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Immigration & Naturalization Service
Office of Policy and Planning***

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MEMORANDUM OF UNDERSTANDING

Between the

Immigration and Naturalization Service

Department of Justice

and the

Employment Standards Administration

Department of Labor

November 23, 1998

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MEMORANDUM OF UNDERSTANDING
Between the
Immigration and Naturalization Service
Department of Justice
and the
Employment Standards Administration
Department of Labor

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to promote employment opportunities for, and the interests of, authorized U.S. workers through:

- fostering appropriate cooperation and coordination between the Immigration and Naturalization Service (INS) of the Department of Justice (DOJ) and the Employment Standards Administration (ESA) of the Department of Labor (DOL); and,
- enhancing worksite enforcement of employer sanctions and labor standards in order to reduce the employment of unauthorized workers in the U.S.

To this end, this MOU clarifies the enforcement roles and responsibilities of each agency in areas of shared authority, ensures more efficient use of resources, reduces duplication of effort, and improves communication and appropriate coordination between the agencies.

This MOU affects the following INS and ESA enforcement and compliance components:

- **INS:** Office of Field Operations
 Investigations
 Border Patrol
 Office of Policy and Programs
 Office of Business Liaison
- **ESA:** Wage and Hour Division (WH)
 Office of Federal Contract Compliance Programs (OFCCP)

Where investigative and enforcement jurisdiction is shared between the signatory agencies, both shall work cooperatively and, in appropriate circumstances, plan and undertake coordinated or joint activities. The Federal statutes and Executive Orders provided for in this agreement include, but are not limited to, the following:

- Immigration and Nationality Act, as amended [Title 8 of the United States Code, Section 1101 et seq., specifically 8 U.S.C. Section 1324a] (INS and ESA)
- Title 18 of the United States Code, Sections 911, 1001, 1015, 1028, 1426, and 1546 (INS)
- Executive Order 12989 (INS)
- Fair Labor Standards Act (ESA)
- Family and Medical Leave Act (ESA)
- Migrant and Seasonal Agricultural Worker Protection Act (ESA)
- Davis-Bacon and Related Acts (ESA)
- McNamara-O'Hara Service Contracts Act (ESA)
- Employee Polygraph Protection Act (ESA)
- Executive Order 11246, as amended (ESA)
- Section 503 of the Rehabilitation Act of 1973, as amended (ESA)
- Vietnam Era Veterans Readjustment Assistance Act of 1974 (ESA)

District Directors for the signatory agencies shall identify areas of mutual local enforcement interest and, in appropriate circumstances consistent with this MOU, plan and develop coordinated or joint actions.

II. Goals

The goals of this MOU are to:

- reduce the employment of unauthorized workers in the U.S. and the consequential adverse effects on the job opportunities, wages and working conditions of authorized U.S. workers by increasing employers' compliance with their employment eligibility verification obligations;
- reduce the economic incentives for the employment of unauthorized workers and the consequential adverse effects on the job opportunities, wages and working conditions of authorized U.S. workers by increasing employers' compliance with minimum labor standards;
- avoid the victimization of unauthorized workers employed in the U.S. by

employers which may seek to use the enforcement powers of the signatory agencies to intimidate or punish these workers; and,

- promote employment opportunities for authorized U.S. workers and improvements in their wages, benefits, and working conditions.

III. Background

Historically, INS and ESA have maintained working relationships in areas of mutual law enforcement interest. Immigration reform legislation over the last decade has significantly expanded and intensified this interaction.

The U.S. continues to face a serious problem of illegal migration as unauthorized workers are drawn to and remain in the U.S. workplace. Deterring illegal migration and overstaying of authorized periods of admission or employment in the U.S. must include reducing the magnet of employment opportunities through worksite enforcement of both immigration laws and labor standards. As an essential part of his efforts to reduce illegal immigration, President Clinton directed INS and DOL to establish complementary strategies to increase and improve worksite enforcement. The President's directive requires INS and ESA to enhance their existing relationships to facilitate identifying high risk industries and metropolitan zones of deterrence for coordinated enforcement. In addition, information will be shared, as appropriate, when industries or occupational settings are identified in which visa overstayers who are not authorized to work are a common problem.

INS has primary responsibility for enforcing Section 274A of the Immigration and Nationality Act (INA), the provisions commonly referred to as "employer sanctions." These provisions are an integral part of the INS enforcement mission, expanding and supporting the complementary goal of securing our borders as illegal aliens are often lured to the U.S. by promises or prospects of employment. Many migrants fall into the hands of ruthless and exploitative criminal alien smuggling operations and abusive employers who intentionally violate the law by knowingly employing unauthorized aliens and subjecting their employees to substandard wages and working conditions.

Vigorous enforcement of our immigration laws can deter violations of labor standards by preventing the employment of unauthorized workers whose willingness to accept sub-standard wages and working conditions artificially suppresses wages, leads to the degradation of overall conditions in the workplace, and deprives authorized U.S. workers of decent job opportunities. Thus, by

focusing on employers in industries and locations with a history of reliance on unauthorized labor, worksite enforcement initiatives can manifestly increase deterrence of unauthorized alien employment, remove unauthorized workers from the workplace, disrupt alien smuggling and harboring operations, and make decent jobs available for authorized workers.

ESA's primary responsibility is the enforcement of labor standards statutes with the goal of ensuring that all covered workers - irrespective of their immigration status - are afforded the full benefits and protections of our labor laws. The INA provides DOL a role in the enforcement of employer sanctions because vigorous targeted enforcement of labor standards can serve as a meaningful deterrent to illegal immigration. It denies some of the business advantages that may be gained through the employment of highly vulnerable and exploitable workers at sub-standard wages and working conditions. Labor law enforcement not only helps ensure fairness and acceptable workplace standards, but also helps foster a level competitive playing field for employers who seek to comply with the law. Consequently - consistent with its primary labor standards compliance mission - in carrying out this MOU, the ESA agencies will take no action which will compromise their ability to carry out the fundamental worker protection mission. Likewise, INS will take no action which will compromise its ability to effectively carry out its primary mission of immigration law enforcement.

