it before he goes to the Middle East.

NOTE: The exchange began at 10:20 a.m. in the Roosevelt Room at the White House. A tape was not available for verification of the content of this exchange.

Remarks and an Exchange With Reporters on Immigration Policy July 27, 1993

The President. Thank you very much, ladies and gentlemen. I'd like to say a special word of thanks to the large number of Members of Congress who are here today. I think I have the entire list. If I don't, the Vice President will amend it when I finish. But I see Senator Kennedy, Senator Simon, Senator Feinstein, Senator Boxer, Senator Graham and Congressmen Brooks, Mazzoli, Schumer, Bryant, Fish, Kennedy, Lantos and Gilman. I think that's every Member of Congress here. Did I miss anyone? I missed Congressman Gallegly; I'm sorry.

Several weeks ago, I asked the Vice President to work with our Departments and Agencies to examine what more might be done about the problems along our borders. I was especially concerned about the growing problems of alien smuggling and international terrorists hiding behind immigrant status, as well as the continuing flow of illegal immigrants across American borders.

Following several weeks of intense efforts, including his personal involvement in resolving the recent alien smuggling incident with Mexico, the Vice President presented me with a report spelling out what we might do. I have reviewed that report and approved it. We have spoken to Members of Congress, including those who are here today and others. I want to particularly acknowledge Senator Kennedy, Senator Simpson, Congressmen Brooks and Mazzoli for all their work on this issue over many, many years. We're also in debt to Senators Feinstein and Boxer for their aggressive work in trying to deal with the growing problem, especially in the State of California, and I want to state publicly how much I appreciate the work the Hispanic Caucus has done to ensure that a balanced approach is adopted in dealing with this issue.

The simple fact is that we must not, and we will not, surrender our borders to those who wish to exploit our history of compassion and justice. We cannot tolerate those who traffic in human cargo, nor can we allow our people to be endangered by those who would enter our country to terrorize Americans. But the solution to the problem of illegal immigration is not simply to close our borders. The solution is to welcome legal immigrants and legal legitimate refugees and to turn away those who do not obey the laws. We must say no to illegal immigration so we can continue to say yes to legal immigration.

Today we send a strong and clear message. We will make it tougher for illegal aliens to get into our country. We will treat organizing a crime syndicate to smuggle aliens as a serious crime. And we will increase the number of border patrol, equipping and training them to be first class law enforcement officers. These initiatives for which I am asking the Congress for an additional \$172.5 million in 1994 are an important step in regaining control over our borders and respect for our laws. When I made a commitment to combat this problem on June 18th, I announced a plan of action. This is the next step in fulfilling that commitment.

Some will worry that our action today sends the wrong message, that this means we are against all immigration. That is akin to America closing its doors. But nothing could be further from the truth. Let me be clear: Our nation has always been a safe haven for refugees and always been the world's greatest melting pot. What we announce today will not make it tougher for the immigrant who comes to this country legally, lives by our laws, gets a job, and pursues the American dream. This administration will promote family unification. We will reach out to those who have the skills we need to make our nation stronger, and we will welcome new citizens to our national family with honor and with dignity. But to treat terrorists and smugglers as immigrants dishonors the tradition of the immigrants who have made our nation great. And it unfairly taints the millions of immigrants who live here honorably and are a vital part of every segment of our society. Today's initiatives are about stopping crime, toughening the penalties for the criminals,

and giving our law enforcement people the tools they need to do their job.

I'm also taking steps today to address the long-term challenges of reforming our immigration policy. I intend to appoint a new chair to the congressionally mandated Commission on Immigration Reform and to ask the Congress to expand the Commission to include senior administration officials. I'm also asking our Attorney General, Janet Reno, and the INS Commissioner-Designate, Doris Meissner, to make sure the INS is as professional and effectively managed as it can be. Under their leadership, I have no doubt that it will be. With these efforts, I hope that we can begin a broad-based national discussion on this important issue and move toward significant resolution of the problems that plague all Americans.

Now, I'd like to ask the Vice President to come forward with my thanks for his outstanding work to discuss the specifics of the initiative.

[At this point, the Vice President outlined the immigration policy. The Attorney General then discussed what measures will be taken to enforce the policy.]

Q. With all due respect, sir, all of this has been tried previously. The Simpson, Romano, Mazzoli bill did make a similar attempt to this by increasing penalties, they increased funding, they increased border patrols, they increased penalties to employers, and yet, nothing happened. What leads you to believe that this time something might really happen?

The President. I want to give them a chance to answer this. It's not true that all these things have been tried before. First, Senator D'Amato, I'm glad to see you. Thank you for coming.

It's not true that all these things have been tried before, and it's certainly plain to anybody with eyes to see that the border patrol is drastically understaffed, breathtakingly understaffed. But there are also some new elements in this, and I think I'd let the Vice President and the Attorney General address them.

The Vice President. Yes, the change in the exclusion provisions is brand new. The change in the investment in the information

systems that will avoid a repetition of what happened when the sheik applied for a visa and then the office didn't have the information because even though the State Department did, it didn't have the information system to display it, a lot of these things are brand new. They've never been done before, and it is a coordinated approach involving all of the players involved and the full keyboard, if you will. Every part of the issue is being addressed here.

Now, there are some things that are not addressed and the procedure the President outlined for addressing the longer term problems is going to work just as well as this procedure worked. It's going to take more time, though.

Q. How much of this counterterrorism provision was sparked by the World Trade Center bombing, and how confident are you that the borders will be safe now from terrorists getting into the United States, if this proposed legislation is enacted?

The President. I can answer the first part; maybe I should invite the Attorney General to comment on the second. There's no question that the World Trade Center bombing has caused us to review a whole range of issues, not just involving immigration, in terms of our ability to deal with the whole threat of actual or potential terrorism. And when that happened, we began in earnest to review not only this issue but the capacity of our law enforcement agencies to deal with it, and we will continue to do that. I think that I owe that to the American people, and that clearly had something to do with it.

Attorney General Reno. With respect to the second part, no one can ensure anything, except that we are going to try our best. When I came into office, I found a service that too often did not communicate with law enforcement and vice-versa, that too often was not in communication with other Federal Agencies. I think it's imperative that we bring everyone together to communicate to do everything that we can to address the critical issue of terrorism and to be as vigilant as possible. To ensure our borders at this day and time is a very difficult task, but it is one that is of the highest priority of this administration.

Q. Mr. President, on the question of the reason illegal Chinese immigrants—obviously, they involve three parties: the United States, China, and Taiwan. Because some of the ships are from Taiwan. So I wonder, are you planning to personally discuss with leaders of China and Taiwan, maybe, in November APEC meeting in Seattle?

The President. Well, let me say, first of all, I just talked to the Secretary of State last night, and he raised these issues personally in his conversation with the representative of the Chinese Government recently. And we have enjoyed good relations with Taiwan, also. We intend to raise it with them. We intend to raise it at the highest levels with both countries and to seek their active and consistent cooperation. And I think, as you point out, without that cooperation, we will continue to have greater difficulties on this end. But I think they will help us more, and I have no reason to believe that they won't. We're just going to have to work on it. We're going to have to have their help to do better.

