

INVENTORY

JULIE FERNANDES
Domestic Policy Council

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NATIONAL SECURITY COUNCIL

FAX COVER SHEET

**Office of Democracy, Human Rights
and Humanitarian Affairs****NATIONAL
SECURITY
COUNCIL**17th & Penn, N.W.
Washington, D.C.
20504Did you get a complete,
clear transmission? If
not, please call:

(202) 456-9141

From: SCOTT BUSBY**To:** PETER JACOB 6-2604
MARIA ECHAVASTE 6-2983**Agency:** LEANNE S. 6-7028**Fax Number:** ALAN E. 514-1117**Date/Time:****No. of pages to follow:** 1**Message:**USEFUL STATS ON SUSPENSION
~~APPROVALS~~ APPROVALS. FY 97 NUMBERS
ARE SOMEWHAT UNRELIABLE GIVEN MANY
PROCEDURAL + SUBSTANTIVE ~~CHANGES~~ CHANGES.

OCT-31-97 FRI 01:56 PM

FAX NO.

P. 02

U.S. Department of Justice
Executive Office for Immigration Review
Decisions by Immigration Judges on Applications for Suspension of Deportation

October 30, 1997

All Nationalities

	Grants	Conditional Grant ***	Denials	Withdrawals*	Others **	Total
FY 89	276		331		205	812
FY 90	472		459		294	1,225
FY 91	896		576		774	2,246
FY 92	1,181		771		508	2,460
FY 93	1,597		939		509	3,045
FY 94	2,405		1,155		694	4,254
FY 95	3,752		1,780		1,052	6,584
FY 96	7,475		2,541		1,604	11,620
FY 97	4,090	72	5,102	272	2,868	12,404

Salvadorans

FY 89	17		32		23	72
FY 90	78		62		29	169
FY 91	51		22		288	361
FY 92	51		14		17	82
FY 93	75		34		25	134
FY 94	90		38		17	145
FY 95	106		42		33	181
FY 96	271		66		67	404
FY 97	148	3	231	20	153	555

Guatemalans

FY 89	4		9		5	18
FY 90	9		14		6	29
FY 91	17		6		79	102
FY 92	11		7		10	28
FY 93	26		19		13	58
FY 94	59		31		15	105
FY 95	67		60		43	170
FY 96	227		187		74	488
FY 97	138	1	306	18	101	564

* Withdrawals were tracked as a separate category in FY 97 only. Prior to that time they were included in "others".

** "OTHERS" ALSO INCLUDES CHANGES OF VENUE AND CASES IN WHICH A FORM OF RELIEF OTHER THAN SUSPENSION MAY HAVE BEEN GRANTED.

*** "CONDITIONAL GRANTS" HAVE BEEN ISSUED ONLY SINCE OCT. 1, 1997, WHEN A REGULATION AUTHORIZING CONDITIONAL GRANTS WENT INTO EFFECT.

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From: SCOTT BUDY**To:** PETER JACOBY 6-2604**Agency:** LEANNE SHIMABUKURO 6-7028**Fax Number:** JOHN MORTON 314-9077**Date/Time:** ROB WEINER 6-1647**No. of pages to follow:** 2**Message:** MARIA ECHAVASTE CALLED FROM
BRAZIL AND SAID THAT IT IS HIGHLY LIKELY
THAT POTUS WILL BE ASKED ABOUT CENTRAL
AMERICAN INITIATIVE TOMORROW & DURING
"TOWN MEETING" IN ARGENTINA. SHE, MCCURRY,
+ STEINBERG INDICATED A WISH FORGUIDANCE THAT WAS STRONGER IN OUTLINING
~~THE~~ OUR PROPOSAL + RAISING CONCERNS
W/ THAT OF SMITH, DIAZ-BALART. PLEASE

CENTRAL AMERICA LEGISLATION
October 16, 1997

Q: What is your view of the recent legislative initiative announced by Representatives Lincoln Diaz-Balart (R-FL) and Lamar Smith (R-TX) that would grant special immigration benefits to certain Central Americans, including an amnesty to Nicaraguans who entered the country prior to December 1995?

A: During my recent trip to Central America, I announced my intention to address the harsh, unintended consequences of the new immigration law for certain Central Americans and others who had developed substantial equities in the United States. In July, I transmitted to the Congress a legislative proposal that would offer fairer treatment to these individuals -- specifically by permitting them to be considered on a case-by-case basis under the more generous rules that were in effect at the time their immigration cases were initiated. I have been encouraged by the broad bipartisan support this proposal has received so far.

Last week, several Republicans in the House of Representatives announced their intention to introduce a bill that would also provide relief to Central Americans. ~~Although~~ we have not yet received the final details of their proposal, we understand that it would grant extraordinary benefits to most Nicaraguans in the U.S. in exchange for less generous treatment of other Central Americans and other similarly situated persons who would be severely impacted by certain provisions of the new law.

I am deeply concerned about this proposal's disparate treatment of similarly situated individuals. It not only fails to recognize the very similar circumstances of Salvadorans and Guatemalans and of the countries from which they fled, it also fails to mitigate the harsh and unintended consequences of the new law for others with pending cases. We would find it difficult to support such a lopsided proposal. It pits one group against another without addressing our fundamental concerns about certain aspects of the new law. Such an approach, in my view, is not only unfair; it is destined to fail.

I stand by my original proposal to provide even-handed treatment to all Central Americans who sought refuge in United States as well as others who have developed substantial equities here. I strongly urge the Congress to adopt such an approach.

I want to work w/ Congress
more fair. treatment

I am pleased that
their
proposal
embraces
much
of
recognizes
the
importance
of the
situation
of the
law
on
the
Central
Americans
I
am
in
my
proposal.

[If asked]

Q: If the Republicans insist on granting amnesty to Nicaraguans, would you support granting a similar amnesty to Salvadorans, Guatemalans and other deserving groups?

A: I do not think a broad amnesty is the appropriate remedy for these circumstances. It is inconsistent with the serious efforts we and the Congress have undertaken to give real meaning to our immigration laws. The proposal I have offered seeks to bring greater fairness to the consideration of special sorts of immigration cases without compromising this central purpose.

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Total Pages: _____

LRM ID: IMS115

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, July 10, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference *J. Jukes*

OMB CONTACT: Ingrid M. Schroeder

PHONE: (202)395-3883 FAX: (202)395-3109

SUBJECT: Draft Bill on Suspension of Deportation Amendments *IL*

DEADLINE: 4:30pm Thursday, July 10, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is a draft transmittal letter and fact sheet for the draft bill regarding suspension of deportation circulated under LRM #IMS114.

