

Immigration

Deportation /
Local Jail Demo



Ingrid M. Schroeder
10/31/97 05:32:43 PM

.....

Record Type: Record

To: See the distribution list at the bottom of this message
cc: James J. Jukes/OMB/EOP, Darlene O. Gaymon/OMB/EOP
Subject: LRM #IMS187 - Statement of Administration Policy on HR1493 Deportation of Criminal Aliens

Total Pages: _____

LRM ID: IMS187

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

Friday, October 31, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

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

OMB CONTACT: Ingrid M. Schroeder
PHONE: (202)395-3883 FAX: (202)395-3109

SUBJECT: Statement of Administration Policy on HR1493 Deportation of Criminal Aliens

DEADLINE: 2pm Monday, November 3, 1997

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

COMMENTS: H.R. 1493 is scheduled for House floor consideration on the suspension calendar on Tuesday, November 4th. If we do not receive your comments by the above deadline we will assume that you have "no objection" to the attached SAP. The bill report for H.R. 1493 can be found on the internet in THOMAS at the address below:

<http://thomas.loc.gov/>

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SUBJECT: Statement of Administration Policy on HR1493 Deportation of

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

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

(2) sending us a memo or letter

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

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

DRAFT -- NOT FOR RELEASE

H.R. 1493 -Criminal Alien Identification
(Gallegly (R) California and 33 cosponsors)

The Administration maintains a strong commitment to identifying and removing criminal and other deportable aliens and will work with Congress to enhance partnerships that work

effectively to meet these goals.

The Administration opposes House passage of H.R. 1493. The bill would require the Attorney General, subject to appropriations, to identify certain illegal aliens or aliens subject to deportation from among those who are incarcerated in local governmental incarceration facilities prior to their arraignment on criminal charges. The effect of H.R. 1493 would be that the Immigration and Naturalization Service would have to refocus resources on individuals who have not been arraigned and may not be deportable. This could hinder efforts to target the worst and most serious offenders -- aliens incarcerated for criminal convictions.

* * * * *

To require the Attorney General to establish a program in local prisons to identify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States,...
(Reported in the House)

Union Calendar No. 197

105th CONGRESS

1st Session

H. R. 1493

[Report No. 105-338]

A BILL

To require the Attorney General to establish a program in local prisons to identify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States, and for other purposes.

October 23, 1997

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

HR 1493 RH

Union Calendar No. 197

105th CONGRESS

1st Session

H. R. 1493

[Report No. 105-338]

To require the Attorney General to establish a program in local prisons to identify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

April 30, 1997

Mr. GALLEGLY (for himself, Mr. ROYCE, Mr. PACKARD, Mr. COX of California, Mr. ROHRABACHER, Mr. CUNNINGHAM, Mr. RIGGS, Mr. CALVERT, Mr. KIM, and Mr. BILBRAY) introduced the following bill; which was referred to the Committee on the Judiciary

October 23, 1997

Additional sponsors: Mr. LIPINSKI, Mr. CANADY of Florida, Mr. BEREUTER, Mr. MCKEON, Mr. MARTINEZ, Mr. WICKER, Mr. BONO, Mr. HORN, Mr. DREIER, Mr. SHERMAN, Mr. HUTCHINSON, Mr. GOODLATTE, Mr. MCCOLLUM, Mr. HUNTER, Mr. TRAFICANT, Mr. CANNON, Mr. DEAL of Georgia, Mr. BERMAN, Mr. STUMP, Mr. HAYWORTH, Mr. COOK, Mr. GIBBONS, Mr. FOLEY, and Mr. Visclosky

October 23, 1997

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 30, 1997]

A BILL

To require the Attorney General to establish a program in local prisons to identify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States, and for other purposes.

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

SECTION 1. PROGRAM OF IDENTIFICATION OF CERTAIN
DEPORTABLE ALIENS AWAITING ARRAIGNMENT.

(a) ESTABLISHMENT OF PROGRAM- Not later than 6 months after the date of the enactment of this Act, and subject to such amounts as are provided in appropriations Acts, the Attorney General shall establish and implement a program to identify, from among the individuals who are incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges, those individuals who are within 1

or more of the following classes of deportable aliens:

(1) Aliens unlawfully present in the United States.