Q. Are you inviting them to the APEC meeting? Are you inviting President Li Teng-hui to the APEC meeting?

The President. We also are discussing how we're going to deal with the APEC meeting, who is going to come from all the 15 countries. And of course, who comes will be in part, I think, determined by how much we'll want to pursue this discussion there. But in terms of who will be there, that hasn't been finalized from their point of view.

Go ahead.

Q. Mr. President, how do you depoliticize the asylum process? Because in the Reagan years, anybody from El Salvador was not considered to have a bona fide claim of asylum. In the Bush years, Chinese fleeing birth control policies were deemed to have a good claim for asylum. How do you make this more rational so that the American people and the foreigners both know what qualifies as asylum?

The President. That's a very good question. I'm so glad you asked it. I think the answer is that we have to have criteria for enforcing this law that grows out of our laws that are based on policies rooted in laws enacted by the Congress. I think that is the answer. Obviously, if Congress and the ad-

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ministration work with the Congress, if we decide that there's some policy that's so important for other reasons, for our other foreign policy concerns, our human rights concerns, you name it, that we want to root that in our legal policy, then no one can accuse us of being arbitrary, because we will have gone through a deliberative process. The Congress will have made a judgment; we will all be on public record.

But I do think it's very important that immigrants from the world looking at us and governments from the world looking at us, not believe that the President will wake up someday and decide that for some arbitrary reason we will enforce the immigration laws of the country in one way or another. Perhaps the Vice President and the Attorney General would like to make a comment about that, also.

The Vice President. I'd like to add one brief point. This proposal does take the partisanship and the politics out of it. This is a bipartisan initiative. Republicans as well as Democrats are here from both the Senate and the House. And if I could summarize the basic tone of this initiative, I would use the words of Doris Meissner, who is the designee to head up INS, when she said not long ago, we want to stop illegal immigration so that we can continue opening our country to legal immigration. The two go together, and that's what this proposal is designed to do.

The President. I think we've answered about all the questions we can. I'd like to close by reemphasizing that point. When I ran for President, I think in some ways the most rewarding part of the experience was having the opportunity to see just how many different countries and how many different ethnic groups have contributed to making America what it is today. We don't want to do anything to interrupt that. But we cannot continue to progress as a country unless we have a more vigorous response to this problem, and we don't want to cloud the two. This has nothing to do with our support for keeping the rainbow and the melting pot of America going and growing and enriching and strengthening this country.

But the kinds of practices that are manifest in who can get into this country on an air-

plane, what kind of illegal smuggling can go on, and the fact that our borders leak like a sieve, those things cannot be permitted to continue in good conscience. It's not good for the American immigrants who are here legally in this country, for the American economy, for the cohesion of our society, or for the rule of law worldwide. And we're going to try to do better. This is a very good first step.

Thank you very much.

NOTE: The President spoke at 11:38 a.m. in Room 450 of the Old Executive Office Building.

Message to the Congress Transmitting Proposed Legislation on Illegal Immigration

July 27, 1993

To the Congress of the United States:

I am pleased to transmit today for your immediate consideration and enactment the "Expedited Exclusion and Alien Smuggling Enhanced Penalties Act of 1993." This legislative proposal is designed to address the growing abuse of our legal immigration and political asylum systems by illegal aliens holding fraudulent documents and by alien smugglers. Also transmitted is a section-by-section analysis. The proposal is part of a larger Administration initiative that I announced on June 18, 1993, to combat the illegal entry and smuggling of aliens into the United States.

The use of fraudulent documents by aliens seeking to enter the United States has increased dramatically. This proposal would expedite the exclusion and return of certain undocumented and fraudulently documented aliens who clearly are ineligible for admission to the United States, while ensuring that persons who have legitimate asylum claims receive full and fair hearings. In addition, the bill would increase the ability of the Immigration and Naturalization Service (INS) to prosecute alien smugglers and enhance the penalties for alien smuggling.

The expedited exclusion procedures would apply to an alien who, for example: (1) attempted to use a fraudulent passport to enter

the United States; (2) came to the United States by commercial airplane and did not present a visa upon arrival; or (3) was encountered by the Coast Guard on the high seas and brought to the United States. To apply for asylum, these aliens first would have to establish that they had a credible fear either of persecution in the country from which they had departed or of return to persecution. If an asylum officer determined that the alien had such a credible fear, the alien then could apply for asylum. If the alien did not have the requisite fear of persecution, the alien would be subject to an immediate order of exclusion barring him or her from entering the United States. The bill would limit judicial review of such an exclusion order.

Alien smuggling has become an increasingly pervasive problem, as seen in the current wave of Chinese aliens being brought to the shores of this country by unscrupulous criminal organizations. These organizations seek to profit both from transporting these aliens and from their labors once in this country. The number of alien smugglers arrested in the past 3 years has tripled, and the number of smugglers convicted has doubled.

Alien smuggling not only violates our criminal and immigration laws, but it also takes a terrible toll on the lives of the aliens illegally brought into this country. Many of these individuals transfer their entire life savings and pledge thousands of additional dollars to smugglers. These aliens are often placed in deplorable conditions amounting to indentured servitude until they can pay the debts incurred for their passage to America. Moreover, organized criminal syndicates are becoming more frequently associated with this highly profitable traffic in human cargo.

The bill's criminal provisions are vital to help apprehend offenders and deter future criminal activity in this area. Under this proposal, the maximum penalty imposed against certain smugglers would be increased from 5 to 10 years in prison for each individual smuggled. Since clandestine means of investigation are often needed to build cases against alien smuggling rings, the bill would authorize INS to conduct wiretaps for alien smuggling investigations.

Finally, the Racketeer Influenced and Corrupt Organizations statute would be amended so its penalty and forfeiture provisions could be used against alien smuggling organizations. The proposal also would expand the ability of law enforcement personnel to forfeit the proceeds of illegal alien smuggling, such as cash and bank accounts.

In addition to this bill, our efforts to combat alien smuggling include strengthening law enforcement efforts and attacking smuggling operations at the source. The Federal Government already has begun interdicting and redirecting smuggling ships, where feasible, in transit to the United States. INS is detaining aliens who enter the United States in conjunction with criminal smuggling activities. The Department of Justice, consistent with due process and existing laws, is expediting the adjudication of entry claims raised by migrants who are the victims of organized criminal smuggling schemes.

All of these actions, taken together, signal the United States abhorrence of the trafficking in human beings for profit and our determination to combat this illegal activity. At the same time, they reaffirm our Nation's commitment to safeguarding the protection of bona fide refugees.

I urge the prompt and favorable consideration of this legislative proposal by the Congress.

William J. Clinton

The White House,
July 27, 1993.