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LRM ID: IMS115

SUBJECT: Draft Bill on Suspension of Deportation Amendments

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

DRAFT

7/9/97 10:15pm

The Honorable Newt Gingrich
Speaker
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I am pleased to submit for your immediate consideration and enactment the "Immigration Reform Transition Act of 1997". This legislative proposal is designed to ensure that the complete transition to the new cancellation of removal provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) can be accomplished in a fair and equitable manner consistent with our law enforcement needs and national security interests.

This legislation provides a better transition to the new rules applicable to immigration relief formerly known as suspension of deportation. In particular, it avoids any unfairness that could come from applying new rules to pending cases involving individuals who have long ties to the United States. Also, it recognizes the continuing effects of special legal measures taken by my predecessors over the last decade with regard to those Central Americans who entered the United States in the 1980s in response to civil war and political persecution.

These measures -- the Nicaraguan Review Program which, under successive administrations from 1985 to 1995, protected roughly 40,000 Nicaraguans from deportation while their cases were under review and the American Baptist Church v. Reno litigation which resulted in a 1990 court settlement protecting roughly 190,000 Salvadorans and 50,000 Guatemalans -- would be effectively nullified under the unduly restrictive rules of IIRIRA. Such a result would come at great cost to families, our communities at home, and our international interests throughout the Americas.

This legislation will delay the effective date of IIRIRA's new provisions so that pending immigration cases will continue to be considered and decided under the old suspension of deportation rules as they were long known prior to April 1, 1997 while the new law would apply fully to cases commenced after that date. This legislation, of course, dictates no particular outcome of any case. Every application for suspension of deportation or

cancellation of removal must still be considered on a case-by-case basis by an immigration judge. It simply restores a fair opportunity for those whose cases have long been in the system or have other demonstrable equities.

Under the old suspension of deportation rules, immigration relief could be granted, in the discretion of an immigration judge, to an individual who had been present in the United States for seven years, showed good moral character, and demonstrated that deportation would cause extreme hardship to the individual or to a spouse, parent or child who was a United States citizen or a lawful permanent resident. Under the new law, the grounds for relief were significantly narrowed in two ways. First, the individual must show continuous physical presence for ten years. Second, the hardship that must be demonstrated must be "exceptional and extremely unusual." No longer is hardship to the individual alone relevant. This legislation will apply these new standards only to new cases.

In addition to continuing to apply the old standards to old cases, it exempts these cases from the new 4,000 annual cap on the number of suspensions of deportations (renamed cancellations of removals). It also exempts from the cap cases of battered spouses and children who receive cancellation. Finally, the legislation extends to all individuals included in the 1990 ABC settlement the substantive standards (e.g., seven years continuous physical presence, extreme hardship) previously available to suspension applicants whether or not they were formally placed in proceedings prior to April 1, 1997. Those individuals whose time to move to reopen their case following a removal order may have otherwise elapsed are granted 180 days in which to do so.

My Administration is committed to working with you for its enactment. If, however, we are unsuccessful in the goal you and I share of just and proper action, I am prepared to use my inherent foreign policy authority to take additional available administrative steps, including [considering] a grant of Deferred Enforced Departure which would provide time-limited protections from deportation for qualified individuals. Enactment of this legislation ensures a smooth transition to the full implementation of IIRIRA and prevents harsh and avoidable results.

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

William J. Clinton

The White House, July, __, 1997

THE WHITE HOUSE

DRAFT

Office of the Press Secretary

For Immediate Release

July xx, 1997

"Immigration Reform Transition Act of 1997"**FACT SHEET**

The President today transmitted to the Congress a legislative proposal entitled the "Immigration Reform Transition Act of 1997." This legislation provides a needed transition for certain persons with immigration proceedings begun before the 1996 immigration law took effect but still not yet finally adjudicated. This proposal will eliminate application of the new rules, effective April 1, 1997, to persons requesting suspension of deportation before the new law took effect. It will avoid the unfairness of applying certain new rules to pending immigration cases, and it recognizes the continuing effects of special legal measures taken over the last decade concerning Central American countries that were then mired in civil war.

Under this legislation, applicants for suspension of deportation who were in the administrative pipeline before April 1, 1997, will be required to meet the standards that applied prior to the effective date of the new law. The new law significantly tightens the criteria for suspension eligibility, which is appropriate for newly-filed requests, but unduly harsh for cases filed prior to April 1. This legislation will fulfill the President's promise he made during his May, 1997, trip to Central America to correct that inequity.

Under the new immigration law, immigration judges only may award a total of 4,000 grants of suspension per year. That ceiling only should be applied to requests filed after the new law took effect. The "Immigration Reform Transition Act of 1997" will ensure that deserving requests for suspension -- including those by certain battered spouses and children -- filed before April 1 will not be denied because of the cap.

In addition, the legislation will:

Clarify that the provision of the 1996 immigration law requiring a suspension applicant to have satisfied the physical presence requirement before INS instituted deportation proceedings against that individual only applies to cases filed after April 1, 1997. Persons who requested suspension before April 1 will be able to count their physical presence in the United States after INS began deportation proceedings against them.

Specify that all members of the longstanding class action case American Baptist Churches v. Thornburgh (the ABC class, which the Federal government settled in 1991) who request suspension of deportation will be judged by the pre-April 1 standards.

Give persons with final orders of deportation 180 days to file a motion to reopen their proceedings to request suspension. (Currently, such motions generally must be filed within 90 days of the date an order of deportation becomes final.)

This legislative proposal will help ensure that the 1996 immigration law will not have an unduly harsh effect on those individuals who have made vital contributions to their local communities here in the United States, while putting down deep roots in our Nation and abiding by our laws. We must continue to combat illegal immigration while facilitating legal immigration. But we must do so with laws that are humane and compassionate. The "Immigration Reform Transition Act of 1997" will fine-tune the 1996 law so that it achieves both goals appropriately and clearly.

Fact Sheet on "Deferred Enforced Departure" (DED)

Q: What is "deferred enforced departure"?

- "Deferred enforced departure" (DED) is an action which the President may take to delay the removal of a specified group of aliens from the United States for a designated period of time. It is based on the President's constitutional authority to exercise prosecutorial discretion in the enforcement of U.S. laws and to conduct foreign relations.
- DED is different from temporary protected status (TPS), which is a form of temporary relief that, by statute, may be granted by the Attorney General to certain designated nationals in the United States who have fled special types of situations (e.g., armed conflict or natural disaster). DED is not subject to the same statutory requirements and thus is more flexible.