(2) Aliens described in paragraph (2) or (4) of section 237(a) of the Immigration and Nationality Act (as redesignated by section 305(a)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(b) DESCRIPTION OF PROGRAM- The program authorized by subsection (a) shall include--

(1) the detail, to each incarceration facility selected under subsection (c), of at least one employee of the Immigration and Naturalization Service who has expertise in the identification of aliens described in subsection (a); and

(2) provision of funds sufficient to provide for--

(A) the detail of such employees to each selected facility on a full-time basis, including the portions of the day or night when the greatest number of individuals are incarcerated prior to arraignment;

(B) access for such employees to records of the Service and other Federal law enforcement agencies that are necessary to identify such aliens; and

(C) in the case of an individual identified as such an alien, pre-arraignment reporting to the court regarding the Service's intention to remove the alien from the United States.

(c) SELECTION OF FACILITIES-

(1) IN GENERAL- The Attorney General shall select for participation in the program each incarceration facility that satisfies the following requirements:

(A) The facility is owned by the government of a local political subdivision described in clause (i) or (ii) of subparagraph (C).

(B) Such government has submitted a request for such selection to the Attorney General.

(C) The facility is located--

(i) in a county that is determined by the Attorney General to have a high concentration of aliens described in subsection (a); or

(ii) in a city, town, or other analogous local political subdivision,

that is determined by the Attorney General to have a high concentration of such aliens (but only in the case of a facility that is not located in a county).

(D) The facility incarcerates or processes individuals prior to their arraignment on criminal charges.

(2) NUMBER OF QUALIFYING SUBDIVISIONS- For any fiscal year, the total number of local political subdivisions determined under clauses (i) and (ii) of paragraph (1)(C) to meet the standard in such clauses shall be the following:

(A) For fiscal year 1999, not less than 10 and not more than 25.

(B) For fiscal year 2000, not less than 25 and not more than 50.

(C) For fiscal year 2001, not more than 75.

(D) For fiscal year 2002, not more than 100.

(E) For fiscal year 2003 and subsequent fiscal years, 100, or such other number of political subdivisions as may be specified in appropriations Acts.

(3) FACILITIES IN INTERIOR STATES- For any fiscal year, of the local political subdivisions determined under clauses (i) and (ii) of paragraph (1)(C) to meet the standard in such clauses, not less than 20 percent shall be in States that are not contiguous to a land border.

(4) TREATMENT OF CERTAIN FACILITIES- All of the incarceration facilities within the county of Orange, California, and the county of Ventura, California, that are owned by the government of a local political subdivision, and satisfy the requirements of paragraph (1)(D), shall be selected for participation in the program.

SEC. 2. STUDY AND REPORT.

Not later than 1 year after the date of the enactment of this Act, the Attorney General shall complete a study, and submit a report to the Congress, concerning the logistical and technological feasibility of implementing the program under section 1 in a greater number of locations than those selected under such section through--

(1) the assignment of a single Immigration and Naturalization Service employee to more than 1 incarceration facility; and

(2) the development of a system to permit the Attorney General to conduct off-site verification, by computer or other electronic means, of the immigration

status of individuals who are incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges.

Message Sent To:

Steven M. Mertens/OMB/EOP
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growers. All three of the pending challenges were consolidated before Judge Thomas F. Hogan. The parties in City of New York and Snake River had agreed upon a briefing schedule. The government's motion to dismiss is due November 12.