Remarks and an Exchange With Reporters Prior to a Meeting With Midwestern Governors

July 27, 1993

Q. Mr. President, do you have any problem with Senator Boren's idea for a budget summit?

The President. Let me make a statement, first of all, about what we're here for.

I want to welcome the Governors from the States afflicted by the floods to Washington,

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countries there. We'll have more to say about it later, but I'm anxious to get on with the meeting.

Q. Will you get a chance to visit sometime, perhaps for the Olympics in Sydney?

The President. Why, I hope so. I've always wanted to come. I had one other chance to go to Australia, and I had to turn it down because of when I was a Governor. And I've been jealous of every friend of mine who ever went there. So I sure hope I can come.

NOTE: The President spoke at 12:48 p.m. in the Oval Office at the White House. A tape was not available for verification of the content of these remarks.

The President's News Conference With Prime Minister Paul Keating of Australia

September 14, 1993

The President. Good afternoon. It's a great pleasure for me to welcome the Prime Minister of Australia, Mr. Keating, to Washington and to have this opportunity to make a couple of statements and then answer some of your questions.

Despite that vast ocean which separates us, Australia and the United States share essential values and interests rooted in our frontier heritages, our shared commitment to democracy, our status as Pacific trading nations, and our efforts across the years to ensure and strengthen our common security. It's a pleasure for me to have the opportunity to personally reaffirm those bonds today.

The Prime Minister and I exchanged views on a wide variety of issues. I'd like to emphasize the importance of one in particular, the Uruguay round of multilateral trade negotiations. We agreed that strengthening GATT's trade rules is a top priority for both our countries. As a founder of the Cairns Group of free trading agricultural nations, Australia is working closely with us to bring the Uruguay round to conclusion this year. So that we can achieve agreement this year, the Prime Minister and I strongly urge the European Community not to reopen the Blair House accord on agricultural trade as has been suggested.

We need to move forward, not backward, to complete the round and to give the world economy a much-needed boost.

We also discussed the importance of economic relations in the new Pacific community that both our nations are committed to help build. We discussed the building blocks of that community: bilateral alliances, such as the one we share; an active commitment to supporting the spread of democracy; and support for open and expanded markets. We discussed the important role of the Organization for the Asian Pacific Economic Cooperation, APEC. Both the U.S. and Australia are members. Both of us have been active proponents of regional trade liberalization. And I look very much forward to working with Prime Minister Keating to make the November APEC ministerial meeting and the leaders conference in Seattle, Washington, a big success.

Australia and the United States also share mutual security interests. Australia has been our ally in every major conflict of this century. Today we share an interest in bolstering the region's security and in supporting its movement toward democracy. I expressed my particular admiration for the crucial role Australia has played in fashioning and implementing the international effort to promote reconciliation in Cambodia. I told the Prime Minister that we look forward to many similar partnerships in the years ahead.

This meeting was to have occurred yesterday, but Prime Minister Keating and I agreed that we should delay it because of the signing of the Israeli-Palestinian peace agreement. That historic breakthrough reminds us that we live in a momentous time when the old walls of division are falling and new vistas are opening. Our success in seizing these opportunities will depend in large measure on how well the community of democracies can respond to work together towards shared goals. Today this meeting with the Prime Minister reaffirms that our two nations will continue to work together closely to turn the promise of this era into reality.

Mr. Prime Minister.

Prime Minister Keating. Thank you, Mr. President. Well, I'd like to say firsthand that our meeting was most worthwhile, from my point of view and Australia's point of view,

who has a different opinion. But I think, as President, I should take the position that I'm going to try to bring this country along with this and leave that other business to others to fight.

Someone from Australia. Yes?

Pacific Community and Human Rights

Q. Mr. Clinton, could you comment on Australian concerns that the U.S. push on human rights in countries such as China and Indonesia could threaten Asia-Pacific economic cooperation? Could Mr. Keating also comment on that? And Mr. President, could you also flesh out exactly what you want to see coming out of the leaders summit in Seattle in November?

The President. Let me mention, first of all, the United States does have a very strong position on human rights, and I think we should. I also think your government has a good position on human rights, which it has not been reluctant to express in dealing with other nations. But that has not undermined our relationships, commercial relationships and political relationships with countries that we think are making an honest effort to shoot straight with us and to work with us.

You mentioned Indonesia. I went out of my way to ask President Soeharto to come to Japan and meet with me when I was there, because he's the head of the nonaligned nations. Indonesia, I think, is one of the most underestimated countries in the world. Most people have no idea how big it is, that 180 million people live there, that it is a vast, enormous potential partner in a global economy. We have questions about the issues of East Timor, as you know, and I think you do, too—your country does, too. But we have had good contact with Indonesia.

With regard to China, the United States has, after all, an \$18 billion trade deficit with China. It would be hard to say that we are not doing our part to aid the Chinese economic revival. We have very strong commercial relationships with them. But it is our responsibility in the world in which we live, I think, to try to restrain the proliferation of weapons of mass destruction, to try to stand up for human rights, and to try to engage the Chinese across a whole broad range

of issues, so that we can't simply have a commerce-only relationship.

I am going to do what I can to build the Pacific community and not to undermine it, and that's what your Prime Minister spoke so eloquently about today.

I think you wanted him to comment on this, too.

Prime Minister Keating. Neither the United States nor Australia will ever compromise its shared sense of democracy, its commitment to human rights and the respect of human values. And we put them forthrightly wherever we see those values under threat or seeking to be compromised. And this is true in Australia's case with Indonesia. It's been true in respect of China, as has been the case with the United States. But I think it's true for me and I'm certain for the President that we see these issues as part of a total relationship where we seek to have an influence on these countries and where the influence may be diminished if the totality of the relationship only involves the human rights questions, and beyond that, that is on these other issues like proliferation and other issues and commercial questions, where the relationship must be seen in its totality.

Middle East

Q. Mr. President, a day after the historic signing ceremony here on the South Lawn yesterday, the Israelis appear to be establishing a relationship with Morocco, a formal relationship, and there is this agreement between Israel and Jordan. What specifically are you doing now, to try to promote the establishment of formal diplomatic relations between Israel and other Arab nations, Saudi Arabia, Kuwait, good friends of the United States? And do you think that is in the cards in the immediate future?

The President. Well, let me first say that I am very, very pleased that Prime Minister Rabin and Foreign Minister Peres have been received by King Hassan in Morocco. When we learned of this development yesterday, and we talked about it in some detail—Prime Minister Rabin and I talked about it—I was very pleased, because I think that the King may have set an example, which I hope other Arab states will consider following now, to try to continue now to just establish dialog.

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May 27 / Administration of William J. Clinton, 1993

I'm going to support the crime bill, which includes the Brady bill, to require people to wait so we can check their criminal background before they buy handguns. It will also have more police officers on it.

