

Maria

MEMORANDUM

TO: MARIA ECHAVESTE
FROM: IRENE BUENO
RE: MEETING ON FIX 96/ADMINISTRATIVE ACTIONS – Friday, October 6, 2000 in Maria's office

PURPOSE: This purpose of this meeting is to discuss with DOJ the status of their administrative actions to address the problems that have arisen as a result of the Immigration Reform laws of 1996.

BACKGROUND: DOJ has been working on some administrative actions to address the problems. The following is a list and a status of some administrative actions, some of which were suggested made by AILA and (see attached memorandum):

ADMINISTRATIVE ACTIONS CURRENTLY UNDER CONSIDERATION

- 10/23
1. **Prosecutorial Discretion:** AILA suggests that INS/DOJ could develop guidelines for the exercise of prosecutorial discretion and choose not to proceed with prosecution of certain classes of cases. INS has prepared a legal memorandum establishing legal framework on prosecutorial discretion guideline that would address when cases and charges would be brought. However, many policy issues would need to be worked out before these guidelines are worked out. You ask Bo the status of these guidelines.

Comments close???
Retroactivity

Soriano Rule: AILA argues that because Federal Courts disagreed with the Attorney General retroactive application of provisions of the law that DOJ should change its interpretation. DOJ issued proposed regulations changing its interpretation of the law. However, this regulation would not provide any relief for individuals who have already been deported. AILA and other immigrant and civil rights organizations have commented the regulation suggesting that DOJ has authority to consider those cases. Comment period has been closed. We should find out the status of this regulation.

96-2000

2. **Detention:** AILA argues that INS could acquiesce to court decisions that find mandatory detention unconstitutional. Instead, the INS continues to detain everyone released to its custody post-

October 1998. INS also continues to oppose bond and custody hearings in some cases where removal is based on pre-IIRAIRA grounds. DOJ cannot find that mandatory detention is unconstitutional but has done some things in this area to add more flexibility in detention but cannot go any further without change in legislation.

Limits on Detention for Long-term detainees: AILA asked that INS limit the detention for long-term detainees who are nationals of country that will not accept their repatriation such as Cuba and Cambodia. A Federal District Court found these provisions unconstitutional and directed the INS to release the detainee. INS established guidelines on the release of long-term detainees.

SUMMARY EXCLUSION/EXPEDITED REMOVAL: AILA is seeking to additional safeguards in the expedited removal process to ensure that it meet due process concerns. AILA suggests that the Administration allow independent researchers access to study the process and give persons in expedited removal the opportunity to consult with and be assisted by a competent interpreter. DOJ has reviewed this proposal and asked INS to consider this suggestion. The INS policy council has agreed and asked INS to develop outside parties to observe the process that is not disruptive to the current process. We should ask Bo the status of this proposal. AILA is also concerned about expanding expedited removal and we should find out if INS has any plans to expand it.

3. Repapering Regulation: DOJ is considering a proposed regulation that would allow people to be considered under the he transitional law rather than the old law if they would do better under transitional law. DOJ is working on this regulation. They hope to get this in a month. We should ask for an update on the status.

2 weeks

ADMINISTRATIVE ACTIONS THAT ARE PENDING IN LEGISLATION (PARITY AND H.R. 5062) BUT THAT WE SHOULD REVIEW IF LEGISLAITON DOES NOT PASS

1. Aggravated Felony Definition: DOJ has retroactively applied the new aggravated felony definition to crimes that were committed before 1996. AILA suggests that DOJ does not have to interpret the law in this way and should applied retroactively only to felonies serious felonies. In addition, DOJ could issue guidelines on prosecutorial discretion to priorities

the most serious felonies and not prosecute less serious felonies such as hairpulling cases and hundreds of similar other cases. AILA recognizes that this is only temporarily relief until broader legislation is passed. This provision is part of H.R. 5062, the Barney Frank bill. However, if this legislation does not pass DOJ/INS should consider addressing this in its prosecutorial discretion guidelines.

2. **Reinstatement:** AILA argues that old removal orders do not have to be reinstated where the person was both deported and reentered under the old-Pre-1996 law. By reinstating the old order, individuals are ineligible for any relief such as NACARA applicants. AILA argues that the AG has prosecutorial discretion to refuse to move for reinstatement of orders of removal. This problem is addressed in parity legislation but should be reviewed if the parity is not enacted.
3. **Stop-time rule:** The stop time rule is a provision in the 1996 law that cuts off the required period of continuous residence when an offense was committed. The result is that long-term lawful permanent residents are barred from relief from deportation even though they have lived in the US for many years after the offense was committed. AILA suggests that the AG could exercise prosecutorial discretion not to prosecute these cases where the person would have been eligible for relief but for the new stop time rule. *H.R. 5062 addresses this issue.*

ADMINISTRATION ACTIONS THAT AILA WANTS BUT ARE DIFFICULT

JUDICIAL REVIEW: AILA suggests the DOJ modify its litigation posture and not oppose judicial review particularly in cases where 1996 law is ambiguous. DOJ response is that this would be very unlikely.

ATTENDEES:

You
James Castello
Brad Glassman
Bo Cooper
Beth Nolan
Dawn Chirwa
Irene

TO: Maria Echaveste
From: American Immigration Lawyers Association
RE: Items for Administrative Action
DT: April 14, 2000

Thank you for meeting with AILA's Executive Committee to discuss a range of immigration issues. As you requested, here is a short summary of issues where we believe the Administration could take useful action to mitigate the harsh impact of the 1996 immigration laws, while at the same time pursuing legislative initiatives that would change the law.

1. **Judicial Review:** The Administration should modify its litigation posture and not oppose judicial review, especially in cases where the statute is ambiguous. The goal of the 1996 legislation was to streamline the judicial review process and to prohibit protracted and repetitive recourse to the federal courts as a means of delaying deportation. That goal can be achieved by consolidating more claims into the final order of removal and eliminating the fragmentation of litigation that occurred before 1996. However, the goal of streamlining does NOT require imposing the kinds of prohibitions on judicial review that have themselves led to protracted litigation.
2. **Retroactivity:** The INS/DOJ have interpreted the law as being retroactive rather than prospective in many instances. There are many cases in which the statute does not require retroactive interpretation, and many cases where the INS/DOJ could simply develop guidelines for the exercise of "prosecutorial discretion" and choose not to proceed with prosecution of certain classes of cases. For example:
 - a. **Soriano:** At least 6 circuits (First, Second, Third, Fifth, Sixth and Eleventh) have ruled against the Attorney General's *Soriano* decision and have determined that the provisions of the Anti-Terrorism and Effective Death Penalty Act (AEDPA) do NOT require disqualifying from relief those whose applications for 212(c) relief were pending as of the date of enactment of AEDPA.

We have asked that the Attorney General withdraw her decision in *Soriano* to ensure consistent and just application of the law across the country. Several advocates briefed the Solicitor General and the Deputy Attorney General on this matter; it has been "under consideration" for several months at the Justice Department.

- b. **Aggravated felony definition:** The new aggravated felony definition does NOT have to be applied to old crimes. At the very least, the Administration should direct that the term "aggravated felony" be applied only to *felonies* and that such felonies be *serious*. In addition, the INS/DOJ could issue guidelines for the exercise of prosecutorial discretion which provide that convictions that were neither aggravated felonies nor even deportable offenses when committed, and that were committed more than 10 (or 5, or 15) years ago will not be priorities for prosecution. While such guidelines would not provide lasting and sure relief for lawful permanent residents, they would temporarily hold off the initiation of deportation proceedings while the Administration attempts to effect legislative change. Such "prosecutorial discretion" would help the Administration avoid the negative publicity that has resulted from blindly proceeding with cases such as that of Mary Ann Gehris (a 14-year old conviction for "hairpulling"), Jesus Collado (a 25-year old conviction for statutory rape), and literally hundreds of others.
- c. **Reinstatement:** Old removal orders do NOT have to be reinstated where the person was both deported AND re-entered under the old pre-1996 law. The INA provides for reinstatement of removal orders against persons illegally re-entering the U.S. The result is that the prior order of removal is reinstated from its original date and the person is not eligible for any relief.

The INS has taken the position that the reinstatement provision applies to those persons eligible for NACARA! It is estimated that this posture will result in the denial of literally thousands of NACARA applications and worse, the removal of thousands of NACARA-eligible persons who have resided in the U.S. for years. This position is contrary to the clear intent of both Congress and the Administration to provide relief for NACARA-eligible persons.

At the very least, the Administration could request that the Attorney General use her prosecutorial discretion and refuse to move for reinstatement of orders of removal in those cases where the person is eligible for relief under NACARA.

- d. **Stop time rule:** The "stop time rule" is a provision in the 1996 law that cuts off the required period of continuous

residence when an offense was committed. The result is that long-term lawful permanent residents are barred from relief from deportation, even though they have lived in the U.S. for many years after their offense was committed. This is particularly troublesome in cases where the individual's offense was not even a basis for deportation prior to 1996. Again, the Administration could exercise "prosecutorial discretion" and not prosecute cases where the person would have been eligible for relief but for the new "stop time rule".

3. **Detention:** The INS could acquiesce to court decisions that find mandatory detention unconstitutional. Instead, the INS continues to detain everyone "released" to its custody post-October 1998. INS continues to oppose bond and custody hearings in some cases where removal is based on pre-IIRIRA grounds (Richardson).

Further, the INS could put a limit on how long it will continue to detain someone after a removal order has been issued, and release anyone it has failed to deport by that time.

4. **Summary exclusion/expedited removal.**

- a. **Transparency:** The new expedited removal process lacks vital safeguards. Despite assertions to the contrary by INS personnel, the process has never been reviewed by the courts to determine whether it satisfies due process concerns. (The sole legal challenge allowed by the statute was dismissed based on jurisdiction and standing grounds; the judge in the case expressed grave concerns with the actual procedures.)

The INS has barred all access to outside parties to observe the process. The Administration should allow independent researchers access to study the process and should give persons in expedited removal the opportunity to consult with, and be assisted by, a competent interpreter.

- b. **Expansion:** The Administration should not expand the expedited removal process to persons already inside the U.S. On September 20, 1999, the INS issued a notice indicating its intention to expand expedited removal to certain criminal aliens held in federal, state and local

jails. The expansion will begin with a pilot program in three contract facilities in Texas.

The Administration opposed expedited removal legislation in 1996, arguing that it only sought such authority in "emergency" situations. The 1996 statute not only instituted the procedure at every port of entry, it also gave the Attorney General the authority to extend expedited removal to persons who have been in the U.S. less than two years.