- **Canadian Extradited:** After a nearly five-year extradition effort, the former president of Neese Coated Fabrics was returned from Canada to face trial in MO. The defendant and his company were indicted in 1993 on charges of falsifying test results and abandoning hazardous wastes at the company's downtown St. Louis plant. Neese allegedly delivered more than 40,000 pieces of defective tent material to the military at a cost of \$3.2 million and supplied false supporting documentation.
- **Operation Detail:** On October 20, Irving Bowman was arrested in Long Island, NY, by Deputy U.S. Marshals from the District of NJ and the Southern District of NY. Bowman is alleged to be a major cocaine and heroin trafficker wanted on federal indictments in GA and NJ. The arrest was the result of a lengthy DEA and IRS investigation called "Operation Detail."
- **Drug Conspiracy Cases:** The Supreme Court, as DOJ urged, granted the certiorari petition in Edwards v. United States to resolve a conflict among the circuits in federal drug conspiracy cases. The Court will consider whether a jury verdict of guilty in a prosecution for a drug conspiracy involving more than one drug requires the district court to set a base offense level under the Sentencing Guidelines by considering only the drug that supplies the lowest sentence. DOJ contends that the type of drug for which a defendant is accountable is a sentencing factor for the judge, not the jury, to determine.
- **COPS Universal Hiring Program Grant Announcement:** On October 30, the COPS Office announced the awarding of over \$62.5 million to 476 jurisdictions in 47 states and Puerto Rico to fund the hiring of 969 additional officers.

DEPARTMENT OF COMMERCE

- **Transatlantic Conference:** On November 6-7, Secretary Daley will lead the U.S. delegation to the Transatlantic Business Dialogue conference in Rome, Italy. Over 40 U.S. and 50 EU CEOs will attend.
- **Gray Whales:** The IWC adopted by consensus a quota that allows the Makah Indian Tribe of WA a five-year aboriginal subsistence hunt averaging four gray whales a year, combined with an average annual harvest of 120 gray whales by natives of the Chukotka region of Russia's Pacific coast. DOC expects criticism of this decision from a number of conservation organizations. The Commission also approved a new quota for Alaska Eskimos consistent with their continuing hunt of bowhead whales in the Arctic Ocean.

File: —

IMMIGRATION

Criminal Aliens/Demo

23100



BOARD OF SUPERVISORS COUNTY OF LOS ANGELES

383 KENNETH HAHN HALL OF ADMINISTRATION / LOS ANGELES, CALIFORNIA 90012

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(213) 974-1411

August 1, 1997

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

We are writing to request your support for a Federally-funded demonstration project in Los Angeles County which would establish the nation's first regional criminal alien enforcement strategy to be based on local/Federal cooperation and coordination, state-of-the-art computer technology and multi-jurisdictional information sharing.

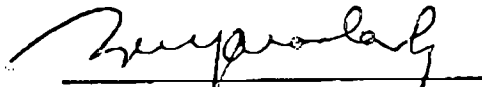
As clearly demonstrated in the enclosed report, criminal aliens not only threaten public safety and undermine the quality of life in our communities, they impose an enormous and unacceptable burden on our County's criminal justice system. Entitled "The Impact of Deportable Aliens on the Los Angeles County Jail System," this report details, among other findings, that habitual criminal aliens are locked in a vicious cycle of crime and are totally undeterred by deportations, removal orders, enhanced border interdiction operations and other Federal enforcement strategies. In fact, this study proves that the criminal alien problem in Los Angeles County has significantly worsened over the past six years.

AUG 11 1997

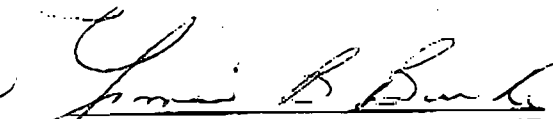
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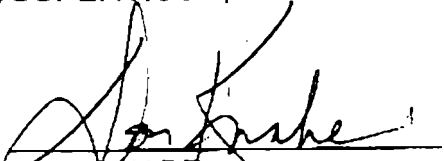
Our Board fully concurs with the conclusions and recommendations of the Countywide Criminal Justice Coordination Committee, which brought together numerous high-level local and Federal justice officials in the preparation of this report, and we urge your support of the proposed cooperative partnership and the Los Angeles County criminal alien enforcement demonstration project.