We're going to give people coming out of the military incentives to go into police work. We're going to give young people the opportunity to pay off part of their college loan by being police officers for a while. So I think we can get this 100,000 figure. And you will be helped by that. But this bill that's going through now should help DC and all the States, because it provides funds specifically for those who want to rehire people who have been laid off as well as hire new police officers. And that should help a lot.

Abortion

Q. Good morning. I'd like to know, is abortion going to be covered under the new health care plan?

The President. I don't think a decision has been made about that. Let me tell you what the problem is. The Congress has historically not permitted public funds to be spent for abortion, except to save the life of the mother. Most private health insurance plans permit some broader coverage for abortion for people who are covered.

So what the health care task force is trying to resolve is how to at least provide for the position that we shouldn't—in solving the national health crisis, we shouldn't take away from people some right they now have in their health insurance plans. And that's what they're trying to work through now. And I'm not sure exactly where they're going to wind up, but I think they're going to try to wind up in a way that either does that or at least makes it possible that that can be done. That's the dilemma here.

Ms. Zahn. You mean the continuation of—

The President. That gives people the right to at least access what they've got now in their health insurance plan, if they're private citizens and they get that, as a result of this change we've got, because what we're trying to do is not run this money for the uninsured through the Government anyway. We want it to be operating outside the Government and the taxpayers.

Ms. Zahn. Harry's working the other side of the audience over there.

Mr. Smith. We've got a 1-minute question.

Immigration

Q. I'm from southern California, and there we have a lot of problem with immigration. I kind of have a question for you. Idealistically, I feel that America should let as many people in as we can. But in our State it's really taking a toll on Medicare, et cetera, et cetera.

The President. Absolutely. You're from California, you know that—

Mr. Smith. Thirty seconds left.

The President. Quick answer. The Nation does not enforce its immigration laws. We should let immigrants come in. It makes us a stronger country. But we can't let everybody in overnight. We should attempt to enforce the laws more rigorously. And when California, Texas, Florida, New York, and other States pay a disproportionate burden, the National Government ought to help them more. We changed the rules to help California more, because it's not fair for you to pay for what the National Government does or doesn't do.

[At this point, the network took a commercial break.]

China

Q. I'm from Tarzana, California. I've been going to China since 1980, seven or eight times. I've lived and worked in China for 2 years. I'm very concerned about what you're going to do with the—

Mr. Smith. Most-favored-nation—

Q. —most-favored-nation. On the one hand, if you don't give them this, you feel that you'll pressure the government into changing their attitude. On the other hand, the people don't want that to happen because they feel that they will be hurt financially. And then when they're hurt economically and financially, then they'll get less rights and privileges.

Mr. Smith. Is this a done deal, your decision on this?

The President. I think it is a done deal for the next year. Let me explain the issue here. In order for a country to trade with

Administration of

us, they have to have a favored-nation status. China is a huge country. I think now our security is at risk with China just because it's one of the fastest growing in the world. They're using communism to market their products. They still put people in prison. Still, we think, have to get their products, and we have to deal with them.

The issue is, should we put China in a favored-nation status for a year? We have decided to have a modernization in the status for a year. It's an opportunity for America to make it clear to the world some progress on the issue of prison labor. There are disputes about a lot of this issue. I think the President is making, but the United States has the abuse of lots of use of prison labor off when they say

Q. I'm from Tarzana, California. Mr. President, this morning, before the President lies there and the President is going to happen

The President. I really think of it as to everybody, a stupid little thing that overshadows all the things we have to do.

But actually, I say a little bit of stupid little misperception by America today. I go out here and I best to do that.

Mr. Smith.

Q. Good morning. I'm the president of the United States in Washington. I come to our country.

The President.

us, they have to get what's called most-favored-nation status in order to have big trade. China is a huge trading partner of ours, I think now our second biggest trading deficit, with China just behind Japan. They've got one of the fastest growing economies in the world. They're moving away from communism to market economics very quickly. They still put political prisoners in jail. They still, we think, have used prison labor to make products, and we have some other problems with them.

The issue is should we revoke that or should we put conditions on it. I basically have decided to extend most-favored-nation status for a year because I want to support modernization in China, and it's a great opportunity for America there. But I want to make it clear to them that there has to be some progress on human rights and the use of prison labor. Our trade disputes and our disputes about arms sales I'm going to take out of this issue and negotiate directly with them. I think they will appreciate the gesture I'm making, but I hope they understand that the United States just can't turn its back on the abuse of lots of people and especially the use of prison labor and just choking people off when they say their piece.

Q. I'm from Troy, Michigan. My question, Mr. President, when you wake up in the morning, before you get out of bed, do you lie there and think what stupid little thing is going to happen today? *[Laughter]*

The President. Some days I do. What I really think of is stupid little things happen to everybody, and I just hope that if some stupid little thing happens to me, it won't overshadow all the big good things I'm trying to do.

But actually, when I get up in the morning, I say a little prayer that I won't make any stupid little mistakes and that I'll do right by America today. That's what I do. Then I go out here and run off old age. I do my best to do that.

Mr. Smith. Here we go, Mr. President.

Q. Good morning, Mr. President. I'm president of the Bloomingdale Civic Association in Washington, and you're welcome to come to our community at any time.

The President. Thank you. I'd like that.

Statehood for the District of Columbia

Q. My question basically is, can you express to the American people why it is important for the District of Columbia to have statehood, to have the opportunity to vote for two Senators and Members of Congress?

The President. Well, I think, frankly, I think having the Senators and the Members of Congress is not as important as having control over your own destiny. The District of Columbia now has more people than 5 other States, pays more taxes than 10 other States, and sent more soldiers to fight in the Persian Gulf war than 20 other States. And yet, every time they turn around, Congress can overturn anything they do through their elected officials.

If they became a State, yes, it's true, they would get two Senators and a Member of Congress, just like the other small States. But the main thing is they would have more control over their own destiny. It's very frustrating for the people in the District to know that Congress can do or not do anything, just like this fellow said here, that they can say, "No, you can't have \$2 million for police." And they can't do it on their own because they don't have the independence. So that's why I've always supported statehood. Once I saw the facts about the size, the taxes, and the contribution to the national interest, I thought they ought to have the right to be independent.

Mr. Smith. We need to take a break. We'll come back with more live from the Rose Garden.

[At this point, the network took a commercial break.]

Mr. Smith. We are live at the White House Rose Garden with President Clinton, the first national network town meeting since you were elected. We appreciate you letting us come in here. We've got lots of questions from more than 200 people in the audience.

Paula.

Ms. Zahn. And this man's been braving very patiently for the last hour. Please stand, and you can fire away.

President's Haircut

Q. I'm from Montana. I work for the Rural Electric. And my question for you is: With

ingly, I have instructed Secretary Christopher to continue as planned with his consultations through Europe on the measures we will take if the Serbs do not act in good faith.

I have spoken in the past 2 days with a number of congressional leaders as well as President Yeltsin, Prime Minister Major, Chancellor Kohl, President Mitterrand, Prime Minister Mulroney, and Prime Minister-designate Ciampi. I will continue such consultations.

