

NACARA

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

October 15, 1997

OCT 20 PM 1:24

The Honorable William J. Clinton  
President of the United States  
The White House  
Washington, DC 20500

Dear Mr. President:

We are writing to express the very serious reservations of the Congressional Hispanic Caucus concerning the agreement reached between Congressmen Lamar Smith and Lincoln Diaz-Balart, which has the backing of the House Republican Leadership, regarding legislative relief for approximately 250,000 Guatemalans, Nicaraguans and Salvadorans currently facing uncertain immigration status.

There are several aspects of this agreement that we find extremely objectionable because they represent a retreat from the efforts of the Congressional Hispanic Caucus to provide just treatment for all immigrants to our nation. While the legislative language is not yet available, our understanding is that the agreement would grant amnesty to all Nicaraguans who entered the country before December 1, 1995. In turn, Salvadorans and Guatemalans who entered the country before 1990 would be allowed to pursue permanent residency through suspension of deportation hearings under the rules in place before the enactment of the 1996 immigration law, except that judicial review would not be available for these decisions. The agreement would also codify the Board of Immigration Appeals' decision Matter of N-J-B-, which would apply the 1996 immigration law retroactively. Finally, the current employment visa category of "unskilled workers" would be eliminated entirely.

First, we do not support making the Salvadoran and Guatemalan cases unreviewable by a federal court. The Smith-Diaz-Balart agreement removes the ability for immigrants to have judicial review of an erroneous decision. This severely limits the rights of these immigrants to meaningful due process in the resolution of their immigration status.

Our second concern is that except for Salvadorans, Nicaraguans and Guatemalans specifically exempted, the agreement codifies the N-J-B- decision and makes it impossible for others who were already in the process of pursuing permanent resident status through suspension of deportation to pursue their claims. The Attorney General, as a matter of law and her good judgment, vacated the N-J-B- decision for further review, determining that "[legislation] should not be applied retroactively in the absence of a clear statutory directive." See Landergraf v. USI Film Products, 511 U.S. 244 (1994). The codification of N-J-B- threatens the immigration status, and could lead to the deportation, of at least 25,000 immigrants in our nation.

Third, we find it unacceptable that an entire category of legal immigrants is negotiated away as part of this deal. The Smith-Diaz-Balart agreement ties together the potential relief for Central Americans with the abolition of the unskilled worker visa category. Elimination of this long-standing visa category will affect approximately 10,000 immigrants annually from all over the

10/21/97 00:05  
The Honorable William J. Clinton  
October 15, 1997  
Page 2

world who come to the U.S. under this provision. At this time, there is a large backlog of approximately 21,000 immigrants who qualify for this category of visa, and who have been waiting patiently for years. The fate of these pending cases is uncertain under the Smith-Diaz-Balart proposal. The rug should not be pulled out from underneath those who have played by the rules and waited in line.

Fourth, there is simply no rational basis for the disparate treatment of these groups of Central American immigrants. From the beginning, we urged you, Mr. President, to take action in crafting a fair solution for the thousands of Central Americans caught in the pipeline when the 1996 immigration law changed the rules mid-stream. Our goal was to treat everyone who was already in the process of pursuing legal residency fairly. We applaud you for your leadership in fashioning bi-partisan legislation that would allow these immigrants to proceed with the rules under which they started.

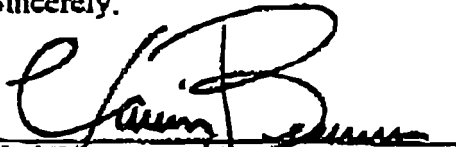
We support and will continue to advocate for the fair and equal treatment of all similarly situated immigrants. We find the agreement of Congressmen Smith and Diaz-Balart to grant amnesty to Nicaraguans in this country before December 1, 1995, to be a positive development that we should build upon. We find it promising that the House Republican Leadership is now supporting amnesty as a possible solution. However, if amnesty is to be made available to Nicaraguans, it should also be made available to Guatemalans and Salvadorans. The Guatemalans and Salvadorans find themselves in virtually identical circumstances as the Nicaraguans; we strongly support treating them equally.


Lastly, we think you would agree Mr. President that we should not grant favorable treatment to one group at the expense of others. Sadly, the Smith-Diaz-Balart agreement suggests that our nation is unable to be fair to one group of immigrants without being unfair to another. The elimination of the unskilled worker category affects 10,000 immigrants a year and the codification of N-I-B closes the door on those left out of the deal who have pending claims.

We hope to meet with you as soon as possible to discuss this critical situation. We appreciate your continued leadership and work on this very important issue. We know that your efforts on behalf of Central American immigrants, including your administration's offer to work with Congressman Diaz-Balart in a bipartisan manner on legislation that was drafted by your administration has been largely responsible for keeping hope alive for Central American immigrants.

Thank you again for your work. We look forward to your continued support for a final resolution that will help all Central Americans without causing other, additional harm to our nation's immigration policy.

Sincerely,

  
XAVIER BECERRA  
Chairman, Congressional Hispanic Caucus

  
LUIS GUTIERREZ  
Chairman, CHC Immigration and Citizenship  
Task Force

05/22/87 THE 18-48 FAX 202 450 8140 NSC DEMOCRACY 2002

NOTE FOR ELENA KAGAN/LEANNE SHIMABUKURO

FROM : ROB MALLEY

Subject: Administrative Steps on Suspension of Deportation

At the meeting today, the advocates strongly urged us to consider administrative, as opposed to legislative, steps. The most important ones they propose are:

1. That the AG reverse the *NJB* decision -- which held that the rule on accrual of time for suspension purposes applied retroactively. As you know, 5 of the 7 BIA judges on the *NJB* panel dissented from the majority opinion, and some federal courts also have disagreed with *NJB*.

I have raised this with DoJ and INS in the past, and have been told that OLC's view is that the advocates' position is not defensible. OLC has so advised the AG. Of course, the White House could request that this be reviewed, and could inform DoJ of its preferred policy outcome, but this is hardly likely to yield a different result.

2. That DoJ and INS interpret the cap provision to apply to the total number of adjustment granted per year, not the number of suspensions/cancellations of removal. Aliens who are granted suspension would be placed on a waiting list and permitted to remain here legally until a number is available for adjustment in a subsequent fiscal year.

My recollection on this one is that INS/GC thought this was not the preferred interpretation, albeit a defensible one. At the same time, DoJ/INS strongly believed that adopting that approach would be viewed on the Hill (i.e., by Smith) as an end-run around the cap. In litigation on this issue, DoJ has opposed the advocates' view.

The WH could ask Justice whether it the advocates' approach is defensible and, if it is, could request that it be adopted. However, without the other fixes that we would like (regarding *NJB* and the retroactive application of the hardship standards for ABC class members), this would be of limited value.

3. That DoJ interpret the ABC agreement to guarantee that suspension claims of class members would be adjudicated under the old rules. ABC class members would be subject to 7 year, more lenient standard, regardless of when they were put in proceedings.

I have not discussed this with DoJ or INS at all, and therefore do not know whether the settlement can be so read. However, DoJ has taken the firm position that the settlement only had to do with asylum, not with suspension -- which gives us some clue as to where they would come out.

# NATIONAL SECURITY COUNCIL

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**From: Rob Malley**

**To: Elena Kagan/Leanne Shimabukuro/S. Warnath**

**Agency: DPC**

**Fax Number: 62878/67028/55567**

**Date/Time:**

**No. of pages to follow: 5**

**Message: Yet another version -- this time as a  
discussion memo we might distribute. I have added  
a short section on administrative steps. Have a nice  
weekend.**

**Rob**

05/20/97 FAX 12:42 FAX 1202 400 9140 NSC DECLASSIFIED

## DISCUSSION MEMORANDUM

### **Background**

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) severely restricts the availability of suspension of deportation in three ways:

(1) it extends the length of time immigrants must have resided in the U.S. to be eligible for suspension from seven to ten years and requires a greater showing of hardship. These rules apply to persons placed in removal proceedings after April 1, 1997;

(2) it sets a 4,000 annual cap on the total number of suspensions that can be granted, regardless of the number of individuals found eligible for suspension. Previously, there was no ceiling;

(3) it requires immigrants to meet the 7 (now 10) year residency prong before being placed in removal proceedings. (Prior to the IIRIRA, time would accrue throughout the course of proceedings.) This "stop-time" rule applies retroactively to individuals who were placed in proceedings prior to April 1, 1997.

The combination of these changes will dramatically reduce the number of immigrants currently in the U.S. who will be eligible for suspension. During your trip to Central American, you stated that you would work with Congress to seek to alleviate the harshest consequences of the law.

### **Persons Affected by the Law**

While the suspension provisions of the IIRIRA will affect all nationalities, its consequences will be most acutely felt by the large number of Central Americans who entered the U.S. illegally in the mid/late 1980s in response to civil war and large-scale political persecution.

Nicaraguans: Approximately 40,000 Nicaraguans currently are in deportation proceedings. The Reagan Administration protected most of them from deportation during the pendency of a special DoJ review of their asylum applications. That program ended in June 1995 and the last available form of relief for Nicaraguans is to apply for suspension of deportation. Because of the way their cases were handled, Nicaraguans will be most severely affected by the retroactive application of the "stop-time" rule.

Guatemalans and Salvadorans: As a result of a settlement in a major class action lawsuit (known as ABC) that was reached in 1991, Salvadoran and Guatemalan asylum-seekers who came to the U.S. in the 1980s were protected from deportation until their

cc: Vice President  
Chief of Staff

asylum claims could be decided under special adjudication procedures. Congress and the Executive branch also protected Salvadorans from deportation through various programs that expired in 1994. The ABC class is comprised of roughly 190,000 Salvadorans and 50,000 Guatemalans.

Because INS only fully put in place its special asylum procedures on April 7, 1997, and because ABC members did not press for rapid asylum hearings (believing that they were accruing time for purposes of suspension), a majority of them still have pending asylum applications and have yet to seek suspension of deportation. As a result, and barring a legislative change, they will be subject to the IIRIRA's stricter rules. Others were placed in proceedings before the accrual of seven years, and therefore will be barred by the "stop-time" rule.

*In short, absent legislative fixes, approximately 280,000 Central Americans may eventually be subject to deportation.* This could lead to serious disruptions to families in the U.S., and threaten the stability of Central American nations that rely heavily on remittances from immigrants and whose labor markets could not absorb a large number of returnees.

#### **Congressional Sentiment**

The legal modifications appear to have been motivated by the feeling that suspension was granted too generously. In addition, some in Congress wanted to eliminate the possibility of an amnesty-like program for Central Americans. At the same time, many Members were not aware of the full impact of these changes, particularly on long-standing *de facto* residents such as the ABC members.

#### **Legislative Strategy Options**

##### Option 1: Lift Cap for Cases in Proceedings Prior to April 1.

*This option would affect between 19,000 to 38,000 individuals who would be granted suspension absent the cap.* However, it would not address the core concerns of the immigrant community or of Central American governments because it would not assist about 215,000 ABC members not in proceedings as of April 1 (and therefore affected by the cap and the new suspension rules), nor would it help the 40,000 Nicaraguans affected by retroactive application of the "stop-time" rule. This is the most modest option which DoJ already is discussing with Members of Congress. In the meantime, DoJ has put a hold until September 30 on deportations of people who would have qualified but for the cap.

Option 2: Lift Cap for Cases in Proceedings Prior to April 1 and Reverse Retroactive Application of the "Stop-Time" Rule.

*This option would benefit between 38,000 and 76,000 individuals -- essentially those helped by option 1 plus Nicaraguans and others affected by retroactive application of the "stop-time" rule. It could be justified as a fair transitional measure as the Administration moves toward full implementation of the law. However, it would be criticized from both sides: it would not help approximately 215,000 ABC class members not in proceedings as of April 1, and is likely to be strongly opposed by the principal congressional backers of the IIRIRA. Absent high-level White House efforts, proposing this could undermine our chances on option 1.*

Option 3: Lift Cap for ABC Members and Individuals in Proceedings Prior to April 1; Reverse Retroactive Application of the "Stop-Time" Rule for Cases in Proceedings Prior to April 1; and Apply pre-April 1 Suspension Standards to ABC Members.

*This is the broadest option and is expected to benefit roughly 119,000 individuals -- those covered by option 2 plus ABC members who would have qualified had there been no change in the law. This is the only option that addresses the bulk of the Central Americans' and immigrant community's concerns. Special treatment of ABC class members can be justified by their unique circumstances, which includes their long presence in the U.S. under temporary legal status and the fact that their asylum cases were delayed while INS put in place special asylum procedures -- as a result of which they are being barred from suspension because of legislation passed 6 years after the settlement agreement with DoJ. The Administration also could point out that these are transitional measures, and that full implementation of the immigration law will soon follow.*

However, this option is likely to generate strong opposition from Members of Congress who will liken it to an amnesty and question the Administration's resolve to seriously enforce the immigration law. Moreover, it might be criticized for singling out for special treatment Salvadorans and Guatemalans. Absent high-level White House intervention along the lines of the final days of debate on the 1996 bill, even proposing this option could jeopardize the chances of options 1 or 2.

**Related Issues**

Two additional issues need to be resolved based on your decision on the foregoing options:

Issue #1: Whether to temporarily stop deporting individuals who would qualify for suspension under the option you select.

This would avoid the deportation of immigrants who may otherwise qualify were we to reach agreement with Congress. At the same time, the hold would not prejudice the outcome of our negotiations with Congress as deportations could resume if and when necessary.

Issue #2: Whether to agree, in negotiations with the Congress, to offset any increase in the number of suspension grants with a reduction in legal immigration numbers.

While not our preferred option, some Members of Congress might condition their agreement on an offset. With roughly 900,000 legal immigrants admitted per year, even the most generous option (#3) would entail reducing that number by only slightly over 10% or, if spread over several years, a fraction thereof.

However, any such option could be seen to conflict with the Administration's principle of favoring legal immigrants over those without legal status. In addition, several Members -- including Senator Abraham -- strongly oppose an offset, which they fear might re-open debate on other legal immigration issues.

#### **Administrative Options**

Immigration advocates are pressing us to take administrative steps instead of/in addition to legislative ones.

#### Step #1: Temporarily Halt ABC Asylum Interviews

Pursuant to the settlement, INS began conducting new asylum interviews of ABC members in April 1997. Interviews are resulting in large numbers of denials and placement of aliens in deportation proceedings -- thereby cutting off the accrual of time for suspension/cancellation purposes. Advocates seek an immediate, temporary halt to interviews as the Administration considers its options, arguing that the INS waited 6 years to schedule the interviews, only to hold them when they will cause most harm to the aliens as a result of the new "stop time" rule. However, a halt will be viewed by some Members as inconsistent with INS' commitment to move forward with interviews.

#### Step #2: Re-interpret the Cap Provision

Advocates argue that the IIRIRA can reasonably be read to impose a 4,000 cap on the number of adjustments of status granted annually, not on the number of suspensions. They ask that aliens granted suspension be placed on a wait list and permitted to remain in the U.S. legally until a number is available for

adjustment of status in a subsequent fiscal year. While this arguably is a defensible interpretation of the law, it risks being viewed by some Members as an end-run around the cap.

Step #3: Reverse the decision applying the stop-time rule retroactively

Advocates are urging the Attorney General to reverse the Board of Immigration Appeals decision (known as *NJB*) holding that the stop-time rule applies retroactively. They argue that *NJB* was a 7-5 split decision by the Board and that a reversal would be legally justified. However, OLC has reviewed this issue and does not believe the advocates' interpretation is defensible.

259884



# NATIONAL BAR ASSOCIATION

Reply To:

Randy K. Jones  
President  
San Diego, CA

March 31, 1998

VIA FACSIMILE (202) 456-2883 AND REGULAR MAIL

Beverly McQueary Smith  
President-Elect  
Huntington, NY

President William Jefferson Clinton  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

Harold D. Pope  
Vice President  
Detroit, MI

Dear President Clinton:

Patricia M. Rosler  
Vice President  
Washington, DC

I write to you on behalf of the National Bar Association, the nation's oldest and largest association of African American lawyers and judges, to urge you to support legislation, namely S. 1504 and H.R. 3033, to redress the inequities that Haitian immigrants suffered when the Nicaraguan Adjustment and Central American Relief Act (NACARA), which did not include relief for Haitians, was adopted.

Ray L. Shackelford  
Vice President  
Houston, TX

Sharon E. Strickland  
Vice President  
Chicago, IL

The enactment of S. 1504 and H.R. 3033 are in the national interest and consistent with American traditions of equitable treatment and protection of the persecuted and oppressed. The Haitians refugees protected by S.1504 and H.R. 3033 are already in the United States, and many were admitted after the INS determined that they had demonstrated credible fear of persecution. These temporarily-protected Haitians are now in a legal limbo, similar to that in which Central Americans and others found themselves prior to passage of the NACARA last year. These bills would provide similar relief to that already provided for Nicaraguans and Cubans.

Andrea Pair Bryant  
Secretary  
Austin, TX

Joseph H. Hairston  
Treasurer  
Washington, DC

Rodney G. Moore  
General Counsel  
San Jose, CA

Robie A. Beatty  
Parliamentarian  
Washington, DC

John Crump  
Executive Director  
Washington, DC

The number of Haitians who would benefit from this legislation, according to INS estimates, is fewer than 40,000--a much smaller number than the number of Nicaraguans and Cubans who were granted relief under NACARA.