Q: When has DED been used previously?

- Such authority was first invoked by President Bush in 1989 with regard to Chinese nationals in the U.S. following the events at Tiananmen Square.
- In 1991, President Bush issued DED to persons evacuated from Kuwait by the U.S. during the Persian Gulf War ("Persian Gulf Evacuees") and, in 1992, to Salvadorans on the expiration of TPS for those persons.
- President Clinton extended DED for both the Persian Gulf Evacuees and the Salvadorans, although DED was later allowed to lapse for both groups.

Q: Why would the President consider granting DED to certain groups of Central Americans?

- In the 1980s, thousands of Nicaraguans, Salvadorans, and Guatemalans sought refuge in the United States after fleeing war and civil strife in their countries. Most of these individuals were eventually authorized to stay temporarily in the U.S. through various administrative and legislative actions.
- Peace has recently been achieved in Nicaragua, El Salvador and Guatemala but it is still fragile. The leaders of those

countries have made clear their concern that, at this time, the return of their many citizens in the United States would threaten their efforts to establish a lasting peace.

- Recently enacted immigration legislation makes it much more difficult for many of these individuals to remain in the United States. The President would like to fix this problem legislatively. However, absent a legislative solution, the President has determined that it would be in the interest of peace, stability, and democracy in Central America to defer the departure of those Nicaraguans, Salvadorans, and Guatemalans who would have qualified for permanent status in the United States under the law in effect prior to the implementation of the new legislation.

Central American Migrants

Q: What did the Attorney General announce yesterday with regard to Central American migrants?

A: The Attorney General announced a three-part course of action relating to a form of immigration relief called "suspension of deportation." This remedy permits certain qualified individuals to gain permanent status in the United States. These actions are aimed primarily at fulfilling the President's promise to ease the effects of recent legislative changes to suspension on Central Americans in the United States.

The three components of the Attorney General's announcement are as follows:

1. The Attorney General has decided to vacate and take under review a controversial administrative decision, Matter of N-J-B-, that made it much more difficult for individuals in the U.S. to qualify for suspension. While that decision is under review, the Attorney General has ordered the INS not to deport anyone who would have been eligible for suspension but for that decision.

2. The Attorney General announced that the Administration will be sending legislation to the Hill next week that will provide for a more fair and humane transition to the new, more restrictive rules governing suspension. In essence, this legislation would permit anyone who was in immigration proceedings prior to April 1 as well as Salvadorans and Guatemalans who are covered by the settlement agreement in the American Baptist Churches (ABC) to be considered for suspension under the old, more lenient rules.

3. The Attorney General also indicated that, if Congress is unwilling to pass this legislation, the Administration will consider any available administrative options to protect from deportation certain Nicaraguans, Salvadorans, and Guatemalans who would have qualified for suspension but for the new rules.

Q: Why is the Administration taking this course of action?

A: As the President learned during his trip to Central America last month, peace and democracy are still fragile in that region. The sudden return of Central Americans in the United States could jeopardize these important accomplishments. After

2

so much strife in that part of the world - which had profound implications for the United States -- , the President believes it vital to the national security to assist in any way he can in bringing stability to that part of the world. The Administration also recognizes that many of these individuals, after years of being authorized to remain in the United States, have developed important ties to this country and should be treated fairly in light of the recently passed legislation.

Q: Isn't what the Administration proposes tantamount to an amnesty program for Central Americans?

A. No. The Administration's approach seeks only to ensure that persons whose immigration cases were pending prior to April 1 are able to benefit from the suspension rules in place prior to April 1. Persons who apply for suspension will continue to be considered on a case-by-case basis according to several legal requirements. Not all individuals who apply for suspension will qualify.

Q: How many people will be affected by the legislation?

A. The Department of Justice estimates that, under the proposed legislation, as many as 280,000 people might be eligible to apply for suspension under the old rules. It further estimates that about 160,000 might actually decide to apply for suspension. However, because suspension is decided on a case-by-case basis, it is impossible to estimate how many people might be able to gain permanent status under the proposed changes.

Q: What is the effect of the Attorney General's announcement on the lawsuit in Miami (the Tefel case) and other litigation involving these issues?

A. This question would be better asked of the Attorney General. Our understanding is that the Department of Justice is currently reviewing its posture in these cases in light of the Attorney General's announcement. The government's position will be made clear in the near future.

Q and A

Q: How many people will be affected by these decisions?

A: INS' best estimate is that as many as 280,000 people might be eligible to appear before an immigration judge to request suspension. INS estimates that perhaps about 160,000 might actually decide to apply for suspension. These numbers of course are very, very rough estimates.

Q: Are you going to reverse NJB?

A: What I am going to do is exercise my authority to review the decision. After I have done so, I will announce my decision. Moreover, given my determination to review the BIA decision, and the significance of that decision to so many people, I will immediately vacate the BIA decision. As a result, that decision will no longer dictate the Department's position on application of the stop-time rule to proceedings initiated before April 1.

Q: What other reason would you have for certifying the case to yourself?

A: The BIA's decision was a close case and deserves my careful review.

Q: If Congress doesn't pass it, what relief can you offer qualified candidates for suspension?

A: The Administration is prepared to consider all administrative options, which would include DED, deferred enforced departure.

Q: We've heard that if the legislation doesn't pass you will ask the President to grant Deferred Enforced Departure to the central Americans. Is this true?

A: The Administration is strongly committed to easing the harsh effects of the new immigration law, and therefore is prepared to consider all administrative options if our legislation is not enacted. Such administrative options certainly would include DED, but since DED is only a temporary form of relief from deportation, and would be much narrower than our legislative proposal, we only would consider it as a last resort.

Q: Is the President prepared to grant DED?

A: We are hopeful that Congress will pass our legislative proposal making such a move unnecessary. However, as I previously said, we are not foreclosing any options at this point.

Q: If you grant DED, will it be offered to all qualified individuals who were in the pipeline prior to April 1, or only to Central Americans?

or only 7.
A: It would be premature to speculate on the scope of DED at this point. We prefer to have Congress pass our legislation, which would offer broader relief than DED could afford. [OR???? DED is an action that the President may take based upon his authority to conduct foreign relations. Thus, it would apply only to nationals of certain countries and not to all applicants for suspension of deportation. [The impact of forced departures on the U.S. interests in peace, stability and democracy in Central America is relevant to consideration of DED for those nationals.]

Q: How long can a DED grant be for?