The Administration should not expand expedited removal, but should afford persons in the U.S. the right to have their case adjudicated in immigration court.

5. Other enforcement issues:

- a. **Racial profiling:** The INS should abandon the use of racial profiling for immigration enforcement purposes. INS collaboration with state and local law enforcement agencies should be subject to strict guidelines and oversight.
- b. **No criminal prosecution of victimless immigration crimes:** The criminal prosecution of victimless immigration crimes also has dramatically increased, stressing court systems and public defenders, and resulting in criminal records for immigrants who have no prior arrests. These cases have traditionally been handled through deportation, not the federal criminal prosecution. Such prosecutions should be guided by national standards and not left up to each district.
- c. **Secret evidence:** The Administration should agree to CIPA-like processes in the secret evidence cases, so that persons attempting to defend themselves would at least be provided with an adequate summary of the alleged evidence against them.
- d. **Late legalization:** The Administration should modify its position regarding the "unresolved legalization cases", and provide a mechanism for adjudication and resolution of these cases, pending some further legislative action.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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No. of Pages: _____ (Excluding Cover)

Comments: I received this summary from USCC.
Thought you would want to see it.

THE EFFECTS OF H.R. 5293

The 1996 immigration laws violate core American principles of law, justice and fairness. Specifically, these laws subject long-time lawful permanent residents to deportation for minor offenses from years in the past. The 1996 laws are merciless: providing for no second chances, changing the rules in the middle of the game, and denying people their day in court. The media nationwide has reported on the harsh effects of the 1996 laws. Through this coverage, lawmakers, public officials and the general public have learned of the overly harsh provisions of IIRAIRA and AEDPA. In the face of widespread recognition that the laws are overly harsh, HR 5293 would expand those laws to apply to more people.

H.R. 5293 expands the "aggravated felony" definition and the "clock-stopping" rule

Under the bill, the aggravated felony definition is expanded to apply to the grounds of inadmissibility as well as removability. Unfortunately, the definition of an "aggravated felony" was widely expanded by the 1996 laws. After 1996, almost any offense can be an "aggravated felony", including minor offenses where no jail time is served. When the Second Circuit Court of Appeals recently ruled that a misdemeanor shoplifting conviction with a suspended one-year sentence is an "aggravated felony" under the 1996 laws, both the majority and the dissent agreed that this was an "Alice in Wonderland" use of words. Indeed, one of the ironies of the 1996 law is that a person can be called an "aggravated felon" for deportation purposes and yet still fit under what has always been the "petty offense" exception to inadmissibility. This bill's solution is to now make these folks inadmissible as "aggravated felons" rather than to examine whether it makes sense to use such an Alice-in-Wonderland-like definition of the term "aggravated felony".

The bill would expand the "clock-stopping" rule to terminate continuous presence for the purposes of cancellation of removal upon the commission of any offense that is a ground of inadmissibility or a ground of deportability. Under the current law, the overly harsh and unfair clock-stopping rule only applies to the commission of an offense that is a ground of inadmissibility and a ground of deportability. But the real point is that the clock-stopping rule does not make sense, especially for folks who are left to pursue normal lives and are never pursued by the INS (e.g. those folks who are the beneficiaries of "prosecutorial discretion"). The clock-stopping rule should be repealed, not expanded.

H.R. 5293 expands the grounds of inadmissibility and further erodes INS discretion

By expanding the grounds of inadmissibility to include minor offenses for which no jail time was actually served, INS is prohibited from exercising discretion in enforcing the immigration laws. There is no opportunity for prosecutorial discretion in admission decisions. With deportability, the INS can choose to not pursue a case that has sympathetic fact or involves a minor offense. But with a person at the border returning from a trip, an INS agent must affirmatively make a decision to admit the person. This bill would prohibit the admission of any person, including legal permanent residents, who has ever been convicted of an "aggravated felony" under the 1996 laws, even if it was a minor offense that occurred many years ago.

H.R. 5293 would expand mandatory detention

The bill would expand mandatory detention to apply to anyone who the INS "alleges" is inadmissible or deportable by reason of having committed one of the many offenses

covered by §236(c)(1), including minor offenses. The current statute says an alien is subject to mandatory detention only if he/she "is inadmissible" or "is deportable" based on one of those offenses. The BIA has interpreted this to require that INS is not substantially unlikely to prevail on those charges. Under this bill, a person will be subject to mandatory detention whether INS is likely to prevail on their allegations or not.

The bill would apply mandatory detention to anyone regardless of when their conviction occurred, since it would eliminate the "when released" language from the current law and would add a new effective date that does not limit the statute's application to people released prospectively. In other words people who had minor convictions from 20 years ago would be subject to mandatory detention.

The bill also applies mandatory detention even to individuals who were convicted of crimes but were never sentenced to any period of imprisonment. By repealing the "when released" language, the bill eliminates a strong argument that the current statute by its plain language only applies to individuals who are actually incarcerated, since otherwise they would not be "released". Rather than eliminating the unjust practice of mandatory detention of people who may have never served a day in jail, this bill does the opposite: it requires mandatory detention for people who have never been incarcerated.

HR 5293 goes even farther to eradicate judicial discretion

The bill eliminates the only waiver that is currently available for people who are classified as aggravated felons. This waiver was an important tool for people with minor offenses that are nevertheless classified as an "aggravated felony" under the 1996 law. Rather than expanding this needed discretionary relief, this bill eliminates it entirely.

Not only does H.R. 5293 represent an expansion of the overly harsh 1996 laws, this bill violates the spirit of the recently reached compromise bill H.R. 5062 that passed the House on suspension earlier this month.

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From: Lisa J. Macecevic on 09/20/2000 03:11:34 PM

Record Type: Record

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

cc: Richard E. Green/OMB/EOP@EOP

Subject: CQ story and House remarks on HR5062 - fix '96 bill

CQ MONITOR NEWS

HOUSE WOULD REVERSE PORTIONS OF 1996 IMMIGRATION LAW

By Nicole Duran, CQ Staff Writer

Sept. 19, 2000 - The House voted Tuesday to reverse part of a 1996 law that requires automatic deportation of legal immigrants who commit certain crimes, even if they have not been sentenced to prison.

Supporters said the passage of HR 5062 by voice vote should reverse a wrong that fell on some immigrants as a result of two 1996 laws that barred them from application for permission to remain in the United States.

The Anti-terrorism and Effective Death Penalty Act (PL 104-132) and the Illegal Immigration Reform and Immigration Responsibility Act (PL 104-208) also barred immigrants who committed offenses prior to 1996 from application to remain in the United States.

The change adopted by the House would allow immigrants convicted of aggravated felonies, except rape and sexual abuse of a minor, to apply for what is called "cancellation of removal."

Immigrants who committed a minor crime in their past and then rehabilitated themselves were deported as a result of that law's retroactive application, <Judiciary Committee Chairman Henry J. Hyde, R-Ill., said from the floor.

Sheila Jackson-Lee, D-Texas, said the result was the separation of families and loss of income and property for people who may have committed an offense as a juvenile or whose offense was so minor they did not even serve time.

"This legislation rises up and then ensnares them in a net," she said.

Additionally, immigrants who committed offenses before 1996 would no longer lose their continuous residence status as a result. Under the bill, those residents already deported because of retroactive application of the 1996 legislation could reopen their deportation proceedings to apply for cancellation of removal.

Bob Filner, D-Calif., said the bill had to be passed because the 1996

laws were "denying people their most basic rights."

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CONGRESSIONAL RECORD

HOUSE
PAGE H7765
Sept. 19, 2000

ESTABLISHING THE ELIGIBILITY OF
ALIENS ADMITTED FOR PERMANENT
RESIDENCE

Mr. HYDE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5062) to establish the eligibility of certain aliens lawfully admitted for permanent residence for cancellation of removal under section 240A of the Immigration and Nationality Act.

The Clerk read as follows:

H.R. 5062

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIMITING DISQUALIFICATION FROM CANCELLATION OF
REMOVAL FOR CERTAIN PERMANENT RESIDENT ALIENS.

(a) TERMINATION OF PERIOD OF CONTINUOUS RESIDENCE.-

[Page H7766]

(1) IN GENERAL.-Section 240A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1229b(d)(1)) is amended by adding at the end the following:

"Notwithstanding the preceding sentence, in determining under such sentence whether a period of continuous residence described in subsection (a)(2) has ended, any offense committed on or before September 30, 1996, shall be disregarded."

(2) EFFECTIVE DATE.-The amendment made by paragraph (1) shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-587).

(b) TREATMENT OF PARTICULAR CRIMES AS AGGRAVATED FELONIES.-

(1) IN GENERAL.-Section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as contained in title III of division C of Public Law 104-208; 110 Stat. 3009-587) is amended by adding at the end the following:

"(d) TRANSITION RULE FOR CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS.-

"(1) IN GENERAL.-Except as provided in paragraph (2), notwithstanding section 321 or 322 of this Act, section 440 of the Antiterrorism and Effective Death Penalty Act of 1996 (8 U.S.C. 1101 note), or any other provision of law (including any effective date), in applying section 240A(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)(3)) to a criminal offense committed on or before September 30, 1996, the term 'aggravated felony' shall not be construed to include the offense if the offense-

"(A) was not considered to be within the meaning of that term (as defined in section 101(a) of the <Immigration> and Nationality Act (8 U.S.C. 1101(a)) on the date on which the offense was committed; and

"(B) is considered to be within the meaning of that term (as so defined) by reason of the enactment of-

"(i) this Act, in the case of an offense committed during the period beginning on April 25, 1996, and ending on September 30, 1996; or

"(ii) this Act or the Antiterrorism and Effective Death Penalty Act of 1996, in the case of an offense committed on or before April 24, 1996.

"(2) EXCEPTION.-Paragraph (1) shall not apply to an offense of rape or sexual abuse of a minor. The amendment made by section 321(a)(1) of this Act shall not be affected by such paragraph.

"(3) COURSE OF CONDUCT.-In the case in which a course of conduct is an element of a criminal offense, for purposes of paragraph (1), the date on which the last act or omission of that course of conduct occurs shall be considered to be the date on which the offense is committed."

(2) EFFECTIVE DATE.-The amendment made by paragraph (1) shall take effect as if included in the enactment of section 304 of the Illegal <Immigration> Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 3009-587).

SEC. 2. POST-PROCEEDING RELIEF FOR AFFECTED ALIENS.