INS and ESA have historically sought to identify appropriate circumstances warranting efforts to coordinate worksite enforcement activities in order to achieve a legal workforce that enjoys the full range of employment standards protections available under law and Executive Order.

IV. Implementation

A. National Procedures

Liaison

The Headquarters enforcement/compliance components of INS and ESA shall maintain liaison concerning matters of mutual interest and jurisdiction, and shall actively seek to improve communication at all levels of the organizations. Information sharing at the Headquarters level of each agency will include cooperation and coordination in the development of policies, procedures, regulations, enforcement priorities and approaches, training materials, and activity reports.

In order to implement this MOU, INS and ESA agree to exchange, periodically update, and disseminate to all their field offices information concerning office locations and jurisdictional areas of responsibility of their respective operational field units.

INS shall provide to ESA sufficient quantities of the Handbook for Employers (M-274) for distribution to all employers inspected by ESA investigators.

Policy and Procedures

INS has primary responsibility for employer sanctions enforcement, including assessing civil penalties and initiating legal proceedings under Section 274A of the INA. In addition, INS has responsibility for promulgating employer sanctions program policy. Because of possible resource implications, INS will advise and consult with ESA regarding any significant proposed changes in the employer sanctions program policy which may affect ESA activities or policies and, as changes are implemented, the two agencies will coordinate to modify their implementing procedures accordingly.

INS and ESA will work to develop criteria and procedures for referral of suspected violations. Such referrals will be subject to appropriate tracking and follow-up by the respective agencies.

The agencies will develop and implement policies consistent with INS Operations Instruction 287.3a that avoid inappropriate worksite interventions where it is known or reasonably suspected that a labor dispute is occurring and the intervention may, or may be sought so as to, interfere in the dispute. The agencies will develop and implement policies concerning circumstances when it is known (or appears) to INS that a labor dispute is occurring and an INS law enforcement action may be appropriate at the worksite.

Information Exchange

INS and ESA will promote the exchange of information and interaction among their respective field offices so as to avoid any extensive reporting burden on either field staff. INS and ESA shall continue to examine the possibility of mutual access to any automated information systems, where such systems relate to the enforcement of statutes of shared jurisdiction. ESA and INS will exchange periodic reports of employer sanctions enforcement activities, including data on employer compliance.

In order to promote more effective communication, INS Headquarters will provide a database indicating the disposition of INS employer sanctions cases, including those which were based on ESA-91 referrals. Results of these cases will be included in the database and the entire database will be provided to ESA Headquarters. ESA Headquarters will sort and disseminate appropriate information concerning INS employer sanctions cases to its field offices.

Effective inter-agency communication has been essential to the agencies' relationship; this MOU reinforces the importance of communication and information exchange. INS and ESA representatives will continue to meet regularly at both the Headquarters and field levels to identify appropriate circumstances and explore avenues for coordinated and joint enforcement efforts. Refinements in enforcement strategies will be shared between the agencies on a periodic basis. Coordinated enforcement will seek to maximize the effective use of limited resources while having the greatest impact on employers who violate immigration and labor laws. In this regard, INS will share available information with ESA that will help identify areas and industries where visa overstayers who may not be authorized to work are frequently employed.

Training

INS shall assist ESA in revising and delivering employment eligibility verification training. Staff in local ESA offices will assist INS in training INS officers to identify suspected violations of labor standards under the jurisdiction of ESA, as determined to be appropriate. Training materials and checklists for determining possible labor standards violations (possibly including "self-audit" tools to be provided to employers subject to worksite enforcement interventions) will be prepared by ESA and supplied to INS.

B. Field Procedures

Liaison

Field level liaison between INS and ESA is principally the responsibility of the INS District Directors/Chief Patrol Agents (or designees) and the District Directors of the appropriate ESA offices (or designees). The District Directors of both agencies will identify a point-of-contact within their respective offices who will be responsible for liaison and coordination on all information exchange and enforcement initiatives at the local level.

An important goal of this liaison is the free flow of information between the agencies and the effective utilization of such information. The points-of-contact for ESA shall be responsible for ensuring that information is furnished to INS in a timely manner and that it conforms to prescribed criteria. The points-of contact for INS shall likewise be responsible for ensuring that information is furnished to ESA in a timely manner and that it conforms to prescribed criteria.

When INS receives a request from ESA to review INS records or to interview an individual in INS custody, it will make every effort to comply promptly with that request, to the extent permitted by law, upon presentation of proper credentials by the ESA investigator. When ESA receives a request from INS to review ESA records, it will make every effort to comply promptly with that request, to the extent permitted by law, upon presentation of proper credentials by the INS officer. The agency making the request will expeditiously follow through on any records review or interview requested so as not to unduly interfere with law enforcement activities.

INS and ESA field personnel shall cooperate in identifying appropriate opportunities to coordinate enforcement activities, and - to the extent that resources permit - shall conduct coordinated or joint investigations where appropriate, with each agency pursuing violations within its own jurisdiction. In those circumstances where joint efforts are not appropriate or possible, the agency conducting the investigation/inspection will provide the employer subject of the intervention with compliance information to facilitate any future contact by the non-participating agency.

ESA Enforcement

In the course of all on-site activities at employers' facilities and where appropriate in technical assistance activities with employer/employee groups, ESA staff will advise employers about their employment eligibility verification and anti-discrimination responsibilities and distribute copies of the Handbook for Employers: Instructions for Completing Form I-9 (Employment Eligibility Verification Form) [INS publication M-274] and available informational material on the anti-discrimination provisions from the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). Distribution of the Handbook for Employers shall be documented on any ESA-91 referral.