A: The duration of DED would be determined by the President. DED has typically been granted by the President for periods of 12 months, 18 months, or 24 months. DED is renewable and has been renewed in the past when previously invoked.

Q: Would people granted DED be able to work legally in the U.S.?

A: Yes.

Q: Are you seeking changes in the other standards for cancellation [7 v 10 years, demonstrating hardship to U.S. citizen not just to one's self]?

A: The legislation only makes adjustments to the application of the standards, not to the standards themselves. If the new legislation is enacted, the new standards will apply only to new cases and not retroactively to pending cases or cases filed by members of the ABC class.

✓ Q: Will these moves end the ABC lawsuit?

A: The ABC lawsuit settled in 1990. INS will continue to adhere to its obligations under that settlement agreement.

Q: Does this mean you are not going to appeal Tefel? Why has the government been wasting time pursuing Tefel in the first place?

A: We are still considering our options for appeal because the decision also involves other legal issues.

Q: Congressman X says this is really just a disguised amnesty program. Is it?

A: Not at all. Persons still will have to meet the suspension criteria and appear before an immigration judge who has the discretion to grant or deny the application.

Q: If you reverse NJB and get rid of the cap for people in the pipeline prior to April 1, won't you be offering suspension to 100,000 people? Isn't that tantamount to an amnesty?

TALKING POINTS

Telephone Calls

- o Good afternoon Senator/Representative _____. I am calling to inform you that I have decided to vacate and take under review the Board of Immigration Appeal's decision in Matter of N-J-B. While the new law clearly makes the new provision applicable to cases filed after April 1, 1997, I believe that the question of its application to pending cases initiated prior to April 1 deserves my careful review.
- o [If asked: While the decision in Matter of N-J-B is under review, I will order the INS not to deport individuals who would have been eligible for suspension but for the N-J-B-decision.]
- o Second, the Administration will be sending legislation to the Hill next week to provide for a more humane transition to the new, more restrictive rules governing suspension. In particular, our proposal would exempt individuals in proceedings before April 1 from the 4,000 cap and the new rule governing the accrual of residency.
- o In recognition of the special circumstances of the persons covered by the Bush Administration's settlement of the ABC litigation and the Reagan Administration's Nicaraguan Review Program, our proposed legislation would also apply the pre-April 1 rules to any ABC class members or individuals covered by the Nicaraguan Review Program.
- o If these legislative proposals are not enacted, the Administration is prepared to consider any available administrative option, including Deferred Enforced Departure, to protect from deportation ABC class members and individuals covered by the Nicaraguan Review Program who would have qualified for suspension but for the new rules.
- o I look forward to working with you to secure the enactment of our proposal. The new law has brought many needed reforms, but we must provide for a phased, humane transition.

DRAFT

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 therefore asking the Attorney General and Department of Justice to adopt appropriate administrative mechanisms for ensuring, to the extent possible, that individuals covered by this legislation receive the same fair and generous consideration of their claims. I am also directing the Attorney General and my Administration to address specifically the situation of Haitians, who are not covered by this bill. Most 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 Haitians in the next session of Congress. Finally, I note my displeasure with Congress' decision to continue to permit the retroactive application of certain provisions of the new immigration law. Such an approach is inherently unfair and un-American and we intend to revisit it as soon as we can.

DRAFT

Signing Statement on 245(i)

The conference report contains a limited extension of section 245(i) of the Immigration and Nationality Act. While this is a step in the right direction, I am concerned that it does not go far enough. Section 245(i) has permitted persons who have already been determined to be eligible for visas to obtain those visas in the United States instead of at consulates abroad. This has helped to keep families together and businesses operating without disruption. I strongly supported a permanent and clean extension of 245(i) and am pleased that the limited extension will cover many people who have already filed visa petitions. I am concerned, however, that changes made to the provision will impede many businesses from benefiting from section 245(i) and will delay the reunification of families in the future.

7406

THE WHITE HOUSE
WASHINGTON

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER

SUBJECT: Haitians without Status in the United States

In recent weeks, there has been growing concern about Haitians without legal status in the United States. While the legislative package on Central Americans that we are negotiating with the Republicans may help some Haitians, it does not reach the vast majority of them (approximately 11,000) who were paroled into the United States by the Bush Administration from November 1991 to June 1992 following President Aristide's ouster.

Members of the Congressional Black Caucus and other advocates for the Haitians are pushing very hard to provide relief -- preferably an amnesty like that proposed by the Republicans for Nicaraguans -- to the so-called "Guantanamo Haitians" as part of any legislative package that would assist Central Americans and other immigrants. They argue that any bill that provides relief to Central Americans but does not provide similar benefits to Haitians is discriminatory.

There is consensus within the interagency that it is important to provide relief to these Haitians along the same lines that we have proposed for the Central Americans. We are working hard with the Congress to include Haitians in this way. However, if we are unsuccessful, we may need to explore the same administrative options (e.g., Deferred Enforced Departure) that we have vowed to consider for the Central Americans if the current legislation is unsuccessful. We are attaching talking points on this issue if it comes up during your trip to Florida.

Attachment

Tab A Talking Points on Haitians in the United States

cc: Vice President
Chief of Staff

7406

Talking Points on Haitians in the United States

- Our original legislative proposal sought to provide greater fairness to all persons, including Haitians, who were eligible to apply for suspension of deportation prior to the enactment of the recent immigration law.
- We continue to fight for fairness and equal treatment in our negotiations with the Congress on this initiative. We are pushing hard for action on this issue before the end of this session of Congress.
- We understand that the proposals currently under consideration do not address the unique circumstances of the Haitians who the Bush Administration brought into the United States from Guantanamo Bay Naval Base in 1991 and 1992. We are pushing to find a legislative solution for this group. If that is not possible, we will explore administrative options as well.

THE PRESIDENT HAS SEEN

10/27/97

however, have serious doubts that we have a factual basis for temporarily suspending existing permits, and they worry that a loss on this issue could undermine our ability to defend any future action by Treasury to modify the test for non-sporting weapons. Senator Biden thinks that a loss on the temporary suspension issue would have detrimental political consequences, and that we should not take the action unless we believe a court could sustain it.

We are pressing Treasury, Justice, and White House Counsel lawyers to develop the strongest possible case for suspending existing permits; when we are satisfied that they have done so, we will together evaluate the strength of that case and determine whether to recommend temporary suspensions. We have met with staff for Sens. Feinstein and Biden and Reps. Schumer and McCarthy to brief them on our concerns about this issue. We are also trying to develop some kind of compromise option.