(a) IN GENERAL.-Notwithstanding section 240(c)(6) of the <Immigration> and

Nationality Act (8 U.S.C. 1229a(c)(6)) or any other limitation imposed by law on motions to reopen removal proceedings, the Attorney General shall establish a process (whether through permitting the reopening of a removal proceeding or otherwise) under which an alien-

(1) who is (or was) in removal proceedings before the date of the enactment of this Act (whether or not the alien has been removed as of such date); and

(2) whose eligibility for cancellation of removal has been established by section 1 of this Act;

may apply (or reapply) for cancellation of removal under section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)) as a beneficiary of the relief provided under section 1 of this Act.

(b) PAROLE.-The Attorney General should exercise the parole authority under section 212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) for the purpose of permitting aliens removed from the United States to participate in the process established under subsection (a).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Illinois (Mr. HYDE) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Illinois (Mr. HYDE).

GENERAL LEAVE

Mr. HYDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5062, the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. HYDE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 made long-needed reforms to our laws governing the deportation of criminal aliens. The act put an end to criminal aliens' indefinitely delaying their deportations through endless appeals and put an end to serious criminals such as rapists being granted relief from deportation. The results are clear and gratifying. The number of criminal aliens deported by the INS has gone up dramatically since enactment of the act. Our neighborhoods are safer, especially immigrant neighborhoods, which have always borne the brunt of crime committed by aliens.

One aspect of the 1996 act has, however, led to a number of deportations that strike many, including myself, as unfair. The act broadened

the definition of crimes which are considered aggravated felonies for which no relief from deportation is available. The hardship has come about because this change was made retroactively. The new definition of aggravated felony applies to crimes whenever committed. Thus, aliens who committed crimes years before enactment of the 1996 act, crimes not considered aggravated felonies when committed, have become deportable as aggravated felons.

Now, retroactive application of the law is the exception and not the rule, in the Committee on the Judiciary, for obvious reasons of notice and fairness. In addition, in some cases aliens have clearly rehabilitated themselves in the intervening years since committing their crimes, are no longer a threat to society and have started families. In these cases deportation seems an extreme remedy. Now, these hardship cases, in my opinion, could have been resolved if the INS had utilized its inherent power of prosecutorial discretion. The INS could have decided not to pursue deportation where the facts called out for forbearance. However, the INS has failed to do so. In fact, until recently the agency refused to admit it even had prosecutorial discretion.

Given this reality, it seems wise for Congress to step in and take action. H.R. 5062, introduced by the gentleman from Florida (Mr. MCCOLLUM) and the gentleman from Massachusetts (Mr. FRANK), does so in a prudent and responsible manner. Under current law, legal permanent residents may apply for cancellation of removal if they have committed deportable acts. To ask for such relief, they must have been legal permanent residents for 5 years, have continuously resided in the U.S. for 7 years and not have committed any offense classified as an aggravated felony.

H.R. 5062 provides that offenses committed before 1996 that became classified as aggravated felonies in 1996, except for rape or sexual abuse of a minor, would not bar cancellation of removal. Under the bill, legal permanent residents already removed because of such offenses could reopen their removal proceedings to apply for cancellation of removal. It is in the Attorney General's sole and unreviewable discretion whether to grant cancellation of removal in particular cases.

H.R. 5062 makes one more change in the law to carry out our intent. For the purpose of qualifying for cancellation of removal, the 1996 reforms terminated periods of continuous residence as of the date of commission of a deportable offense. Legal permanent residents who have been here for many years thus could not benefit from cancellation of removal, even if it was otherwise available to them, because deportable offenses they committed in past years now prevent them from accumulating the required residence time.

H.R. 5062 provides that deportable offenses committed before the 1996 reforms no longer terminate periods of continuous residence for legal permanent residents. Legal permanent residents already removed because of retroactive application of the stop time rule could reopen their removal proceedings to apply for cancellation of removal. I urge my colleagues to vote for H.R. 5062. Enactment of this bill will make a meritorious correction without endangering the success of the 1996 bill's thrust against crime.

Mr. Speaker, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, if one can imagine this scenario, a contributing member of this community, it could be in Massachusetts or the State of Texas or in New York, a young man, newly married with a young family, working, contributing, and legislation then rises up and ensnares him into a net dealing with the whole question of a potential or a juvenile offense that might have occurred that did not even result in jail time. Either that individual is deported or the individual finds himself or herself at home in their country burying a loved one and cannot get back into the country. Their family is separated. All that they have is lost: homes, apartments, cars. This is the reason for H.R. 5062.

[Page H7767]

I want to commend the chairman, the gentleman from Illinois (Mr. Hyde); and ranking member, the gentleman from Michigan (Mr. Conyers); my chairman, the gentleman from Texas (Mr. SMITH), for working through this; the gentleman from Florida (Mr. McCollum) and the gentleman from Massachusetts (Mr. Frank); the gentleman from Texas (Mr. Frost), and his leadership; the gentleman from Florida (Mr. Diaz-Balart); the gentlewoman from Florida (Ms. Ros-Lehtinen); the gentleman from California (Mr. Filner); the gentleman from California (Mr. Bilbray); the gentleman from California (Mr. Rogan); and the gentleman from California (Mr. Ose) for working with us on a very important piece of legislation.

[] 1300

It is by nature a technical bill, but it will eliminate the technical obstacles to applying for cancellation of removal under section 240(a) of the <Immigration> Nationality Act.

The effects of the bill, however, are not just technical in nature, and I have given my colleagues a scenario of a divided family, painfulness, the spouse now detained because of some minor offense that some judge early in their life felt that they were not even warranted jail time. It will have very real consequences in the lives of many longtime lawful, permanent residents of the United States who have been unfairly deprived of relief by the retroactive changes of the 1996 <immigration> bill.

First, it will eliminate retroactive application of the so-called stop-time rule by which an alien's lawful permanent resident status is taken away for eligibility purposes when proceedings are instituted by the issuance of a notice of to appear. No crime committed before September 30, 1996 would bar an immigrant from accruing the period of residency required for cancellation of removal.

It would also address the injustice caused by declaring longtime, permanent residents ineligible for relief, residents with families and roots in the community, on the basis of a retroactive change in the definition of an aggravated felony. The 1996 <immigration> law made people ineligible for

cancellation of removal as aggravated felons on the basis of criminal offenses that were not aggravated felonies when they were committed.

For example, prior to 1996, a theft offense was treated as an aggravated felony only if a sentence of 5 years or more was imposed. Say, for example, Mr. X entered the U.S. as a lawful, permanent resident in 1970. He was convicted of shoplifting and sentenced to a 1-year suspended sentence in 1985. The harsh provision of the 1996 law made Mr. X statutorily ineligible for cancellation of removal despite the fact that he did not commit a serious crime and never again in life ever committed a serious crime. The judge who presided over that case did not think that the offense warranted even a single day of incarceration. But under H.R. 5062, Mr. X would no longer be barred from applying for cancellation of removal.

Mr. Speaker, H.R. 5062 requires the Attorney General to establish a process of reopening removal proceedings for aliens who were in removal proceedings before the enactment date of H.R. 5062 and who will now be eligible for cancellation of removal because of H.R. 5062. This will allow these aliens to reapply for cancellation relief. The bill specifies that the Attorney General should parole such aliens into the United States, give them an opportunity to apply to regain their lawful permanent residence status, and will cover those individuals who are left wandering and in a complete state of confusion, having gone to bury a loved one or attend to a sick loved one and cannot now restore their status in the United States to seek reunification with their families.

Mr. Speaker, these changes will permit long-term, lawful permanent residents who have been affected by the retroactive changes unfairly in the law to have their day in court, families will be reunited, children will have fathers, children will have mothers, and I believe it is the right thing. I urge my colleagues to vote for this bill.

Mr. Speaker, I am pleased to rise in favor of H.R. 5062. It is by nature a very technical bill. It will eliminate technical obstacles to applying for cancellation of removal under section 240A of the <Immigration> and Nationality Act. The effects of the bill, however, are not just technical in nature. It will have very real consequences in the lives of many long-time, lawful permanent residents of the United States who have been unfairly deprived of relief by the retroactive changes of the 1996 <Immigration> bill.

First, it will eliminate retroactive application of the so called "stop-time rule" by which an alien's lawful permanent resident status is taken away from eligibility purposes when proceedings are instituted by the issuance of a "notice to appear." No crime committed before September 30, 1996, would bar an immigrant from accruing the period of residency required for cancellation of removal.

It also would also address the injustice caused by declaring long-term permanent residents ineligible for relief on the basis of a retroactive change in the definition of an "aggravated felony." The 1996 <Immigration> law made people ineligible for cancellation of removal as aggravated felons on the basis of criminal offenses that were not aggravated felonies when they were committed.

For example, prior to 1996, a theft offense was treated as an aggravated felon only if a sentence of 5 years or more was imposed. Mr. X entered the United States as a lawful permanent resident in 1970. He was convicted of shoplifting and sentenced to a 1-year suspended sentence in 1985. The harsh provisions of the 96 law make Mr. X statutorily ineligible for cancellation of removal despite the fact that he did not commit a serious crime. The judge who presided over the case did not think that the offense warranted even a single day of incarceration. Under H.R. 5062, Mr. X would no longer be barred from applying for cancellation of removal.

H.R. 5062 requires the Attorney General to establish a process for reopening removal proceedings for aliens who were in removal proceedings before the enactment date of H.R. 5062 and who will now be eligible for cancellation of removal because of H.R. 5062. This will allow these aliens to apply for cancellation relief. the bill specifies that the Attorney General should parole such aliens into the United States go give them an opportunity to apply to regain their lawful permanent resident status.

These changes will permit long-time lawful permanent residents who have been affected by retroactive changes in the law to have their day in court. I urge you to vote for this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. HYDE. Mr. Speaker, with great pleasure I yield such time as he may consume to the gentleman from Texas (Mr. SMITH), the very distinguished chairman of the Subcommittee on <Immigration> of the House Committee on the <Judiciary>.

Mr. SMITH of Texas. Mr. Speaker, I thank the chairman of the Committee on the <Judiciary> and my friend from Illinois for yielding me this time.

Mr. Speaker, the 1996 <immigration> reforms improve public safety by facilitating deportation of dangerous criminals. Since 1996, the number of criminal aliens deported annually has almost doubled from 36,000 in 1996 to 67,000 projected for this year. Increased deportations benefit public safety in the United States because the recidivism rate for criminal aliens is high. <Justice> Department statistics show that half of all criminal aliens released from prison are convicted of another serious offense within 3 years.

Since 1996, cancellation of removal has been the primary relief from deportation available to aliens. Legal permanent residents are likely to receive cancellation of removal if they have continuously resided in the U.S. for 7 years and have not committed any crimes classified as aggravated felonies.