We all hope for a true and just peace in Bosnia. It must include not only the provisions of peace on paper but also the practices of peace on the ground.

Exchange With Reporters Prior to a Meeting With Governor Chris Patten of Hong Kong

May 3, 1993

Bosnia

Q. Mr. President, do you expect the Serbs to keep their word—

The President. The what?

Q. —the Bosnian Serbs? Do you trust the Serbs at this point?

The President. Well, I want to reiterate what we've already said. I want to evaluate them by their actions. We'll see what they do. I hope the Serbian Assembly will support the decision to sign onto Vance-Owen, and we'll just see. We'll just have to measure it as we go along.

Q. Mr. President, are you still committed, as you said, to sending in ground troops to help enforce the peace if it does hold? Would there be American participation in a peacekeeping mission?

The President. We said several weeks ago that the United States would be prepared to support a United Nations effort, heavily engaged in by the Europeans, to help to enforce a peace if a peace was made that we would have no interest in. We were not interested in sending soldiers in there into combat, into a fighting situation but that we thought there would have to be a peacekeeping force there and that we would be prepared to participate.

Q. Well, if this peace holds, then, if Vance-Owen holds, you've got 10 provinces, wouldn't that be a very difficult and dangerous mission for American and United Nations forces?

The President. No, it depends entirely on what happens between now and then. And before I agree to put one American soldier there, we're going to watch events, and I will obviously speak not only to you but directly to the American people about it.

Q. How many do you contemplate sending in?

The President. I think it's very important now to point out—let me just restate what's at stake here—there has been enormous loss of life under especially brutal conditions there. And it is a very politically unstable part of the world, which has significant potential for a wider war.

So the United States has tried to work with our allies—Secretary Christopher, as you know, is on this mission now—in an attempt to get the parties together so that we can present a united front and so that we can keep the pressure up to end the killing but also to stop the prospect of a much wider war, which could cause much more trouble, much more instability. But there has been at this point no decision made on any of that, and I would not make any such decisions without further consultation with the Congress and discussing it directly with the American people.

Q. Why don't the allies agree with you?

Q. Are you getting cooperation from the allies—

The President. So far, the meetings are going great.

Q. Have you talked to Christopher?

The President. I have. I talked to him twice yesterday—talked to him twice.

Q. You mean, they have signed on your policy?

The President. I talked to Christopher, Prime Minister Major, President Mitterrand, the Prime Minister-designate of Italy, to President Yeltsin, and to Chancellor Kohl. I've talked to a lot of people.

Q. And they all agree—

The President. —Prime Minister Mulroney. We have agreed that we're going to keep the pressure up and have a united

front and move forward, and we're developing a policy now.

Q. Mr. President, can we ask you a question about—

The President. Sure.

Chinese Democracy Initiative

Q. —we're just trying find out—the Governor will be here to ask you not to renew MFN with conditions. You have said that you will have some conditions. Can you have any kind of a compromise here? And the other question was, if you do support the Governor's proposals, do you think that will upset the Chinese?

The President. Well, let me answer the first question first. We obviously hope that we can maintain the maximum good relationship with the Chinese. I have no interest in trying to isolate them. I'm encouraged by the successes of their economic reforms. And that's got to be in the interest of the whole world if it is accompanied with responsible behavior and respect for human rights and movement toward a more democratic society. There has been some encouraging news in China on a number of fronts in the last few weeks. I still think that more needs to be done. And I'm hopeful that it will be. But we're not in the position to say finally what the condition of our relations will be—and next month when the time runs out because it's an evolving situation.

And secondly, I just have to say that I think that the democracy initiative in Hong Kong is a good thing. And I'm encouraged that the parties have agreed to talk about it. And it's one of the world's most vibrant, thriving important cities. It is an incredible center of commerce and haven of opportunity for millions of people who literally have—many of them have not a thing but the clothes on their back when they came there. And I think the idea of trying to keep it an open and free society after 1997 is in the best interest of the Chinese. I think it's clearly in the best interest of the Chinese. So I think this initiative is well-founded, and I support it. I hope it doesn't offend anybody, but how can the United States be against democracy? That's our job; get out there and promote it.

available for verification of the content of this exchange.

Remarks on Signing the Asian/Pacific American Heritage Month Proclamation

May 3, 1993

Thank you very much. Let me begin by extending a warm welcome to all of you, especially those who have traveled very great distances, as many of you have, to help celebrate Asian Pacific American Heritage Month.

I'm pleased to be joined on the stage by Senator Dan Akaka, with whom I played golf last weekend, less well than he did I might add; and Representatives Bob Matsui, Norm Mineta, Robert Underwood, Patsy Mink, Eni Faleomavaega—did I do a good job? Pretty good—and Jay Kim. And let us also honor the memory of the late Senator Spark Matsunaga, who left such a wonderful legacy as a true friend of the Asian Pacific community.

My campaign and my administration have gained so much from the talents of Asian Pacific Americans, and I'd like to recognize just a few of them: Barbara Chow, my Special Assistant for Legislative Affairs; Neil Dhillon, at the Department of Transportation; Atul Gawande, who has been working on the Health Care Task Force; Maria Haley on our personal staff; Goody Marshall with the Vice President's staff; Doris Matsui in Public Liaison who did such a wonderful job with this event; Shirley Sagawa in Legislative Affairs; Debra Shon at the United States Trade Representative's Office; Melinda Yee at the Department of Commerce; and many others who are an essential part of our efforts every day.

Fifteen years ago, Representative Frank Horton introduced the first resolution proclaiming Asian Pacific American Heritage Week, honoring the significant contributions of Asian Pacific Americans in all walks of life. In 1990, Congress designated and President Bush proclaimed the month of May as Asian Pacific Heritage Month. And last year, with the help of Representative Horton and 106 of his colleagues, the designation of May as

NOTE: The exchange began at 10:31 a.m. in the Oval Office at the White House. A tape was not

some ways, this process has begun. An emerging Chinese middle class points the antennae of new televisions towards Hong Kong to pick up broadcasts of CNN. Cellular phones and fax machines carry implicit notions of freer communications. Hong Kong itself is a catalyst of democratic values, and we strongly support Governor Patten's efforts to broaden democratic rights.

The question we face today is how best to cultivate these hopeful seeds of change in China while expressing our clear disapproval of its repressive policies.

The core of this policy will be a resolute insistence upon significant progress on human rights in China. To implement this policy, I am signing today an Executive order that will have the effect of extending most-favored-nation status for China for 12 months. Whether I extend MFN next year, however, will depend upon whether China makes significant progress in improving its human rights record.

The order lays out particular areas I will examine, including respect for the Universal Declaration of Human Rights and the release of citizens imprisoned for the nonviolent expression of their political beliefs, including activists imprisoned in connection with Tiananmen Square. The order includes China's protection of Tibet's religious and cultural heritage and compliance with the bilateral U.S.-China agreement on prison labor.