Investigators of ESA's Wage and Hour Division (WH) and Office of Federal

Contract Compliance Programs (OFCCP) shall conduct thorough inspections of employers' compliance with their employment eligibility verification obligations (Forms I-9) in conjunction with ESA's labor standards enforcement, except in any investigation based on a complaint alleging labor standards violations. (The limitation to conduct employment eligibility verification inspections only in "directed" – *i.e.*, non-complaint cases – is intended and will be implemented so as to avoid discouraging complaints from unauthorized workers who may be victims of labor standards violations by their employer.) This employment eligibility verification compliance inspection by ESA investigators shall not involve making any inquiry regarding the immigration status of workers, nor shall the conduct of an employment eligibility verification inspection be the basis for ESA on-site investigation.

At the conclusion of the employment eligibility verification inspection and generally before the completion of the investigation or review, ESA investigators will advise employers of their findings regarding the employment eligibility verification (I-9) inspection. In cases where it appears that violations uncovered are serious – such as no I-9's or refusal to provide I-9's, previous warning notice issued or an indication of fraudulent documents – the ESA I-9 inspection (but not the labor standards compliance investigation of which it is a part) shall be terminated without close-out with the employer, INS contacted by telephone and the ESA-91 referral form prepared and forwarded to INS as soon as possible.

ESA investigators will not issue warning notices or Notices of Intent to Fine to employers which are found to be violating their employment eligibility verification obligations.

Referrals to INS

ESA will be responsible for the prompt referral to INS of all suspected serious violations that are uncovered through its directed investigations. "Serious" violations include:

- evidence of fraud, especially in instances where admissions rather than allegations, are made that fraudulent documents were used to obtain employment or where the employer knew about or assisted in obtaining fraudulent documents;
- where I-9 forms are not regularly maintained by the employer;

- violations of the provisions against knowingly hiring or continuing to employ unauthorized workers, though DOL investigators will make no inquiry regarding workers' immigration status;
- violations of the prohibition against indemnity bonds;
- where the employer refuses to provide the necessary documents for review, subject, as appropriate to the circumstances, to the existing regulation's three-day notice provision; or,
- it is known that a warning notice or Notice of Intent to Fine has previously been issued by INS.

ESA-91 referral forms will be forwarded to INS field offices by ESA for suspected serious violations as quickly as possible. These ESA-91 forms shall specify the kinds of violations disclosed, identify a point-of-contact at ESA, and include a brief but substantive narrative containing any information and/or supporting documentation which may be available. ESA-91 forms from inspections that reveal less serious paperwork violations based on jointly established criteria will be furnished on a timely basis. ESA-91 forms from inspections which indicate employer compliance will be forwarded to INS only on request.

In order to promote more effective coordination, INS Headquarters will provide a database quarterly indicating the disposition of INS employer sanctions cases, including (and indicating) those which were based on ESA-91 referrals, indicating the results of those cases. This report will be provided to ESA Headquarters.

The Immigration Officer's Field Manual for Employer Sanctions will indicate that ESA-91's are a primary source of credible information for predicating employer inspections and/or investigations. INS field offices will utilize this source of lead information effectively, as described above, and will provide feedback to the point-of-contact through the database described in Section B Field Procedures below.

Referrals to ESA

ESA District Directors and their INS counterparts will work together to develop protocols (and training) for INS officers to make inquiries during the course of their worksite enforcement activities that are intended to elicit information which would indicate the occurrence of possible labor standards violations at the workplace. When INS obtains or receives information during the course of its worksite

enforcement activities which indicates a possible violation of statutes within the jurisdiction of DOL, the INS shall expeditiously notify the District Director of the appropriate ESA field office covering the area in which the suspected violation occurred. Such notification may be in the form of telephone communication or via timely transmission of copies of INS records prepared in the course of its enforcement operations.

In order to promote more effective coordination, ESA Headquarters will prepare quarterly reports (down to the District Office level) indicating the disposition of labor standards enforcement activities initiated pursuant to INS referrals which resulted in significant findings of violations or monetary recovery for workers.

Removal

In certain situations, WH may ask INS to delay deportation of undocumented workers who are cooperating in the development of a case or are otherwise necessary for its prosecution. Criteria will be developed by Headquarters of INS and ESA for WH to make such requests and for INS to grant them as may be appropriate.

Employment Opportunities for Legal Workers

In addition to reducing the magnet of jobs for illegal migration, it is desirable that employers be encouraged to identify and use opportunities to maintain a legal work force. The agencies recognize this goal, and accord it a high priority for both agencies.

In circumstances where INS removes unauthorized workers from the workplace, reasonable efforts will be made to ensure that these workers are not deprived of appropriate compensation for the work performed, thereby affording an economic benefit to the employer from the employment of unauthorized workers. This will be accomplished by INS notifying the designated Wage and Hour point-of-contact of the circumstances of the employment so that if the workers are not paid (or appear not to have been properly paid) by the employer, appropriate enforcement and collection activities by DOL can commence.

In addition, INS will make reasonable efforts to help assure that in such circumstances, persons legally authorized to work have the opportunity to gain employment. To do so, INS will refer employers which have been found to employ unauthorized workers to a designated point-of-contact in DOL which will coordinate

with local sources of legal workers. The DOL point-of-contact will ensure that the U.S. Employment Service (USES) State Department of Labor job service agencies, which are funded by DOL, various private organizations, and the local OFCCP office are informed of job opportunities for authorized workers. OFCCP will contact the employer to facilitate the linkage to additional sources of available legal workers. .
ESA will work with the USES to develop an appropriate reporting mechanism to track the number of authorized workers referred and gaining employment pursuant to INS contact.

Referrals to OSC/Immigration-Related Discrimination

ESA and INS officers shall each be responsible for directly referring indications or allegations of discrimination violations under Section 274B of the INA to the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).

V. Agreement

The provisions of this Memorandum of Understanding cancel and supersede all previous MOUs and become effective on the date of signature. The provisions may be reviewed and jointly modified or eliminated, as appropriate, if it is determined by either agency that such review and modification or elimination is in the interest of effectively and efficiently enforcing the laws under the agencies' respective jurisdictions.

The preceding constitutes the full Memorandum of Understanding on this subject between the Department of Justice, Immigration and Naturalization Service, and the Department of Labor, Employment Standards Administration.