Some hardship cases have arisen where deportation may not be appropriate. Republicans and Democrats in Congress have urged the <Immigration> and Naturalization Service to ensure that deportation proceedings are not prosecuted in inappropriate cases. However, the INS has been slow to respond.

Mr. Speaker, H.R. 5062, introduced by the gentleman from Florida (Mr. MCCOLLUM) and the gentleman from Massachusetts (Mr. FRANK), makes two changes in existing law. The 1996 reforms expanded the aggravated felony definition and provided that aggravated felons are ineligible for cancellation of removal. The 1996 amendments that have resulted in hardship claims were added by Senate conferees late in the legislative process. While there is justification for deporting noncitizens convicted of serious crimes, applying a new standard retroactively arguably is unfair.

[Page H7768]

Mr. Speaker, H.R. 5062 provides that offenses committed before 1996 that were not aggravated felonies when committed, except for rape or sexual abuse of a minor, would not bar cancellation of removal. Legal permanent residents already removed because of sexual offenses could reopen proceedings to apply for cancellation of removal.

Second, the 1996 reforms terminated an alien's continuous residence on the date of commission of a deportable offense. For some legal permanent residents, offenses committed in past years now prevent them from accumulating the required residents time to apply for cancellation of removal.

Mr. Speaker, H.R. 5062 provides that deportable offenses committed before 1996 no longer terminate periods of continuous residence for legal permanent residents. Legal permanent residents already removed because of that provision could reopen their proceedings to apply for cancellation of removal.

Mr. Speaker, I hope my colleagues will support H.R. 5062.

Ms. JACKSON-LEE of Texas. Mr. Speaker, it is my pleasure to yield 1 minute to the gentleman from Michigan (Mr. CONYERS), the ranking member of the Committee on the Judiciary, and thank him for his assistance in this legislation.

Mr. CONYERS. Mr. Speaker, this bill is a product of the intense negotiations between the gentleman from Massachusetts (Mr. FRANK); the chairman of the committee, the gentleman from Illinois (Mr. HYDE); the gentleman from Florida (Mr. MCCOLLUM); the gentlewoman from Texas (Ms. JACKSON-LEE), and is a product of how far we have been able to go with the Frank-Frost original legislation, the gentleman from Texas has been in this in a very important way.

So we are proud of what we have been able to do in terms of deportable, minor offenses, which prior to the 1996 law, were pretty outrageous.

Mr. Speaker, I think we have come a great distance. We have another larger bill on this list waiting to be dealt with, the Fix 96 bill, so I am hopeful that spirit of the negotiations that brought us to this point on H.R. 5062 will move forward.

Ms. JACKSON-LEE of Texas. Mr. Speaker, it is my pleasure to yield such time as he may consume to the gentleman from Massachusetts (Mr. FRANK), a major guiding force of this legislation who has worked in a determined and persistent and conciliatory manner to bring this legislation to the floor of the House, and a distinguished member of the Committee on the Judiciary.

Mr. FRANK of Massachusetts. Mr. Speaker, I thank the gentlewoman for her helpful efforts in bringing this bill to the floor.

I want to thank a number of members of the committee on both sides of the aisle, particularly the chairman of the full committee who put a lot into mediating this. It is an important step forward.

I want to say at the outset, I intend, if I am back here next year, and the early polls are good, to push for more changes than we now have. But this represents what we were able to agree on this late in this session, and while it is not everything I would like to see, it is a very significant improvement very worth passing. I hope that this bill does become law and that we are able to work with the other body and with the administration to put these provisions into law.

Some people have been puzzled and have asked me, well, how come there was retroactivity they thought constitutionally we could not do that, and I think it is an important point for people to understand. One cannot, under our Constitution, pass what the Constitution calls an ex post facto law if one is increasing the criminal penalty. But the right of a noncitizen with regard to deportation is not of the same constitutional order. So this is a policy judgment by the Congress to say that with regard to deportation, there should not be a difference, even though it would be constitutionally permissible of a retroactive sort. This leaves the effect of this bill on people who committed crimes on or after the date of enactment. That is one of the subjects that I hope we will address next year.

However, what this bill says that if one committed an offense on or before the date of the enactment of this bill, essentially one will now be treated as if the old law was in effect and there will be no element of retroactivity.

One of the things we should stress is, none of the offenses here affected now become nondeportable. We are not talking about people not being subject to deportation if, in a particular case, they ought to be deported. It increases the amount of discretion. It reduces the extent to which there was kind of an automaticity, but it does not say that people cannot be deported.

Not every offense is covered. I will be urging the <Immigration> Service, if we pass this, to read the intent of Congress here and in the discretion which they have and Members of this body had to recall to them the fact that no matter what, there is still prosecutorial discretion, that they will be guided by the spirit here of nonretroactivity in their administration of the bill and, in fact, focus on people who are genuinely dangerous and a threat to the community as they have the authority to do. But fundamentally, this is a time to feel good about making something better.

There are just two other points I want to make. One, I do want to stress,

and I appreciate the gentleman from Texas including this and the gentleman from Illinois and others on the majority side; this is retroactively doing away with retroactivity, to some extent. That is, there are people who are already deported. Under this bill, people who are already deported will be able, because we instruct the <Immigration> Service to set up a procedure whereby they can apply to come back. The criteria I assume would be, to the extent that it can be reconstructed, if they would not have been deported in the first place, they should not be deported. It does not mean that everybody who is deported automatically comes back. There is a process, and they will have to show that if it was not for this change in the law, they would not have been deported.

The last point I want to make is this, Mr. Speaker. I appreciate the indulgence of my colleagues. It is a general point, not about this bill. We hear much too much today from people who are critics of our political system who tell us that only big money dominates politics, who tell us that we cannot get anything done in Congress unless there are huge campaign contributions.

Is this a very significant piece of legislation. This is an acknowledgment that a piece of legislation in 1996 had some flaws, it is a correction of those flaws. It will mean a great deal to many people; and to my knowledge, there are not a lot of campaign contributors among them. The people who have been victimized by this who, on the whole, have been people of limited economic circumstances.

So for those who are quick to kind of argue that political participation by citizens is worthless, that only big money counts, I would ask them to look at the example of this bill. This is a bill that has come to the floor today because of broad support by average citizens, most of whom, as I said, are not people of enormous economic wealth. No campaign contributions brought this bill to the floor. This bill was lobbied by citizens all across the country. Members from Sacramento and San Diego and Texas and Massachusetts and Florida, all over the country came together, because we all had constituents who were caught in a device that maybe nobody intended, maybe they did, but it was clearly working out more harshly than we thought appropriate. So I am very grateful to the majority for bringing this bill forward. I do want to stress again, this is an example of how citizens can get together and use their rights as citizens to get legislation changed.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentleman from Massachusetts (Mr. Frank) for his words. It is a broad-based effort, and we are delighted that the effort was led by the gentleman from Texas (Mr. Frost), the chairman of the Democratic Caucus, a member of the Committee on Rules. He is an original cosponsor of this legislation.

[Page H7769]

Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. Frost), and I thank him for his leadership on this matter.

Mr. FROST. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Mr. Speaker, I am pleased to support legislation that restores some sanity and common sense to our Nation's <immigration> policy. Many of us in Congress never intended for the 1996 <immigration> reforms to lead to the senseless deportation of those who have paid for their minor crimes and are now productive members of society. I have personally met with many families in my district that are now dealing with the trauma of the unwarranted deportation of a family member. These families will stay in America, but are often reliant on the care and financial support of the person facing deportation. These families may be forced to go on welfare or their children may be put into foster homes. Clearly, our communities are not made safer by breaking up these families.

With this legislation, Congress is beginning to address those provisions in the 1996 law that went too far. H.R. 5062 is the first step in the right direction of fixing the 1996 <immigration> legislation.

[] 1315

Under current law, many legal residents can be deported for minor offenses that were not deportable offenses when they pled guilty to them. The bill will bring sensible relief to those who have paid for past infractions and will give people a chance to remain in the country. In addition, people who have already been deported under the retroactive provision of this law will be allowed to apply for readmission to the United States. This will allow families who were previously torn apart to reunite and regain the opportunity of the American Dream.

The bill does not fix all of the harsh provisions of the 1996 <immigration> legislation but it will bring some relief to those who have dealt with the tragedy of a deported family member.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume just to add to the importance of this legislation the bipartisanship that is evident. In addition to a lack of campaign contributions, many of these individuals who will ultimately seek citizenship are not voters as well. I think the fairness of this issue has risen so high that we can see this bipartisan effort today.

Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts (Mr. McGovern).

Mr. McGOVERN. Mr. Speaker, I rise in strong support of H.R. 5062, and I want to thank the chairman and ranking members of the Committee on the Judiciary, and especially my colleague, the gentleman from Massachusetts (Mr. Frank) for all their work in bringing this bill before the House.

In 1996, the Congress enacted the Illegal Immigration Reform and Responsibility Act. Now, nearly 4 years later, this Nation, built by immigrants, has witnessed broken families, devastated U.S. citizens, and people unjustly deported and jailed because of unjust provisions included in this bill.

In the Third Congressional District of Massachusetts, which I represent,

there are large concentrations of immigrant families; from Portugal, especially the Azores, Cambodia, Cape Verde, and other regions. I have listened to the anguished stories of these families. Some families have members facing deportation for felony convictions committed years ago, and the person responsible has served time and made restitution to this community.

H.R. 5062 gives new hope to these desperate families. It does not fix all the problems, but it is an important step in the right direction.

Again, I want to thank all those involved for bringing it to the floor. I urge my colleagues to support H.R. 5062.

Ms. JACKSON-LEE of Texas. Mr. Speaker, may I inquire of the Chair the amount of time remaining?

The SPEAKER pro tempore (Mr. Isakson). The gentlewoman from Texas (Ms. Jackson-Lee) has 6 minutes remaining.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. Filner), a gentleman who has worked very hard on these issues, and these issues are particularly important to his constituents.

Mr. FILNER. Mr. Speaker, I thank the gentlewoman for yielding me this time, and I also rise in support of H.R. 5062.

Mr. Speaker, I want to thank the gentleman from Florida (Mr. McCollum) for offering this legislation; the gentleman from Texas (Mr. Smith), the chairman of the subcommittee for bringing it to us; and the gentleman from Illinois (Mr. Hyde), the chairman of the full committee; and their counterparts, the gentleman from Michigan (Mr. Conyers), the gentleman from Massachusetts (Mr. Frank), and the gentlewoman from Texas (Ms. Jackson-Lee) for working so hard on this bill. All of them have graciously given me time to point out the situation that this has caused in San Diego, California, where we have hundreds of families affected by the legislation that was passed in 1996.