7. Crime -- Juvenile Crime Bill: The Senate clearly will not vote on juvenile crime legislation this year. A pending issue is whether the FY 98 Commerce, Justice, State Appropriations bill will include funding for new juvenile crime and prevention programs (including our prosecutors and afterschool programs) given that Congress has failed to enact authorizing legislation. We recently heard that the CJS appropriators probably will rebuff our efforts to get funding for these programs this year.

8. Immigration -- Central Americans: House Republicans are close to unveiling legislation to remedy certain problems the 1996 immigration law created for Central Americans. Although we have yet to see the language, we have heard that it will: (1) grant amnesty for Nicaraguans in the country before December 1995; (2) ensure that certain Guatemalans and Salvadorans will have their suspension of deportation claims decided under the older, more lenient standards; (3) retroactively apply the tougher standards of the new law to the suspension claims of all *non*-Central Americans; and (4) eliminate the unskilled workers category, but clear out the pipeline by grandfathering all individuals with approved visa petitions (about 70-75,000 individuals, representing seven years' worth of immigration by unskilled workers).

The Senate is also preparing a bill granting amnesty to Nicaraguans and protecting Guatemalans and Salvadorans from retroactive application of the new law's tough standards, but probably extending this protection to certain *non*-Central Americans (contra #3, above). This extension would comport with the Administration's proposal. Two other aspects of the legislation are uncertain. First, it is unclear what the Senate will do with respect to the unskilled workers category. Chairman Abraham opposes reducing legal immigration, especially as a tradeoff for protecting illegal immigrants. But he knows that Lamar Smith will support a deal only if it includes this provision, and he therefore may consider a "moratorium" on the category, attached to a broad grandfathering provision (perhaps even broader than we expect from the House). Second, the Senate may decide to provide protection for certain Haitians who are not protected under either the House bill or our own proposal. The CBC is pressing strongly for such protection.

Suspension of Deportation Legislation
October 31, 1997

Background: The immigration bill passed last year significantly tightened the requirements for a form of immigration relief called suspension of deportation. Following the President's trip to Central America in the spring, the Administration transmitted to the Congress a legislative proposal that would have permitted persons with pending immigration cases to benefit from the older, more generous rules relating to suspension of deportation. Our bill also sought to ensure that Central Americans who benefited from various forms of protection in the U.S. after fleeing persecution and war in their countries could be considered on a case-by-case basis for suspension relief. The Republicans have recently offered a counter-proposal that would: (1) grant amnesty to Nicaraguans who entered the country before December 1995; (2) permit Salvadorans and Guatemalans to be considered under the older, more generous suspension rules; and (3) apply the strict new suspension rules to everyone else with pending cases except persons who fled communism in the Soviet Bloc and arrived in the U.S. prior to 1990.

Q: What is the Administration's reaction to the current Republican counter-proposal to address the situation of Central Americans and others with pending claims to suspension of deportation?

A: The Administration welcomes all Congressional efforts to ameliorate the harsh impact of the new immigration law, particularly as it relates to persons who have developed substantial ties to this country after fleeing persecution or war in their home countries.

However, we are concerned about several aspects of the Republican proposal:

First, we are concerned that the Republican proposal fails to address the situation of Haitians who the Bush Administration brought to this country after the coup d'etat against 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. They deserve the same case-by-case consideration for relief that we have sought for others, including the Central Americans.

Second, we object to the failure of the Republican to address the situation of others with pending immigration cases. These persons would be subject to the new, strict suspension rules despite the fact that their cases were pending at the time the new law went into effect. We think persons with old cases should be considered under the old rules, not new ones.

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.



Elizabeth R. Newman
07/25/97 11:10:52 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Notice to Congress: Immigration reform Transition Act

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 25, 1997

TO THE CONGRESS OF THE UNITED STATES:

I am pleased to submit for your immediate consideration and enactment the "Immigration Reform Transition Act of 1997," which is accompanied by a section-by-section analysis. This legislative proposal is designed to ensure that the complete transition to the new "cancellation of removal" (formerly "suspension of deportation") provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; Public Law 104-208) can be accomplished in a fair and equitable manner consistent with our law enforcement needs and foreign policy interests.

This legislative proposal would aid the transition to IIRIRA's new cancellation of removal rules and prevent the unfairness of applying those rules to cases pending before April 1, 1997, the effective date of the new rules. It would also recognize the special circumstances of certain Central Americans who entered the United States in the 1980s in response to civil war and political persecution. The Nicaraguan Review Program, under successive Administrations from 1985 to 1995, protected roughly 40,000 Nicaraguans from deportation while their cases were under review. During this time the American Baptist Churches v. Thornburgh (ABC) litigation resulted in a 1990 court settlement, which protected roughly 190,000 Salvadorans and 50,000 Guatemalans. Other Central Americans have been unable to obtain a decision on their asylum applications for many years. Absent this legislative proposal, many of these individuals would be denied protection from deportation under IIRIRA's new cancellation of removal rules. Such a result would unduly harm stable families

and communities here in the United States and undermine our strong interests in facilitating the development of peace and democracy in Central America.

This legislative proposal would delay the effect of IIRIRA's new provisions so that immigration cases pending before April 1, 1997, will continue to be considered and decided under the old suspension of deportation rules as they existed prior to that date. IIRIRA's new cancellation of removal rules would generally apply to cases commenced on or after April 1, 1997. This proposal dictates no particular outcome of any case. Every application for suspension of deportation or cancellation of removal must still be considered on a case-by-case basis. The proposal simply restores a fair opportunity to those whose cases have long been in the system or have other demonstrable equities.

In addition to continuing to apply the old standards to old cases, this legislative proposal would exempt such cases from IIRIRA's annual cap of 4,000 cancellations of removal. It would also exempt from the cap cases of battered spouses and children who otherwise receive such cancellation.

The proposal also guarantees that the cancellation of removal proceedings of certain individuals covered by the 1990 ABC litigation settlement and certain other Central Americans with long-pending asylum claims will be governed by the

more

(OVER)

pre-IIRIRA substantive standard of 7 years continuous physical presence and extreme hardship. It would further exempt those same individuals from IIRIRA's cap. Finally, individuals affected by the legislation whose time has lapsed for reopening their cases following a removal order would be granted 180 days in which to do so.

My Administration is committed to working with the Congress to enact this legislation. If, however, we are unsuccessful in this goal, I am prepared to examine any available administrative options for granting relief to this class of immigrants. These options could include a grant of Deferred Enforced Departure for certain classes of individuals who would qualify for relief from deportation under this legislative proposal. Prompt legislative action on my proposal would ensure a smooth transition to the full implementation of IIRIRA and prevent harsh and avoidable results.