Doris Meissner
Commissioner
Immigration and
Naturalization Service

Date: _____

Bernard E. Anderson
Assistant Secretary
Employment Standards
Administration

Date: _____

To: Bob Bach @ INS

From: J. Fraser @ DOL

cc: Julie Fernandes @ DPC
Bernard Anderson @ ESA
Michael Ken @ ESA
Joe Kennedy @ OFCEP

Subj: Draft INS-ESA MOU

Attached is the latest version with changes pursuant to comments from the AFI-CIO -- see pages 7, 10 and 11 -- though not always verbatim.

I'm working on the "talking points" we discussed.

Call ASAP.

Thanks

F.

Attachment (13 pages)

DRAFT 10/8/98
Rev. 10/26/98

MEMORANDUM OF UNDERSTANDING

Between the

Immigration and Naturalization Service

Department of Justice

and the

Employment Standards Administration

Department of Labor

November 18, 1998

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MEMORANDUM OF UNDERSTANDING
Between the
Immigration and Naturalization Service
Department of Justice
and the
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I. Purpose

The purposes of this Memorandum of Understanding (MOU) are to:

- foster appropriate cooperation and coordination between the Immigration and Naturalization Service (INS) of the Department of Justice (DOJ) and the Employment Standards Administration (ESA) of the Department of Labor (DOL), and
- enhance worksite enforcement of employer sanctions and labor standards in order to reduce the employment of unauthorized workers in the U.S. and promote employment opportunities for and the interests of authorized U.S. workers.

To this end, this MOU is intended to clarify the enforcement roles and responsibilities of each agency in areas of shared authority, ensure more efficient use of resources, reduce duplication of effort, and improve communication and appropriate coordination between the agencies.

This MOU affects the following INS and ESA enforcement and compliance components:

- INS: Investigations Division
 Office of Business Liaison
 Border Patrol
- ESA: Wage and Hour Division (WH)
 Office of Federal Contract Compliance Programs (OFCCP)

Where investigative and enforcement jurisdiction is shared between the signatory agencies, both shall work cooperatively and, in appropriate circumstances, plan and undertake coordinated or joint activities. The Federal statutes and Executive Orders provided for in this agreement include, but are not limited to, the following:

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- Executive Order 12989 (INS)
- Fair Labor Standards Act (ESA)
- Family and Medical Leave Act (ESA)
- Migrant and Seasonal Agricultural Worker Protection Act (ESA)
- Davis-Bacon and Related Acts (ESA)
- McNamara-O'Hara Service Contracts Act (ESA)
- Employee Polygraph Protection Act (ESA)
- Executive Order 11246, as amended (ESA)
- Section 503 of the Rehabilitation Act of 1973, as amended (ESA)
- Vietnam Era Veterans Readjustment Assistance Act of 1974 (ESA)

District Directors for the signatory agencies shall identify areas of mutual local enforcement interest and, in appropriate circumstances consistent with this MOU, plan and develop coordinated or joint actions.

II. Goals

The goals of this MOU are to:

- reduce the employment of unauthorized workers in the U.S. and the consequential adverse effects on the job opportunities, wages and working conditions of authorized U.S. workers by increasing employers' compliance with their employment eligibility verification obligations;
- reduce the economic incentives for the employment of unauthorized workers and the consequential adverse effects on the job opportunities, wages and working conditions of authorized U.S. workers by increasing employers' compliance with minimum labor standards;
- avoid the victimization of unauthorized workers employed in the U.S. by employers which may seek to use the enforcement powers of the signatory

agencies to intimidate or punish these workers; and,

- promote employment opportunities for authorized U.S. workers and improvements in their wages, benefits, and working conditions.

III. Background

Historically, INS and ESA have maintained working relationships in areas of mutual law enforcement interest. Immigration reform legislation over the last decade has significantly expanded and intensified this interaction.

The U.S. continues to face a serious problem of illegal migration as unauthorized workers are drawn to and remain in the U.S. workplace. Deterring illegal migration and overstaying of authorized periods of admission or employment in the U.S. must include reducing the magnet of employment opportunities through worksite enforcement of both immigration laws and labor standards. As an essential part of his efforts to reduce illegal immigration, President Clinton directed INS and DOL to establish complementary strategies to increase and improve worksite enforcement. The President's directive requires INS and ESA to enhance their existing relationships to facilitate identifying high risk industries and metropolitan zones of deterrence for coordinated enforcement. In addition, information will be shared, as appropriate, when industries or occupational settings are identified in which visa overstayers who are not authorized to work are a common problem.

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Vigorous enforcement of our immigration laws can deter violations of labor standards by preventing the employment of unauthorized workers whose willingness to accept sub-standard wages and working conditions artificially suppresses wages, leads to the degradation of overall conditions in the workplace, and deprives authorized U.S. workers of decent job opportunities. Thus, by targeting employers in industries and locations with a history of reliance on

unauthorized labor, worksite enforcement initiatives can manifestly increase deterrence of unauthorized alien employment, remove unauthorized workers from the workplace, disrupt alien smuggling and harboring operations, and make decent jobs available for authorized workers.

The INA provides DOL a role in the enforcement of employer sanctions. However, ESA's primary responsibility is the enforcement of labor standards statutes with the goal of ensuring that all covered workers - irrespective of their immigration status - are afforded the full benefits and protections of our labor laws. Vigorous targeted enforcement of labor standards can serve as a meaningful deterrent to illegal immigration by denying some of the business advantages that may be gained through the employment of highly vulnerable and exploitable workers at sub-standard wages and working conditions. Labor law enforcement not only helps ensure fairness and acceptable workplace standards, but also helps foster a level competitive playing field for employers who seek to comply with the law. Consequently - consistent with its primary labor standards compliance mission - in carrying out this MOU, the ESA agencies will take no action which will compromise their ability to carry out the fundamental worker protection mission. Likewise, INS will take no action which will compromise its ability to effectively carry out its primary mission of immigration law enforcement.

INS and ESA have historically sought to identify appropriate circumstances warranting efforts to coordinate worksite enforcement activities in order to achieve a legal workforce that enjoys the full range of employment standards protections available under law and Executive Order.