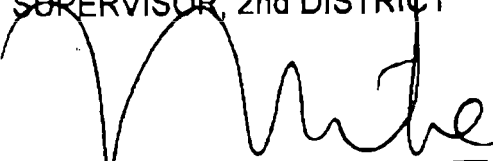
Very truly yours,


ZEV YAROSLAVSKY
CHAIRMAN
SUPERVISOR, 3rd DISTRICT


GLORIA MOLINA
SUPERVISOR, 1st DISTRICT

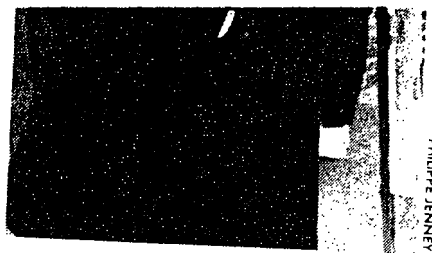

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SUPERVISOR, 2nd DISTRICT


DON KNABE
SUPERVISOR, 4th DISTRICT


MICHAEL D. ANTONOVICH
SUPERVISOR, 5th DISTRICT

0729-16.L3

Enclosure



Rex Wingerter fought for client against INS.

INS Hunts Convicted Aliens in Court

Refugee With a Record Barely Escapes Deportation

BY STEPHANIE MENCIMER

In 1993, Getu McKonen, then a 19-year-old Ethiopian refugee, was convicted in D.C. Superior Court of selling less than \$20 worth of marijuana to an undercover cop. For that misdemeanor, he got six months' probation—and he almost got a fast one-way ticket back to political persecution in Ethiopia, courtesy of the Immigration and Naturalization Service's (INS) new get-tough policy on aliens with criminal records.

McKonen was able to find an immigration lawyer—Takoma Park, Md., solo practitioner Rex Wingerter—who convinced the prosecutor and the judge to vacate his conviction and stave off his

SEE SUPERIOR COURT WATCH, PAGE 6

ties between
D.C. lobbyist
Michael
Brown, his
father, Ron, the
Commerce
secretary, and
a troubled
Tulsa gas
company.



Ron Brown

Energy Resources Inc. filed suit against her former business partners—including Michael Brown—alleging that some of

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SEE BROW

Doctors Mop Up on Medical

BY T.R. GOLDMAN

Aside from their golf game, there's nothing doctors complain about more than the nation's legal system, a maze they blame for extortionate malpractice premiums and exorbitant damage awards sparked by the most minor mistakes.

If the House Republicans' version of Medicare is enacted, though, golf scores may be the only thing left to grouse about.

Medical malpractice reform is one of several provisions Republican leaders granted to organized medicine this year in exchange for its support of the Medicare bill now wending its way through the House.

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Medicare
drug mal-
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LOBBY TALK

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firms who

INSIDE O.J. Sunshine



Judy Johnson (left), chief trial counsel of the California State Bar, says the public has a right to know that her group is probing the courtroom conduct of lawyers in the O.J. Simpson trial. But some say disclosing the probe flouts state law. **Page 2**

Inadmissible

H. Ross Perot's third-party efforts may have run afoul of the FEC; Hogan & Hartson expects many absences because of the Million Man March. **Page 3**

Thomas' Lament

The full text of Justice Clarence Thomas' recent speech decrying the modern culture of victimhood. Verbatim, **Page 10**

True Crime Story

Failed policies have sh-
blacks into the justice
system. Analysis, **Page**

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SUPERIOR COURT WATCH

INS Deporting Aliens Faster—For Lesser Crimes

FROM PAGE 1

deportation, at least for now. But he was one of the lucky ones.

Spurred by hard-liners in Congress, the INS has started cracking down on noncitizens, legal and illegal alike, who have been convicted of crimes. INS agents are cross-checking court records with the names of aliens and are moving quickly to capture and deport those with criminal records.

"You can have a green card for 30 years and dozens of grandkids at your knee, but if you get busted for [selling] three grams of marijuana like McKonen did you can be deported [immediately]," says Wingerter an immigration specialist who is representing McKonen.

Carol Wolchok, director of the Center for Immigration Law and Representation of the American Bar Association, says the case shows "that the immigration consequences of a criminal conviction can be far more severe than any of the criminal penalties. Immigrant kids

foster family says far outweighs his minor crime. According to court documents, McKonen was taken prisoner by the Somali government at age four, after his father was killed in the military clash between the Somali and Ethiopian border forces. For 11 years, McKonen was held in a prisoner-of-war camp. He received no education and only meager food. The floor was his only bedding.