APR - 7 1998

Letter to President Clinton

Page 2

There is a significant precedent for providing to Haitians the relief which S. 1504 and H.R. 3033 accord. Congress enacted similar legislation in 1957 for Hungarians; in 1966 for Cubans; in 1977 for Indochinese; in 1992 for Chinese students; in 1996 for Poles and Hungarians; and in 1997 for Nicaraguans and Cubans.

The limited number of Haitians protected under S. 1504 and H.R. 3033 have contributed greatly to the communities in the United States in which they now live. Many have married, had children who are U.S. citizens, started businesses and served in the military. In Miami, New York, Boston, Chicago, and many other areas where Haitians reside, state and local officials from both parties support the enactment of S. 1504 and H.R. 3033.

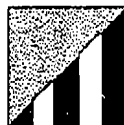
The National Bar Association urges you to support and fight for the passage of both bills. We thank you in advance for your continued commitment to equality for all.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy K. Jones", with a long horizontal line extending to the right.

Randy K. Jones  
President  
National Bar Association

258773



C.N.C.

## Cuban American National Council, Inc.

March 23, 1998

President of the United States  
The White House  
1600 Pennsylvania Ave.  
Washington, D.C. 20500

Dear President Bill Clinton:

The enactment of S. 1504 and H.R. 3033 is in the national interest and consistent with American traditions of equitable treatment and protection of the persecuted and oppressed. The Haitian refugees protected by S. 1504 and H.R. 3033 are already in the United States, and many were admitted after the INS determine that they had demonstrated credible fear of persecution. These temporarily-protected Haitians are now in a legal limbo, similar to that in which Central Americans and others found themselves in prior to passage of the NACARA last year. These bills would provide similar relief to that already provided for Nicaraguans and Cubans.

The number of Haitians who will benefit from this legislation, according to INS estimates, is fewer than 40,000—a much smaller number than the number of Nicaraguans and Cubans who were granted relief under NACARA.

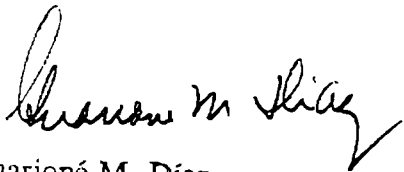
There is significant precedent for providing to Haitians the relief which S. 1504 and H.R. 3033 accord. Congress enacted similar legislation in 1957 for Hungarians, in 1966 for Cubans; and in 1977 for Indochinese; in 1992 for Chinese students; in 1996 for Poles and Hungarians; and in 1997 for Nicaraguans and Cubans.

MAR 31 1998

The limited number of Haitians protected under S. 1504 and H.R. 3033 have contributed greatly to the communities in the United States in which they now live. Many have married, had children who are U.S. citizens, started businesses and served in the military. In Miami, New York, Boston, Chicago,, and many other areas where Haitians reside, state and local officials from both parties support the enactment of S. 1504 and H.R. 3033.

We urge you to support and fight for the passage of both bills and we thank you in advance for your commitment to equality for all.

Sincerely,



Guarioné M. Díaz  
President

GMD:le

c:BClinton-Haitians

THE WHITE HOUSE  
WASHINGTON

Facsimile from Diane Ikemiyashiro  
Office of Presidential Letters and Messages

Voice: (202) 456-5519 FAX: (202) 456-5426

Number of Pages (including cover): 5

Date: 4.21.98

Time: 10:25 am

To: Julie Fernandez

Voice: 6.6558

FAX: 6.5581

incoming letter(s) from: \_\_\_\_\_

re: \_\_\_\_\_

for your review

per my e-mail or voice-mail message to you

per your request

Additional comments:

*Julie -  
I have 2 incoming letters here.  
Thanks for your help.  
-D*

Central Americans Legislation  
November 19, 1997

**Q: What is the Administration's view of the immigration legislation that addresses the situation of Central Americans?**

**A: The Administration is pleased that the Congress has acted on the President's initiative to ameliorate the harsh impact of the new immigration law as it relates to Central Americans. This makes good on the President's pledge when he went to Central America last spring. As the President made clear during that trip, the United States has a particular obligation to help these people — not only because they have now established deep roots in our communities — but also because sending them home at this time would very likely disrupt the important progress these countries have made towards peace, democracy, and economic reform.**

Nevertheless, we are concerned about several aspects of the bill passed by Congress:

*They* **First, we believe it <sup>me</sup> inappropriately provides different treatment for similarly situated persons. Central Americans <sup>covered by this bill all</sup> who came to the United States because of persecution or civil strife war in their countries and have established substantial ties here should be treated similarly. However, we believe that these differences can be minimized in the implementation process. The President has asked the Attorney General to consider the ameliorative purposes of the legislation and the history and circumstances of the people covered by it in that process.**

**Second, we are concerned that it fails to address the situation of Haitians, many of whom the Bush Administration brought to this country after the overthrow of President Aristide in 1991. Like persons from Central America, these persons were fleeing persecution and civil strife and have developed substantial ties to the U.S. We will pursue a legislative solution for these people in the next session of Congress.**

**Third, Congress should not have continued to permit the application of new, harsher immigration rules to other persons with pending cases. Changing the rules in the middle of the game is unfair, unnecessary, and contrary to our values. We intend to revisit this issue as at the earliest opportunity.**

Signing Statement on "Victims of Communism Relief Act"

I am pleased that this bill includes legislation that responds to my initiative, following my recent trip to Central America, to address the circumstances of Central Americans and others who were treated unfairly by last year's immigration bill. These provisions take account of the compelling reasons that caused these individuals to seek refuge in the United States, the important ties they have established here, and the fragile and difficult conditions that exist in their home countries.

Nevertheless, I am concerned about several aspects of this legislation. First, I believe that it treats similarly situated people differently. ~~This is wrong.~~ The violence and oppression that caused most of these people to seek the protection of the United States did not discriminate; nor should the relief that

~~we offer to them.~~ I ~~am~~ <sup>seek</sup> therefore ~~asking~~ <sup>ask</sup> the Attorney General and Department of Justice to ~~adopt~~ <sup>consider</sup> appropriate administrative mechanisms <sup>to</sup> ~~for ensuring,~~ <sup>e</sup> to the extent possible, that all

~~individuals covered by this legislation receive the same fair and generous consideration of their claims.~~ ~~as fully achieved of this leg.~~ ~~I am also directing~~ <sup>concerned</sup> about the plight of certain Haitians ~~who are not covered by this~~ <sup>who</sup> the Attorney General and my Administration to address

~~specifically the situation of Haitians, who are not covered by this bill.~~ <sup>Many</sup> Most Haitians were ~~also~~ forced to flee their country

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final order — 6-9/46

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Scott

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because of persecution and civil strife and they deserve the same treatment that this legislation makes possible for other

groups. We will seek passage of legislation providing relief to

Haitians in the next session of Congress. ~~and I ask the AG to~~ Finally, I ~~note my~~

~~displeasure with Congress' decision~~ to continue to permit the

~~retroactive~~ application of certain provisions of the new

immigration law. <sup>some</sup> Such an approach is inherently unfair and un-

American and we intend to revisit it as soon as we can.

Keep in mind the Special Exam.

NJB and cap

and will take appropriate admin action while we seek this leg. solution. ~~that is appropriate~~ ~~of this leg proposed.~~

believe that Congress should have prevented the application of the new, harsher laws not have continued to permit the application of new, harsher immigration rules to pending cases.

Changing the rules in the middle of the game is ~~both~~ unfair and unnecessary, and we intend to revisit this issue, as well.

We intend to revisit this issue, as well.

TO BE INSERTED IN DC APPROPRIATIONS SIGNING STATEMENT

During my trip to Central America in May, I pledged to address the circumstances of Central Americans who were treated unfairly by last year's immigration bill. In July, I transmitted to the Congress a legislative proposal that offered relief to these people. I am very pleased that this bill includes provisions that do just that.

more than one war (?)  
Most Central Americans who sought refuge in the United States did so because of the civil war and human rights abuses that plagued that region for many years. As I noted during my trip, I believe that the United States has a particular obligation to help these people, not only because they and their families have now established deep roots in our communities, but also because sending them home at this time would very likely disrupt the important progress these countries have made towards peace, democracy, and economic reform.

Nevertheless, I am concerned about several aspects of this legislation as passed by the Congress. First, I am troubled by the fact that it treats similarly situated people differently. The Central Americans covered by this bill fled similar violence and persecution; they have established similarly strong connections to the United States; and their home countries are all fledgling democracies in need of our assistance. The relief made available to these people should be consistent as well. female

ask ( I believe, however, that the differences in relief offered by the legislation can be minimized. I am asking the Attorney General to consider the history and circumstances of the people covered by this legislation and its ameliorative purposes in implementing its provisions.

✓ I am also concerned about the plight of certain Haitians who are not covered by this legislation. Many Haitians were also forced to flee their country because of persecution and civil strife and they deserve the same treatment that this legislation makes possible for other groups. We will seek passage of legislation providing relief to these Haitians early in the next session of Congress, and take appropriate administrative action while we pursue this solution.

Finally, I believe that Congress should not have continued to permit the application of new, harsher immigration rules to other persons with pending cases. Changing the rules in the middle of the game is unfair, unnecessary, and contrary to our values. We intend to revisit this issue at the earliest opportunity.

THE WHITE HOUSE  
WASHINGTON

Facsimile from Diane Ikemiyashiro  
Office of Presidential Letters and Messages

Voice: (202) 456-5519 FAX: (202) 456-5426

Number of Pages (including cover): 5

Date: 12.1.97

Time: 5:00 pm

To Julie Fernandez

Voice: \_\_\_\_\_

FAX: 6.5581

[ ] incoming letter(s) from: <sup>1)</sup> Bernard Cardinal Law <sup>2)</sup> Jose Medina  
re: <sup>3)</sup> Walter Johnson

[ ] for your review

[ ] per my e-mail or voice-mail message to you

[ ] per your request

Additional comments:

*Thanks for your help, Julie.*

*P.S. - My draft to Cardinal Law is a bit different. I made it more personal, but the essence of my original draft has not changed.*

CHARTERED  
IN  
1893

# SAN FRANCISCO LABOR COUNCIL, AFL-CIO



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email: 71563.3512@CompuServe.com

**SEND ALL COMMUNICATIONS TO:**

**SECRETARY-TREASURER**  
WALTER L. JOHNSON

**PRESIDENT**  
JOSIE MOONEY  
United Public Employees, 790

**VICE PRESIDENT**  
BOB BOILEAU  
Operating Engineers, 3

**EXECUTIVE COMMITTEE**  
JAMES AHERN  
Fire Fighters, 708

ANDY CIRKELIS  
Newspaper & Periodical Drivers, 921

F.X. CROWLEY  
Theatrical Stage Employees, 16

DOUG CUTHERBERTSON  
Northern California  
Newspaper Guild, 52

PEGGY GASH  
United Educators of San Francisco  
AFT Council

FRANZ GLEN  
I.B.E.W. 6

MICHAEL HARDEMAN  
Sign, Display & Allied Crafts, 510

DONNA LEVITI  
Carpenters, 22

RICHARD LEUNG  
Service Employees  
International Union, 57

GUNNAR LUNDEBERG  
Sailors' Union of the Pacific

LAWRENCE B. MARTIN  
Transport Workers Union of America  
California Conference

LARRY MAZZOLA  
Plumbers, 38

GEORGE MC CARTNEY  
S.I.U., Atlantic, Gulf &  
Inland Waters District

ROBERT MC DONNELL  
Laborers' International Union, 261

RUDY MERAZ  
Graphic Communications Union, 583

ROBERT MORALPS  
Sanitary Truck Drivers, 350

DAVID NOVOGRODSKY  
I.P.T.E., 21

FRED PECKER  
International Longshoremen's &  
Warehousemen's Union, 6

KATIE QUAN  
Pacific Northwest Dist.  
Council, I.L.G.W.U.

JOSEPH SHARPE  
United Food &  
Commercial Workers, 648

JOAN MARIE SHELLEY  
United Educators of San Francisco  
AFT Council

AL TRIGLIETRO  
S.F. Police Officers'  
Association, S.E.I.U. 911

PAUL VABACALLI  
United Public Employees, 790

HOWARD WALLACE  
Health Care Workers, 250

NANCY WOHLFORTH  
Office & Professional Employees, 3

SGT. AT ARMS  
LUPE ODEPZA  
Painters, 4

**TRUSTEES**  
VINCENT COSS  
Seafarers' International Union

JOHN OVERSTREET  
Mortuary Employees Union

CLAIRE ZVANSKI  
United Public Employees, 790

**PRESIDENT EMERITUS**  
DAVE DEWETTER

Via Fax 202-456-6212 & U.S. Mail

Nov 6, 1997

241983

The Honorable William Clinton  
President of the United States  
The White House  
1600 Pennsylvania Avenue...  
Washington, D.C. 20500

Dear President Clinton:

I have been following the ABC issue and of this date and time it appears a consensus is developing in Congress to grant immediate citizenship to Nicaraguans covered by the Bill and requiring Salvadorans and Guatemalans to begin the process of applying for permanent residence!

I believe this republican "solution" to give preference to some immigrants while delaying the process for others is politically motivated, patently unfair, and ideologically driven. This issue provides this country with an opportunity to organize with immigrant workers and community allies on a concrete proposal which improves the lives of immigrant workers. It also provides an opportunity to close a regretful chapter of military solutions which do not work and to begin a process of healing.

I would like to request your involvement to insure equity for all immigrants from Central America. This country was founded on principles of equity and fairness. Let's continue to apply those founding principles to this important issue!

Sincerely,

*Walt Johnson*

Walter L. Johnson  
Secretary-Treasurer

opeiu#3aflcio(11)

NOV 10 1997

UNITY IS STRENGTH!

242788

*Jose Medina*

Member  
Board of Supervisors  
City and County of San Francisco



JOSE MEDINA

November 13, 1997

President William J. Clinton  
The White House  
Washington, DC 20500

**Re: ABC Case and Equal Treatment of Immigrants**

Dear President Clinton:

I am writing to ask for your timely intervention in support of the 18,000 Haitians, and the 260,000 Salvadorans and Guatemalans struggling to make their personal residence in this country.

Since the U.S. is actively participating in the post-war reconstruction of the countries of El Salvador and Guatemala, it makes sense to offer these individuals the hope of asylum. Especially, since many of them have U.S. citizen children or have businesses and other ties to this country.

On Monday, November 17, 1997, the San Francisco Board of Supervisors will vote on a resolution asking you to issue an executive order to streamline the process under which Salvadoran, Guatemalan, and Haitian refugees apply for suspension of deportation. As the author of that resolution, I hope that your intervention might lead to an adjustment of their status to permanent residence.

In the San Francisco Bay Area, there are approximately 30,000 persons who fall under the ABC Class. Please intervene to enhance the "Victims of Communism Relief Act" passed by the U.S. Senate on November 10, 1997 to offer an asylum policy of equal treatment to all immigrants.

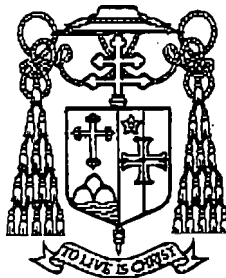
Sincerely,

*Jose Medina*  
Jose Medina

IM/im

NOV 17 1997

241526



**CARDINAL'S RESIDENCE**  
2101 COMMONWEALTH AVENUE  
BRIGHTON, MASSACHUSETTS 02135

617-782-2544

617-782-8358 (fax)

October 31, 1997

The Honorable William Jefferson Clinton  
President of the United States of America  
The White House  
Washington, D.C. 20500

Dear Mr. President:

The purpose of this letter is to urge you to prevent the deportation of more than 300,000 Central American nationals who fled to the U.S. in the 1980s in the face of persecution and violence in their homelands. Should these deportations occur, they would have a disastrous impact on not only these 300,000 individuals but also on their family members, many of whom are citizens or Lawful Permanent Residents of the United States. There could be as many as a million people living in this country who would face the severe hardship of separation from their families and/or forced return to countries they do not know or consider their home. The overwhelming majority are Catholic who are heavily concentrated in the states of California, New York, Florida, Washington D.C., Massachusetts and Texas.

Specifically, I write today to ask you to intervene in discussions underway on Capitol Hill regarding relief for Central American and Caribbean refugees: certain nationals of Guatemala, El Salvador, Nicaragua and Haiti. These are people who have lived in the United States for many years. Most have been given some form of immigration status and authorization to work here. The Immigration and Naturalization Service, however, has not yet acted on the majority of their claims for relief. In the intervening years, these immigrants have built lives here even while their legal status and lives have been clouded by uncertainty. I urge you to intervene now so we can obtain a solution that is fair to all similarly situated refugees and does not require the enactment of unacceptable provisions that would harm other groups of immigrants and refugees.

It is my understanding that a number of members of Congress have reached agreement on a proposed legislative solution that would address some of the concerns of some of the affected groups. The existence of this compromise is a step in the right direction. It represents a bipartisan recognition that Central American refugees in danger of deportation have built enormous equities here and deserve to have their cases adjudicated in a manner that is fair and just.