IV. Implementation

A. National Procedures

Liaison

The Headquarters enforcement/compliance components of INS and ESA shall maintain liaison concerning matters of mutual interest and jurisdiction, and shall actively seek to improve communication at all levels of the organizations. Information sharing at the Headquarters level of each agency will include cooperation and coordination in the development of policies, procedures, regulations, enforcement priorities and approaches, training materials, and activity reports.

In order to implement this MOU, INS and ESA agree to exchange, periodically update, and disseminate to all their field offices information concerning office locations and jurisdictional areas of responsibility of their respective operational field units.

INS shall provide to ESA sufficient quantities of the Handbook for Employers (M-274) for distribution to all employers inspected by ESA investigators.

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INS and ESA will work to develop criteria and procedures for referral of suspected violations. Such referrals will be subject to appropriate tracking and follow-up by the respective agencies.

The agencies will develop and implement policies – consistent with INS Operations Instruction 287.3a – to avoid inappropriate worksite interventions where it is known or suspected that a labor dispute is occurring and the intervention may or may be sought so as to interfere in the dispute. The agencies will develop and implement policies concerning circumstances when it is known (or appears) to INS that a labor dispute is occurring and an INS law enforcement action may be appropriate at the worksite. ✓
✓
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Information Exchange

INS and ESA will promote the exchange of information and interaction among their respective field offices so as to avoid any extensive reporting burden on either field staff. INS and ESA shall continue to examine the possibility of mutual access to any automated information systems, where such systems relate to the enforcement of statutes of shared jurisdiction. ESA and INS will exchange periodic reports of employer sanctions enforcement activities, including data on employer compliance.

Effective inter-agency communication has been essential to the agencies' relationship; this MOU reinforces the importance of communication and information exchange. INS and ESA representatives will continue to meet regularly at both the Headquarters and field levels to identify appropriate circumstances and explore avenues for coordinated and joint enforcement efforts. Refinements in enforcement strategies will be shared between the agencies on a periodic basis. Coordinated enforcement will seek to maximize the effective use of limited resources while having the greatest impact on employers who violate immigration and labor laws. In this regard, INS will share available information with ESA that will help identify areas and industries where visa overstayers who may not be authorized to work are frequently employed.

Training

INS shall assist ESA in revising and delivering employment eligibility verification training. Staff in local ESA offices will assist INS in training INS officers to identify suspected violations of labor standards under the jurisdiction of ESA, as determined to be appropriate. Training materials and checklists for determining possible labor standards violations (possibly including "self-audit" tools to be provided to employers subject to worksite enforcement interventions) will be prepared by ESA and supplied to INS.

B. Field Procedures

Liaison

Field level liaison between INS and ESA is principally the responsibility of the INS District Directors/Chief Patrol Agents (or designees) and the District Directors of the appropriate ESA offices (or designees). The District Directors of both agencies will identify a point-of-contact within their respective offices who will be responsible for liaison and coordination on all information exchange and enforcement initiatives at the local level.

An important goal of this liaison is the free flow of information between the agencies and the effective utilization of such information. The points-of-contact for ESA shall be responsible for ensuring that information is furnished to INS in a timely manner and that it conforms to prescribed criteria. The points-of contact for INS shall likewise be responsible for ensuring that information is furnished to ESA in a timely manner and that it conforms to prescribed criteria. Further, the INS point-of-contact shall be responsible for ensuring that information received from

ESA is promptly reviewed, acted upon appropriately, and that timely feedback on referrals on which INS has taken action finding non-compliance and follow-up results is provided to their ESA counterparts.

When INS receives a request from ESA to review INS records or to interview an individual in INS custody, it will make every effort to comply promptly with that request, to the extent permitted by law, upon presentation of proper credentials by the ESA investigator. When ESA receives a request from INS to review ESA records, it will make every effort to comply promptly with that request, to the extent permitted by law, upon presentation of proper credentials by the INS officer. The agency making the request will expeditiously follow through on any records review or interview requested so as not to unduly interfere with law enforcement activities.

INS and ESA field personnel shall cooperate in identifying appropriate opportunities to coordinate enforcement activities, and - to the extent that resources permit - shall conduct coordinated or joint investigations where appropriate, with each agency pursuing violations within its own jurisdiction. In those circumstances where joint efforts are not appropriate or possible, the agency conducting the investigation/inspection will provide the employer subject of the intervention with compliance information to facilitate any future contact by the non-participating agency.

ESA Enforcement

In the course of all on-site activities at employers' facilities and where appropriate in technical assistance activities with employer/employee groups, ESA staff will advise employers about their employment eligibility verification and anti-discrimination responsibilities and distribute copies of the Handbook for Employers: Instructions for Completing Form I-9 (Employment Eligibility Verification Form) [INS publication M-274] and available informational material on the anti-discrimination provisions from the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). Distribution of the Handbook for Employers shall be documented on any ESA-91 referral.

Investigators of ESA's Wage and Hour Division (WH) and Office of Federal Contract Compliance Programs (OFCCP) shall conduct thorough inspections of employers' compliance with their employment eligibility verification obligations (Forms I-9) in conjunction with ESA's labor standards enforcement, except in any investigation based on a complaint alleging labor standards violations. (The

limitation to conduct employment eligibility verification inspections only in "directed" – *i.e.*, non-complaint cases – is intended and will be implemented so as to avoid discouraging complaints from unauthorized workers who may be victims of labor standards violations by their employer.) This employment eligibility verification compliance inspection by ESA investigators shall not involve making any inquiry regarding the immigration status of workers, nor shall the conduct of an employment eligibility verification inspection be the basis for ESA on-site investigation.

At the conclusion of the employment eligibility verification inspection and generally before the completion of the investigation or review, ESA investigators will advise employers of their findings regarding the employment eligibility verification (I-9) inspection. In cases where it appears that violations uncovered are serious – such as no I-9's or refusal to provide I-9's, previous warning notice issued or an indication of fraudulent documents – the ESA I-9 inspection (but not the labor standards compliance investigation of which it is a part) shall be terminated without close-out with the employer, INS contacted by telephone and the ESA-91 referral form prepared and forwarded to INS as soon as possible.