In 1989, McKonen was released and allowed to return to

Ethiopia as part of a prisoner exchange—but he found that his entire family had been killed. A short time later, the Communist-led Ethiopian government conscripted McKonen into the military to fight in the civil war.

He fled the country and, walking for 25 straight days, made it to a Kenyan refugee camp, where he remained for seven months. With help from the International Red Cross and the U.S. Embassy, McKonen was granted refugee status and allowed to come to the United States at the age of 16.

In 1990, when he arrived in the United States, he spoke no English and had only the clothes on his back. He was placed with foster parents Robert and Patricia Mohr, who enrolled him in D.C.'s Woodrow Wilson High School.

About eight months before his arrest, the court documents say, McKonen began suffering from depression and was found by a psychologist to be suicidal. He was placed on medication and started regular counseling, but he had abandoned both therapies shortly before his arrest.

"When this all happened, he was going through a real depression," says Robert

Mohr, a professor at Catholic University's physics

court-appointed attorneys on Oct. 26.

"Congress has dumped in millions of dollars to deporting criminal aliens," says Wingerter. "The pressure is on, and defense attorneys need to be sensitive to this."

No Easy Out

Some D.C. court employees are grumbling because the court has refused to offer them the same early retirement program being granted to many other city employees during the District's fiscal crisis.

An anonymous memo, apparently circulated by unhappy staffers, was sent last month to members of the courts' administrative body, the Joint Committee on Judicial Administration.

It noted that last year, 232 court employees, fully 20 percent of the courts' work force, had 20 or more years of service and could have been designated as eligible to take advantage of the "early out/easy out" program offered by the court—a figure confirmed by court officials.

But the court chose to conduct a lottery among those employees interested in the program rather than make it available to all who wished to retire early.

The anonymous letter suggested that employees were unhappy that the early retirement packages widely offered in other city agencies were offered to only 24 court staffers, four of whom ultimately decided not to leave. Younger employees, the letter contends, are also being discouraged by the lack of upward mobility in the top-heavy organization.

The letter argues, "If there is a place where the court could trim down, it is in the middle and upper management levels: exactly the area for which early out/easy out is targeted."

Other court employees who wish to remain



Dan Stein argues that aliens are guests and should be kicked out if they break the law.

PATRICE GILBERT

consequences of a criminal conviction can be far more

severe than any of the criminal penalties. Immigrant kids can end up being deported away from their whole families over something like this."

INS officials and their supporters take the view that noncitizens do not have an automatic right to be in the United States and that taxpayers should not support those who commit crimes.

Dan Stein, executive director of the Federation for American Immigration Reform (FAIR), says removing noncitizens from the nation's jails and prisons is "the single most important immigration initiative of this administration. You'll remember that aliens are considered a guest of the nation. Why should we have them stay here when they are drug offenders?"

Recently, Congress has made it much easier for the INS to expel criminal aliens. Last year, for example, lawmakers for the first time allowed federal judges to conduct deportation hearings immediately following conviction. Congress also placed the burden on the convict to prove that he or she should not be deported. It also recently expanded the list of crimes for which a noncitizen can be deported.

Congress has given teeth to this crusade by appropriating millions of new dollars for the cause. In 1995, for example, \$45 million was set aside solely to provide deportation hearings in jails and prisons.

The INS has responded by deporting record numbers of foreign-born residents. T. Alexander Aleinikoff, INS executive associate commissioner for programs, said in a Sept. 28 statement: "We are working hard to . . . double the number of criminal aliens who will be removed next year." As of Aug. 31, the INS had deported 28,330 criminal aliens this year.

As for McKonen, he came very close to being removed this year. Convicted in 1993 for selling less than three grams of marijuana, about enough to make two joints, he was sentenced in 1993 by Superior Court Judge Joseph Ryan to six months' probation, which he completed uneventfully.

Then, early one morning in August 1994, six armed INS agents came to McKonen's D.C. home, rousted him from bed, handcuffed him, and whisked him off to an INS facility in Virginia.