NOV 4

Letter to The Honorable William Jefferson Clinton

October 31, 1997

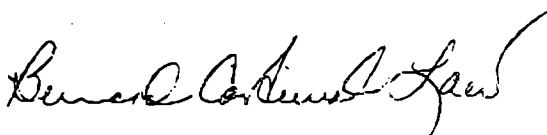
Page 2

While we await specific legislative language, I understand that this agreement would provide Nicaraguans with an opportunity for lawful permanent residency. Guatemalans and Salvadorans would be able to apply for suspension of deportation roughly under the rules that applied to them prior to 1996. Although I am very pleased that Congress and the Executive branch have entered into discussions to endeavor to resolve this injustice, I am troubled by a number of other aspects of the reported agreement. For instance, nationals from other nations -- including Haiti -- would have a much more difficult time applying for relief from deportation, and this would happen retroactively. Also, the number of immigrants who may benefit from "diversity" and "low skilled worker" visas each year would be reduced.

The Catholic Church in the U.S. has a long tradition of standing in solidarity with immigrants. This is our history. I am most grateful to those who seek to provide relief for Salvadoran, Guatemalan and Nicaraguan refugees here in our midst. I am concerned, however, by several aspects of the proposed legislation. First, the proposed legislation would not extend the same relief to similarly situated refugees such as those who fled the turmoil of Haiti. Second, the proposed legislation would retroactively change the rules for nationals of all other countries, making it impossible for many of them to obtain relief from deportation. Third, the proposed legislation would reduce the number of immigration visas in order to provide relief to a refugee-like population, an action that would harm many who have been waiting in line for visas and would create a dangerous precedent for the future treatment of refugee populations. I urge you to intervene with the interested parties in the House and the Senate to correct these inequities so that meaningful relief for Central American refugees and similarly situated populations can become enacted into law.

Asking God to bless you, I am

Sincerely yours in Christ,



Archbishop of Boston

# Los Angeles Times

## Relief Plan for Refugees Seen as Unfair to Some

Monday  
November 3  
1997

■ **Immigration:** GOP proposal to recognize 'victims of communism' could create political hierarchy, critics say.

By JODI WILGOREN  
TIMES STAFF WRITER

WASHINGTON—Republican congressional leaders have taken legislation intended to provide relief to Central American refugees and rewritten it to favor "victims of communism," angering some Democrats and immigrant advocates.

The new proposal would allow thousands of immigrants from various countries to stave off deportation without meeting strict guidelines passed last year, but critics say that it would create an unfair hierarchy tinged with politics in favoring certain ethnic groups.

At the top of the heap would be refugees from Nicaragua who fled when the United States was backing a brutal war against the leftist Sandinista regime. The new proposal would grant permanent residency to any Nicaraguan who entered the United States before December 1995 and who applies for residency by 2000.

Without providing similar amnesty, the deal would allow immigrants from Guatemala, Salvador, the former Soviet Union and Eastern Europe to apply for a suspension of deportation if they have been in the country for seven years—rather than 10—and can prove that leaving would be an "extreme hardship."

Please see REFUGEES, A4

## REFUGEES: Relief Plan

Continued from A1

Refugees from Haiti and other countries are not included in the deal, which would also slash in half the number of visas available to low-skilled workers, to 5,000 per year.

Critics plan to object loudly this week with a series of protests, news conferences and lobbying aimed at the White House.

"We shouldn't have to hurt some immigrants to help others, or rob Peter to pay Paul," said Frank Sharry of the National Immigration Forum. "We don't object if the congressional leadership wants to give more help to more immigrants. But it doesn't have to be done in a way that sacrifices fairness at the altar of political expediency."

Rep. Xavier Becerra (D-Los Angeles), chairman of the Congressional Hispanic Caucus, said Sunday that he would vigorously oppose the legislation because the benefits for about 500,000 Guatemalans and Salvadorans—most of whom live in Southern California—would be different than those for about 50,000 Nicaraguans concentrated in South Florida.

"It's porking, it's pork-barreling on immigration—which constituencies will help you the most," Becerra said. "If you're going to provide relief for those in one situation and someone else is similarly situated, provide the same relief. That's basic fairness."

The legislation, which was dubbed the "Victims of Communism Relief Act" after a meeting of Republicans last week, will probably be attached to a pending appropriations bill this week. Both houses must still vote on it.

This is the latest version of a Clinton administration plan intended to undo some provisions of last year's immigration reform legislation, which dealt retroactively with Nicaraguan, Salvadoran and Guatemalan refugees who had applied to have their deportations suspended.

Most of these immigrants never obtained legal status, in part because of bureaucratic backlogs.

The original bill, which treated members of all three groups equally, was opposed by Texas Republican Lamar Smith, who chairs the House subcommittee on immigration, and Sen. Phil Gramm. The new proposal garnered Smith's support but triggered opposition from Democrats, who complained about inequity.

Meanwhile, Sen. Spencer Abraham (R-Mich.), who chairs an immigration subcommittee,

# Los Angeles Times

Monday  
November 3  
1997

suggested that Eastern, European and Soviet refugees deserved treatment similar to the Central Americans; in the new deal, those who arrived by 1990 and applied for asylum by 1991 would be grandfathered in under the pre-1996 rules.

Others officials, including members of the Congressional Black Caucus, suggested that Haitians be granted relief; they are not included in the new deal, however, in part because most came less than seven years ago, so even the older standard would not help their situation.

While some Democrats, Catholic leaders and other immigration advocates denounced the deal, those who crafted it celebrated it for granting special recognition to the plight of the Nicaraguans, among other things.

"This is an historic breakthrough for justice for immigrants. It is reflective of the greatest American tradition of generosity," Rep. Lincoln Diaz-Balart (R-Fla.) said in a written statement.

"This . . . is a significant victory for everyone who believes that America should remain a nation of immigrants and refuge for those fleeing war and persecution," agreed Abraham.

Rep. Heena Ros-Lehtinen (R-Fla.), a Cuban refugee, acknowledged that the plan was "not perfect" but called it "a step in the right direction because it recognizes the special place that Nicaraguans deserve."

Among Republicans, there is a consensus to aid the Nicaraguans. But there is less support for the much larger number of Guatemalans and Salvadorans who left when the United States was providing military and political aid to help their countries fight off insurgencies by left-wing guerrillas.

"For us, it's like, OK, because we were fighting against the United States intervention in Central America, this is a kind of payback," said Carlos Ardon of the Salvadoran Assn. of Los Angeles, a legal resident who has been in the U.S. since 1982. "It sends a message like, 'You didn't support the administration back in the '80s, now this is what you're getting.'"

John McCalla of the New York-based National Coalition for Haitian Rights agreed that it is unfair to play favorites for those who fled communism.

"We're in favor of people being equally treated. We don't think it's only people who were victims of Communist regimes who were victims of persecution and abuse," McCalla said. "If the United States is going to be doing right by the Nicaraguans, they should be doing right by the Haitians. We're going to cry hell and scream our head off. We're not going to let this die."

# Congress

If you really want general workers a go should have waited to print Richard M. commentary, "Esc premiums."

What's truly frigid Mr. Minter would believe that so-called "non-directed" preference networks are an means for the Federal Health Benefit Plan "savings" for this touted as accomplishable goal, these typ

WASHINGTON TIMES 10/28/97

# 'Discordant'

Your Oct. 17 E-mail "Dueling surveys" are supposed to be results from two of American Jews. A Forum (IPF) poll support for the Israel peace process and facilitation. On the more recent Middle East (MEQ) poll shows from a Palestinian of Palestinian Authority Yasser Arafat.

In fact, the results are easily reconcilably complementary, tions have almost focuses. Indeed, and three shared similar margins, both polls rate Pr and Israeli Prime Minister Netanyahu have highly unfav Mr. Arafat.

The IPF poll hardly on the "far left" by MEQ editor Dan respondents constitute representative American Jewish population answers reveal a deeply concerned security.

The vast majority

# The Pentagon

The latest revelation recovery of document excerpts of Gulf War and the resultant information should be enough."

Since I began in issue in 1993 for the Pentagon records were lost, known to exist did pertinent historical simultaneous locations. The chairman o

# Immigration scapegoats

It is an encouraging sight to see members of Congress willing to face up to an unintended legislative mistake and work to ensure that fairness is restored. That's what appears to be happening in the case of the 300,000 Latin American refugees who have been in this country since the 1980s and who found themselves squeezed by certain provisions of the 1996 Immigration Reform Act. These are people who have not only been through some very difficult times, as civil war ravaged their countries, but also people the vast majority of whom have become productive members of this society.

An arrangement brokered by House Speaker Newt Gingrich is now in the works to allow the refugees what they have always asked for — not permission to stay, but simply a hearing before an immigration judge who will decide who gets to stay and who has to leave. While the 1986 Immigration act allowed them temporary refugee status and the prospect of a hearing after seven years of good behavior, the law passed last year capped the number of cases at 4,000 each year and upped the number of years to 10. Problem: Once the refugees had submitted their paperwork and their application process had been started, they stopped "accumulating" years (as far as the Immigration and Naturalization Service was concerned, at least). This meant that many got trapped at seven years, Kafkaesquely unable to reach the now-needed 10. As has been pointed out in editorials in this space, that is absolutely not the way the American system is meant to work.

Some hard work by Rep. Lincoln Diaz-Balart in the House and Sens. Connie Mack and Spencer Abraham appears to have paid off. Rep. Lamar Smith, who chairs the subcommittee responsible for the 1996 legislation, has agreed to a solution as far as the Central Americans are concerned. While Mr. Smith rejects any notion that there is a question of retroactivity involved here, he has offered to give Nicaraguans who arrived in the United States before Dec. 1, 1995 green cards. Salvadoreans and Guatemalans will get a hearing according to the 1986 rules.

That's the good news. The bad news is Mr. Smith's price is some 30,000 other people caught in much the same bind but who do not have the same political clout and high profile as the Central Americans. These are people from Eastern Europe, Ireland, Cuba, Haiti, Mexico and elsewhere. And in addition, he's demanding the elimination of a category of legal immigrants, so-called "other workers," meaning about 10,000 nannies, gardeners and other unskilled, but certainly highly useful, laborers.

One would hope that the congressional leadership, while welcoming Mr. Smith's change of heart on the Central Americans, would stand up for all people unfairly caught by a heedless change in rules in the middle of the game. Let new cases be tried according to the new and tougher rules. And let those who have put their trust in the fairness of the American system know that our political leaders take that faith seriously.

# The Indonesian gardener's tale

Despite being denied access to the notorious videotapes of White House fund-raising coffees for nearly a year, Attorney General Janet Reno, upon finally viewing them earlier this month, immediately gave the White House a free pass, claiming to have seen nothing that would cause her to seek the appointment of an independent counsel. In the light of blockbuster revelations made by the Los Angeles Times this week — where else but from a newspaper would Miss Reno learn of any blockbuster development? — she ought to be compelled to reconsider her opinion of the information presented by the tapes.

Probably the most intriguing exchange revealed by the videotapes was the greeting given to President Clinton by a shy "Indonesian gardener," Arief Wiriadinata. "James Riady sent me," Mr. Wiriadinata told the president at a Democratic National Committee (DNC)-sponsored coffee on Dec. 15, 1995. Apart from why an alien from Indonesia living in modest circumstances in northern Virginia would be invited to a DNC-organized White House coffee, the immediate question is: Why would James Riady, the scion of a multibillion-dollar Indonesian conglomerate — the Lippo Group — that has extensive interests in China and close business relationships with its government, want the president to know that he had this "Indo an gardener"?

According to an interview last June from Indonesia with Senate investigators, details of which were obtained by the Los Angeles Times, Mr. Wiriadinata said the initial donations were sought by John Huang, the former senior U.S. Lippo official who at the time was employed at the Commerce Department. The DNC has maintained that the initial donations — two \$15,000 checks given on Nov. 8, 1995, three days, it turns out, after Mr. Ning wired the funds from Indonesia — were solicited by Mr. Huang's wife, Jane.

As a Commerce official at the time, it would have been illegal for Mr. Huang to have solicited the contributions. Mr. Wiriadinata further maintained in his interview that Mr. Huang, in exchange for the donations to the DNC, had promised to arrange meetings between Mr. Wiriadinata and wealthy Asian-American businessmen. Mr. Wiriadinata, who chafes at his depiction as "an Indonesian gardener," owned an Indonesia-based computer company that he had hoped to expand in the United States. That was why he agreed to be the DNC's benefactor, he told investigators. For more than a year, the DNC has maintained that the \$450,000 largess, more than two-thirds of which was sent to the DNC after the Wiriadinatas had returned to Indonesia, was attributed to the appreciation the Wiriadinatas expressed in response to a get-well card that Mr.

Central American suspension legislation  
October 10, 1997

Q: What are the Administration's views on the bills that have been recently introduced in the House and Senate to address the situation of Central Americans who have been in the United States for substantial periods of time?

A: The Administration welcomes the efforts by the Congress to respond to the President's initiative to address the special circumstances of Central Americans and others who have resided in the United States for long periods of time. We have not yet received the statutory language relating to both proposals and thus do not have a position on them at this time. We will be carefully reviewing the details of these proposals as soon as we receive them and will work closely with the Congress to achieve a result that is consistent with the President's original objectives. These are (1) to bring greater fairness to the consideration of cases of Central Americans and others who have resided in the United States for long periods of time; (2) to respond to the still fragile situations of those Central American countries that have only recently emerged from civil war.

Record Type: Record

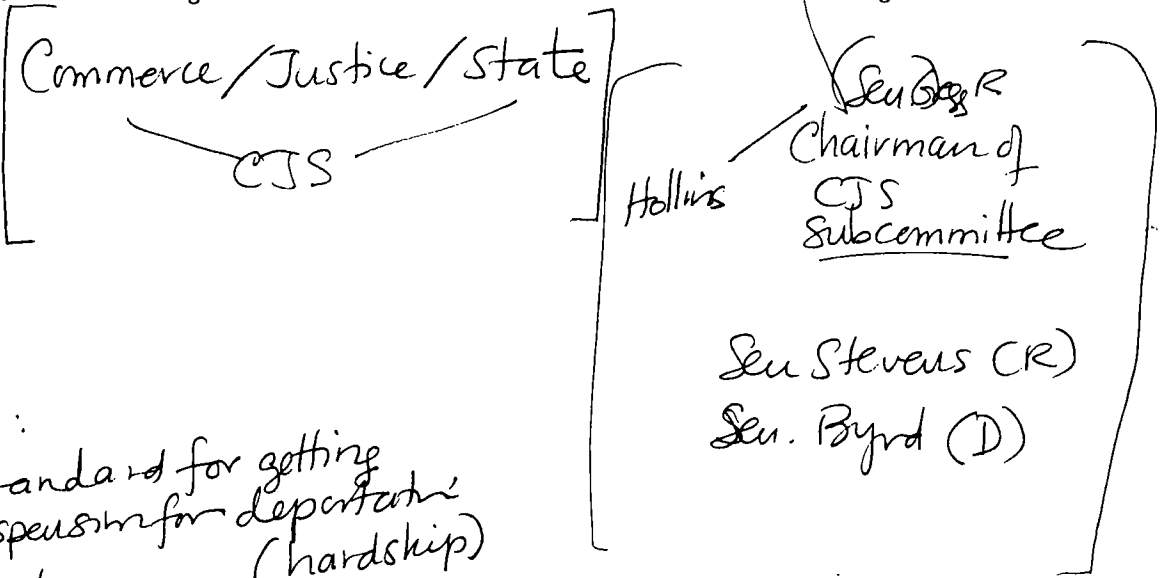
To: Elena Kagan/OPD/EOP  
 cc: Jose Cerda III/OPD/EOP, Julie A. Fernandes/OPD/EOP  
 Subject: immigration legislative update

*[Handwritten signature]*

As of this evening:

**Central Americans**-- Looks like this is back on DC Approps, which the Senate has yet to pass. Kennedy is holding the Central Americans piece to add Haitians and NJB. He is also trying to get a relaxed suspension standard (from "extreme hardship" to "hardship") for the ABC class, but will probably pull back on this. Peter is hoping yesterday's letter will give us some leverage with the CBC and Hispanic Caucus when the House votes on the DC bill. Timing on DC still unclear.

**245(i)**-- The CJS conference is meeting tomorrow at 9:00am. The Senate (Gregg) is supposedly still holding firm on a permanent extension. Despite the strong House vote on motion to instruct last week, House conferees will be looking to compromise through some sort of grandfather provision. The current thinking is that a limited clean extension (2-5 years) of 245(i) is preferable to a grandfathering provision-- which we might be able to get after the extension expires. INS has been working with Abraham to get numbers on how much revenue would be lost through grandfathering.



1996 INS law:  
 Sets high standard for getting suspension for departure (hardship)  
 Cap @ 4000/year.

One way to show hardships is # of years.

NJB - BIA decision says that some kinds of time don't count - stops clock once certain proceedings begin.

⊕ applying retroactively

AG vacated NJB to review. Hasn't reversed it.

Interest in codifying that provision (NTB)  
to ~~Central Americans~~ non-Central Americans.  
Applying it to everyone.

We want silence. Then AG can reverse it.

We are fighting for future application  
only ~~of only~~. No one subject to it  
retroactively.

Suntum, Margaret

Want to be on  
list to receive  
press releases.

245(i):

Allows people who are here (illegally?) w/  
~~status~~ (filed) petitions for citizenship.  
Allows them to stay while petitions are  
pending (pay \$1,000 penalty).

(Fight over whether it can be permanently  
extended.