In addition, we will use existing statutes to address our concerns in the areas of trade and arms control.

The order I am issuing today directs the Secretary of State and other administration officials to pursue resolutely all legislative and executive actions to ensure China abides by international standards. I intend to put the full weight of the Executive behind this order. I know I have Congress's support.

Let me give you an example. The administration is now examining reports that China has shipped M-11 ballistic missiles to Pakistan. If true, such action would violate China's commitment to observe the guidelines and parameters of the Missile Technology Control Regime. Existing U.S. law provides for strict sanctions against nations that violate these guidelines. We have made our concerns on the M-11 issue known to the Chi-

nese on numerous occasions. They understand the serious consequences of missile transfers under U.S. sanctions law. If we determine that China has in fact transferred M-11 missiles or related equipment in violation of its commitments, my administration will not hesitate to act.

My administration is committed to supporting peaceful democratic and promarket reform. I believe we will yet see these principles prevail in China. For in the past few years, we have witnessed a pivot point in history as other Communist regimes across the map have ceded to the power of democracy and markets.

We are prepared to build a more cooperative relationship with China and wish to work with China as an active member of the international community. Through some of its actions, China has demonstrated that it wants to be a member of that community. Membership has its privileges, but also its obligations. We expect China to meet basic international standards in its treatment of its people, its sales of dangerous arms, and its foreign trade.

With one voice, the United States Government today has outlined these expectations.

NOTE: The statement referred to Christopher Patten, Governor and commander in chief of Hong Kong.

Memorandum on Most-Favored-Nation Trade Status for China

May 28, 1993

Presidential Determination No. 93-23

Memorandum for the Secretary of State

Subject: Determination Under Section 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93-618, 88 Stat. 1978 (hereinafter "the Act"), I determine, pursuant to section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402(c) of the Act will substantially promote the objec-

tives of section 402 of the Act. I further determine that the continuation of the waiver applicable to the People's Republic of China will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the *Federal Register*.

William J. Clinton

[Filed with the Office of the Federal Register, 12:28 p.m., May 28, 1993]

NOTE: This memorandum will be published in the *Federal Register* on June 1.

Executive Order 12850—Conditions for Renewal of Most-Favored-Nation Status for the People's Republic of China in 1994

May 28, 1993

Whereas, the Congress and the American people have expressed deep concern about the appropriateness of unconditional most-favored-nation (MFN) trading status for the People's Republic of China (China);

Whereas, I share the concerns of the Congress and the American people regarding this important issue, particularly with respect to China's record on human rights, nuclear nonproliferation, and trade;

Whereas, I have carefully weighed the advisability of conditioning China's MFN status as a means of achieving progress in these areas:

Whereas, I have concluded that the public interest would be served by a continuation of the waiver of the application of sections 402 (a) and (b) of the Trade Act of 1974 (19 U.S.C. 2432(a) and 2432(b)) (Act) on China's MFN status for an additional 12 months with renewal thereafter subject to the conditions below;

Now, Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. The Secretary of State (Secretary) shall make a recommendation to the President to extend or not to extend MFN status to China for the 12-month period beginning July 3, 1994.

(a) In making this recommendation the Secretary shall not recommend extension unless he determines that:

—extension will substantially promote the freedom of emigration objectives of section 402 of the Act; and

—China is complying with the 1992 bilateral agreement between the United States and China concerning prison labor.

(b) In making this recommendation the Secretary shall also determine whether China has made overall, significant progress with respect to the following:

—taking steps to begin adhering to the Universal Declaration of Human Rights;

—releasing and providing an acceptable accounting for Chinese citizens imprisoned or detained for the non-violent expression of their political and religious beliefs, including such expression of beliefs in connection with the Democracy Wall and Tiananmen Square movements;

—ensuring humane treatment of prisoners, such as by allowing access to prisons by international humanitarian and human rights organizations;

—protecting Tibet's distinctive religious and cultural heritage; and

—permitting international radio and television broadcasts into China.

Sec. 2. The Secretary shall submit his recommendation to the President before June 3, 1994.

Sec. 3. The Secretary, and other appropriate officials of the United States, shall pursue resolutely all legislative and executive actions to ensure that China abides by its commitments to follow fair, nondiscriminatory trade practices in dealing with U.S. businesses, and adheres to the Nuclear Non-Proliferation Treaty, the Missile Technology Control Regime guidelines and parameters, and other nonproliferation commitments.

Sec. 4. This order does not create any right or benefit, substantive or procedural, enforceable by any person or entity against the United States, its officers, or employees.

William J. Clinton

The White House,
May 28, 1993.

[Filed with the Office of the Federal Register, 12:27 p.m., May 28, 1993]

NOTE: This Executive order will be published in the *Federal Register* on June 1.

Letter to Congressional Leaders Transmitting a Report on Most-Favored-Nation Trade Status for China

May 28, 1993

Dear Mr. Speaker: (Dear Mr. President:)

Pursuant to subsection 402(d)(1) of the Trade Act of 1974, as amended, 19 U.S.C. 2432(d)(1) ("the Act"), I hereby submit the attached report concerning the continuation of a waiver of application of subsections (a) and (b) of section 402 of the Act to the People's Republic of China. The report explains my reasons for having determined that continuation of the waiver currently in effect for the People's Republic of China will substantially promote the objectives of section 402. In addition, I am also transmitting herewith for your further information a copy of an Executive Order which enumerates the specific conditions which I have established with respect to a further extension of the waiver next year for the period beginning July 3, 1994.

Sincerely,

William J. Clinton

NOTE: Identical letters were sent to Thomas S. Foley, Speaker of the House of Representatives, and Albert Gore, Jr., President of the Senate.

Report to the Congress on Most-Favored-Nation Trade Status for China

May 28, 1993

Pursuant to section 402(d)(1) of the Trade Act of 1974 (hereinafter "the Act"), having determined that further extension of the waiver authority granted by section 402(c) of the Act for the twelve-month period beginning July 3, 1993 will substantially promote the objectives of section 402, I have today determined that continuation of the waiver

currently applicable to China will also substantially promote the objectives of section 402 of the Act. My determination is attached and is incorporated herein.

Freedom of Emigration Determination

In FY 1992, 26,711 U.S. immigrant visas were issued in China. The U.S. numerical limitation for immigrants from China was fully met. The principal restraint on increased emigration continues to be the capacity and willingness of other nations to absorb Chinese immigrants, not Chinese policy. After considering all the relevant information, I have concluded that continuing the MFN waiver will preserve the gains already achieved on freedom of emigration and encourage further progress. There, thus, continues to be progress in freedom of emigration from China; we will continue to urge more progress.

Chinese Foreign Travel Policies

In FY 1992, 75,758 U.S. visas were issued worldwide to tourists and business visitors from China, a 35 percent increase over FY 1991 and a 76 percent increase over FY 1988. Foreign travel by Chinese-government sponsored businessmen alone increased by 48 percent in FY 1992, reflecting Deng Xiaoping's policies of accelerating China's opening to the outside world.