Like my colleagues, I rise to say that we must stop deporting hard-working legal immigrants only because they committed a minor infraction years or even decades ago. We must stop hauling parents away in the middle of the night in front of their children and denying these people, now in detention, the most basic constitutional rights that we in America believe everyone should have.

That is exactly what the 1996 law did. It redefined the term aggravated felony to cover virtually every crime ever committed. It was retroactive, covering misdemeanor crimes decades ago, and denied basic constitutional protections, such as bail and visitation rights. I repeat, we are talking about legal immigrants, immigrants residing in this country in legal fashion, who have paid their debt, if appropriate, to our society.

So we are now rolling back several of the provisions of the 1996 law and allowing those who have been deported to appeal to return to the United

States. This is a great and positive step. It will mean much to hundreds and hundreds of families in San Diego, California, and it means a lot to all Americans that we are restoring liberty and justice for all.

I urge everyone to support this legislation.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield 1 minute to the gentlewoman from Chicago, Illinois (Ms. Schakowsky). We have worked together on battered immigrant legislation, and I appreciate her work on these matters.

Ms. SCHAKOWSKY. Mr. Speaker, I thank the gentlewoman for yielding me this time.

I represent a district, and I am proud to, that is probably one of the most diverse in the Nation. It is really a gateway to the United States for people from every part of the globe. They embrace our country in a way that demonstrates their willingness to play by the rules.

We are talking about people affected by this bill who are legally in the United States and, in the case of those people who have been impacted specifically by the provisions of the 1996 law, if they have committed some sort of infraction, have paid for that. They have already done that.

What this bill has done is cause pain to so many families because the rules have been changed, which in some ways is not really a very American idea, saying that now, even though they have paid the price, they are going to be deported because we have redefined that infraction that they have committed and they are going to be out. It means that they have to leave their families, and the pain that it has caused can be corrected by supporting H.R. 5062.

I urge that support, Mr. Speaker.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume to once again ask for support of this legislation. I would hope that this is painless so that we can rid the pain to others.

Mr. CONYERS. Mr. Speaker, the Illegal <Immigration> Reform and Immigrant Responsibility Act of 1996 was touted as legislation that would control illegal <immigration>. It actually has many provisions that significantly affect American families, legal <immigration> and others seeking to enter the United States legally. Among other things, the 1996 law subjects long-time lawful permanent residents to deportation for minor offenses committed prior to the enactment of the 1996 law.

[Page H7770]

H.R. 5062 is the product of negotiations between Representative BARNEY FRANK, HENRY HYDE and BILL MCCOLLUM:

It applies only to eliminating mandatory deportation of legal permanent residents who committed offenses that were not deportable prior to enactment of the 1996 law.

Mandatory deportation will not be required for persons who were convicted prior to September 30, 1996, of "aggravated felonies" that were not deportable offenses at the time of the conviction. Such persons will be eligible to apply for cancellation of removal.

People who have already been deported under the retroactive provisions of this law will be allowed to apply for readmission to this country, thus providing an avenue for the reunification of families that were split apart by the retroactive impact of the 1996 law.

A technical provision known as the "stop-time rule" also will be eliminated for those offenses committed on or before enactment of the 1996 law. This provision enables persons to take advantage of cancellation of removal.

This bill is only a modest bill—merely a first step toward the reforms needed to address the injustices of the overly harsh 1996 law. With regard to retroactivity, persons who are deportable under the 1996 law remain deportable. Though they can apply for cancellation of removal, they may be ineligible for other benefits such as naturalization. Moreover, the bill applies only to convictions—rather than offenses—that occurred prior to the 1996 law.

More broadly, the harshness of the 1996 <immigration> law must be mitigated in future bills as seen in Representative JOHN CONYERS' H.R. 4966 (Fix '96 bill). The 1996 law must be changed to restore judicial review and discretion to the Attorney General and the courts, eliminate mandatory detention, and revoke retroactive enforcement of the 1996 law on a more comprehensive basis.

Mr. MCCOLLUM. Mr. Speaker, I rise today in support of H.R. 5062 and urge my colleagues to vote for this important legislation.

Mr. Speaker, this bill corrects an injustice in our laws. In 1996, Congress made several modifications to the nation's <immigration> law that had a harsh and unintended impact on many permanent resident aliens who live in the United States. Under these modifications, legal aliens who had lived in the United States for many years, and who may have entered a plea for a burglary or simple assault years ago, suddenly were subject to automatic deportation with no right to seek a waiver from the Attorney General, as had been the law. This retroactive feature was a creation of the other body and was something I opposed in 1996. It is wrong and bad law.

The House intention under the 1996 act was to deport those immigrants who were guilty of a dangerous aggravated felony. However, a House/Senate Conference significantly expanded the definition of such felonies to include relatively minor crimes, and then applied the law retroactively. As a consequence, individuals who had committed comparatively minor crimes would be deported, even if the crime was committed 30 or 40 years ago.

The result, Mr. Speaker, was a manifest injustice.

I will cite one example: Olufoake Olaleye, a legal permanent immigrant originally from Nigeria and mother to two American born children had lived

in the United States for a number of years and had supported her family without ever having taken a nickel of public assistance. She was hard working, dedicated to her family, and in 1993 she was charged with shoplifting \$14.99 worth of baby clothes after she attempted to return several items to an Atlanta clothing store without a receipt.

Olufake, not unreasonably, wanted the matter resolved quickly and so appeared in court with a lawyer where she pled guilty, paid a fine, and was given a 12 month suspended sentence. There the matter would have rested. Unfortunately, under the 1996 law, her crime was considered an aggravated felony, and because the '96 bill included retroactivity provisions, the I.N.S. reopened her case and ordered her deported.

Mr. Speaker, it is wrong to retroactively deport a hard working immigrant for stealing \$14.99 worth of baby clothes and to equate shoplifting with murder, rape and armed robbery. This Congress, with the best of intentions, went too far. H.R. 5062 will go a long way towards correcting this by eliminating retroactivity.

Mr. Speaker, we are a just and fair nation and must strike a just and fair balance in our immigration codes. H.R. 5062 does just that and I urge my colleagues to vote in favor of this bill.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HYDE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. HYDE) that the House suspend the rules and pass the bill, H.R. 5062.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

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Message Sent To: _____

Steven M. Mertens/OMB/EOP@EOP
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Joel K. Wiginton/WHO/EOP@EOP
Irene Bueno/WHO/EOP@EOP
Ruth M. Samardick/OPD/EOP@EOP

Scott

- Speech - Pres. + ~~VP~~ VP CBC + CAC - congratulate ~~VP~~
Deadline
- Letter VP
 - McCullum, Frank ^{bill suspension} - ~~intended~~ when they
deal - go to suspension -
 - ~~but~~ Letter - we can do some much.
Lamar Smith ~~to~~ may oppose.
 - Timing of the Letter - before or after.
 - NY Times article - McCullum bill.
 - EDIR - interpret LA since - INS - ~~article~~

PRESS ADVISORY

Congressman John Conyers, Jr.

**Fourteenth District, Michigan
Ranking Member, Committee on the Judiciary
Dean, Congressional Black Caucus**

July 24, 2000

**CONTACT: Scott Deutchman
(202) 225-6906**

RESTORATION OF FAIRNESS IN IMMIGRATION ACT OF 2000

Representative John Conyers (D-MI), along with Representatives Jackson Lee (D-TX), Morella (R-MD), Clyburn (D-SC), Gutierrez (D-IL), Roybal-Allard (D-CA), Underwood (D-GU) and Carrie Meek (D-FL) will introduce on July 25 an omnibus immigration bill that would repeal the most punitive aspects of the 1996 immigration law, while restoring an overall sense of fairness and equity to our system of immigration and naturalization. In short, this bill would "FIX '96." Among other important provisions, the bill includes measures to restore fairness and due process in our immigration laws, updates the amnesty registry date, restores section 245(i), implements NACARA and Haitian parity, and streamlines procedures to allow spouses and minor children to visit their immigrant family members.

This will be the most important immigration bill introduced this Congress, and has been endorsed by the Congressional Black Caucus, Hispanic Caucus, and Asian Pacific Caucus, and is supported by a wide range of immigration and advocacy groups, including the American Arab Anti-Discrimination Committee, American Civil Liberties Union, American Immigration Lawyers Association, Asian Pacific American Labor Alliance, Washington Lawyers Committee for Civil Rights and Urban Affairs, Immigration and Refugee Services of America, Leadership Conference on Civil Rights, National Asian Pacific American Legal Consortium, National Immigration Forum, and, National Korean American Service and Education Consortium, Organization of Chinese Americans, and Southeast Asia Resource Action Center.

A press conference announcing the introduction of the bill will be held on July 25, 2000 at 1:00 in Room 2237 of the Rayburn House Office Building, Washington, D.C. A brief summary of the bill is attached.

03/30/00 WED 10:28 FAX 4003

SUMMARY OF THE RESTORATION OF FAIRNESS IN IMMIGRATION ACT OF 2000

Title I-Due Process in Immigration Proceedings -- Overturns unconstitutional "court stripping" provisions included in '96 law; permits the Attorney General to release immigrants from detention facilities who do not pose a safety risk and are not likely to flee; permits consular review of visa applications.

Title II-Fairness in Cases Involving Previous and Minor Misconduct -- Repeals portions of '96 law which retroactively allowed deportation for minor offenses; restores Attorney General discretion to permit humanitarian exceptions to such deportation orders; repeals harsh five year ban on family visitations and other visas for such deportees.

Title III-Encouraging Family Reunification -- Streamlines procedures by which spouses, young children, and others can rejoin their families; permits immigrants to adjust their immigration status without being forced to go abroad.

Title IV-Fairness in Asylum and Refugee Proceedings -- Provides for more efficient and equitable consideration of refugee consultations and asylum determinations; eliminates arbitrary time limits on filing asylum applications; clarifies eligibility for asylum sought on gender based persecution.

Title V-Fairness in Naturalization and Legalization Proceedings -- Extends amnesty registry date; provides equitable and fair procedures for considering naturalization and immigration applications for refugees from Central America and Haiti, refugees from Liberia, Asian-Americans born in the Philippines and Japan, and women who have been denied citizenship because of their gender; authorizes funding to reduce the naturalization backlog from more than 2 years to 6 months.

Title VI-Cracking Down on Discrimination in Immigration Related Employment Practices and Illegal Sweatshops -- Streamlines immigration related employment discrimination by eliminating specific intent requirement and expanding the class of protected immigrants; provides greater resources and criminal penalties to be used against illegal sweat shop operators.