Senate extended it permanently  
House was silent. (passed approp. bill)  
so provision was silent.

~~status~~  
~~status~~

House had a vote — motion to instruct  
(to remove provision)

✳️ → Did not pass.

House conferees are trying to deal

Grandfather certain people  
or limit it.

Sen. wants a permanent extension.

House  
proposal

Visa petitions ————— 245(i)

[Last year, created a sunset provision  
on 245(i).



SHIMABUKUR\_L @ A1  
11/05/97 07:35:00 PM

Record Type: Record

To: Jose Cerda III, Julie A. Fernandes, Leanne A. Shimabukuro, WARNATH\_S @ A1@CD@LNGTWY  
cc:  
Subject: NORTHERN BORDER SENATORS FIGHTING IMMIGRATION PROVISION

Date: 11/05/97 Time: 17:39  
BNorthern border senators fighting immigration provision

WASHINGTON (AP) Lawmakers representing states bordering Canada voiced alarm Wednesday over an immigration provision they fear could lead to a border traffic nightmare.

They said last year's immigration reform law will force the Immigration and Naturalization Service to start checking everyone entering and leaving the United States next fall.

That would stop the current free flow of traffic between the United States and Canada at numerous points, including the busy Ambassador Bridge that carries 30,000 cars between Detroit and Windsor, Ontario, each day.

"This is not Checkpoint Charlie. This is the largest unguarded frontier in the world," Sen. Patrick Leahy, D-Vt., said at Senate Judiciary immigration subcommittee hearing.

"It is generating waves of controversy at our borders," said Sen. Spencer Abraham, R-Mich., the subcommittee chairman.

Abraham introduced a bill Tuesday that would block the provision of the 1996 immigration law that directs the INS to start keeping records in October 1998 of "aliens" departing and arriving in the United States. The idea was to identify foreigners who are overstaying their visas.

Of the estimated 5 million people living here illegally, roughly 40 percent have overstayed their visas.

The INS says the provision means they must track everyone. Northern senators say that will create a traffic nightmare, interfering with high-volume commerce between the nations and damaging relations.

"This can only be interpreted by our friends in Canada as being mean-spirited," said Sen. Alfonse D'Amato, R-N.Y.

Abraham's bill would free the INS from the congressional mandate to check all foreigners at northern and southern border crossing points.

But including the Mexican border has angered some Southwestern senators in states with high populations of illegal immigrants. Last year, the INS apprehended 1.5 million people trying to enter the country illegally, and only 40,000 of those were caught on the northern border.

"I will ... fight like a tiger anything that will weaken or lengthen (the) time for us to get this situation under control," said Sen. Dianne Feinstein, D-Calif., a member of the subcommittee.

Feinstein said she was concerned about drug runners and the costs to her state of providing services for an increasing population of illegal immigrants.

The Clinton administration wants the immigration provision eliminated for land and sea borders and instead wants a study examining the feasibility of implementing the system.

Michael J. Jrinyak, deputy assistant commissioner for inspections at the INS, told the Senate panel that would not delay the implementation of the system at airports. ``People expect to present documents and wait on departure at airports, but not at the land borders.''

Jrinyak said if the INS is allowed to conduct pilot programs, it could find out if concerns about border delays and the need for costly border tracking systems ``are valid.''

APNP-11-05-97 1742EST

As of June 23, 1997 (3:19 PM)

**Maria Echaveste**

June 23, 1997

Jose,

Where are we on this?

Elena and NSC held a meeting on this a few weeks ago with outside groups. She was going to work with NSC and pull together a follow-up meeting.

## MEMORANDUM

Date: June 18, 1997  
To: Rahm Emanuel  
Fr: Howard Berman  
Re: DEPORTATION OF CENTRAL AMERICANS

---

Since the President's trip to Central America, a few things have occurred that would allow the President, with sufficient bipartisan support, to follow through on his commitment to find a way to deal with the quasi-legal groups from El Salvador, Guatemala and Nicaragua.

Immigrants from each of these groups have been in the United States since the civil wars of the 1980s and have been placed in varying degrees of temporary legal status over the years. As members of the class action *American Baptist Churches v. Thornburgh* (ABC), about 250,000 Salvadorans and Guatemalans have all been here at least since 1990, when the ABC case was settled. At first, they were granted Temporary Protected Status, but when that expired, both President Bush and President Clinton chose to extend their time in the United States by extending the Deferred Enforced Departure policy.

Nicaraguans were welcomed to the U.S. by the Reagan and Bush Administrations during the civil war in Nicaragua. Roughly 40,000 of the Nicaraguans who came to the U.S. have yet to gain permanent residency. Under the Nicaraguan Review Program, Nicaraguans were invited to seek suspension of deportation.

Members of both groups have established roots in their communities, have legally worked and paid taxes for many years, and have had native-born U.S. citizen children. Most are technically in deportation proceedings and would qualify for suspension of deportation as it existed under the old law. The new law changes the eligibility requirements for relief — now called "cancellation of removal."

Although Lamar Smith made assurances to his Republican colleagues on the Conference Committee to the contrary, the INS implementation of the new law retroactively targets these two populations for deportation. Under the old law, a non-permanent resident alien would be eligible for discretionary relief from deportation known as "suspension of deportation" if they met a certain set of requirements: 1) continuous physical presence for 7 years; 2) good moral character; 3) deportation would cause extreme hardship to the alien, or to their spouse, parent or child who is a green-card holder, or a citizen.

The new provision changed the requirements to ten years physical presence instead of seven, and "exceptional and extremely unusual hardship" to the family but not the alien. Most significantly, however, the new law changed the way "continuous physical presence" is tolled and the INS has applied this new tolling retroactively. It is the retroactive application of the new tolling provision that has snatched relief from deportation away from the Central Americans.

The law states that "continuous physical presence" ends when the alien is served with a notice to appear before the INS. The INS has applied this to anyone who has been served with a notice before, on or after enactment of the new law.

The effect is that even though these Central American groups have been in the country for more than seven years, most of them have been in close contact with the INS since their arrival and were issued a notice by the INS called an "Order to Show Cause" before they accrued 7 years in the United States. This makes them ineligible for suspension of deportation. On April 7, 1997, the INS began to review the asylum claims of ABC class members. Because of the changed circumstances in their home countries, most of the members of the class will not be granted asylum. Unless they are determined eligible for "suspension of deportation," most of the members of the class and their families -- which may include U.S. citizens -- will be forced to return to Central America.

While the INS and the Justice Department claim that they are merely implementing the provision according to the letter of the law, there are legitimate challenges to their interpretation. This issue has been playing itself out in the courts. In February, the Board of Immigration Appeals (BIA) narrowly ruled to uphold the INS' interpretation of the law by a vote of 7-5 in a case called "N-J-B." The dissenting judges argued that the INS interpretation and retroactive application of the new tolling provision was contrary to legislative intent. In fact, the dissenting opinion quotes Congressman Smith as saying that it "was the clear intent of the conferees that, as a general matter, the full package of changes made by this part of title III [a] fact those cases filed in court after the enactment of the new law, leaving cases already pending before the courts to continue under existing law." (142 Congressional Record H12293-01, Oct. 4, 1996).

Unfortunately, there is not much legislative history behind the provision, given the "behind-closed-doors" process. Still, the INS argues that because the entire Act was "enforcement-minded" that it should take the toughest possible interpretation.

On May 14, 1997, a federal district court judge in Miami, Judge Lawrence King, placed a temporary restraining order on deportations of Central Americans and others who were affected by the retroactive change in tolling. The plaintiffs in the case were basically asking the Judge to overturn N-J-B. The INS lawyers in the case challenged the court's ability to hear deportation cases, claiming that the new law barred the court from jurisdiction. In his order, Judge King did not discuss the merits of N-J-B, but focused on the jurisdictional issues and denied the INS' motion to dismiss on those claims. The INS

has appealed the order to the 11th Circuit in Atlanta, claiming that Judge King's court has no jurisdiction. The 11th Circuit is awaiting Judge King's ruling.

The TRO expired June 12, 1997, and Judge King has postponed a final ruling on jurisdiction and on N-J-B while he pores over the thousands of pages of INS testimony. Preliminary indications are that he will rule in favor of overturning N-J-B. INS attorneys have indicated that they will also appeal that decision to the 11th Circuit Court.

On Saturday, June 7, Newt Gingrich was in Miami at a meeting with Rep. Diaz-Balart, Rep. Ros-Lehtinen, Jeb Bush, and others where he was reported to have said that he opposed "enforcing new laws retroactively on immigrants already in the United States." As quoted by Reuters, Gingrich said "it's one thing to say about the future, let's set ground rules we all understand."

Congressman Smith has on multiple times assured his colleagues that the new law is not retroactive. The latest being in a "Dear Colleague" issued last week in which he claimed that "aliens who were in proceedings before the April 1, 1997, effective date of the new Act will, for the most part, have their cases heard under the rules applicable before April 1." This is not what INS has done.

Given the recent statements and events it seems like the President has enough bipartisan support to bring us closer to finding a solution to the foreign policy and humanitarian concerns surrounding deportations of these Central American groups.

The first step would be to keep the INS from initiating deportations until Judge King makes his ruling. The second, and most important step would be for the INS to let Judge King's ruling to overturn N-J-B stand. The INS should not appeal to the 11th Circuit Court. An alternative is for the Attorney General to overrule the BIA's N-J-B decision, which she has the authority to do. Finally, because there are several options currently being considered by both the Administration and Congress as to how to deal with this situation, the INS should stop adjudicating the ABC class asylum claims until the issue is settled.

I hope that you understand my deep concern in this issue, and that you will recognize that the events of the past few days have opened up a limited window of opportunity to allow the President to take administrative action to find a just and permanent solution to this problem which has serious foreign policy implications.

CC: MARIA ECHAUSTIC

OFFICE OF THE DEPUTY ATTORNEY GENERAL  
U.S. DEPARTMENT OF JUSTICE  
WASHINGTON, D.C.

FACSIMILE TRANSMISSION SHEET

TO:

Uleann S  
Rob Malley

Fax #:

( ) \_\_\_\_\_ Voice #: ( ) \_\_\_\_\_

FROM:

Gerri L. Ratliff, Counsel to the Deputy Attorney General  
Office of the Deputy Attorney General Room #4215  
U.S. Department of Justice, Main Justice Building  
Washington, D.C. 20530

FAX #: (202) 514-9077 Voice #: (202) 514 - 3392

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SUSPENSION

Special

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put in John Tashiro's edits  
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###

**Introduction**

Many Salvadorans, Guatemalans, and Nicaraguans who fled their countries during the mid to late 1980s were afforded some type of temporary status in the United States for many years. In all cases the status was, by its terms, temporary and not intended to guarantee or lead to permanent residency, nor was it intended to guarantee that those covered would remain in the United States long enough to meet the seven-year residency requirement for suspension of deportation. However, as a practical matter many of these people established strong ties to the United States during their residency here and held the expectation that they might qualify to apply for suspension of deportation before their deportation was enforced.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (hereinafter IIRIRA) severely restricts the availability of suspension of deportation by extending the length of time required in the United States, increasing the hardship requirement, and placing a limit on the number of cases that can be granted each year. These changes, as discussed below, render the option of suspension of deportation unavailable for most of the Guatemalans, Salvadorans, and Nicaraguans who came to the United States in the 1980s -- a matter which is of major concern to countries in the region. In his recent trip, the President pledged to consult with Congress on this issue. Below is a brief history of these cases and options for Congressional action.

**Background**

During the mid to late 1980s, in response to civil war and wide-spread political persecution in Central America, large numbers of civilians from Guatemala, El Salvador and Nicaragua fled to the United States, most entering illegally at the Southwest border. Many of these individuals were *bona fide* refugees, others fled general conditions of civil unrest or came for economic reasons. Some were apprehended by the Immigration and Naturalization Service (INS); some who were not apprehended came forward and affirmatively applied for asylum; and others have resided unidentified in the United States. The cases of those known to the INS were handled through a variety of means. In addition to the Salvadorans, Guatemalans, and Nicaraguans who have resided in the United States under a form of temporary status, there are many others from these countries residing in the United States who were never under such status. These include illegal residents who were not apprehended and never came forward to identify themselves, and many who entered the United States illegally during the 1990s.

**Nicaraguans**

The Nicaraguans' affirmative asylum claims were largely heard and resolved by the INS. Those denied asylum were placed in deportation proceedings before the Executive Office for Immigration Review (EOIR), where most renewed their claims for asylum. Those Nicaraguans apprehended by the INS were also placed in proceedings, and many of those also filed asylum claims with EOIR. In July 1987, the Nicaraguan Review Program was established under Attorney General Meese. Under this program, approximately 30,000 Nicaraguans in proceedings (or who already had a deportation order) were entitled to a special Department of Justice (DOJ) review of their asylum application, if it had been denied, prior to being deported. During this review period, which lasted until June 1995, most of the Nicaraguans in proceedings were

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protected from deportation and were entitled to work authorization. When the program ended in June 1995, as a special transitional measure, Nicaraguans with a final order of deportation were informed that they could continue their work authorization if they filed with EOIR a *prima facie* valid motion to reopen their proceedings to apply for suspension of deportation. They would meet this test if they had seven years physical presence in the United States and had no serious criminal records.

As of April 1, 1997, approximately 38,000 Nicaraguans were in deportation or exclusion proceedings. This includes 16,400 Nicaraguans who had final orders of deportation as of July 1, 1996. It is not known how many of these Nicaraguans were those who fled their country in the mid to late 1980s.

**Guatemalans and Salvadorans**

There was considerable controversy regarding the treatment and status of Salvadorans and Guatemalans during the 1980s. A major class action law suit, *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (*ABC*), was filed against the United States government in 1985, alleging discriminatory treatment of Guatemalans and Salvadorans in asylum adjudication, both by the INS and by EOIR. The DOJ settled the case in 1991, entitling class members to special asylum adjudication procedures which were only fully put into place as of April 7, 1997, for the bulk of the class. Pursuant to the settlement, the vast majority of *ABC* class members have been protected from deportation until their asylum claims are decided, and they are entitled to apply for work authorization. The *ABC* class is specifically defined by nationality and date of entry to the United States: Guatemalans who entered on before October 1, 1990, and Salvadorans who entered on or before September 19, 1990.

Estimated *ABC* class: 240,000, includes:

190,000 Salvadorans

50,000 Guatemalans

(The class includes 25,000 class members in proceedings prior to April 1, 1997; nationality unknown)

Another important note is that as an exceptional act of Congress, as part of the 1990 Immigration Act, Congress authorized Temporary Protected Status (TPS) for Salvadorans then in the United States (approximately 190,000 registered), temporarily suspending their return to their war torn country. TPS was in effect through June 30, 1992, and through the vehicle of Deferred Enforced Departure, protection was extended by both the Bush and Clinton administrations until December 31, 1994. Virtually all Salvadorans protected under TPS were also *ABC* class members.

*ABC* class members have had asylum applications pending in the asylum backlog for many years, pending the termination of TPS and DED for Salvadorans and while the Administration's priority was reforming the asylum program and handling recently filed cases first. It is expected that only a small percentage of the *ABC* class members will now be eligible for asylum because of changes in their countries. Until recent changes in the Immigration and Nationality Act, many expected that they might have the chance to apply for suspension of deportation under pre-

IIRIRA law. This was not part of the settlement agreement, but the expectation arose from the suspension provisions of the pre-IIRIRA Immigration and Nationality Act.

### Changes in the New Law and Congressional Intent

The recent changes to the immigration law dramatically restricted the discretionary relief of suspension of deportation, now called cancellation of removal. The Conference Committee's report on the IIRIRA stated that these changes were made because suspension of deportation was being applied too widely and not as an extraordinary remedy in extreme cases, as it was originally intended. Immigration Judges had been granting suspension at a 50% rate, then the rate went to about 75% after the decision by the Board of Immigration Appeals (BIA) in *Matter of O-J-O*, Int. Dec. 3280 (BIA 1996).

However, it is likely that many in Congress may not have been aware of the consequences of some of the changes to the suspension provisions and the impact they would have on long-standing *de facto* residents. In particular, many may not have been aware of the provisions which severely limited any transitional measures for the ABC class and those already in proceedings before the April 1, 1997, effective date of the IIRIRA. For others in Congress, even the extreme changes were deliberate, specifically aimed at eliminating the possibility of an amnesty-like program for Central Americans who came illegally to the United States in the 1980s, and at further restricting relief for illegal immigrants. For these members of Congress, there will be strong resistance to any modification of the new laws.

#### **1. Raised Standard for Hardship and Length of Time in the United States**

The new cancellation of removal provisions, which apply only to people placed in proceedings after April 1, 1997, limit relief to individuals who have been physically present in the United States for a period of ten, as opposed to seven, years. The hardship standard was raised so that the individual must now demonstrate that removal would result in "exceptional and extremely unusual hardship," as opposed to extreme hardship. Further, this hardship must be to the individual's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence; a showing of extreme hardship to the individual himself or herself no longer suffices.

#### **2. Created a Cap on the Number who Can Be Granted Relief**

Congress also sought to limit the number of individuals who could be granted either suspension of deportation or cancellation of removal, by limiting to 4,000 the number of cases that may be approved per year. Previously, there was no limit on the number of individuals who could be granted suspension of deportation. The cap was adopted as a compromise to avoid eliminating suspension altogether. It was set considerably higher than available figures (2,500 grants in FY 1994), but the members trying to preserve suspension did not attend to the likely effect of the ABC caseload and other factors causing a steady upward trend (3,750 grants in FY 95, and 7,500 in FY 96).