ESA investigators will not issue warning notices or Notices of Intent to Fine to employers which are found to be violating their employment eligibility verification obligations.

Referrals to INS

ESA will be responsible for the prompt referral to INS of all suspected serious violations that are uncovered through its directed investigations. "Serious" violations include: ✓

- evidence of fraud, especially in instances where admissions (rather than allegations) are made that fraudulent documents were used to obtain employment or where the employer knew about or assisted in obtaining fraudulent documents; ✓
- where I-9 forms are not regularly maintained by the employer;
- violations of the provisions against knowingly hiring or continuing to employ unauthorized workers (though DOL investigators will make no inquiry regarding workers' immigration status); ✓

- violations of the prohibition against indemnity bonds;
- where the employer refuses to provide the necessary documents for review (subject, as appropriate to the circumstances, to the existing regulation's three-day notice provision); or, ✓
- it is known that a warning notice or Notice of Intent to Fine has previously been issued by INS.

ESA-91 referral forms will be forwarded to INS field offices by ESA for suspected serious violations as quickly as possible. These ESA-91 forms shall specify the kinds of violations disclosed, identify a point-of-contact at ESA, and include a brief but substantive narrative containing any information and/or supporting documentation which may be available. ESA-91 forms from inspections that reveal less serious paperwork violations based on jointly established criteria will be furnished on a timely basis. ESA-91 forms from inspections which indicate employer compliance will be forwarded to INS only on request.

In order to promote more effective coordination, INS Headquarters will provide a database quarterly indicating the disposition of INS employer sanctions cases, including (and indicating) those which were based on ESA-91 referrals, indicating the results of those cases. This report will be provided to ESA Headquarters.

The Immigration Officer's Field Manual for Employer Sanctions will emphasize that ESA-91's are a primary source of credible information for predicated employer inspections and/or investigations. INS field offices will utilize this source of lead information effectively, as described above, and will provide feedback to the point-of-contact in the appropriate local ESA office of the action taken as a result of information furnished by ESA. If INS declines to follow-up a case in which ESA suspects a serious violation has occurred, INS will advise the appropriate ESA field office of the basis for that decision.

Referrals to ESA

ESA District Directors and their INS counterparts will work together to develop protocols (and training) for INS officers to make inquiries during the course of their worksite enforcement activities that are intended to elicit information which would indicate the occurrence of possible labor standards violations at the workplace. When INS obtains or receives information during the course of its worksite enforcement activities which indicates a possible violation of statutes within the

jurisdiction of DOL, the INS shall expeditiously notify the District Director of the appropriate ESA field office covering the area in which the suspected violation occurred. Such notification may be in the form of telephone communication or via timely transmission of copies of INS records prepared in the course of its enforcement operations.

In order to promote more effective coordination, ESA Headquarters will prepare quarterly reports (down to the District Office level) indicating the disposition of labor standards enforcement activities initiated pursuant to INS referrals which resulted in significant findings of violations or monetary recovery for workers.

Deportation

In certain situations, WH may ask INS to delay deportation of undocumented workers who are cooperating in the development of a case or are otherwise necessary for its prosecution. Criteria will be developed for WH to make such requests and for INS to grant them as may be appropriate.

Employment Opportunities for Legal Workers

In addition to reducing the magnet of jobs for illegal migration, it is desirable that employers be encouraged to identify and use opportunities to maintain a legal work force. The agencies recognize this goal, and accord it a high priority for both agencies.

In circumstances where INS removes unauthorized workers from the workplace, every effort will be made to ensure that these workers are not deprived of appropriate compensation for the work performed, thereby affording an economic benefit to the employer from the employment of unauthorized workers. This will be accomplished by INS notifying the designated Wage and Hour point-of-contact of the circumstances of the employment so that if the workers are not paid (or appear not to have been properly paid) by the employer, appropriate enforcement and collection activities by DOL can commence.

In addition, INS will make reasonable efforts to help assure that in such circumstances, persons legally authorized to work have the opportunity to gain employment. To do so, INS will refer employers which have been found to employ unauthorized workers to a designated point-of-contact in DOL which will coordinate with local sources of legal workers. The DOL point-of-contact will ensure that the U.S. Employment Service (USES) State Department of Labor job service agencies,

which are funded by DOL, various private organizations, and the local OFCCP office are informed of job opportunities for authorized workers. OFCCP will contact the employer to facilitate the linkage to additional sources of available legal workers. .
 ESA will work with the USES to develop an appropriate reporting mechanism to track the number of authorized workers referred and gaining employment pursuant to INS contact.

Referrals to OSC/Immigration-Related Discrimination

ESA and INS officers shall each be responsible for directly referring indications or allegations of discrimination violations under Section 274B of the INA to the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).

V. Agreement

The provisions of this Memorandum of Understanding cancel and supersede all previous MOUs and become effective on the date of signature. The provisions may be reviewed and jointly modified or eliminated, as appropriate, if it is determined by either agency that such review and modification or elimination is in the interest of effectively and efficiently enforcing the laws under the agencies' respective jurisdictions.

The preceding constitutes the full Memorandum of Understanding on this subject between the Department of Justice, Immigration and Naturalization Service, and the Department of Labor, Employment Standards Administration.

 Doris Meissner
 Commissioner
 Immigration and
 Naturalization Service

Date: _____

 Bernard Anderson
 Assistant Secretary
 Employment Standards
 Administration

Date: _____

DATE: Nov. 16, 1998

TO: Bob Bach @ INS

FROM: John Fraser @ DOL 

CC: Julie Fernandes @ DPC
Bernard Anderson @ ESA
Michael Kerr @ ESA
Joe Kennedy @ OFCCP

SUBJ: Proposed "talking points" on new INS-ESA MOU

Bob – trying to beat my promise – here is a "first cut" at proposed "talking points" for unveiling the revised MOU. These are obviously much too long/involved, but this might contain all the ingredients to help deal with several potential audiences – those announcing, our press folks, and internal audiences as well – so started by erring on the side of too much that can be selected from for particular audiences.