Title VII-Fairness in the Treatment of Battered Immigrants -- Expands access to legal protections for battered immigrants provided under the Violence Against Women Act of 1994.

Title VIII-Unused Employment-Based Immigrant Visas -- Recaptures for future use employment-based immigrant visas that went unused in FY1999 and FY2000 due to processing delays.

U. S. HOUSE OF REPRESENTATIVES

Committee on the Judiciary
Democratic Staff Office
B-351-C Rayburn House Office Building
Washington, D.C. 20515
Fax: (202) 225-7680

FACSIMILE COVER LETTER

TO: IRONG BUENOFAX NO: 456-1907 # PAGES: 3 (including this page)

FROM: PERRY APELBAUM SAMPAK GARG
 X SCOTT DEUTCHMAN MICHONE JOHNSON
 CAROLYN DONNELLY TED KALO
 CORI FLAM KEENAN KELLER
 ANTHONY FOXX MATT NOSANCHUK
 TERESA VEST

COMMENTS: Per my voice message, please call
me to discuss.

If parts of this transmission are unclear or transmission
was faulted, please call: (202) 225-6906.

Congress of the United States

Washington, DC 20515

September 12, 2000

The Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Clinton:

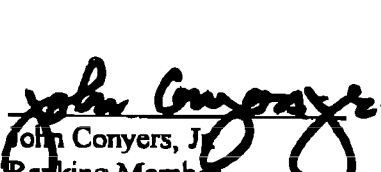
We write to urge you to take the lead in restoring basic American principles of law, justice, fairness and family values to American immigration laws by supporting H.R. 4966, the Restoration of Fairness in Immigration Act of 2000.

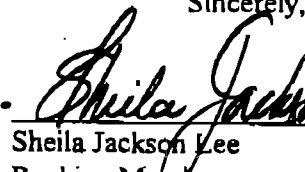
H.R. 4966, introduced by Representative John Conyers (D-MI), currently is co-sponsored by 36 Members on both sides of the aisle, has been endorsed by the Congressional Black Caucus, Hispanic Caucus, and Asian Pacific American Caucus, and is supported by numerous immigration and advocacy groups. This omnibus immigration reform measure responds to the overly harsh provisions of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA). The 1996 law denies people their day in court and a second chance, changes the rules mid-stream, tears families apart, and is aimed at the wrong people by deporting law-abiding workers.

Among other things, the Restoration of Fairness in Immigration Act of 2000 would remedy the un-American effects of the 1996 law by eliminating the retroactivity of IIRAIRA that punishes immigrants for minor offenses from long ago, letting federal courts once again review INS decisions, restoring judicial discretion, and eliminating mandatory detention and indefinite detention. The bill also would restore Section 245(i), update the registry date, and create parity for similarly situated refugees left out of NACARA and HRIFA. In the remaining days of the 106th Congress, we specifically urge that you aggressively pursue the enactment of H.R. 4966's provisions restoring due process in immigration proceedings.

Given both the importance of all of these issues to immigrants nationwide and the few remaining weeks in this session, we urge the Administration to provide the leadership needed to ensure that the provisions of H.R. 4966 are enacted into law.

Sincerely,


John Conyers, Jr.
Ranking Member,
Judiciary Committee

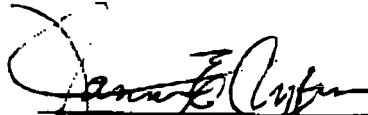

Sheila Jackson Lee
Ranking Member,
Immigration and Claims
Subcommittee


Constance A. Morella
Member

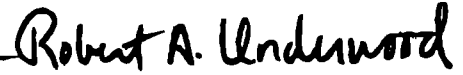
The Honorable William Jefferson Clinton
Page Two
September 12, 2000



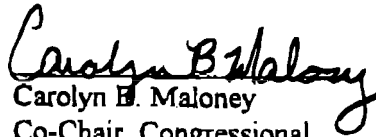
Lucille Roybal-Allard
Chair, Congressional
Hispanic Caucus



James E. Clyburn
Chair, Congressional
Black Caucus



Robert A. Underwood
Chair, Congressional Asian
Pacific American Caucus



Carolyn B. Maloney
Co-Chair, Congressional
Women's Caucus



Sarah.T.Taylor@usdoj.gov
08/07/2000 12:59:00 PM

Record Type: Record

To: Irene Bueno/WHO/EOP
cc:
Subject: Fwd:Cancellation Meeting

Forward Header

Subject: Cancellation Meeting
Author: Tim Haugh
Date: 08/04/2000 11:01 AM

Gerri/Sarah--I went to yesterday's meeting along with David Dixon and Jackie Bednarz. All the groups were in attendance along with Robert, Brad, and James.

The meeting was focused around the McCollum/Frank Cancellation bill introduced

on 7/27 (HR 5062). The bill removes the stop time rule in connection to pre-96

offenses, LPRs would not be ineligible for cancellation on the basis of an aggravated felony if it was not defined as such at the time of the offense and

became an ag felony as a result of the 96 act, and the amendments would be retroactive to 96 and the AG should reopen any cases which a crm alien has become eligible for cancellation, inc paroling them in if removed, as a result of the change.

Raben explained that the Admin generally supports the goals of the bill but is still reviewing. The groups message is that this is a good first step but there needs to be more (elimination of mandatory detention, etc). Most of the meeting involved Robert advising the groups on who they need to push on the Hill as well as the White House and OMB. He emphasized the importance of the appropriators as this could be rolled into an Omnibus package. They also need to make sure its on OMB's priority list.

--Tim



Ruth.E.Tintary@usdoj.gov

08/08/2000 03:28:00 PM

Record Type: Record

To: Irene Bueno/WHO/EOP

cc:

Subject: Fwd:H.R. 5062

Irene,

Here are INS comments on the McCollum bill, HR 5062. Not yet final for DOJ.

- Ruth E.

Forward Header

Subject: H.R. 5062

Author: Philip B Busch

Date: 8/4/2000 5:21 PM

Attached is our office's comment on this bill. Thanks, Phil



- hr5062.doc

INS Office of General Counsel comments on H.R. 5062. Prepared by Philip Busch, HQCOU, 514-1266 (8/4/00).

H.R. 5062 provides opportunities for cancellation of removal to many criminal aliens who were subject to the stricter provisions of the 1996 immigration reform legislation by retroactively amending some of those provisions, as follows:

Section 1(a) of H.R. 5062 provides that the offense "stop-time rule" in section 240A(d)(1) of the Immigration and Nationality Act (INA) does not apply to offenses committed on or before September 30, 1996. The stop-time rule, a new feature of the law after 1996, provides that accrual of the necessary time periods of continuous residence (for lawful permanent residents (LPRs)) or continuous physical presence (for non-LPRs) in order to be eligible for the discretionary relief of cancellation of removal permanently stops when the alien has committed a criminal offense referred to in section 212(a)(2) of the INA that renders the alien inadmissible or deportable. The proposed change would be retroactive back to September 30, 1996; in other words, the stop-time rule will be deemed legally always to have applied only to pre-9/30/96 offenses. Significantly, although this bill purports only to provide relief to LPRs, this change as drafted is likely also to affect significant numbers of non-LPR aliens who are currently ineligible for section 240A(b) cancellation due to the stop-time rule.

Currently, LPR aggravated felons are ineligible for cancellation of removal under INA section 240A(a). Section 1(b) of H.R. 5062 provides that, for purposes of considering eligibility for this relief, an "aggravated felony" does not include offenses committed before 9/30/96 (other than rape or sexual abuse of a minor) are considered to be aggravated felonies by reason of the 1996 changes, but were not defined as such under section 101(a) of the INA at the time they were committed. This amendment is also retroactively effective back to 9/30/96, meaning not only that the law is changed, but that a legal fiction is created that what was on the books between 1996 and 2000 never in fact existed in that form.

Section 2 of H.R. 5062 requires the Attorney General to establish a process under which aliens who have become eligible for cancellation as a result of these changes would be able to apply for it, whether or not their cases have concluded or they have actually departed from the United States. The bill also states that the AG "should exercise the parole authority . . . for the purpose of permitting aliens removed from the United States to participate in the process."

We very strongly object to this bill on both substantive and technical grounds, for the following reasons:

- We have proposed reasonable, targeted changes to the cancellation of removal provisions, the definition of aggravated felony, and the stop-time rule that will improve the fairness of the immigration laws. The changes we propose, however, are prospective, forward-looking ones that will cure problems with the law for the purposes of future administration and enforcement of the law. What this bill offers,

however, is something fundamentally different: retrospective changes that look backward rather than forward. To say that the 1996 changes should be revised in certain respects is fine; to say that they were so bad that Congress should decree that they never actually happened is wrong, and will cause immense problems.

- Since September 30, 1996, the INS has removed over 200,000 criminal aliens. For good reason, this has been the major immigration enforcement priority of this Administration, and it has been a successful one. The recidivism statistics recently compiled by the INS show a criminal alien recidivism rate of about 37 percent, in line with statistics for the overall population. At a minimum, then, it can be fairly estimated that INS enforcement has prevented some 74,000 persons from becoming crime victims. The Department of Justice counts reductions in crime levels as one of its major accomplishments. It is apparent from these statistics that the role of INS in helping achieve this goal has not been an insignificant one.
- This bill would reverse much of that progress. We do not have precise statistics on the number of removed criminal aliens who would have the opportunity to return to this country if this bill passes, but it would be significant – not to mention the undoubtedly large number of ineligible criminal aliens who would file applications that would consume precious resources to adjudicate and deny. In administering the new provision, the Department would be faced with unpalatable and impossible choices. Do we require a strict showing of a prima facie case for relief to be made abroad before the alien may return to make his case before an immigration judge? This would protect public safety, but would require extensive resources for what would be, in effect, a double adjudication. Or, on the other hand, do we use the parole power broadly to allow criminal aliens back in who may pose a danger to the public, who may have no claim to relief, and who must be removed again at significant expense?
- Few would disagree that lawful permanent residents who have committed relatively minor and/or long-ago offenses, and who do not present a present danger to the public, should have an opportunity to apply for discretionary relief in the course of their removal proceedings. Our proposals are designed to identify this group. This bill does no such thing. It relies on sweeping and flawed assumptions about who should be entitled to relief. Those who would benefit include very recent offenders with serious offenses, such as crimes of violence with up to a five-year sentence, racketeering and money laundering.
- Even if it could be demonstrated – which it certainly cannot – that most or all of the beneficiaries of this legislation deserved a second chance, and that they did not present a danger to public safety, the bill still represents a clear and present danger to the safety of American communities for several reasons. First, the resources that would have to be devoted to readjudicating thousands of criminal alien cases would be unavailable to enforce the immigration laws against other present and future criminal aliens. In other words, both the INS and EOIR have more than enough work to do to process and remove dangerous criminal aliens, in addition to their other case

loads, without asking them to redo a substantial portion of their work of the last four years. This could cause additional severe backlogs in the immigration court system and thereby significantly harm the public interest. Furthermore, these resources are not limited to adjudicative and attorney resources, but also include scarce investigative, detention and deportation resources. Second, this bill would have a profound and debilitating effect on the morale of INS personnel who perform the difficult, and sometimes life-threatening, task of enforcing the immigration laws. Enactment of this bill would tell them that most of what they did in good faith to enforce the laws passed by Congress and signed by the President by removing criminal aliens was retroactively contrary to law, and that it was wasted effort that must be redone. Third, the bill will endanger the public safety because it will send the message that criminal aliens who have been deported are welcome back in the United States. Information on what the bill actually does is likely to be amplified and distorted abroad through rumor mills and incorrect foreign media reports that will encourage large numbers of criminal aliens to attempt to return illegally, whether or not they actually would qualify for the relief through legal procedures. Fourth, this bill makes a mockery of any future attempt to say the United States is serious about immigration enforcement, given the drastic remedy of retroactively reversing four years of enforcement efforts against criminal aliens.