By mid-February 1997, the 4,000 cap for fiscal year 1997 was nearly exhausted. In light of the need to address the transitional issues raised by the new cap, the Attorney General has decided not to deport before September 30, 1997, those who would qualify for suspension of deportation but for the cap, pending negotiations with Congress. In this context, the INS and the DOJ have initiated discussions on the Hill concerning possible legislation exempting from the cap transitional cases (those in proceedings prior to April 1, 1997). The DOJ will soon issue a regulation implementing the cap by means of a lottery among the pool of persons who would otherwise have received suspension. Winners will receive lawful permanent resident status; those not selected will receive a deportation order.

### 3. **Established Rule to Stop Time in the United States from Accruing after Initiation of Proceedings**

Formerly, individuals could continue to accrue time toward the seven years throughout the course of proceedings and appeals. To eliminate the incentive for prolonging immigration proceedings, Congress created a rule providing that the time necessary for purposes of cancellation of removal must have accrued before initiation of removal proceedings. The Administration supported this rule for prospective application, but the conference committee bill, in a poorly drafted provision, made the stop-time rule retroactive. The poor drafting has led to continuing litigation, but the BIA ruled that it is fully retroactive. *Matter of N-J-B*, Int. Dec. 3309 (BIA 1997). The retroactive application of the stop-time rule has significant consequences for the approximately 38,000 Nicaraguans who, prior to April 1, 1997, were placed in proceedings or had a final order of deportation issued and the 25,000 ABC class members who were placed in proceedings prior to April 1, 1997.

### Effect of the New Law and Options for Congressional Action

Although suspension of deportation was always a discretionary form of relief, and by no means a guarantee for any individual, the new standards combined with the cap and the retroactive application of the stop-time rule dramatically limit this form of relief. As a result, approximately 280,000 Central Americans may eventually be subject to deportation -- of those only a small percentage will be eligible for asylum or cancellation of removal. The Central American governments are concerned that this threatens the stability and security of the region. Central American governments are very concerned about not only the loss of remittances, which comprise a significant percentage of their revenue, but also their ability to reintegrate this population into their developing economies and post-war societies.

During his recent trip, President Clinton pledged to consult with Congress regarding ways to soften the harsh consequences of the new law for this population. Set forth below are the major options for Congressional action.

1. **Lift or Modify Cap for Cases in Proceedings prior to April 1, 1997**

The most modest option is to eliminate or modify the 4,000 cap for individuals who were placed in proceedings prior to April 1, 1997. The DOJ is already working with staff from the House and Senate immigration subcommittees towards a legislative modification of the cap. Our preferred modification would be to move the effective date of the cap from October 1, 1996, to April 1, 1997, and make the cap applicable only to deportation cases filed *after* April 1, 1997. With such modification, the thousands of cases already in the pipeline before April 1st that meet the suspension criteria could be granted suspension without the number of grants being limited by the cap.

Staff for Rep. Lamar Smith, Chairman of the House Immigration Subcommittee, are interested in modifying the cap, but only if we agree to: (1) offsetting legal immigration numbers to compensate for the increased number of suspension grants that would result and (2) codifying the BIA's *N-J-B* decision. However, staff for Senator Abraham, Chairman of the Senate Immigration Subcommittee, do not favor an offset to legal immigration. As a result, we are caught in the middle. In addition, there needs to be a decision on how such an offset should be structured, if we eventually have to make such a recommendation.

We are relatively confident that the DOJ will be able to work out an acceptable legislative modification to the cap that will partially ameliorate the harsh effects of the new provision. However, we strongly believe that any broader legislative options would require White House intervention with Congress at a higher level than the Immigration Subcommittees.

**Effect:** Lifting the 4,000 yearly cap could affect a relatively small number of individuals; it is roughly estimated that from between 19,000 to 38,000 individuals who were placed in proceedings prior to April 1, 1997, would be granted suspension of deportation if there were no cap applicable to them. (We do not know how many of these are Central Americans, but we believe a strong majority consists of Central Americans and Mexicans.) This option alone would do nothing to help the approximately 215,000 *ABC* class members who have not been placed in proceedings, because they would still be required to meet the new ten-year and heightened hardship requirements and would be subject to the 4,000 yearly cap. Nor would it assist those Nicaraguans and *ABC* class members already in proceedings by April 1, 1997, who cannot meet the physical presence requirement due to retroactive application of the stop-time rule.

**Pros:** This affords important relief to at least 19,000 individuals, while avoiding a nationality-specific remedy. Also, because it is a modest proposal and keeps unchanged the substantive limits to suspension, it may be acceptable, as a transitional mechanism, to the harshest critics on the Hill.

**Cons:** Because this option, taken alone, would affect a relatively small number of individuals, it would not address the concerns of the Central American governments or

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most of the Guatemalans, Nicaraguans, and Salvadorans who have been living in the United States.

**2. Reverse the Retroactive Effect of the Stop-Time Provision and Lift or Modify Cap for Cases in Proceedings prior to April 1, 1997**

A legislative reversal of the BIA holding in *Matter of N-J-B* could enable a number of those who were placed in proceedings prior to April 1, 1997, to be eligible for suspension of deportation. Although the BIA decision could be overturned on appeal in federal court, we discuss here the possibility of legislation providing that the stop-time provision is not to be applied retroactively to cases already in proceedings prior to April 1, 1997.

**Effect:** It is estimated that the number of individuals already in proceedings by April 1, 1997, who would be granted suspension of deportation if *Matter of N-J-B* were overruled would be 38,000 to 76,000. This number includes all nationalities. With regard to Central Americans, this change would largely assist those Nicaraguans who were placed in proceedings prior to April 1, 1997. However, it would potentially affect only a small percentage of the ABC class (25,000), since the bulk of the class, approximately 215,000 individuals, has not yet been placed in removal proceedings.

**Pros:** This avoids a nationality-specific remedy. It would have a significant impact on the availability of suspension for Nicaraguans who came to the United States in the mid 1980s and were placed in proceedings prior to April 1, 1997.

**Cons:** This would have relatively little effect on availability of suspension of deportation to the ABC class, which is of great concern to the governments of Guatemala and El Salvador. This option is also likely to meet with strong opposition from the principal backers of the IIRIRA in Congress, and the proposal could undercut the chance to gain their support for a version of option one.

**3. Apply pre-April 1, 1997, Suspension Standards to ABC Class Members, Lift or Modify the 4,000 Cap for ABC Class Members and Individuals in Proceedings prior to April 1, 1997, and Reverse the Retroactive Application of the Stop-Time Rule for Individuals in Proceedings prior to April 1, 1997**

Individuals in proceedings prior to April 1, 1997, are already subject to the substantive requirements for suspension of deportation under the INA, before it was amended by the IIRIRA. This option would extend the application of the previous suspension requirements to the entire ABC class.

**Effect:** Unlike the options above, this option gives all 240,000 ABC class members a chance to apply for suspension under the old rules. This does not mean that all 240,000 will qualify; we expect about 50% to apply, allowing for no-shows and those who obtain other forms of relief, and 75% of those to succeed, yielding approximately 90,000 who will obtain lawful permanent resident status. Depending on how quickly the asylum office and EOIR caseload is handled, which we estimate would be from 3 to 5 years, this

would amount to an average of 18,000 to 30,000 suspension grants to ABC class members per year. Taking into account those not in the ABC class who would also benefit from this option, we estimate that this option could result in grants of suspension of deportation to roughly 119,000 individuals.

**Pros:** This option would significantly benefit members of the ABC class, whose expectation has been, until recently, that they might eventually be able to apply for suspension of deportation should asylum be denied. It would additionally benefit the Nicaraguans who have been residing in the United States since the mid to late 1980's and who were placed in deportation proceedings prior to April 1, 1997. As such, it would go far to foster stability and security in Central America and address the concerns of the governments of Guatemala and El Salvador regarding integration of this population into their developing economies and post-war societies.

It has been argued by ABC class counsel and special interest groups that special treatment for the ABC class is justified by these individuals' special legal status under the settlement agreement, which was viewed by them as a remedy for past mistreatment. Such treatment arguably also recognizes the exceptional circumstances faced by these individuals, as demonstrated by Congress in granting TPS, and their long standing status in the community.

**Cons:** Applying pre-April 1st suspension requirements to the ABC class singles out two nationalities for special treatment and cuts against Congress's intentions in granting TPS -- by definition a temporary form of protection. In addition, critics will argue that there is no basis to afford ABC class members special treatment in terms of suspension, because the settlement focused solely on class members' asylum adjudications. Class members' expectations about suspension were arguably no different from persons of other nationalities living for a long period in the United States illegally. There were also many non-ABC cases in the asylum backlog similarly affected by the new law. Finally, critics will portray this position as an amnesty and will use it to call into question the Administration's commitment to serious enforcement of immigration laws. Without the Administration's complete commitment to fighting for it, even proposing this option, would jeopardize the success of either option number one or two, as it could cause the principle supporters of the IIRIRA in Congress to harden their position on any potential changes to the law.

**4. No Change in Standard, but Eliminate or Modify the Cap for All Cases Regardless of Date Proceedings Initiated**

**Effect:** Assuming there is no change in the cancellation of removal rules, some proportion of ABC class members and Nicaraguans will meet the requirements for either suspension or cancellation. Either they will have been placed in proceedings prior to April 1, 1997, and meet the requirements of the old suspension of deportation law, or they will meet the requirements of the new cancellation law because they will have been in the United States continuously for ten years, show good moral character, and demonstrate the requisite hardship to relatives who are United States citizens or lawful

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permanent residents. Approximately 25% of the ABC class members entered in 1987 or earlier, meeting the threshold qualification (ten-year physical presence) of the new suspension rules. This number will increase over the course of processing the ABC cases, especially if we adjudicate cases on a first in, first out basis. However, this change would not benefit a significant number of ABC class members and Nicaraguans who cannot meet the cancellation standards or are precluded from meeting the suspension residency requirement because of the retroactive application of the stop-time provision.

**Pros:** Elimination or modification of the quantitative cap on what are qualitative decisions would be a positive step toward fairly providing relief and bringing the cap more in line with the numbers of individuals who may qualify for suspension of deportation or cancellation of removal. This option is more equitable than the lottery system described above.

**Cons:** This option would not significantly help ABC class members and Nicaraguans. In addition, Congress intentionally included the cap with the goal of restricting the number of people who will have this relief available to them. The Administration would face opposition to this proposal and would have to explain why the 4,000 number is too low, especially when stricter cancellation standards were designed to limit the number of grants. Like option number three, proposing this option could also jeopardize the success of either option number one or two, as it could cause the principal supporters of the IIRIRA in Congress to harden their position on any potential changes to the law. It will heighten suspicion that the DOJ will not enforce the new tighter rules as Congress intended.

**Possible Offset against Legal Immigration**

In preliminary discussions on the Hill regarding transitional approaches for implementing the new law, one proposal has been to have an enlarged cap offset by the legal immigration number. Possible options include using slots from the diversity visa lottery (55,000 immigrants per year) or the unused employment-based visa numbers. This is a controversial approach, particularly if the unused employment-based visas are used. Slots taken from this category would otherwise be made available to the preference category for spouses and unmarried children of lawful permanent residents, thereby slowing progress of those on the waiting list, already facing over three years' wait. Based on current estimates, it would require annual offsets as follows:

- Option 1: 19,000 - 38,000; over 5 years: 3,800 - 7,600 per year
- Option 2: 38,000 - 76,000; over 5 years: 7,600 - 15,200 per year
- Option 3: 119,000; over 5 years: 23,800 per year
- Option 4: Difficult to estimate

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**Numbers and Status of Certain Central Americans in the United States**

Although it is difficult to come up with a precise number of Nicaraguans, Salvadorans, and Guatemalans living in the United States who are affected by the changes to the law governing suspension of deportation, we can provide the following approximations:

**Base Population**

- **Nicaraguans**  
 Total: 38,000 in deportation or exclusion proceedings (as of 4/1/97)  
 This number includes 16,400 with final orders of deportation as of 7/1/96, some of whom may have filed motions to reopen.
- **ABC cases pending:<sup>1</sup>**  
 Total: 240,000  
     Salvadorans: 190,000  
     Guatemalans: 50,000  
 These numbers include 25,000 ABC class members placed in proceedings prior to 4/1/97

**Potential Numbers to Benefit From Proposed Options**

1. **Lift or Modify Cap for Cases in Proceedings prior to April 1, 1997**  
  
 Total: 9,000 - 38,000  
 Per year over 5 years: 3,800 - 7,600
2. **Reverse the Retroactive Effect of the Stop-Time Provision and Lift or Modify Cap for Cases in Proceedings prior to April 1, 1997**  
  
 Total: 38,000 - 76,000  
 Per year over 5 years: 7,600 - 15,200
3. **Apply pre-April 1, 1997, Suspension Standards to ABC Class Members, Lift or Modify the 4,000 Cap for ABC Class Members and Individuals in Proceedings prior to April 1, 1997, and Reverse the Retroactive Application of the Stop-Time Rule for Individuals in Proceedings prior to April 1, 1997**  
  
 Total: 119,000  
 Per year over 5 years: 23,800
4. **No Change in Standard, but Eliminate or Modify the Cap for All Cases Regardless of Date Proceedings Initiated**  
  
 No estimate.

<sup>1</sup> Based on TPS and ABC registration databases

# NATIONAL SECURITY COUNCIL

## FAX COVER SHEET

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### Outline of Proposed Provisions for Legislation on Central Americans

- Codify rule in *N-J-B*, as decided by the Board of Immigration Appeals. Clarify that in cases where the Attorney General terminates and initiates new procedures under the post-IRIRA rules, the previously-issued Order to Show Cause is void and thus, time continues to run until the new Notice to Appear is issued.
- Provide exception to *N-J-B* rule for Salvadorans and Guatemalans in the *ABC* class and for Nicaraguans who first entered the United States prior to April 1, 1990. In such cases, the period of continuous physical presence is deemed to terminate on April 1, 1997.
- For suspension of deportation applicants other than the *ABC* class members, Nicaraguans, and asylees described in previous paragraph, the stricter standard of exceptional and extremely unusual hardship to a citizen or legally-resident immediate relative of the applicant will apply. This new requirement will be effective on the date of enactment of these amendments.
- Aggregate limitation of 4,000 is further clarified to apply to decisions to suspend/cancel (and not only to adjustments, thus overturning adverse court decisions to this effect). For FY 1997 only, 4,000 limitation applies to decisions to cancel or suspend made after April 1, 1997. For future years, limitation can be exceeded by up to 10,000, but for each number over 4,000, a visa must be subtracted from the following year's allotment for diversity immigrant visas.

③

Leonard Smith Tropical

**Nicaraguan Adjustment and Central American Deportation Relief Act**

NIC on  
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- Any Nicaraguan present in the United States on date of enactment (A) whose presence was pursuant to a lawful admission after inspection by an immigration officer prior to December 1, 1995; or (B) who otherwise entered the United States prior to December 1, 1995, and who prior to December 1, 1995 either: (1) applied for asylum with the INS; (2) was issued an Order to Show Cause under section 242 or 242B of the Immigration and Nationality Act (as in effect prior to April 1, 1997); (3) was placed in exclusion proceedings under section 236 of the Immigration and Nationality Act (as in effect prior to April 1, 1997); (4) applied for employment authorization; (5) applied for adjustment of status under section 245; or (6) applied for any other benefit under the Immigration and Nationality Act may be adjusted to the status of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment and is otherwise admissible to the United States for permanent residence. Application must be filed by April 1, 2000. A decision by the Attorney General regarding the eligibility of any alien for such adjustment shall not be reviewable in any court.
- Any Nicaraguan who entered the United States prior to December 1, 1995, but does not meet any of conditions listed in (A) or (B)(1) through (6) above shall be eligible to apply for parole, with employment authorization, from the Attorney General. Parole may be granted for a period of up to 12 months, during which time the alien shall have the burden to establish that the alien did, in fact, enter the United States prior to December 1, 1995. If the alien meets this burden, the alien is eligible to apply for adjustment to lawful permanent resident status under same conditions as above.
- Any Nicaraguan who is the spouse, child, or unmarried son or daughter (provided that such unmarried son or daughter entered the United States prior to December 1, 1995) of an alien adjusted to lawful permanent resident status under the prior two paragraphs shall be eligible to apply for such adjustment.
- In deportation cases pending prior to April 1, 1997, the "stop-time" rule enacted in the 1996 Illegal Immigration Reform Act will apply to any applications for suspension of deportation.
- The stop-time rule will not apply to the following classes of Central Americans: (1) Guatemalans and Salvadorans who are members of the plaintiff class in *ABC v. Thornburgh*; (2) other Guatemalans and Salvadorans who applied for asylum on or before April 1, 1990, and whose claims were not adjudicated prior to April 1, 1997; (3) the spouses and minor children (at the time of granting relief) of Guatemalans and Salvadorans described in (1) and (2); (4) adult, unmarried sons and daughters of Guatemalans and Salvadorans described in (1) and (2) and who have been granted relief, provided such sons and daughters entered the United States prior to October 1, 1990.