I urge the Congress to give this legislative proposal prompt and favorable consideration.

WILLIAM J. CLINTON

THE WHITE HOUSE,
July 24, 1997.

#

Message Sent To: _____



Elizabeth R. Newman
07/24/97 12:07:43 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Statement by the President: Immigration reform

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 24, 1997

STATEMENT BY THE PRESIDENT

"Immigration Reform Transition Act of 1997"

I am pleased to transmit to the Congress today the "Immigration Reform Transition Act of 1997." This proposal reflects my commitment to balance firm controls against illegal immigration with common sense and compassion. It would provide a needed transition for individuals who apply for a form of immigration relief called suspension of deportation and who had immigration cases pending before the 1996 immigration law took effect. It would prevent the inherent unfairness of applying new rules to old cases.

This legislation also addresses the special circumstances of Central Americans who came to our country because of civil war and upheaval. Today, the remarkable progress in that region means that many of those people can return home. But as I assured the leaders of Central America when I visited the region in May, we want that to occur in a manner that avoids destabilizing the nations and economies of Central America, or imposing undue hardships on families. We also want to make sure that people who sought refuge in our country and who have contributed greatly to their local communities here in the United States are treated with fairness and dignity. To meet that commitment, this proposal ensures that certain groups of Central Americans whose cases were pending before the new immigration law took effect would be eligible to apply for suspension of deportation under the prior rules.

I am determined to do all I can to preserve our nation's tradition of generous legal immigration. But just as we are a nation of immigrants, we also are a nation of laws. To uphold the tradition of generous legal immigration and to do right by legal immigrants, we need to

continue working to stop illegal immigration. The bill I am submitting today in no way diminishes the important enforcement objectives of the 1996 immigration bill, nor is it an amnesty or waiver program. Rather, it eases the transition to the new law for individuals who have put down deep roots in the United States -- and it advances our nation's strategic interest in promoting peace, prosperity and stability in Central America.

#

Message Sent To: _____

Q and A

Q: How many people will be affected by these decisions?

A: INS' best estimate is that as many as 280,000 people might be eligible to appear before an immigration judge to request suspension. INS estimates that perhaps about 160,000 might actually decide to apply for suspension. These numbers of course are very, very rough estimates.

Q: Are you going to reverse NJB?

A: What I am going to do is exercise my authority to review the decision. After I have done so, I will announce my decision. Moreover, given my determination to review the BIA decision, and the significance of that decision to so many people, I will immediately vacate the BIA decision. As a result, that decision will no longer dictate the Department's position on application of the stop-time rule to proceedings initiated before April 1.

Q: What other reason would you have for certifying the case to yourself?

A: The BIA's decision was a close case and deserves my careful review.

Q: If Congress doesn't [?] pass it, what relief can you offer qualified candidates for suspension?

A: The Administration is prepared to consider all administrative options, which would include DED, deferred enforced departure.

Q: We've heard that if the legislation doesn't pass you will ask the President to grant Deferred Enforced Departure to the central Americans. Is this true?

A: The Administration is strongly committed to easing the harsh effects of the new immigration law, and therefore is prepared to consider all administrative options if our legislation is not enacted. Such administrative options certainly would include DED, but since DED is only a temporary form of relief from deportation, and would be much narrower than our legislative proposal, we only would consider it as a last resort.

Q: Is the President prepared to grant DED?

A: We are hopeful that Congress will pass our legislative proposal making such a move unnecessary. However, as I previously said, we are not foreclosing any options at this point.

Q: If you grant DED, will it be offered to all qualified individuals who were in the pipeline prior to April 1, or only to Central Americans?

OR only 7.
A: It would be premature to speculate on the scope of DED at this point. We prefer to have Congress pass our legislation, which would offer broader relief than DED could afford. [OR???? DED is an action that the President may take based upon his authority to conduct foreign relations. Thus, it would apply only to nationals of certain countries and not to all applicants for suspension of deportation. [The impact of forced departures on the U.S. interests in peace, stability and democracy in Central America is relevant to consideration of DED for those nationals.]

Q: How long can a DED grant be for?

A: The duration of DED would be determined by the President. DED has typically been granted by the President for periods of 12 months, 18 months, or 24 months. DED is renewable and has been renewed in the past when previously invoked.

Q: Would people granted DED be able to work legally in the U.S.?

A: Yes.

Q: Are you seeking changes in the other standards for cancellation [7 v 10 years, demonstrating hardship to U.S. citizen not just to one's self]?

A: The legislation only makes adjustments to the application of the standards, not to the standards themselves. If the new legislation is enacted, the new standards will apply only to new cases and not retroactively to pending cases or cases filed by members of the ABC class.

✓ Q: Will these moves end the ABC lawsuit?

A: The ABC lawsuit settled in 1990. INS will continue to adhere to its obligations under that settlement agreement.

Q: Does this mean you are not going to appeal Tefel? Why has the government been wasting time pursuing Tefel in the first place?

A: We are still considering our options for appeal because the decision also involves other legal issues.

Q: Congressman X says this is really just a disguised amnesty program. Is it?

A: Not at all. Persons still will have to meet the suspension criteria and appear before an immigration judge who has the discretion to grant or deny the application.

Q: If you reverse NJB and get rid of the cap for people in the pipeline prior to April 1, won't you be offering suspension to 100,000 people? Isn't that tantamount to an amnesty?

A: Not at all. Persons still will have to meet the suspension criteria and appear before an immigration judge who has the discretion to grant or deny the application.

Q: When will the WH introduce its bill?

A: The Administration plans to introduce the legislation next week.

Q: If the legislation isn't passed by Oct 1 what will you do about those whose cases have been pending because of the cap? Will INS just round them up and ship them back to their countries or ask them to appear for deportation? Does INS have the resources to deal with huge new numbers of deportations.

A: INS has repeatedly said that under no circumstances will there be mass removals or targeting of any nationalities. And as I said before the Administration is prepared to consider all administrative options, which would include DED, deferred enforced departure, if the legislation does not become enacted.

Q: How will next year's 4,000 suspension slots be allocated?

A: Our legislation would exempt cases filed before April 1 from the cap. Cases filed after April 1 will still have to meet the tougher new criteria of the 1996 immigration law. We are still looking at how we would allocate the 4,000 slots if it looked like those grants might exceed the cap.

Q: We understand from previous statements you made to the Nicaraguan President and others that OLC had recommended against certification of the NJB case. Are you now overruling OLC or questioning their advice?