In FY 1992, 18,908 student visas (including exchange students) were issued, a decline from FY 1991 of 14 percent but still 8 percent greater than FY 1988. The decline was probably the result in part of a recent new directive requiring Chinese college graduates educated at state expense to work for five years before applying for privately-funded overseas study. A drop in funding from recession-strapped U.S. schools and relatives may also have played a role.

Chinese students continue to return from overseas for visits without any apparent problem. With the exception of student activist Shen Tong, we are not aware of any case in which Chinese living in the U.S. who returned to China for visits after June 1989 were prevented from leaving again. Shen was detained in September 1991 and then expelled from China two months later for trying to establish a Beijing chapter of his Fund for Chinese Democracy.

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Human Rights Issues

As detailed in the Department's annual human rights report, China's human rights practices remain repressive and fall far short of internationally-accepted norms. Freedoms of speech, assembly, association, and religion are sharply restricted.

China understands that the Clinton Administration has made human rights a cornerstone of our foreign policy. We have already repeatedly raised our concerns with the Chinese authorities and we intend to press at every opportunity for observance of internationally accepted standards of human rights practice.

We have made numerous requests for information on specific human rights cases. China has provided information on some of these cases but further and more complete responses are necessary. The Chinese recently released, prior to completion of their sentences, several prominent dissidents whom we had identified on lists provided to them. These included not only Tiananmen-era demonstrators but also Democracy Wall (circa 1979) activists. We hope this is the first step toward a broad and general amnesty for all prisoners of conscience.

The Chinese promised then Secretary Baker in 1991 that all Chinese citizens, regardless of their political views, have the right to travel abroad. The only exceptions are citizens who are imprisoned, have criminal proceedings pending against them, or have received court notices concerning civil cases. A number of prominent dissidents, despite long delays, have been able to leave China. Some others have not. Those who have been able to obtain exit permits in the past year include labor leader Han Dongfang, writers Wang Ruowang and Bai Hua, scientist Wen Yuankai, journalists Wang Ruoshui, Zhang Weiguo, and Zhu Xingqing, and scholar Liu Qing. Others, like Hou Xiaotian, Yu Haocheng, and Li Honglin, continue to face difficulties in obtaining exit permission. We continue to press the Chinese on these and other cases.

Our goal is the release of all those held solely for the peaceful expression of their political and religious views. In November 1991, the Chinese confirmed to Secretary Baker the release of 133 prisoners on a list

presented them earlier in June of that year. Since then, the Chinese have released additional political prisoners, including Xu Wenli, Han Dongfang, Wang Youcai, Luo Haixing, Xiong Yan, Yang Wei, Wang Zhixin, Zhang Weiguo, Wang Dan, Wang Xizhe, Gao Shan, Bao Zunxin, and a number of Catholic clergy and lesser known activists. We continue to press for a general amnesty and for permission for international humanitarian organizations to have access to Chinese prisons. We have also pressed for improvement in the conditions of those in Chinese prisons.

China has recently and for the first time admitted publicly that domestic human rights policies are a legitimate topic of international discussion. China has hosted human rights delegations from France, Australia, the U.K., and Germany. China sent several delegations to the U.S. and Europe, as well as Southeast Asia, to study foreign human rights practices and issued a "white paper" maintaining that basic human rights are observed in China and arguing that a country's human rights record should be viewed in light of its own history and culture. We reject this limited definition of human rights but believe it is a significant step forward that China is willing to debate human rights issues with its international critics.

The U.S. continually raises with the Chinese government the need for protection of Tibet's distinctive religion and culture. We are concerned about China's heavy-handed suppression of political demonstrations in the Tibetan Autonomous Region. Demonstrations, on a smaller scale than in past years, continue to result in instances of brutal beatings and long detentions. China has admitted some foreign observers to Tibet and to the main Lhasa prison. Diplomatic reports state that the Chinese Government is providing funds for rebuilding monasteries and that monks are now provided more leeway in their religious practices. In recent years, an increasing number of non-Tibetan Chinese have moved to the Tibetan Autonomous Region in search of economic opportunity. We will continue to monitor closely reports that the PRC is encouraging involuntary emigration by non-Tibetan Chinese to areas traditionally settled by Tibetans. So far, we have

found no evidence of a Chinese government policy to this effect.

Nonproliferation Issues

China's support for global nonproliferation initiatives has increased substantially since the beginning of 1992. In March 1992, China acceded to the Nuclear Non-Proliferation Treaty (NPT) and adhered to the Missile Technology Control Regime (MTCR) guidelines and parameters. In January 1993, Beijing became an original signatory to the Chemical Weapons Convention (CWC). China now is a party to all of the leading nonproliferation agreements. These commitments have influenced Chinese behavior: Beijing has refrained from selling certain sensitive items because of proliferation concerns, and nonproliferation as an issue appears to receive more senior consideration in Chinese policy-making circles.

At the same time, certain sensitive Chinese exports raise questions about PRC compliance with these commitments. At present, the greatest concern involves reports that China in November 1992 transferred MTCR-class M-11 missiles or related equipment to Pakistan. Such a transfer would violate China's MTCR commitment and trigger powerful sanctions under U.S. missile proliferation law. There also are reports that China is exercising inadequate control over sensitive nuclear, chemical, and missile technology exports to countries of proliferation concern. Even if these sales do not violate PRC obligations, they raise questions about China's appreciation of the importance of preventing the proliferation of weapons of mass destruction and their ballistic missile delivery systems.

We are also concerned that China has withdrawn from the Middle East arms control (ACME) talks. The U.S. holds that, as a permanent member of the UN Security Council, China has a special responsibility to continue in these talks.

Seeking full Chinese compliance with multilateral obligations and support for international nonproliferation goals is a top Administration priority. The U.S. is prepared to employ the resources under U.S. law and executive determinations—including the im-

sition of sanctions—if the PRC engages in irresponsible transfers.

Trade Issues, Including Prison Labor

Reciprocal granting of MFN tariff status was a key element cementing the normalization of Sino-U.S. relations by providing a framework for major expansion of our economic and trade relations. In 1992, bilateral trade topped \$33 billion, with Chinese exports of \$25.8 billion and U.S. exports of \$7.5 billion. China was our fastest growing export market in Asia in 1992 as U.S. exports to China rose by 19 percent. In turn, the United States remains China's largest export market, absorbing about 30 percent of China's total exports.

China maintains multiple, overlapping barriers to imports in an effort to protect non-competitive, state-owned industries. China also has recognized that its development goals cannot be achieved without gradually reducing protection and opening its domestic market to the stimulus for change brought by import competition.

Our market access agreement, signed October 10, 1992, if implemented by the PRC, will increase opportunities for U.S. exports by phasing-out 70 to 80 percent of China's non-tariff trade barriers over the next four years. The regular consultation process required by this agreement allows us to monitor implementation and take appropriate action should China violate its commitments. Progress has been made in opening the market to U.S. products but we still need to resolve several issues regarding implementation.