Members of these defined categories of Salvadorans and Guatemalans whose cases are under the jurisdiction of the post-April 1 rules will have their claims for cancellation of removal adjudicated under the more generous standard of 7 years continuous residence and extreme hardship.

*(as opp 10 y RS/ exceptional + unusual hardship to adjust I.P.R.)*

Any member of the defined classes of Guatemalans and Salvadorans who was denied eligibility to apply for suspension of deportation or cancellation of removal due to the time-stop rule prior to July 10, 1997, shall be eligible to petition for reopening of the case and rehearing under the new rules established in this legislation (under time periods specified in H.R. 2533).

The defined classes of Guatemalans and Salvadorans shall not be subject to the numerical cap on suspensions of deportation and cancellations of removal. Aliens in deportation proceedings prior to April 1, 1997, and who apply for suspension of deportation pursuant to the special rules for battered spouses and children (former section 244(a)(3)) also shall not be subject to the numerical cap. The numerical cap will be clarified to state that it applies to decisions to suspend and cancel removal as well as to decisions to adjust status after such relief has been granted.

Attorney General shall have sole discretion, with no judicial review, to determine whether any particular alien is eligible for: the exemption from the stop-time rule; the treatment of suspension applications under the pre-April 1 standards; the opportunity to petition for reopening; and the exemption from the numerical cap outlined in the prior paragraphs.

As an offset for the Guatemalans and Salvadorans who will receive adjustment as a result of being granted suspension of deportation or cancellation of removal, the category for admission of unskilled workers (section 203(b)(3)(A)(iii) of the INA) will be repealed. Any alien with an approved petition for admission in this category as of date of enactment will be eligible for admission within current limits.

DDS 20,000  
INS 20,000

Labor cert pending - 002

Per pending - INS

HS -  
10m/yr

See - 76,000    Im pending  
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5 x 8,000 yr    New in  
70  
45 - apply  
33 part  
18  
15 -

NOTE FOR ELENA KAGAN/LEANNE SHIMABUKURO

FROM : ROB MALLEY

Subject: Administrative Steps on Suspension of Deportation

At the meeting today, the advocates strongly urged us to consider administrative, as opposed to legislative, steps. The most important ones they propose are:

1. That the AG reverse the *NJB* decision -- which held that the rule on accrual of time for suspension purposes applied retroactively. As you know, 5 of the 7 BIA judges on the *NJB* panel dissented from the majority opinion, and some federal courts also have disagreed with *NJB*.

I have raised this with DoJ and INS in the past, and have been told that OLC's view is that the advocates' position is not defensible. OLC has so advised the AG. Of course, the White House could request that this be reviewed, and could inform DoJ of its preferred policy outcome, but this is hardly likely to yield a different result.

2. That DoJ and INS interpret the cap provision to apply to the total number of adjustment granted per year, not the number of suspensions/cancellations of removal. Aliens who are granted suspension would be placed on a waiting list and permitted to remain here legally until a number is available for adjustment in a subsequent fiscal year.

My recollection on this one is that INS/GC thought this was not the preferred interpretation, albeit a defensible one. At the same time, DoJ/INS strongly believed that adopting that approach would be viewed on the Hill (i.e., by Smith) as an end-run around the cap. In litigation on this issue, DoJ has opposed the advocates' view.

The WH could ask Justice whether it the advocates' approach is defensible and, if it is, could request that it be adopted. However, without the other fixes that we would like (regarding *NJB* and the retroactive application of the hardship standards for ABC class members), this would be of limited value.

3. That DoJ interpret the ABC agreement to guarantee that suspension claims of class members would be adjudicated under the old rules. ABC class members would be subject to 7 year, more lenient standard, regardless of when they were put in proceedings.

2

I have not discussed this with DoJ or INS at all, and therefore do not know whether the settlement can be so read. . However, DoJ has taken the firm position that the settlement only had to do with asylum, not with suspension -- which gives us some clue as to where they would come out.

cc: Tom / Leanne

Immigration - deportation

FYI.

Elena

THE PRESIDENT HAS SEEN

07-14-97

THE WHITE HOUSE

WASHINGTON

July 8, 1997

Copied to  
Berger  
Echaveste  
Hilley  
Reed  
Ruff  
COS

MEMORANDUM FOR THE PRESIDENT

FROM: PHIL CAPLAN *Plav*

SUBJECT: Central American Migrants

*Woolridge*

Sandy Berger, Maria Echaveste, John Hilley, Bruce Reed and Chuck Ruff recommend in the attached memo that you approve a course of action to provide relief to Central American migrants affected by the new immigration law. The strategy includes administrative action to be taken by the Attorney General and proposed legislation. Executive action by you would be held in reserve in case the legislative effort is unsuccessful. Sandy et. al. seek your approval as soon as possible so as to permit Hill briefings on the legislation to move forward.

**Background.** As you know, the immigration law severely restricts the government's ability to suspend deportation for aliens who have resided in the U.S. for considerable periods of time. This greatly affects Central Americans who entered here in the 1980s. Two groups are most at risk who had been authorized to stay: 1) roughly 40,000 Nicaraguans who the Reagan Administration protected from deportation while DOJ reviewed their asylum applications - the program ended in June 1995; 2) roughly 190,000 Salvadorans and 50,000 Guatemalans who were protected from deportation under a court settlement. Under the old rules, roughly 120,000 in these groups qualified for suspension. Under the new rules, only a fraction will be eligible.

**Course of action.** Any long-term solution to the problem will require legislation, but there are some administrative actions we can take now. **Administrative:** the Attorney General will: (i) announce temporary steps to ensure that any migrant who would have qualified for suspension under the old rules would not be deported; (ii) announce her review of the "stop-time" decision by the Board of Immigration Appeals - a provision in the new law said that time spent in deportation proceedings did not count towards the residency requirement and the Board ruled that the provision applied retroactively. The AG's review of the decision will be applauded. **Legislation:** Our proposal, which will very likely receive bipartisan support, will restore qualified migrants to the status they had before the new law. **Executive action (to be held in reserve):** you have available to you a presidential grant of deferred enforced departure (DED). DED would protect qualified migrants from deportation, but it is only a temporary solution (18 months) and does not offer naturalization or permanent resident status and could be revoked by a future President. In 1993, you used DED for a portion of the Salvadorans, in the hope that many would eventually qualify for a change in status, but the new law changed the landscape.

Your advisors recommend that you authorize the administrative steps and legislative effort, but hold DED in reserve to see if the legislation moves by the August recess. DED will be mentioned privately to some Members. Rahm concurs with the recommended course of action.

Agree

Disagree

Discuss

**DRAFT****Proposed Amendments Regarding Suspension of Deportation****Background**

*Prior to April 1, 1997?*

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

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

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

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

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

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

### *General description of the amendments*

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

before  
the  
new  
law  
took  
effect

### *Section-by-section analysis*

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

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

197 JUL 26 3:46:02

THE WHITE HOUSE  
WASHINGTON

July 3, 1997

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER *S*  
MARIA ECHAVESTE  
JOHN HILLEY *JH*  
BRUCE REED  
CHARLES RUFF

SUBJECT: Central American Migrants

Purpose

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

Background

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

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

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

ABC Guatemalans and Salvadorans: As a result of a 1990 court settlement (known as ABC), Salvadoran and Guatemalan asylum-

seekers who came to the U.S. in the 1980s were protected from deportation until their asylum claims could be decided under special adjudication procedures. The ABC class is comprised of roughly 190,000 Salvadorans and 50,000 Guatemalans.

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

### Forms of Relief

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

Administrative steps are not available to address fully the other harmful provisions of the law - the cap and the more stringent standards. The most we could do would be to issue a presidential grant of deferred enforced departure (DED) for 18 months with the potential for further extensions. DED would protect its beneficiaries (qualified NRP and ABC members) from deportation; however it offers only a temporary solution, as it would not result in naturalization or permanent resident status and could be terminated by a future President. (DED is an inherent Presidential foreign policy authority, which was used to provide relief to Chinese students in 1990 after the Tiananmen incidents and in 1992 and 1993 for Salvadorans. Here, it would be justified by the foreign policy implications of a sudden return of thousands of Central American migrants. The Office of Legal Counsel is looking into whether any intervening legislation may have circumscribed the President's authority.)

Therefore, we believe we should pursue legislative action. Our proposal would restore ABC and NRP members to the status quo ante - exempting them from the cap and from the new, more stringent suspension standards. Although DED provides incomplete relief, it allows us to protect Central Americans from deportation, at least in the near term, and we would hold it in reserve in case the legislative effort is unsuccessful.

**Proposed Course of Action**

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

1. The Attorney General would announce her decision on *NJB*.
2. We would present our legislative proposal with bipartisan congressional support and privately refer to the possibility of DED. While key Members like Representative Lamar Smith will be hostile to legislation, they might find it less objectionable than DED. We would not propose a trade-off against legal immigration numbers which Senators Abraham and Kennedy (our strongest allies on the Hill on the issue) fear will reopen the legal immigration debate.
3. The Administration would announce temporary steps to ensure that any *ABC* or *NRP* member who would have qualified for suspension under the old rules would not be deported.
4. In the absence of legislative action by the start of the summer recess, we will come back to you with a recommendation that you grant DED.

RECOMMENDATION

That you approve the proposed course of action.

APPROVE \_\_\_\_\_

DISAPPROVE \_\_\_\_\_

3

Edward Smith Tjorndal

**Nicaraguan Adjustment and Central American Deportation Relief Act**

NIC in country by ref/1 95

- Any Nicaraguan present in the United States on date of enactment (A) whose presence was pursuant to a lawful admission after inspection by an immigration officer prior to December 1, 1995; or (B) who otherwise entered the United States prior to December 1, 1995, and who prior to December 1, 1995 either: (1) applied for asylum with the INS; (2) was issued an Order to Show Cause under section 242 or 242B of the Immigration and Nationality Act (as in effect prior to April 1, 1997); (3) was placed in exclusion proceedings under section 236 of the Immigration and Nationality Act (as in effect prior to April 1, 1997); (4) applied for employment authorization; (5) applied for adjustment of status under section 245; or (6) applied for any other benefit under the Immigration and Nationality Act may be adjusted to the status of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment and is otherwise admissible to the United States for permanent residence. Application must be filed by April 1, 2000. A decision by the Attorney General regarding the eligibility of any alien for such adjustment shall not be reviewable in any court.
- Any Nicaraguan who entered the United States prior to December 1, 1995, but does not meet any of conditions listed in (A) or (B)(1) through (6) above shall be eligible to apply for parole, with employment authorization, from the Attorney General. Parole may be granted for a period of up to 12 months, during which time the alien shall have the burden to establish that the alien did, in fact, enter the United States prior to December 1, 1995. If the alien meets this burden, the alien is eligible to apply for adjustment to lawful permanent resident status under same conditions as above.
- Any Nicaraguan who is the spouse, child, or unmarried son or daughter (provided that such unmarried son or daughter entered the United States prior to December 1, 1995) of an alien adjusted to lawful permanent resident status under the prior two paragraphs shall be eligible to apply for such adjustment.
- In deportation cases pending prior to April 1, 1997, the "stop-time" rule enacted in the 1996 Illegal Immigration Reform Act will apply to any applications for suspension of deportation.
- The stop-time rule will not apply to the following classes of Central Americans: (1) Guatemalans and Salvadorans who are members of the plaintiff class in *ABC v. Thornburgh*; (2) other Guatemalans and Salvadorans who applied for asylum on or before April 1, 1990, and whose claims were not adjudicated prior to April 1, 1997; (3) the spouses and minor children (at the time of granting relief) of Guatemalans and Salvadorans described in (1) and (2); (4) adult, unmarried sons and daughters of Guatemalans and Salvadorans described in (1) and (2) and who have been granted relief, provided such sons and daughters entered the United States prior to October 1, 1990.

- Members of these defined categories of Salvadorans and Guatemalans whose cases are under the jurisdiction of the post-April 1 rules will have their claims for cancellation of removal adjudicated under the more generous standard of 7 years continuous residence and extreme hardship.
- Any member of the defined classes of Guatemalans and Salvadorans who was denied eligibility to apply for suspension of deportation or cancellation of removal due to the time-stop rule prior to July 10, 1997, shall be eligible to petition for reopening of the case and rehearing under the new rules established in this legislation (under time periods specified in H.R. 2533).
- The defined classes of Guatemalans and Salvadorans shall not be subject to the numerical cap on suspensions of deportation and cancellations of removal. Aliens in deportation proceedings prior to April 1, 1997, and who apply for suspension of deportation pursuant to the special rules for battered spouses and children (former section 244(a)(3)) also shall not be subject to the numerical cap. The numerical cap will be clarified to state that it applies to decisions to suspend and cancel removal as well as to decisions to adjust status after such relief has been granted.
- Attorney General shall have sole discretion, with no judicial review, to determine whether any particular alien is eligible for: the exemption from the stop-time rule; the treatment of suspension applications under the pre-April 1 standards; the opportunity to petition for reopening; and the exemption from the numerical cap outlined in the prior paragraphs.
- As an offset for the Guatemalans and Salvadorans who will receive adjustment as a result of being granted suspension of deportation or cancellation of removal, the category for admission of unskilled workers (section 203(b)(3)(A)(iii) of the INA) will be repealed. Any alien with an approved petition for admission in this category as of date of enactment will be eligible for admission within current limits.

to ab

277  
provision

DOJ 20,000  
INS 20,000

Labor cost funds - 006

Re + funds - INS

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long term

6e - 76,000      In funds  
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NATIONAL SECURITY COUNCIL

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From: Rob Malley

To: Elena Kagan/ Leanne Shimabukuro

Agency: DPC

Fax Number: 62878/67028

Date/Time:

No. of pages to follow: 4

Message: Attached is a revised version of the options paper -- itself a shortened version of INS'. NSC's view is that we should seek agency positions ASAP on the options and subsidiary issues. If Bruce wants to chair a high-level meeting, our preference would be that it happen very soon, as our principal (Berger) has been asking for this to move.

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: SAMUEL BERGER  
BRUCE REED  
JOHN HILLEY

SUBJECT: Legislative Options on Immigration Law

Purpose

To adopt a legislative strategy to address some of the harshest provisions of the immigration law.

**Background**

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) severely restricts the availability of suspension of deportation in three ways:

(1) it extends the length of time immigrants must have resided in the U.S. to be eligible for suspension from seven to ten years and requires a greater showing of hardship. These rules apply to persons placed in removal proceedings after April 1, 1997;

(2) it sets a 4,000 annual cap on the total number of suspensions that can be granted, regardless of the number of individuals found eligible for suspension. Previously, there was no ceiling;

(3) it requires immigrants to meet the 7 (now 10) year residency prong before being placed in removal proceedings. (Prior to the IIRIRA, time would accrue throughout the course of proceedings.) This "stop-time" rule applies retroactively to individuals who were placed in proceedings prior to April 1, 1997.

The combination of these changes will dramatically reduce the number of immigrants currently in the U.S. who will be eligible for suspension. During your trip to Central American, you stated that you would work with Congress to seek to alleviate the harshest consequences of the law.

cc: Vice President  
Chief of Staff

## Persons Affected by the Law

While the suspension provisions of the IIRIRA will affect all nationalities, its consequences will be most acutely felt by the large number of Central Americans who entered the U.S. illegally in the mid/late 1980s in response to civil war and large-scale political persecution.

Nicaraguans: Approximately 40,000 Nicaraguans currently are in deportation proceedings. The Reagan Administration protected most of them from deportation during the pendency of a special DoJ review of their asylum applications. That program ended in June 1995 and the last available form of relief for Nicaraguans is to apply for suspension of deportation. Because of the way their cases were handled, Nicaraguans will be most severely affected by the retroactive application of the "stop-time" rule.

Guatemalans and Salvadorans: As a result of a settlement in a major class action lawsuit (known as ABC) that was reached in 1991, Salvadoran and Guatemalan asylum-seekers who came to the U.S. in the 1980s were protected from deportation until their asylum claims could be decided under special adjudication procedures. Congress and the Executive branch also protected Salvadorans from deportation through various programs that expired in 1994. The ABC class is comprised of roughly 190,000 Salvadorans and 50,000 Guatemalans.

Because INS only fully put in place its special asylum procedures on April 7, 1997, and because ABC members did not press for rapid asylum hearings (believing that they were accruing time for purposes of suspension), a vast majority of them still have pending asylum applications and have yet to seek suspension of deportation. As a result, and barring a legislative change, they will be subject to the IIRIRA's stricter rules.

*In short, absent legislative fixes, approximately 280,000 Central Americans may eventually be subject to deportation.* This could lead to serious disruptions to families in the U.S. and threaten the stability of Central American nations that rely heavily on remittances from immigrants and whose labor markets could not absorb a large number of returnees.

## Congressional Sentiment

The legal modifications appear to have been motivated by the feeling that suspension was granted too generously -- by 1996, immigration judges were granting it to roughly 75% of applicants. In addition, some in Congress wanted to eliminate the possibility of an amnesty-like program for Central Americans. At the same time, it is likely that many Members were not aware of the full

impact of these changes, particularly on long-standing *de facto* residents such as the ABC members.