A: OLC has been at the heart of this matter from the beginning and has always thought that it presented a close and difficult question. I have been working with them as well as with the INS lawyers in reviewing and analyzing the complex issues involved in this matter in an open, thorough, and thoughtful manner.

Q: Who in Congress already has signed on to help get the legislation passed?

A:

Q: Will any Republicans help with the legislative push aside from the Republican Cubans?

A:

Q: What are the bill's real chances of enactment?

A:

Q: Why haven't you done anything about the cap before if you're so concerned about its

harsh effect?

A: We announced several months ago that suspension cases that were eligible except for the cap were being continued until September 30 to give us time to work with Congress on a legislative modification of the cap.

Q: Why doesn't the President use his DED authority now and not wait for the legislation?

A: DED would be a much more limited type of relief. Persons receiving suspension of deportation adjust to permanent resident status. DED, however, does not qualify a person for permanent resident status.

Q: Why did it take the President so long to fulfill his promise to the Central Americans?

A: As we have told the Central Americans, the Administration has been actively and carefully studying the complex and technical issues related to the implementation of the 1996 immigration law and looking at options as a priority matter. In addition, we announced several months ago that suspension cases that were eligible except for the cap were being continued until September 30 to give us time to work with Congress on a legislative modification of the cap.

Q: What feedback have you gotten from Congress on the legislative proposal?

A: We are proceeding vigorously with Congress now. Over the past few months, we have received requests from over 125 Members and Senators to look at what we could do administratively or legislatively. We will continue to work with them for a just and proper resolution of these cases.

- A: Not at all. Persons still will have to meet the suspension criteria and appear before an immigration judge who has the discretion to grant or deny the application.
- Q: When will the WH introduce its bill?
- A: The Administration plans to introduce the legislation next week.
- Q: If the legislation isn't passed by Oct 1 what will you do about those whose cases have been pending because of the cap? Will INS just round them up and ship them back to their countries or ask them to appear for deportation? Does INS have the resources to deal with huge new numbers of deportations.
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- A:
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work within campus

Leadership
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- Rob W.
 - Maria *
 - NSC
 - Political ..
 - VP .. Joe Lockhart
Roger Salazar
 - Press
-

1:50 comp call

bing. Dixie Band

1:30 Smith - stuff - counsel

2:30 Bunman

TALKING POINTS

Telephone Calls

- o Good afternoon Senator/Representative _____. I am calling to inform you that I have decided to vacate and take under review the Board of Immigration Appeal's decision in Matter of N-J-B. While the new law clearly makes the new provision applicable to cases filed after April 1, 1997, I believe that the question of its application to pending cases initiated prior to April 1 deserves my careful review.
- o [If asked: While the decision in Matter of N-J-B is under review, I will order the INS not to deport individuals who would have been eligible for suspension but for the N-J-B decision.]
- o Second, the Administration will be sending legislation to the Hill next week to provide for a more humane transition to the new, more restrictive rules governing suspension. In particular, our proposal would exempt individuals in proceedings before April 1 from the 4,000 cap and the new rule governing the accrual of residency.
- o In recognition of the special circumstances of the persons covered by the Bush Administration's settlement of the ABC litigation and the Reagan Administration's Nicaraguan Review Program, our proposed legislation would also apply the pre-April 1 rules to any ABC class members or individuals covered by the Nicaraguan Review Program.
- o If these legislative proposals are not enacted, the Administration is prepared to consider any available administrative option, including Deferred Enforced Departure, to protect from deportation ABC class members and individuals covered by the Nicaraguan Review Program who would have qualified for suspension but for the new rules.
- o I look forward to working with you to secure the enactment of our proposal. The new law has brought many needed reforms, but we must provide for a phased, humane transition.

**Talking Points for the Attorney General on
The Administration's Suspension Proposal
July 10, 1997, 2:45
Conference Room B**

Prepared by: Carole Florman, 616-2765
Reviewed by Bert Brandenburg and John Morton

Good afternoon.

Since the immigration law was passed last year, the President, Commissioner Meissner and I have all expressed great concern about certain aspects of the bill which we believe could unfairly affect thousands of individuals whose pending suspension of deportation cases have been working their way through the system -- in some cases for many years.

During the President's recent trip to Central America he made a commitment to find a fair and reasonable approach to these difficult issues. Today we will share with you our plans for fulfilling that promise.

Background

The 1996 Immigration Act 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 new law changes the requirements for suspension for all new cases filed after enactment of the law. But it also applies two provisions to all cases -- even those that were in the pipeline when the law took effect -- and that we believe is unfair.

Under the old law, an individual could continue accruing time toward the needed seven years, even after the deportation proceedings had commenced. The new law imposes a "stop-time" rule, which requires that the requisite period be achieved before the proceeding begin. In a decision known as NJB, the Board of Immigration Appeals (BIA) held that this rule applies to all cases where the grant of suspension of deportation was not final on the date of enactment.

The law also sets a 4,000 cap on the number of suspensions of deportations that can be granted in any fiscal year, beginning with this year. This immediate application to cases already in the pipeline, has caused disruption in normal case processing because it has imposed a quantitative limit on what had previously been a purely qualitative determination, administered in a decentralized fashion by over 200 immigration judges.

These changes dramatically reduce the number of migrants eligible for the humanitarian relief once offered by suspension, and particularly affects thousands of Central Americans who entered the U.S. in the 1980s in response to civil war and

political persecution, and have been authorized to remain in the U.S. under various special measures.

The Proposal

In order to address both these issues we have decided to take the following steps:

First -- I have decided to vacate and take under review the Board of Immigration Appeal's decision in the Matter of N-J-B, a case in which the Board of Immigration Appeal (BIA) ruled that time spent in deportation proceedings could no longer count toward the residency requirement necessary to receive suspension. While this holding is clearly correct for cases filed after April 1, 1997, I believe that the question of its application to pending cases initiated prior to April 1 deserves my careful review.

Second, the Administration will be sending legislation to Congress next week to provide for a more humane transition to the new, more restrictive rules governing suspension. In particular, our proposal would exempt individuals in proceedings before April 1 from the annual cap of 4,000 suspensions, as well as the new rule governing the accrual of residency. If passed, the "Immigration Reform Transition Act of 1997," will enable applicants for suspension of deportation whose cases were pending prior to April 1, 1997 who also meet the standards which applied at that time, to be granted such relief on a case-by-case basis.