Recently, the Chinese have indicated an interest in doing more business with U.S. companies. As U.S. corporate executives are arriving in droves to explore new commercial opportunities in Beijing, at least eight Chinese delegations have been or will soon be dispatched to the U.S. with orders to "buy American". These missions have the potential to generate billions of dollars of export of aircraft, autos, satellites, oil drilling equipment, aviation electronics, wheat, fertilizer, and other U.S. products.

Still, the large and growing U.S.-China trade deficit is unacceptable. The over \$40 billion trade surplus China has accumulated

with the U.S. has been very difficult, particularly in the area of trade, which has resulted in a market that is not free, balanced, or in equilibrium.

Prison Labor

China's use of prison labor in its production of goods for export has been a major concern of the U.S. government. In 1991, the U.S. government and Chinese government agreed to a joint declaration on the use of prison labor in the production of goods for export.

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In the past, the U.S. government has been aggressive in its efforts to enforce U.S. laws against the use of prison labor in the production of goods for export. The U.S. government has been successful in its efforts to enforce U.S. laws against the use of prison labor in the production of goods for export.

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Conditions

China's conditions in the area of trade, which has resulted in a market that is not free, balanced, or in equilibrium, have been a major concern of the U.S. government. In 1991, the U.S. government and Chinese government agreed to a joint declaration on the use of prison labor in the production of goods for export.

with the United States since June 1989 has been very destructive to American industries, particularly the textile and footwear sectors, resulting in the loss of American jobs. It is therefore essential that the PRC implement the market access agreement we have negotiated, which would produce a much greater equilibrium and fairness in Sino-American trade.

Prison Labor

China officially banned the export of products produced by prison labor in October 1991. In August 1992, we signed a Memorandum of Understanding under which the Chinese agreed to investigate cases we presented and to allow U.S. officials access to suspect facilities in China.

The U.S. has presented the Chinese government information on 16 cases of alleged use of prison labor. The Chinese have reported back on all 16 cases, admitting that in four cases they were forced to correct the fact that prisoners were being used to produce goods exports in violation of Chinese law. U.S. officials have visited three prisons and have standing requests to visit five others, including a revisit to one facility.

In the past two years, U.S. Customs has aggressively expanded its enforcement of U.S. laws banning the import of prison labor products. Customs has issued over twenty orders banning suspected Chinese goods from entering the U.S., achieved one court conviction of a U.S. company for importing prison made machine tools and seized suspected equipment in another case.

Since the Prison Labor Memorandum of Understanding was signed last August, there has been no indication that goods allegedly produced by prison labor have entered the U.S. Talks with China will continue on the full enforcement of the provisions of the prison labor MOU.

Conditions for Renewal in 1994

China has made progress in recent years in the areas of human rights, nonproliferation, and trade. Nevertheless, I believe more progress is necessary and possible in each of these three areas. In considering the optimal method of encouraging further progress on these issues, I have decided to issue the attached Executive Order which outlines the

areas in the field of human rights with respect to which China, in order to receive positive consideration for a renewal of MFN in 1994, will have to make overall, significant progress in the next 12 months.

In considering extension of MFN, we will take into account whether there has been overall, significant progress by China with respect to the following:

- Respecting the fundamental human rights recognized in the Universal Declaration of Human Rights, for example, freedoms of expression, peaceful assembly and association.
- Complying with China's commitment to allow its citizens, regardless of their political views, freedom to emigrate and travel abroad (excepting those who are imprisoned, have criminal proceedings pending against them, or have received court notices concerning civil cases).
- Providing an acceptable accounting for and release of Chinese citizens imprisoned or detained for the peaceful expression of their political views, including Democracy Wall and Tiananmen activists.
- Taking effective steps to ensure that forced abortion and sterilization are not used to implement China's family planning policies.
- Ceasing religious persecution, particularly by releasing leaders and members of religious groups detained or imprisoned for expression of their religious beliefs.
- Taking effective actions to ensure that prisoners are not being mistreated and are receiving necessary medical treatment, such as by granting access to Chinese prisons by international humanitarian organizations.
- Seeking to resume dialogue with the Dalai Lama or his representatives, and taking measures to protect Tibet's distinctive religious and cultural heritage.
- Continuing cooperation concerning U.S. military personnel who are listed as prisoners of war or missing in action.
- Ceasing the jamming of Voice of America broadcasts.

The Administration will also use tools under existing legislation and executive de-

terminations to encourage further progress in human rights.

In addition, I wish to make clear my continuing and strong determination to pursue objectives in the areas of nonproliferation and trade, utilizing other instruments available, including appropriate legislation and executive determinations. For example, various provisions of U.S. law contain strong measures against irresponsible proliferation of weapons of mass destruction and nuclear weapons technology. These include missile proliferation sanctions under the National Defense Authorization Act. Using these tools as necessary, we will continue to press China to implement its commitments to abide by international standards and agreements in the nonproliferation area.

In the area of trade, the Clinton Administration will continue to battle for full and faithful implementation of bilateral agreements with China on market access, intellectual property rights, and prison labor. Section 301 of the 1974 Trade Act is a powerful instrument to ensure our interests are protected and advanced in the areas of market access and intellectual property rights. The Administration will also continue to implement vigorously the provisions of the Tariff Act of 1930 to prevent importation of goods made by forced labor.

Proclamation 6566—Prayer for Peace, Memorial Day, 1993

May 28, 1993

By the President of the United States of America

A Proclamation

Each spring, our Nation pauses to remember those who have died securing our peace and freedom. Across our country, Americans are holding ceremonies in remembrance of those who have died under the colors of our Nation. We remember the brave men and women whose sacrifices have paved the way for us to live in a country like America. We remember the families of our fallen heroes,

and we grieve for their losses. And we remember the men and women who are now serving in our Armed Forces.

In the war with Iraq and more recently in our peacekeeping operations in Somalia, more names of young Americans have been added to the roster of our departed heroes. Young service men and women who died in the Persian Gulf joined Americans who left their mark on history at places like the Argonne in World War I, Omaha Beach in World War II, and Pork Chop Hill in Korea, and in the jungles and rice paddies of Vietnam.

Through two centuries and several wars, America has remained the land of the free and the home of the brave. The Persian Gulf war reaffirmed that international peace and security depend on our Nation's vigilance and on the sacrifices of our service men and women. Even in this post-Cold War era, we must be wary, for the world still remains a dangerous place.

By showing our understanding, we can help further the sense of lives well lived, a time on earth well spent, and a heritage of service of lasting meaning.

In respect and recognition of those Americans to whom we pay tribute today, the Congress, by joint resolution of May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer.

Now, Therefore, I, William J. Clinton, President of the United States of America, do hereby designate Memorial Day, May 31, 1993, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11 o'clock in the morning of that day as a time to unite in prayer. I urge the press, radio, television, and all other information media to cooperate in this observance.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be



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