Your reaction welcome.

Thanks

Attachment (4 pages)

DRAFT

**Proposed "Talking Points" regarding
Revised INS-ESA Memorandum of Understanding**

"Everyone agrees that the primary incentive for illegal immigration is employment. Workplace enforcement of labor standards and employer sanctions are the instruments for reducing that incentive and improving opportunities and conditions for all authorized workers. For these efforts to be successful, more work is needed as part of our comprehensive strategy to fight illegal immigration to improve workplace conditions through voluntary compliance and reinvigorated enforcement."

The President's Report on Immigration:

ACCEPTING THE IMMIGRATION CHALLENGE

September 1994

- The Administration has long understood that effective worksite enforcement – of both employer sanctions and basic fair labor standards – is an essential element of a comprehensive strategy for controlling and deterring illegal immigration to the U.S.
- The Administration has continued to assess its worksite enforcement priorities and strategies to identify opportunities for improving effectiveness and avoiding unintended, non-constructive consequences.
- As a part of this review, last summer INS conducted an extensive examination of its worksite enforcement program which resulted in ... *[Bob, can you help me finish this point??]*
- Another part of this review involved reexamining the roles and relationship between the Department of Labor and the INS in terms of the effect on the abilities of the agencies to carry out their primary enforcement missions and serve the Nation's fundamental interests.
- This review has resulted in agreement on a new Memorandum of Understanding – "MOU" – between the Immigration and Naturalization Service and the Department of Labor's Employment Standards Administration – which was signed by the agency heads on November __, 1998.
- The goals of this MOU – as stated explicitly in the document – are to:
 - Reduce the employment of unauthorized workers in the U.S. and the consequential adverse effects on the job opportunities, wages and working

DRAFT

conditions of authorized U.S. workers by increasing employers' compliance with their obligations to verify employment eligibility.

- Reduce the economic incentives for the employment of unauthorized workers and the consequential adverse effects on the job opportunities, wages and working conditions of authorized U.S. workers by increasing employers' compliance with minimum labor standards.
 - Avoid the victimization of unauthorized workers employed in the U.S. by employers which may seek to use the enforcement powers of the agencies to intimidate or punish these workers.
 - And, promote employment opportunities for authorized U.S. workers and improve their wages, benefits, and working conditions.
- The U.S. continues to face a serious problem of illegal migration as unauthorized workers are drawn to and remain in the U.S. workplace.
 - Deterring illegal migration – and overstaying of authorized periods of admission or employment in the U.S. – must include reducing the magnet of employment opportunities through effective worksite enforcement of both immigration laws and labor standards.
 - As an essential part of his efforts to reduce illegal immigration, President Clinton directed INS and DOL to establish complementary strategies to increase and improve worksite enforcement. The President's directive requires INS and ESA to enhance their existing relationships to better identify high risk industries and metropolitan zones of deterrence for coordinated enforcement.
 - INS has primary responsibility for enforcing the provisions of the INA (Section 274A) commonly referred to as "employer sanctions." These provisions are an integral part of the INS enforcement mission, expanding and supporting the complementary goal of securing our borders as illegal aliens are often lured to the U.S. by promises or prospects of employment.
 - Many migrants fall into the hands of ruthless and exploitative criminal alien smuggling operations or abusive employers who intentionally violate the law by knowingly employing unauthorized workers and subjecting them to substandard wages and working conditions.

- Vigorous enforcement of our immigration laws can deter violations of labor standards by preventing the employment of unauthorized workers whose willingness to accept sub-standard wages and working conditions artificially suppresses wages, leads to the degradation of overall conditions in the workplace, and deprives authorized U.S. workers of decent job opportunities.
- By targeting employers in industries and locations with a history of reliance on unauthorized labor, worksite enforcement initiatives can deter unauthorized employment, remove unauthorized workers from the workplace, disrupt alien smuggling and harboring operations, and make decent jobs available for authorized workers.
- The INA also provides the Department of Labor a role in the enforcement of employer sanctions.
- However, DOL's Employment Standards Administration's primary responsibility is the enforcement of labor standards statutes with the goal of ensuring that all covered workers - irrespective of their immigration status - are afforded the full benefits and protections of our labor laws.
- Vigorous targeted enforcement of labor standards can serve to meaningfully deter illegal immigration by denying some of the business advantages that may be gained through the employment of highly vulnerable and exploitable workers at sub-standard wages and working conditions.
- Labor law enforcement not only helps ensure fairness and acceptable workplace standards, but also helps foster a level competitive playing field for employers who seek to comply with the law.
- Among the Federal agencies designated to enforce employer sanctions, there is some underlying tension and conflict in their respective missions.
- Efforts to have INS and DOL investigators work more closely together highlight the fundamental dilemma of worksite immigration enforcement.
- Employers who hire unauthorized workers are also likely to violate other labor law standards. They are also likely to discriminate against some workers.

- Yet, DOL needs the cooperation of workers – including undocumented workers – to report on violations of labor standards or provide information needed to develop enforcement cases.
- INS worksite enforcement efforts could hinder this needed cooperation because workers become less willing to report workplace exploitation or cooperate in labor standards compliance investigations for fear of exposure and deportation.
- The revised MOU between INS and ESA – Wage and Hour, and the Office of Federal Contract Compliance Programs (OFCCP) – contains several features which the agencies have learned from their experience over the last decade should help achieve a better balance in increasing compliance through more effectively enforcing fair labor standards and employer sanctions.
- These include:
 - A clear statement of the goals of the relationship – already cited – which will help guide detailed interagency planning and cooperation.
 - The DOL agencies will only inspect employer compliance with verification requirements in “directed” investigations – that is, in cases that do not arise from a complaint alleging violations. While this will result in a substantial reduction in the number of verification inspections conducted by the DOL agencies, it will help avoid discouraging workers – both legal and illegal – from complaining about exploitative working conditions out of fear of the consequences for themselves or their co-workers.
 - The enforcement staff in both agencies will work together to better assure that employers who hire unauthorized workers will not benefit from attempting to misuse the agencies’ enforcement powers to intimidate or coerce their workers, or from not having to pay for the work performed by unauthorized workers who are apprehended and deported through INS’s worksite enforcement initiatives.
- Achieving higher compliance with basic labor standards and employer sanctions – to reduce the adverse effects for U.S. workers of the employment of unauthorized workers – is a high priority of the Clinton Administration.
- This revised MOU between INS and ESA is, we believe, another big step in that direction.