The proposed legislation recognizes the special circumstances of aliens whose cases were pending when the new law was enacted and will help us avoid any unfairness that could come from applying new rules to pending cases. We want to ensure that the 1996 immigration law will not have an unduly harsh effect on those individuals who have made vital contributions to their local communities here in the United States, while putting down deep roots in our Nation and abiding by our laws.

Our proposed legislation also recognizes the special circumstances of the persons covered by the Bush Administration's settlement of the ABC litigation (1990) and the Reagan Administration's Nicaraguan Review Program (begun in 1987), and will apply the pre-April 1 rules to any ABC class members or participants in the Review Program.

the Administration is *consider*
I have also informed Speaker Gingrich that if these legislative proposals are not enacted, ~~I am~~ prepared to ~~recommend to the President~~ any available administrative option, including Deferred Enforced Departure, to protect from deportation ABC class members and participants in the Nicaraguan Review Program.

This administration's goal has always been to combat illegal immigration while preserving our proud history of legal immigration. We believe that the "Immigration Reform Transition Act of 1997" will provide the necessary finetuning to the 1996 law to allow it to achieve both goals and we look forward to working with the Congress.

I will happy to take your questions.

197 JUL 8 4 32 PM '97

THE WHITE HOUSE
WASHINGTON

July 3, 1997

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM:

SAMUEL BERGER
MARIA ECHAVESTE
JOHN HILLEY
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 _____

TALKING POINTS

Telephone Calls

- o Good afternoon Senator/Representative _____. I am calling to inform you that I have decided to vacate and take under review the Board of Immigration Appeal's decision in Matter of N-J-B. While the new law clearly makes the new provision applicable to cases filed after April 1, 1997, I believe that the question of its application to pending cases initiated prior to April 1 deserves my careful review.
- o [If asked: While the decision in Matter of N-J-B is under review, I will order the INS not to deport individuals who would have been eligible for suspension but for the N-J-B decision.]
- o Second, the Administration will be sending legislation to the Hill next week to provide for a more humane transition to the new, more restrictive rules governing suspension. In particular, our proposal would exempt individuals in proceedings before April 1 from the 4,000 cap and the new rule governing the accrual of residency.
- o In recognition of the special circumstances of the persons covered by the Bush Administration's settlement of the ABC litigation and the Reagan Administration's Nicaraguan Review Program, our proposed legislation would also apply the pre-April 1 rules to any ABC class members or individuals covered by the Nicaraguan Review Program.
- o If these legislative proposals are not enacted, the Administration is prepared to consider any available administrative option, including Deferred Enforced Departure, to protect from deportation ABC class members and individuals covered by the Nicaraguan Review Program who would have qualified for suspension but for the new rules.
- o I look forward to working with you to secure the enactment of our proposal. The new law has brought many needed reforms, but we must provide for a phased, humane transition.

**Talking Points for the Attorney General on
The Administration's Suspension Proposal
July 10, 1997, 2:45
Conference Room B
Prepared by: Carole Florman, 616-2765
Reviewed by Bert Brandenburg and John Morton**

Good afternoon.

Since the immigration law was passed last year, the President, Commissioner Meissner and I have all expressed great concern about certain aspects of the bill which we believe could unfairly affect thousands of individuals whose pending suspension of deportation cases have been working their way through the system -- in some cases for many years.

During the President's recent trip to Central America he made a commitment to find a fair and reasonable approach to these difficult issues. Today we will share with you our plans for fulfilling that promise.

Background

The 1996 Immigration Act 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 new law changes the requirements for suspension for all new cases filed after enactment of the law. But it also applies two provisions to all cases -- even those that were in the pipeline when the law took effect -- and that we believe is unfair.

Under the old law, an individual could continue accruing time toward the needed seven years, even after the deportation proceedings had commenced. The new law imposes a "stop-time" rule, which requires that the requisite period be achieved before the proceeding begin. In a decision known as NJB, the Board of Immigration Appeals (BIA) held that this rule applies to all cases where the grant of suspension of deportation was not final on the date of enactment.

The law also sets a 4,000 cap on the number of suspensions of deportations that can be granted in any fiscal year, beginning with this year. This immediate application to cases already in the pipeline, has caused disruption in normal case processing because it has imposed a quantitative limit on what had previously been a purely qualitative determination, administered in a decentralized fashion by over 200 immigration judges.

These changes dramatically reduce the number of migrants eligible for the humanitarian relief once offered by suspension, and particularly affects thousands of Central Americans who entered the U.S. in the 1980s in response to civil war and

political persecution, and have been authorized to remain in the U.S. under various special measures.

The Proposal

In order to address both these issues we have decided to take the following steps:

First -- I have decided to vacate and take under review the Board of Immigration Appeal's decision in the Matter of N-J-B, a case in which the Board of Immigration Appeal (BIA) ruled that time spent in deportation proceedings could no longer count toward the residency requirement necessary to receive suspension. While this holding is clearly correct for cases filed after April 1, 1997, I believe that the question of its application to pending cases initiated prior to April 1 deserves my careful review.

Second, the Administration will be sending legislation to Congress next week to provide for a more humane transition to the new, more restrictive rules governing suspension. In particular, our proposal would exempt individuals in proceedings before April 1 from the annual cap of 4,000 suspensions, as well as the new rule governing the accrual of residency. If passed, the "Immigration Reform Transition Act of 1997," will enable applicants for suspension of deportation whose cases were pending prior to April 1, 1997 who also meet the standards which applied at that time, to be granted such relief on a case-by-case basis.

The proposed legislation recognizes the special circumstances of aliens whose cases were pending when the new law was enacted and will help us avoid any unfairness that could come from applying new rules to pending cases. We want to ensure that the 1996 immigration law will not have an unduly harsh effect on those individuals who have made vital contributions to their local communities here in the United States, while putting down deep roots in our Nation and abiding by our laws.

Our proposed legislation also recognizes the special circumstances of the persons covered by the Bush Administration's settlement of the ABC litigation (1990) and the Reagan Administration's Nicaraguan Review Program (begun in 1987), and will apply the pre-April 1 rules to any ABC class members or participants in the Review Program.

I have also informed Speaker Gingrich that if these legislative proposals are not enacted, ~~from~~ prepared to recommend to the President any available administrative option, including Deferred Enforced Departure, to protect from deportation ABC class members and participants in the Nicaraguan Review Program.

This administration's goal has always been to combat illegal immigration while preserving our proud history of legal immigration. We believe that the "Immigration Reform Transition Act of 1997" will provide the necessary finetuning to the 1996 law to allow it to achieve both goals and we look forward to working with the Congress.

I will happy to take your questions.