- It must be understood that the cost of retroactively reopening thousands of cases is borne not just by INS and EOIR, but by other aliens whose immigration cases (many of which involve requests for asylum, adjustment or other benefits) will suffer further delays. The measures we have proposed to provide appropriate relief for criminal aliens, unlike this bill, are not at the cost of non-criminal aliens.
- H.R. 5062 has technical problems that are likely to lead to significant litigation and potentially to judicial constructions of the relief that go far beyond what is reasonable. These include: (1) a stated intention to assist LPRs only but a change to the stop-time rule that covers non-LPR cases as well; (2) a vague reference to the meaning of aggravated felony “as defined in section 101(a)” that arguably extends the 1996 amendments’ changes to the definitions of “conviction” and term of imprisonment in addition to the section 101(a)(43) changes to the definition of “aggravated felony” itself (this interpretation would have a substantially broader effect on the scope of cases that would need to be reopened); (3) ambiguity between paragraphs (A) and (B) in section 1(b) of H.R. 5062 that make it unclear whether offenses that were not aggravated felonies at the time they were committed, but were aggravated felonies before the 1996 amendments, are covered; and (4) vagueness about the reopening procedures that provides helpful flexibility but is also likely to spawn litigation.
- It is INS’ experience that attempting to apply provisions that limit consideration of offenses to their status as of the time they were committed is difficult and time-consuming. Doing so requires research not only into current law, but also into the law at different times in the past. This task would have to be undertaken on a large scale if this bill were enacted. In addition, determining prima facie eligibility, let alone whether cancellation is appropriate, is likely to be extremely difficult in many

of these cases. For example, alternative grounds of removability may not have been determined because of clear applicability of the stop-time rule or other bar to relief affected by this bill.

- The bill would also likely place an extraordinarily heavy burden on INS offices abroad and Department of State embassies, especially in certain countries of Latin America. This is because normally cancellation of removal adjudications focus on the alien's conduct in the United States, particularly in light of the residence or physical presence requirements. These cases, however, would involve many aliens who have been removed and may consequently have been living abroad for several years. In order to make a fair assessment whether they pose a danger to U.S. communities and should receive the discretionary relief of cancellation of removal it is necessary to have reliable information about their conduct during that time, including any foreign criminal offenses, which requires in-country investigative work unless risky and unsupported assumptions of good behavior are made in order to decide these cases.
- In conclusion, we support appropriate prospective changes to the law, but oppose in the strongest possible terms a bill that undoes prior law retroactively rather than prospectively; requires the readjudication of substantial numbers of criminal alien cases; permits the return of large numbers of previously removed criminal aliens; drains already limited enforcement and adjudicative resources; and does not fix the problems in the underlying law that led to bills like this being proposed in the first place. H.R. 5062 is not acceptable.

Office of the Deputy Attorney General

U.S. Department of Justice
950 Pennsylvania Avenue, NW, Room 4215
Washington, DC 20530
202-514-6915
Fax: 202-514-9077

To: Irene Bruno

From: Brad Glassman
Counsel to the Deputy Attorney General

Date: 8/5/00

FAX # To:

DOCUMENTS	NUMBER OF PAGES*
	(including cover)

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE IMMEDIATELY AT 202-514-6915.

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H.L.C.

(Original Signature of Member)

106TH CONGRESS
2D SESSION

H. R. 5062

IN THE HOUSE OF REPRESENTATIVES

Mr. McCOLLUM introduced the following bill; which was referred to the
Committee on _____

A BILL

To establish the eligibility of certain aliens lawfully admitted
for permanent residence for cancellation of removal
under section 240A of the Immigration and Nationality
Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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HL.C.

2

1 SECTION 1. LIMITING DISQUALIFICATION FROM CAN-
2 CELLATION OF REMOVAL FOR CERTAIN PER-
3 MANENT RESIDENT ALIENS.

4 (a) TERMINATION OF PERIOD OF CONTINUOUS RESI-
5 DENCE.—

6 (1) IN GENERAL.—Section 240A(d)(1) of the
7 Immigration and Nationality Act (8 U.S.C.
8 1229b(d)(1)) is amended by adding at the end the
9 following:

10 "Notwithstanding the preceding sentence, in deter-
11 mining under such sentence whether a period of con-
12 tinuous residence described in subsection (a)(2) has
13 ended, any offense committed on or before Sep-
14 tember 30, 1996, shall be disregarded."

15 (2) EFFECTIVE DATE.—The amendment made
16 by paragraph (1) shall take effect as if included in
17 the enactment of section 304 of the Illegal Immigra-
18 tion Reform and Immigrant Responsibility Act of
19 1996 (Public Law 104-208; 110 Stat. 3009-587).

20 (b) TREATMENT OF PARTICULAR CRIMES AS AGGRA-
21 VATED FELONIES.—

22 (1) IN GENERAL.—Section 304 of the Illegal
23 Immigration Reform and Immigrant Responsibility
24 Act of 1996 (as contained in title III of division C
25 of Public Law 104-208; 110 Stat. 3009-587) is
26 amended by adding at the end the following:

F:\M6\MCCOLL\MCCOLL.152

H.L.C.

3

1 "(d) TRANSITION RULE FOR CANCELLATION OF RE-
2 MOVAL FOR CERTAIN PERMANENT RESIDENTS.—

3 "(1) IN GENERAL.—Except as provided in para-
4 graph (2), notwithstanding section 321 or 322 of
5 this Act, section 440 of the Antiterrorism and Effec-
6 tive Death Penalty Act of 1996 (8 U.S.C. 1101
7 note), or any other provision of law (including any
8 effective date), in applying section 240A(a)(3) of the
9 Immigration and Nationality Act (8 U.S.C.
10 1229b(a)(3)) to a criminal offense committed on or
11 before September 30, 1996, the term 'aggravated
12 felony' shall not be construed to include the offense
13 if the offense—

14 "(A) was not considered to be within the
15 meaning of that term (as defined in section
16 101(a) of the Immigration and Nationality Act
17 (8 U.S.C. 1101(a)) on the date on which the of-
18 fense was committed; and

19 "(B) is considered to be within the mean-
20 ing of that term (as so defined) by reason of
21 the enactment of—

22 "(i) this Act, in the case of an offense
23 committed during the period beginning on
24 April 25, 1996, and ending on September
25 30, 1996; or

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ELC.

4

1 “(i) this Act or the Antiterrorism and
2 Effective Death Penalty Act of 1996, in
3 the case of an offense committed on or be-
4 fore April 24, 1996.

5 “(2) EXCEPTION.—Paragraph (1) shall not
6 apply to an offense of rape or sexual abuse of a
7 minor. The amendment made by section 321(a)(1)
8 of this Act shall not be affected by such paragraph.

9 “(3) COURSE OF CONDUCT.—In the case in
10 which a course of conduct is an element of a crimi-
11 nal offense, for purposes of paragraph (1), the date
12 on which the last act or omission of that course of
13 conduct occurs shall be considered to be the date on
14 which the offense is committed.”.

15 “(2) EFFECTIVE DATE.—The amendment made
16 by paragraph (1) shall take effect as if included in
17 the enactment of section 304 of the Illegal Immigra-
18 tion Reform and Immigrant Responsibility Act of
19 1996 (Public Law 104-208; 110 Stat. 3009-587).

20 **SEC. 2. POST-PROCEEDING RELIEF FOR AFFECTED ALIENS.**

21 “(a) IN GENERAL.—Notwithstanding section
22 240(c)(6) of the Immigration and Nationality Act (8
23 U.S.C. 1329a(c)(6)) or any other limitation imposed by
24 law on motions to reopen removal proceedings, the Attor-
25 ney General shall establish a process (whether through

July 27, 2000.

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H.J.C.

5

1 permitting the reopening of a removal proceeding or other-
2 wise) under which an alien—

3 (1) who is (or was) in removal proceedings be-
4 fore the date of the enactment of this Act (whether
5 or not the alien has been removed as of such date);
6 and

7 (2) whose eligibility for cancellation of removal
8 has been established by section 1 of this Act;
9 may apply (or reapply) for cancellation of removal under
10 section 240A(a) of the Immigration and Nationality Act
11 (8 U.S.C. 1229b(a)) as a beneficiary of the relief provided
12 under section 1 of this Act.

13 (b) PAROLE.—The Attorney General should exercise
14 the parole authority under section 212(d)(5)(A) of the Im-
15 migration and Nationality Act (8 U.S.C. 1182(d)(5)(A))
16 for the purpose of permitting aliens removed from the
17 United States to participate in the process established
18 under subsection (a).



Ruth.E.Tintary@usdoj.gov

08/08/2000 03:11:00 PM

Record Type: Record

To: Irene Bueno/WHO/EOP

cc:

Subject: Fwd[2]:Graham Bill

Irene,

We compiled these comments about a month before they were asked for officially by OLA by July 25. According to Tim's file notes, they show that these comments were e-mailed to Greg Jones at OLA on July 27, 2000. I have a call into Greg Jones asking for the official DOJ combined comments. I'm waiting to hear from him.

- Ruth E.