### Legislative Strategy Options

#### Option 1: Lift Cap for Cases in Proceedings Prior to April 1.

*This option would affect between 19,000 to 38,000 individuals who would be granted suspension absent the cap. However, it would not address the core concerns of the immigrant community or of Central American governments because it would not assist about 215,000 ABC members not in proceedings as of April 1 (and therefore affected by the cap and the new suspension rules), nor would it help the 40,000 Nicaraguans affected by retroactive application of the "stop-time" rule. This is the most modest option which DoJ already is discussing with Members of Congress. In the meantime, DoJ has put a hold until September 30 on deportations of people who would have qualified but for the cap.*

#### Option 2: Lift Cap for Cases in Proceedings Prior to April 1 and Reverse Retroactive Application of the "Stop-Time" Rule.

*This option would benefit between 38,000 and 76,000 individuals -- essentially those helped by option 1 plus Nicaraguans affected by retroactive application of the "stop-time" rule. It could be justified as a fair transitional measure as the Administration moves toward full implementation of the law. However, it would be criticized from both sides: it would not help approximately 215,000 ABC class members not in proceedings as of April 1, and is likely to be strongly opposed by the principal congressional backers of the IIRIRA. Absent high-level White House efforts, proposing this could undermine our chances on option 1.*

#### Option 3: Lift Cap for ABC Members and Individuals in Proceedings Prior to April 1; Reverse Retroactive Application of the "Stop-Time" Rule for Cases in Proceedings Prior to April 1; and Apply pre-April 1 Suspension Standards to ABC Members.

*This is the broadest option and is expected to benefit roughly 119,000 individuals -- those covered by option 2 plus ABC members who would have qualified had there been no change in the law. This is the only option that addresses the bulk of the Central Americans' and immigrant community's concerns. Special treatment of ABC class members can be justified by their unique circumstances, which includes their long presence in the U.S. under temporary legal status and the fact that their asylum cases were delayed while INS put in place special asylum procedures -- as a result of which they are being barred from suspension because of legislation passed 6 years after the settlement agreement with DoJ. The Administration also could point out that*

these are transitional measures, and that full implementation of the immigration law will soon follow.

However, this option is likely to generate strong opposition from Members of Congress who will liken it to an amnesty and question the Administration's resolve to seriously enforce the immigration law. Moreover, it might be criticized for singling out for special treatment Salvadorans and Guatemalans. Absent high-level White House intervention along the lines of the final days of debate on the 1996 bill, even proposing this option could jeopardize the chances of options 1 or 2.

### Related Issues

Two additional issues need to be resolved based on your decision on the foregoing options:

Issue #1: Whether to temporarily stop deporting individuals who would qualify for suspension under the option you select.

This would avoid the deportation of immigrants who may otherwise qualify were we to reach agreement with Congress. At the same time, the hold would not prejudge the outcome of our negotiations with Congress as deportations could resume if and when necessary. However, this will be criticized by some Members of Congress.

Issue #2: Whether to agree, in negotiations with the Congress, to offset any increase in the number of suspension grants with a reduction in legal immigration numbers.

While not our preferred option, some Members of Congress might condition their agreement on an offset. With roughly 900,000 legal immigrants admitted per year, even the most generous option (#3) would entail reducing that number by only slightly over 10% or, if spread over several years, a fraction thereof.

However, any such option could be seen to conflict with the Administration's principle of favoring legal immigrants over those without legal status. In addition, several Members -- including Senator Abraham -- strongly oppose an offset, which they fear might re-open debate on other legal immigration issues.

### RECOMMENDATION

I have not discussed this with DoJ or INS at all, and therefore do not know whether the settlement can be so read. However, DoJ has taken the firm position that the settlement only had to do with asylum, not with suspension -- which gives us some clue as to where they would come out.

- ① Offer agencies
- ② What works on Hill
- ③ Reevaluate Administrative pieces
  - ↳ Doris / David Martin
  - ↳ GEM / SENT

- ISSUE OF  
COMBINATION OF OPS.  
-

## DISCUSSION MEMORANDUM

### **Background**

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) severely restricts the availability of suspension of deportation in three ways:

- (1) it extends the length of time immigrants must have resided in the U.S. to be eligible for suspension from seven to ten years and requires a greater showing of hardship. These rules apply to persons placed in removal proceedings after April 1, 1997;
- (2) it sets a 4,000<sup>PERSON</sup> annual cap on the total number of suspensions that can be granted, regardless of the number of individuals found eligible for suspension. Previously, there was no ceiling;
- (3) it requires immigrants to meet the 7 (now 10) year residency prong before being placed in removal proceedings. (Prior to the IIRIRA, time would accrue throughout the course of proceedings.) This "stop-time" rule applies retroactively to individuals who were placed in proceedings prior to April 1, 1997.

The combination of these changes will dramatically reduce the number of immigrants currently in the U.S. who will be eligible for suspension. During your trip to Central American, you stated that you would work with Congress to seek to alleviate the harshest consequences of the law.

### **Persons Affected by the Law**

While the suspension provisions of the IIRIRA will affect all nationalities, its consequences will be most acutely felt by the large number of Central Americans who entered the U.S. illegally in the mid/late 1980s in response to civil war and large-scale political persecution.

Nicaraguans: Approximately 40,000 Nicaraguans currently are in deportation proceedings. The Reagan Administration protected most of them from deportation during the pendency of a special DoJ review of their asylum applications. That program ended in June 1995 and the last available form of relief for Nicaraguans is to apply for suspension of deportation. Because of the way their cases were handled, Nicaraguans will be most severely affected by the retroactive application of the "stop-time" rule.

Guatemalans and Salvadorans: As a result of a settlement in a major class action lawsuit (known as ABC) that was reached in 1991, Salvadoran and Guatemalan asylum-seekers who came to the U.S. in the 1980s were protected from deportation until their

cc: Vice President  
Chief of Staff

asylum claims could be decided under special adjudication procedures. Congress and the Executive branch also protected Salvadorans from deportation through various programs that expired in 1994. The ABC class is comprised of roughly 190,000 Salvadorans and 50,000 Guatemalans.

Because INS only fully put in place its special asylum procedures on April 7, 1997, and because ABC members did not press for rapid asylum hearings (believing that they were accruing time for purposes of suspension), a majority of them still have pending asylum applications and have yet to seek suspension of deportation. As a result, and barring a legislative change, they will be subject to the IIRIRA's stricter rules. Others were placed in proceedings before the accrual of seven years, and therefore will be barred by the "stop-time" rule.

what is this time of accrual?

In short, absent legislative fixes, approximately 280,000 Central Americans may eventually be subject to deportation. This could lead to serious disruptions to families in the U.S., and threaten the stability of Central American nations that rely heavily on remittances from immigrants and whose labor markets could not absorb a large number of returnees.

estimate of what this # would be w/o the new law?

### Congressional Sentiment

The legal modifications appear to have been motivated by the feeling that suspension was granted too generously. In addition, some in Congress wanted to eliminate the possibility of an amnesty-like program for Central Americans. At the same time, many Members were not aware of the full impact of these changes, particularly on long-standing de facto residents such as the ABC members.

### Legislative Strategy Options

#### Option 1: Lift Cap for Cases in Proceedings Prior to April 1.

This option would affect between 19,000 to 38,000 individuals who would be granted suspension absent the cap. However, it would not address the core concerns of the immigrant community or of Central American governments because it would not assist about 215,000 ABC members not in proceedings as of April 1 (and therefore affected by the cap and the new suspension rules), nor would it help the 40,000 Nicaraguans affected by retroactive application of the "stop-time" rule. This is the most modest option which DoJ already is discussing with Members of Congress. In the meantime, DoJ has put a hold until September 30 on deportations of people who would have qualified but for the cap.

40,000?

Are they still adjudicating cases?

- ACTUALLY  
LARGER #5

Option 2: Lift Cap for Cases in Proceedings Prior to April 1 and Reverse Retroactive Application of the "Stop-Time" Rule.

Do we need to do this legislatively?

This option would benefit between 38,000 and 76,000 individuals - essentially those helped by option 1 plus Nicaraguans and others affected by retroactive application of the "stop-time" rule. It could be justified as a fair transitional measure as the Administration moves toward full implementation of the law. However, it would be criticized from both sides: it would not help approximately 215,000 ABC class members not in proceedings as of April 1, and is likely to be strongly opposed by the principal congressional backers of the IIRIRA. Absent high-level White House efforts, proposing this could undermine our chances on option 1.

Option 3: Lift Cap for ABC Members and Individuals in Proceedings Prior to April 1; Reverse Retroactive Application of the "Stop-Time" Rule for Cases in Proceedings Prior to April 1; and Apply pre-April 1 Suspension Standards to ABC Members.

This is the broadest option and is expected to benefit roughly 119,000 individuals -- those covered by option 2 plus ABC members who would have qualified had there been no change in the law. This is the only option that addresses the bulk of the Central Americans' and immigrant community's concerns. Special treatment of ABC class members can be justified by their unique circumstances, which includes their long presence in the U.S. under temporary legal status and the fact that their asylum cases were delayed while INS put in place special asylum procedures -- as a result of which they are being barred from suspension because of legislation passed 6 years after the settlement agreement with DoJ. The Administration also could point out that these are transitional measures, and that full implementation of the immigration law will soon follow.

However, this option is likely to generate strong opposition from Members of Congress who will liken it to an amnesty and question the Administration's resolve to seriously enforce the immigration law. Moreover, it might be criticized for singling out for special treatment Salvadorans and Guatemalans. Absent high-level White House intervention along the lines of the final days of debate on the 1996 bill, even proposing this option could jeopardize the chances of options 1 or 2.

**Related Issues**

Two additional issues need to be resolved based on your decision on the foregoing options:

Issue #1: Whether to temporarily stop deporting individuals who would qualify for suspension under the option you select.

This would avoid the deportation of immigrants who may otherwise qualify were we to reach agreement with Congress. At the same time, the hold would not prejudice the outcome of our negotiations with Congress as deportations could resume if and when necessary.

Issue #2: Whether to agree, in negotiations with the Congress, to offset any increase in the number of suspension grants with a reduction in legal immigration numbers.

While not our preferred option, some Members of Congress might condition their agreement on an offset. With roughly 900,000 legal immigrants admitted per year, ~~even~~ the most generous option (#3) would entail reducing that number by ~~only slightly~~ over 10% or, if spread over several years, ~~a fraction thereof.~~

However, any such option could be seen to conflict with the Administration's principle of favoring legal immigrants over those without legal status. In addition, several Members -- including Senator Abraham -- strongly oppose an offset, which they fear might re-open debate on other legal immigration issues.

Administrative Options

Immigration advocates are pressing us to take administrative steps instead of/in addition to legislative ones.

*It would also lead to ~~the~~ delay in reuniting ~~the~~ families who are already legal immigr present in the U.S.*

Step #1: Temporarily Halt ABC Asylum Interviews

Pursuant to the settlement, INS began conducting new asylum interviews of ABC members in April 1997. Interviews are resulting in large numbers of denials and placement of aliens in deportation proceedings -- thereby cutting off the accrual of time for suspension/cancellation purposes. Advocates seek an immediate, temporary halt to interviews as the Administration considers its options, arguing that the INS waited 6 years to schedule the interviews, only to hold them when they will cause most harm to the aliens as a result of the new "stop time" rule. However, a halt will be viewed by some Members as inconsistent with INS' commitment to move forward with interviews.

Step #2: Re-interpret the Cap Provision

Advocates argue that the IIRIRA can reasonably be read to impose a 4,000 cap on the number of adjustments of status granted annually, not on the number of suspensions. They ask that aliens granted suspension be placed on a wait list and permitted to remain in the U.S. legally until a number is available for

adjustment of status in a subsequent fiscal year. While this arguably is a defensible interpretation of the law, it risks being viewed by some Members as an end-run around the cap.

Step #3: Reverse the decision applying the stop-time rule retroactively

Advocates are urging the Attorney General to reverse the Board of Immigration Appeals decision (known as *NJB*) holding that the stop-time rule applies retroactively. They argue that *NJB* was a 7-5 split decision by the Board and that a reversal would be legally justified. However, OLC has reviewed this issue and does not believe the advocates' interpretation is defensible.

GET  
DECISION  
- AS  
AUTHORITY  
TO RETURN

AS + OLC  
TAKING DIFFERENT  
VIEWS - ?

NOTE FOR ELENA KAGAN/LEANNE SHIMABUKURO

FROM : ROB MALLEY

Subject: Administrative Steps on Suspension of Deportation

At the meeting today, the advocates strongly urged us to consider administrative, as opposed to legislative, steps. The most important ones they propose are:

1. That the AG reverse the *NJB* decision -- which held that the rule on accrual of time for suspension purposes applied retroactively. As you know, 5 of the 7 BIA judges on the *NJB* panel dissented from the majority opinion, and some federal courts also have disagreed with *NJB*.

I have raised this with DoJ and INS in the past, and have been told that OLC's view is that the advocates' position is not defensible. OLC has so advised the AG. Of course, the White House could request that this be reviewed, and could inform DoJ of its preferred policy outcome, but this is hardly likely to yield a different result.

2. That DoJ and INS interpret the cap provision to apply to the total number of adjustment granted per year, not the number of suspensions/cancellations of removal. Aliens who are granted suspension would be placed on a waiting list and permitted to remain here legally until a number is available for adjustment in a subsequent fiscal year.

My recollection on this one is that INS/GC thought this was not the preferred interpretation, albeit a defensible one. At the same time, DoJ/INS strongly believed that adopting that approach would be viewed on the Hill (i.e., by Smith) as an end-run around the cap. In litigation on this issue, DoJ has opposed the advocates' view.

The WH could ask Justice whether it the advocates' approach is defensible and, if it is, could request that it be adopted. However, without the other fixes that we would like (regarding *NJB* and the retroactive application of the hardship standards for ABC class members), this would be of limited value.

3. That DoJ interpret the ABC agreement to guarantee that suspension claims of class members would be adjudicated under the old rules. ABC class members would be subject to 7 year, more lenient standard, regardless of when they were put in proceedings.

**Leanne A. Shimabukuro** 07/03/97 10:36:39 AM

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Record Type: Record

To: Maria Echaveste/WHO/EOP  
cc: Jose Cerda III/OPD/EOP  
Subject: follow up on suspension issue

I wanted to get back to you on the question I raised with you yesterday. On the 4,000 cap, the Hogan memo argues that the statute could be read to mean that we can grant an unlimited number of suspensions but can only adjust the status of 4,000 people. Normally, once we suspend deportation, we allow individuals to adjust to permanent resident status within a short amount of time. My question was: what is the status of people who are suspended but are not allowed to adjust for years? Is this better than DED status?

According to Rob Malley, it is preferable to be under "suspension" status since adjustment to permanent resident status naturally follows, even if we make people wait for years to get it. On the other hand, DED does not necessarily result in adjustment.

This reaffirms the point you made yesterday that groups will likely prefer the legislative fix of lifting the cap on suspensions and adjustments to granting DED administratively.

09/10/97 10:59 202 514 9077

DOJ

002

09/09/97 17:45 202 514 5488

OLA

002

09/09/97 TUE 11:37 FAX 202 225 3872

IMMIGRATION &amp; CLAIMS

002

~~CONFIDENTIAL~~ -- Embargoed

### Outline of Proposed Provisions for Legislation on Central Americans

- Codify rule in *N-J-B*, as decided by the Board of Immigration Appeals. Clarify that in cases where the Attorney General terminates and initiates new procedures under the post-IRIRA rules, the previously-issued Order to Show Cause is void and thus, time continues to run until the new Notice to Appear is issued.
- Provide exception to *N-J-B* rule for Salvadorans and Guatemalans in the *ABC* class and for Nicaraguans who first entered the United States prior to April 1, 1990. In such cases, the period of continuous physical presence is deemed to terminate on April 1, 1997.
- For suspension of deportation applicants other than the *ABC* class members, Nicaraguans, and asylees described in previous paragraph, the stricter standard of exceptional and extremely unusual hardship to a citizen or legally-resident immediate relative of the applicant will apply. This new requirement will be effective on the date of enactment of these amendments.
- Aggregate limitation of 4,000 is further clarified to apply to decisions to suspend/cancel (and not only to adjustments, thus overturning adverse court decisions to this effect). For FY 1997 only, 4,000 limitation applies to decisions to cancel or suspend made after April 1, 1997. For future years, limitation can be exceeded by up to 10,000, but for each number over 4,000, a visa must be subtracted from the following year's allotment for diversity immigrant visas.

cc: Tom / Leanne

Immigration - deportation

FYI.

Elena

THE PRESIDENT HAS SEEN  
07-14-97

THE WHITE HOUSE

WASHINGTON

July 8, 1997

Copied to  
Berger  
Echaveste  
Hilley  
Reed  
Ruff  
COS

MEMORANDUM FOR THE PRESIDENT

FROM: PHIL CAPLAN *Phil*

SUBJECT: Central American Migrants

*Woolsey*

Sandy Berger, Maria Echaveste, John Hilley, Bruce Reed and Chuck Ruff recommend in the attached memo that you approve a course of action to provide relief to Central American migrants affected by the new immigration law. The strategy includes administrative action to be taken by the Attorney General and proposed legislation. Executive action by you would be held in reserve in case the legislative effort is unsuccessful. Sandy et. al. seek your approval as soon as possible so as to permit Hill briefings on the legislation to move forward.