Even though McKonen had been convicted only of a misdemeanor, for immigration purposes any conviction for drug distribution is an "aggravated felony" and a deportable offense. As long as his drug conviction stood, McKonen had no legal grounds to fight his expulsion.

McKonen has a wrenchingly sad past, one that his

Dan Stein argues that aliens are guests and should be kicked out if they break the law.

therapies shortly before his arrest.

"When this all happened, he was going through a real depression," says Robert

Mohr, a professor at Catholic University's physics department. "He's not involved with drugs. When he was arrested, this girl [the undercover cop] was flirting with him and he was trying to impress her," so he found a friend who had a few grams of marijuana to sell to her.

McKonen waived his right to appeal his conviction after his then attorney incorrectly advised him that it would not affect his status as a legal permanent U.S. resident. Instead, last June an INS judge ordered McKonen deported to Ethiopia because of the conviction.

McKonen's foster parents sought Wingerter's help to appeal his deportation. Wingerter moved in Superior Court to vacate McKonen's sentence based on the ineffective assistance of McKonen's original lawyer.

Prosecutors in the U.S. attorney's office did not oppose the motion, and last month Judge Russell Canan granted the motion and allowed McKonen to enter a guilty plea to simple possession of marijuana, a nondeportable charge.

"Hats off to the U.S. attorney's office," says Wingerter. "They did the right thing."

Wingerter is now attempting to reopen the INS case and have the deportation order vacated. Robert Mohr says McKonen is doing well, working three jobs and living with his girlfriend in a group house.

"He's being a positive citizen and he's working hard to make his own way," says Mohr.

The ABA's Wolchok says Congress has removed some of the basic due process procedures available to noncitizens. Once someone is convicted or pleads guilty to offenses the INS considers aggravated felonies, she says, "there is absolutely no remedy."

But INS officials not only defend the policy, they boast about it in regular press conferences. Last month, the agency issued a press release touting the record number of criminal aliens deported in the month of August. According to the agency's figures, 3,053 criminal aliens were deported in August, up from 2,736 in August of 1994.

INS agents periodically check Superior Court records for recently convicted aliens, and the court also notifies the INS of criminal convictions of aliens, according to Lisa Ross, an INS spokeswoman.

In response to the stepped-up federal efforts, local criminal defense organizations are increasing their attempts to educate attorneys about immigration issues that may arise in criminal cases. The D.C. Public Defender Service is including seminars on immigration in its upcoming Criminal Practice Institute. Wingerter will be teaching a continuing legal education seminar for

could trim down, it is in the middle and upper management levels: exactly the area for which early out/easy out is targeted."

Other court employees who wish to remain anonymous say it's unfair not to allow regular court employees early retirement when Judge Curtis Von Kann, who retired this month, is entitled to collect 33 percent of his \$133,600 per-year judicial salary after serving only 10 years on the bench.

The anonymous memo also raises concerns that if the court doesn't reduce its payroll through painless early retirement plans, the city's financial crisis will ultimately require layoffs, which would disproportionately affect

younger people with less tenure in government service.

Court Executive Officer Ulysses Hammond did not return calls seeking comment. Instead, he faxed a statement saying: "The court does not contemplate offering an easy out/early out retirement program at this time, because no decision in this regard has been made by the Joint Committee on



Ulysses Hammond

Judicial Administration."

The D.C. Financial Control Board has supported the D.C. Council's request that the court pare 145 positions, about 10 percent of its payroll, in the fiscal 1996 budget, according to Edward Stephenson, a senior staffer at the control board.

The council and the control board can make recommendations for the court budget, but only Congress has the power to make the cuts. And so far, the court has done little to contribute to the belt-tightening going on in the rest of the city. Last year, while the mayor was pressuring all city agencies to slash 10 percent from their payrolls, the court offered to—and did—get rid of a mere two percent, and many of those positions were ultimately refilled.

In addition, court employees were not subject to pay cuts or furloughs endured by nearly all other city employees during the last fiscal year, which ended Sept. 30. Stephenson says that this year the court is "going to have to be part of the overall budget plan."

"Superior Court Watch" appears alternately in this space with "Federal Court Watch."