Forward Header

Subject: Fwd:Graham Bill

Author: Tim Haugh

Date: 6/22/2000 12:29 PM

here you go. I'm just putting in the file for now. --tim

Forward Header

Subject: Graham Bill

Author: Steven M Hurst

Date: 06/22/2000 12:21 PM

Tim,

Here is the consolidated comment paper on S 2668, Graham Bill. We may get some comments on it, so we should not forward outside INS just yet.

Forward Header

Subject: Graham Bill

Author: Michael L Shaul at HQ-REC-001

Date: 06/22/2000 10:22 AM

ATTACHED ARE:

- 1 - CONSOLIDATED COMMENTS ON S. 2668
- 2 - A SEPARATE CHART CONTAINING THE PREVIOUSLY SUBMITTED VIEWS ON THE H-1 PROVISIONS
- 3 - A LIST OF THOSE COMMENTS NOT INCORPORATED INTO THE CONSOLIDATION AND THE REASONS THEREFOR.



- 3billa~1.doc



- comments.wpd



- comentno.wpd

American Immigration Lawyers Association
Attn: Judy Golub
1400 Eye Street, N.W.
Suite 1200
Washington, D.C. 20005
Phone: (202) 216-2403
Fax: (202) 371-9449

AILA Fax Cover Sheet

To:	<u>Flore Bueno</u>	From:	<u>Judy Golub</u>
Fax #:	<u>456-5581</u>	Date:	<u>7/16/00</u>

Let's talk soon

Jmg



Leadership Conference on Civil Rights

1629 "K" St., Suite 1010
Washington, D.C. 20005
Phone: 202/466-3311
Fax: 202/466-3435
www.civilrights.org

June 23, 2000

The Honorable Eric H. Holder, Jr.
Deputy Attorney General
Office of the Attorney General
Department of Justice
950 Pennsylvania Avenue, NW, Room 4111
Washington, D.C. 20530

Dear Mr. Deputy Attorney General:

We are writing on behalf of the National Council of La Raza (NCLR) and the Leadership Conference on Civil Rights (LCCR) as a follow-up to the meeting we had on April 25, 2000 during which we reviewed with you our concerns on a number of immigration and civil rights issues. We appreciate that you and your staff took the time to meet with us, and the broader group of immigration and civil rights policy advocates from the American Bar Association, the American Civil Liberties Union, the American Immigration Lawyers Association, the National Asian Pacific American Legal Consortium, and the Mexican American Legal Defense and Education Fund.

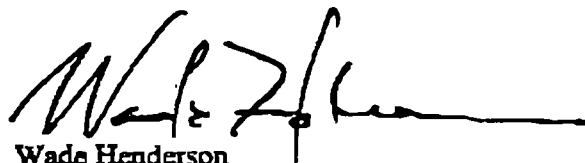
During our meeting, we focused on a number of problematic issues we believe the Clinton Administration has the authority to address or remedy. These issues include the Department of Justice's (DOJ) interpretation of current immigration law in the areas of judicial review, retroactive application of the law in the context of deportation, detention, and expedited removal procedures.

Given the limited time remaining in the second term of the Clinton Administration, we urge you to act now. We are concerned and disappointed that, to date, the DOJ has taken no action on the priority issues we have been discussing with you. We hope that the DOJ's review of the matter of Soriano, which has yet to be announced, will be a step toward addressing the inequities faced by immigrants in our nation today.

The communities we represent have been harmed by the 1996 changes in immigration law and by the other initiatives we discussed at the meeting, and await relief. The DOJ has the authority and opportunity to undertake actions that will mitigate the harsh impacts of these laws and initiatives. We look forward to your reply and thank you for your attention in these matters.

Sincerely,


Raul Yzaguirre
President
National Council of La Raza


Wade Henderson
Executive Director
Leadership Conference on Civil Rights

MEMORANDUM

TO: MARIA ECHAVESTE
FROM: IRENE BUENO
RE: MEETING WITH GROUPS ON FIX 96/DUE PROCESS LEGISLATION –
Monday, October 2, 2000 at 10:30 am in the Roosevelt Room

PURPOSE:

- What are their priorities?
- Leg. Strategy in the Senate
for H.R. 1062 ~~the bill~~ ^{+ conf. report}
- Republican - key to Broderick Strategy

BACKGROUND:

- Play 6th ^{LISA} ~~5th~~ + Fix 96

*In separate
memo*

Wade Henderson requested this meeting to discuss strategy on Fix 96/Due Process legislation. The groups and the Hill are looking to us to help in passing an expanded legislation. We are having a pre-meeting to discuss what we will say we can and are willing to do to get legislation enacted this year.

Administration's Position: The Administration supports Fix 96/Due process legislation including the Frank/McCullom legislation H.R. 5062 that passed the House. Generally, we do not think this legislation goes far enough. On the other hand, DOJ/INS is very worried that the provision that allows individuals who have already been deported to return to the United States would cause administrative burdens. Groups and supportive Congressional members believe that this is an important step to take and they expect there is hope for making additional changes in the future. We would also be supportive of expanding the legislation but INS may have some concerns expanding it as some of the groups and the Hill would like to do. Last week, you met with Representative Frank, the sponsor of the H.R. 5062 who urged the White House to help move this legislation forward. You expressed the Administration's support for the legislation and that we would ask DOJ to send a letter to the Senate urging to pass the legislation.

Current Status in the Senate: According to Esther Olavarria, Senator Kennedy's staff person, they want to expand the Due Process legislation but know that Representative Lamar Smith would object to it and could undermine passage of legislation this year. Esther would like to attend the meeting to explore with us the best strategy to get expanded legislation passed this year. On September 27, 2000, Senators Kennedy and Graham introduced an expansive Fix 96/Due Process legislation, S.3120 Immigrant Fairness Restoration Act (IFRA). Co-sponsors include Senator Feingold, Leahy, Durbin, John Kerry, Wellstone, Reid. Daschle may cosponsor it as well.

Current Status in the House: The House passed under suspension H.R. 5062, legislation that Representative Frank worked with Representatives Hyde and McCullom to ameliorate some of the harshest provisions of Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) and the Anti-terrorism and Effective Death Penalty Act (AEDPA) by granting the Attorney General the discretion to allow long-time permanent residents with significant ties to the United States to remain in the United States, despite certain criminal convictions. Representatives Hyde and McCullom convinced Representative Lamar Smith to accept this legislation but Smith agreed only if no changes to the legislation were made later in the legislation process. However, since that legislation passed the House, Representative Smith introduced H.R. 5293 that would be worse than the 1996 laws. DOJ thinks he introduced it to try to prevent somehow undermine a broader Fix 96 legislation.

Summary of the McCullom/Frank legislation summary:

- H.R. 5062 provides that the offense “stop-time rule” does not apply to offenses committed on or before September 30, 1996. The stop-time rule, a new feature of the law after 1996, provides that accrual of the necessary time periods of continuous residence (for lawful permanent residents (LPRs)) or continuous physical presence (for non-LPRs) in order to be eligible for the discretionary relief of cancellation of removal permanently stops when the individual has committed a criminal offense that renders him/her inadmissible or deportable. The proposed change would be retroactive back to September 30, 1996.
- Currently, LPR aggravated felons are ineligible for cancellation of removal. H.R. 5062 provides that, for purposes of considering eligibility for this relief, an “aggravated felony” does not include offenses committed before 9/30/96 (other than rape or sexual abuse of a minor) are considered to be aggravated felonies by reason of the 1996 changes, but were not defined as such at the time they were committed. This amendment is also retroactively effective back to 9/30/96.
- H.R. 5062 requires the Attorney General to establish a process under which immigrants who have become eligible for cancellation as a result of these changes would be able to apply for it, whether or not their cases have concluded or they have actually deported from the United States. The bill also states that the AG “should exercise the parole authority for the

purpose of permitting aliens removed from the United States to participate in the process.

ATTENDEES:

You
Irene
Mark Magana
Joel Wiginton
James Castello
Robert Raben
Patty First

Groups

Wade Henderson, LCCR
Cecilia Munoz , NCLR
Frank Sharry, NIF
Angela Kelly, NIF
Karen Narasaki, NAPALC
Sally Kaneshia, Asian Law Caucus
Jeanne Butterfield, AILA
Judy Golub, AILA
Carol Wolchuk , ABA
Angelo Amador, MALDEF
Melanie Nesser
Greg Nojiem, ACLU
Abigail Price, US Catholic Conference

Hill

Esther Olavarria, Senator Kennedy's office
House staff: TBA
Andrea Calme, Senator Doherty

- Lesser crimes in the future
- Mandatory Detention
- Suspension for non-LPR

26
H.R. 5062 w/ improvements

- 3 issues: - most concern + IRS will support.
- Address Mandatory Detention
 - Flexibility in discretion
 - Appropriate when to count when necessary.

Level ABA - ~~the~~

Mandatory Detention Fed. Ct. size similar process.

Admin. purpose - temporary custody rule - give AG discretion (6hr 1996-1998)

Restoring Discussions to AG - judge could hear if LPR ~~has~~ been more than 7 yrs. Howard Soto in 1996 modified the AG discretion - if someone LPR + someone did not accept 5 yrs for any plea judge could ~~not~~ have discretion. MS Cellin has proposed but in conference committee created an automatic barrier. Since ~~we~~ began 5 yrs -

- Judicial Review - sup Ct of authority in many areas. ~~HR 5062~~ - should not get 2 bits at the apple. ~~Repeat this one only~~
5042(a)(2)(C)

Wade

Comprehensive reform (Kraus + Conyer) - in 10th bill but need a down payment in HR 5062 ~~discuss~~.

2 legislative options

- Legislative Approval HR ~~5062~~ 5062 Plus - B. understand limited possibilities involving omnibus.

HR 5062 - UC (Guthrie)

Morahan - he may willing to go by or by not involved. But staff has not spoken. Republicans were very aware of it + no one articulated objected. Could get HR 5062 passed under UC.

Interplay w/ LIFA

Still a priority but not a heavy lift to add improvements, don't want to be played off.

Next Steps *HR 5062 - ~~the~~ ~~take point~~ ~~UC~~ then by. history language.

- Pass HR 5062 w/ some indications of need to improve (Hatch would be key + a possibility.)

They will explore an amendment w/ RS ~~including~~ including Meade, Stevens but if cannot get HR 5062.

- Focus add ons - in something. disaggregate for HR 5062

- Administrative Fixes - Regs + EO? = Follow-up on Serrano (MG will follow up w/ Jones) (★)
= Exercise more discretion

*With calls to Senate RS.

HR 5062 - will be ~~hard~~ hard to U.C.

Consensus

→ Get HR 5062

→ position ourselves for end game

* Admin fixes - follow up MG

* Senate RS - def call on Ritzgo

- Evaluate ~~if~~ appropriate.