**Background.** As you know, the immigration law severely restricts the government's ability to suspend deportation for aliens who have resided in the U.S. for considerable periods of time. This greatly affects Central Americans who entered here in the 1980s. Two groups are most at risk who had been authorized to stay: 1) roughly 40,000 Nicaraguans who the Reagan Administration protected from deportation while DOJ reviewed their asylum applications -- the program ended in June 1995; 2) roughly 190,000 Salvadorans and 50,000 Guatemalans who were protected from deportation under a court settlement. Under the old rules, roughly 120,000 in these groups qualified for suspension. Under the new rules, only a fraction will be eligible.

**Course of action.** Any long-term solution to the problem will require legislation, but there are some administrative actions we can take now. **Administrative:** the Attorney General will: (i) announce temporary steps to ensure that any migrant who would have qualified for suspension under the old rules would not be deported; (ii) announce her review of the "stop-time" decision by the Board of Immigration Appeals -- a provision in the new law said that time spent in deportation proceedings did not count towards the residency requirement and the Board ruled that the provision applied retroactively. The AG's review of the decision will be applauded. **Legislation:** Our proposal, which will very likely receive bipartisan support, will restore qualified migrants to the status they had before the new law. **Executive action (to be held in reserve):** you have available to you a presidential grant of deferred enforced departure (DED). DED would protect qualified migrants from deportation, but it is only a temporary solution (18 months) and does not offer naturalization or permanent resident status and could be revoked by a future President. In 1993, you used DED for a portion of the Salvadorans, in the hope that many would eventually qualify for a change in status, but the new law changed the landscape.

Your advisors recommend that you authorize the administrative steps and legislative effort, but hold DED in reserve to see if the legislation moves by the August recess. DED will be mentioned privately to some Members. Rahm concurs with the recommended course of action.

Agree       Disagree       Discuss

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: SAMUEL BERGER  
BRUCE REED  
JOHN HILLEY

SUBJECT: Legislative Options on Immigration Law

Purpose

To adopt a legislative strategy to address some of the harshest provisions of the immigration law.

**Background**

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) severely restricts the availability of suspension of deportation in three ways:

(1) it extends the length of time immigrants must have resided in the U.S. to be eligible for suspension from seven to ten years and requires a greater showing of hardship. These rules apply to persons placed in removal proceedings after April 1, 1997;

(2) it sets a 4,000 annual cap on the total number of suspensions that can be granted, regardless of the number of individuals found eligible for suspension. Previously, there was no ceiling;

(3) it requires immigrants to meet the 7 (now 10) year residency prong before being placed in removal proceedings. (Prior to the IIRIRA, time would accrue throughout the course of proceedings.) This "stop-time" rule applies retroactively to individuals who were placed in proceedings prior to April 1, 1997.

The combination of these changes will dramatically reduce the number of immigrants currently in the U.S. who will be eligible for suspension. During your trip to Central American, you stated that you would work with Congress to seek to alleviate the harshest consequences of the law.

cc: Vice President  
Chief of Staff

### Persons Affected by the Law

While the suspension provisions of the IIRIRA will affect all nationalities, its consequences will be most acutely felt by the large number of Central Americans who entered the U.S. illegally in the mid/late 1980s in response to civil war and large-scale political persecution.

Nicaraguans: Approximately 40,000 Nicaraguans currently are in deportation proceedings. The Reagan Administration protected most of them from deportation during the pendency of a special DoJ review of their asylum applications. That program ended in June 1995 and the last available form of relief for Nicaraguans is to apply for suspension of deportation. Because of the way their cases were handled, Nicaraguans will be most severely affected by the retroactive application of the "stop-time" rule.

Guatemalans and Salvadorans: As a result of a settlement in a major class action lawsuit (known as ABC) that was reached in 1991, Salvadoran and Guatemalan asylum-seekers who came to the U.S. in the 1980s were protected from deportation until their asylum claims could be decided under special adjudication procedures. Congress and the Executive branch also protected Salvadorans from deportation through various programs that expired in 1994. The ABC class is comprised of roughly 190,000 Salvadorans and 50,000 Guatemalans.

Because INS only fully put in place its special asylum procedures on April 7, 1997, and because ABC members did not press for rapid asylum hearings (believing that they were accruing time for purposes of suspension), a vast majority of them still have pending asylum applications and have yet to seek suspension of deportation. As a result, and barring a legislative change, they will be subject to the IIRIRA's stricter rules.

*In short, absent legislative fixes, approximately 280,000 Central Americans may eventually be subject to deportation.* This could lead to serious disruptions to families in the U.S. and threaten the stability of Central American nations that rely heavily on remittances from immigrants and whose labor markets could not absorb a large number of returnees.

### Congressional Sentiment

The legal modifications appear to have been motivated by the feeling that suspension was granted too generously -- by 1996, immigration judges were granting it to roughly 75% of applicants. In addition, some in Congress wanted to eliminate the possibility of an amnesty-like program for Central Americans. At the same time, it is likely that many Members were not aware of the full

impact of these changes, particularly on long-standing *de facto* residents such as the ABC members.

### **Legislative Strategy Options**

#### Option 1: Lift Cap for Cases in Proceedings Prior to April 1.

*This option would affect between 19,000 to 38,000 individuals who would be granted suspension absent the cap. However, it would not address the core concerns of the immigrant community or of Central American governments because it would not assist about 215,000 ABC members not in proceedings as of April 1 (and therefore affected by the cap and the new suspension rules), nor would it help the 40,000 Nicaraguans affected by retroactive application of the "stop-time" rule. This is the most modest option which DoJ already is discussing with Members of Congress. In the meantime, DoJ has put a hold until September 30 on deportations of people who would have qualified but for the cap.*

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*This option would benefit between 38,000 and 76,000 individuals - essentially those helped by option 1 plus Nicaraguans affected by retroactive application of the "stop-time" rule. It could be justified as a fair transitional measure as the Administration moves toward full implementation of the law. However, it would be criticized from both sides: it would not help approximately 215,000 ABC class members not in proceedings as of April 1, and is likely to be strongly opposed by the principal congressional backers of the IIRIRA. Absent high-level White House efforts, proposing this could undermine our chances on option 1.*

#### Option 3: Lift Cap for ABC Members and Individuals in Proceedings Prior to April 1; Reverse Retroactive Application of the "Stop-Time" Rule for Cases in Proceedings Prior to April 1; and Apply pre-April 1 Suspension Standards to ABC Members.

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### Related Issues

Two additional issues need to be resolved based on your decision on the foregoing options:

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This would avoid the deportation of immigrants who may otherwise qualify were we to reach agreement with Congress. At the same time, the hold would not prejudice the outcome of our negotiations with Congress as deportations could resume if and when necessary. However, this will be criticized by some Members of Congress.

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While not our preferred option, some Members of Congress might condition their agreement on an offset. With roughly 900,000 legal immigrants admitted per year, even the most generous option (#3) would entail reducing that number by only slightly over 10% or, if spread over several years, a fraction thereof.

However, any such option could be seen to conflict with the Administration's principle of favoring legal immigrants over those without legal status. In addition, several Members -- including Senator Abraham -- strongly oppose an offset, which they fear might re-open debate on other legal immigration issues.

### RECOMMENDATION

## MEMORANDUM

May 22, 1997

### OPTIONS FOR AVOIDING MASS REPATRIATION AND DEPORTATION OF CENTRAL AMERICANS AND MINIMIZING HARDSHIPS TO ABC CLASS MEMBERS

This memorandum addresses issues specific to Salvadoran and Guatemalan nationals who are members to the class in the lawsuit *American Baptist Churches et al v. Thornberg* (the ABC class). The proposed policy solutions may also be relevant to issues concerning other nationalities.

#### I. Background

The INS commenced asylum interviews for the ABC class on April 7, 1997. Sadly, when the litigation was settled, neither the attorneys for the ABC class nor the attorneys for the US government anticipated the severe limitations on relief contained in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act ("the Act").

Prior to the new Act, most class members who were not granted asylum would have a significant possibility of obtaining residency by a grant of suspension of deportation. Suspension is a remedy that an Immigration Judge can grant in immigration proceedings and which results in a grant of permanent residency. To qualify, an applicant must prove: (1) seven years of residency; (2) good moral character; and (3) that deportation would result in extreme hardship to the applicant or to his US citizen or permanent resident family members.

The majority of ABC class members not only have seven years in this country but have also established strong ties to family, friends, and work in the United States. In sum, thousands in the class expected to legalize by grants of suspension in immigration court.

The new immigration act eliminates suspension of deportation for all aliens placed in proceedings on or after April 1, 1997. Instead of suspension, the Act creates a new remedy called "cancellation of removal." Like suspension, it empowers an immigration judge to grant permanent residency. But its requirements are nearly impossible to meet. These requirements include: (1) ten years of residency; (2) good moral character; and (3) that a US citizen or lawful permanent resident parent, spouse or child of the applicant will suffer extreme and exceptional hardship. The hardship to the applicant is no longer relevant!

Many ABC class members are members of families where the entire family applied for asylum. Thus, in many cases no member of the family can meet the requirement of having a legalized family member. Furthermore, a significant number of applicants are young adults orphaned or abandoned in the war. These young adults, regardless of their achievements here and the traumas they have overcome, cannot qualify for relief since they have no citizen or permanent resident qualifying family members. Finally, many ABC applicants entered the United States between 1988 and 1990, and thus will not have ten year's residence when their cases enter the court.

The new Act contains other restrictions as well. The first concerns limitations on accruing years of residency to qualify for suspension or cancellation of removal. The new Act provides in Section 309(c)(5) that an applicant stops accruing the requisite seven or ten years when the applicant is served with a Notice to Appear, the document which commences immigration proceedings and which replaces the former Order to Show Cause ("OSC").

When the INS denies asylum to an ABC class member, the INS will then serve the applicant with a Notice to Appear, which charges deportability and notifies the applicant of a court date. However, a substantial percentage of ABC class members were previously in immigration proceedings and have old OSCs. These individuals will almost certainly be ineligible for suspension or cancellation because under the Board of Immigration Appeal's NJB decision, their old OSC could stop them from accruing the requisite time in this country. For instance, an individual who entered this country in 1983 seeking asylum and who was denied asylum (wrongly) that year by the INS will have an OSC dated 1983. If this individual is now denied asylum at his ABC interview and placed in deportation proceedings, then, instead of being credited for 14 years of residency, the NJB decision would credit only the years he lived here up to 1983.

About twenty-five percent of ABC class members were already in proceedings and thus have old OSCs issued before the accrual of seven years. These individuals could all be deemed ineligible for relief. In addition, nearly all Salvadoran ABC class members had OSCs issued to them in 1992, as a condition of obtaining Temporary Protective Status. Thus, a huge percentage of the class with old OSCs would be barred from applying for suspension or cancellation.

Finally, the new Act contains a provision that the INS contends limits grants of suspension or cancellation of removal to 4,000 per fiscal year. In February 1997, the chief immigration judge ordered all immigration judges to stop granting suspension because the 4,000 limit was nearly reached. The language in the Act does not make clear what happens to other suspension/cancellation applicants once the 4,000 limit is reached. Advocates for immigrants hope that the INS will decide that once the limit is reached, the judges can still grant suspension with the understanding that the grant recipient must wait to adjust status until there are sufficient numbers available in a subsequent fiscal year. The INS could enact regulations specifying that an alien granted suspension in one fiscal year be granted temporary legal status and placed on a waiting list for adjustment whenever a visa number is available. That approach is entirely consistent with the wording of the statute.

## **II. SUGGESTED ADMINISTRATIVE STRATEGIES TO PROTECT THE ABC CLASS**

### **A. Halt ABC Asylum Interviews.**

There should be an immediate halt to ABC asylum interviews while the Administration considers its options. Interviews began in early April and are continuing. The scheduling of interviews is causing confusion and fear, resulting in individuals failing to appear if they do not receive or do not understand the interview notices, and foreclosing the Administration from changing the procedures or standards governing the asylum interview process. There is no bar to deferring ABC interviews while the Administration and Congress consider various options.

**B. Grant TPS Status.**

Salvadorans and Guatemalans in the US should be given TPS under INA § 244 (or some similar status that provides them with employment authorization and prohibits their deportation) while the Administration considers a longer term solution.

**C. Interpret the ABC Agreement to Guarantee Class Members the Right to Seek Suspension of Deportation in Immigration Court.**

1. The INS can and should interpret the ABC agreement to guarantee class members the right to seek suspension without regard to the recent changes in the law. ABC class members should be allowed to apply for suspension under the standards in effect when the settlement was formally approved in 1991. In responding to a Petition for Rulemaking submitted by advocates of the class, the Justice Department reassured class members in 1996 that they could seek suspension in immigration court. In reliance on this promise, class members did not file suit in federal court against the INS to compel it to expedite ABC interviews prior to the effective date of the new Act. In view of this promise and other equitable factors, ABC class members should not be subject to the provisions concerning suspension of deportation or cancellation of removal contained in the new Act.

2. The Justice Department should adopt a regulation that allows suspension-of-deportation and cancellation-of-removal applications to be adjudicated administratively by the INS. Currently, only immigration Judges can adjudicate suspension applications. As a result, aliens must be placed into deportation or removal proceedings to apply. That unnecessarily burdens the immigration courts and delays the process. Cases that can be granted by the INS could be diverted from the courts. The jurisdiction of the immigration Judges would be preserved for aliens whose cases are denied administratively or who did not apply to the INS. (This is analogous to the existing procedures governing asylum applications).

**D. The Attorney General Should Resolve Suspension and Cancellation Issues Under the New Act In a Just Manner Consistent With the President's Statements.**

**1. The OSC Issue.**

The Attorney General should order that the NJB decision does not apply to ABC class members. Alternatively, the Attorney General should reverse BIA and find that § 309(c)(5) applies only to Notices to Appear issued after April 1, 1997, and to Orders To Show Cause issued before April 1, 1997, but not served until after April 1, 1997. This interpretation gives full meaning to all of the terms of the new Act,

**2. The 4,000 Cap.**

The INS' interpretation that Section 309(c)(7) imposes a 4,000 per year cap on suspension and cancellation of removal will be a severe obstacle for ABC class members. Like other provisions of the

new law, it should not be applied retroactively to ABC class members. In addition, the Attorney General should interpret the statute as imposing only a limit on granting adjustment of status, not on granting suspension. Aliens who are granted suspension should be placed on a "wait list" and permitted to remain here legally with work authorization until a number is available for adjustment in a subsequent fiscal year. The Attorney General should also rule that the 4,000 limit does not apply to cases commenced prior to April 1, 1997.

**E. The INS Should Apply Specific Hardship Standards for ABC Class Members Applying for Suspension.**

The INS should adopt standards to implement the eligibility criteria for suspension of deportation under the pre-1996 law. ABC class members who establish 7 years of residence should be deemed to satisfy the "extreme hardship" and good moral character requirements for suspension unless they have been convicted of disqualifying criminal offenses. The unique circumstances of class members and their long-standing ties to the United States should cause the Attorney General to issue regulations or guidelines that class members who otherwise qualify for suspension will satisfy the extreme hardship test. This will allow expeditious adjudication of suspension claims without unduly burdening the immigration court.

In the event that ABC class members are required to establish eligibility under the new cancellation of removal provision of the new Act, the Attorney General should issue regulations or guidelines that the US citizen or lawful permanent resident family member of an ABC class member will suffer extreme and exceptional hardship from the class member's removal.

**F. The INS Should Adopt a Policy of Following Matter of Chen in Adjudicating ABC Class Members Asylum Claims.**

In Matter of Chen, the Board of Immigration Appeals found that past persecution alone can be sufficient to establish an asylum claim based on the degree of persecution and humanitarian concerns. Under Matter of Chen, once an applicant establishes past persecution, a presumption arises that there is a threat of future persecution. The INS can rebut this presumption by demonstrating a change in country conditions. The INS should train its officers that the history of the ABC class is a compelling humanitarian concern that warrants grants of asylum based on past persecution, even when there is no showing of a current threat of persecution.

**G. Through Regulations, INS Should Institute a Policy Similar to What it Previously Did Under the Nicaraguan Review Program for Beneficiaries of Approved Visa Petitions.**

1. The policy should be to provide temporary legal status to ABC class members who are the beneficiaries of approved visa petitions who are waiting for current priority dates. This regulation would protect Central America from economic and political instability, and help unify families already in the United States.

2. The INS should adopt a rule or policy that class members' presence in the US does not constitute "unlawful" presence within the meaning of the new 3 & 10 year bars under § 212(a)(9). Absent such a policy, a class member who is denied asylum may be deemed to have been here unlawfully for many years and thereby be barred from the US for three or ten years even if he or she has developed an independent basis for obtaining legal status.

3. If an ABC member does not become subject to these bars (i.e. if adjustment program not continued), then he or she should be considered presumptively eligible for the waiver under extreme hardship. It would be extreme hardship for ABC members to return home for that period of time given that most fled their countries years and years ago to avoid or flee from actual persecution. All ties they have are now in this country.

**H. The INS Should Adopt a Policy or Rule That It Will Stipulate to Reopen the Deportation Order of Any Class Member Who Is Eligible for Adjustment of Status.**

Many class members are eligible for immigrant visas independent of their ABC status. These individuals should be allowed to obtain their permanent resident status through "adjustment of status" without having to leave the US. For those who are subject to deportation orders, adjustment is possible only if their case is first "reopened." Such reopening has been needlessly opposed by the INS.