ME

Tuesday

Sept. 4, 1998

I-9

AFL wants us to recraft MOU to limit Labor I-9 inspections to non-complaint cases.

~~Does~~ All we have said publicly

Admin. has not said anything to constrain US.

Will this signal Admin. not serious about this?

(This will drive #s of I-9 inspections down from 35K → 10-15K

— when they do a "directed" non-complaint based inspection

INS~~is~~ has also instituted a procedure to require a plan for worksite enforcement to be cleared by headquarters.

2 Qs

① Do we still want to pursue notion that DOL have more authority w/ respect to violations.

DOL assessing fines (Idem F. agnostic)

YES

Pros: — compliance (consequences for violations)
— Do folks feel frustrated to do it if nothing comes of it

Cons: — Coordinating policy btm 2 agencies is difficult.

different objectives w/ enforcement

Idea is for complaints from workers not to be a trigger for INS coming to their work site.

Which I-9 inspections (narrow & class of referrals) ~~that~~ are referred to INS.

opposition to this (?)

DOL only cares ~~is~~ about the paper

FY99 child labor

(not really going after illegals)

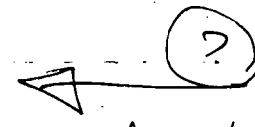
FY2000

addit. resources

for enf. garment/agriculture

John F. will recraft MOU

By next week will circulate it.

Institutional problems  that need to be worked out.

Target to have it done by end of November.

1-9

THE WHITE HOUSE
WASHINGTON

March 30, 1998

The Honorable Harold Rogers
Chairman
Subcommittee on Commerce, Justice, State,
and the Judiciary
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

For the last several years, the Administration and Congress have shared the goal of significantly strengthening the Nation's immigration system. While the Immigration and Naturalization Service (INS) has made important progress, the Administration recognizes that the recent changes in the breadth and scope of the agency's mission require a rethinking of its structure.

In its report accompanying P.L. 105-119, the House Appropriations Committee directed the Attorney General to review the recommendations of the Commission on Immigration Reform (CIR) and develop a plan that would result in greater effectiveness and efficiency in the performance of the core functions of the Federal immigration system. The President, also responding to the CIR report, asked the Domestic Policy Council (DPC) to "evaluate carefully the [CIR] proposal and other reform options designed to improve the executive branch's administration of the Nation's immigration laws." In conducting this review, the DPC, working closely with the Office of Management and Budget, consulted with the Departments of Justice, Labor, and State, the INS, staff of the CIR, immigration experts and advocacy groups, and other White House offices, including the National Security Council.

The Administration review concluded that the CIR report correctly diagnosed many of INS' longstanding problems -- insufficient accountability between field offices and headquarters, competing priorities within field offices, lack of consistency, a need for greater professionalism, overlapping organizational relationships, and significant management weaknesses. These problems have hampered the ability of the INS to more effectively pursue the principal tasks that Congress and the Administration expect the INS to perform: effective enforcement of our immigration laws both at our borders and in the interior and the efficient provision of immigration and citizenship services. Improving the ability of the INS to pursue these critical priorities must be the guiding principle of any reform plan.

After careful consideration and study, we have concluded that the most effective way to adhere to this guiding principle is to implement dramatic and fundamental reforms *within* the INS. The Administration's reform plan will untangle the INS' overlapping and confusing organizational structure and replace it with two clear organizational chains of command — one to accomplish its enforcement mission and the other to provide immigration-related services. By retaining both of these functions within a single agency, the Administration's reform plan will ensure that both the enforcement and service operations are appropriately coordinated and supported by headquarters. The Administration's reform plan will strengthen accountability and improve efficiency and effectiveness by allowing each of the two chains of command to focus on its unique requirements.

The key features of the Administration's plan are to:

- Effect an operational split between enforcement and services, resulting in two distinct, clear lines of authority from the field to headquarters, with an INS Commissioner continuing to be responsible for overall agency operations.
- Eliminate the current field structure in which district offices serve both enforcement and service functions, and replace it with separate enforcement and service offices that bring the right mix of staff and skills to local service caseloads and enforcement needs.
- Improve the quality of the workforce by creating separate enforcement and service career paths for INS employees, so that the best employees can move up the ladder and be rewarded for high performance.
- Restructure management operations to ensure an effective "shared support" operation (e.g., records and data management, technological support, employee relations, and administrative support) that will serve both the enforcement and the service sides of the agency.
- Establish a Chief Financial Officer to improve financial, accounting, and budget execution systems.

In addition to implementing the restructuring plan noted above, the Administration will continue its efforts to identify and take appropriate remedial action to eliminate any remaining areas of duplication or inadequate coordination between the INS and the Departments of Labor and State.

03/31/88 TUE 10:51 FAX 202 505 0134 nqorr nq

During its review, the Administration carefully evaluated the CIR recommendations. The CIR concluded that the INS' dual responsibility of welcoming legal immigrants and deterring illegal immigration has resulted in "mission overload." To address this issue, the CIR recommended disbanding the INS and reallocating its primary responsibilities to the Departments of Justice, State and Labor. We believe those recommendations would only compound the current problems with the Nation's immigration system.

First and most important, this reallocation would hinder the coordination and communication necessary to maintain the integrity and efficiency of both immigration enforcement and immigration service operations. To be most effective, all immigration policy and management should remain within one agency at the Justice Department. Second, such a substantial reallocation of authority could require a lengthy transition, exacerbating existing concerns about long delays in immigration activities.

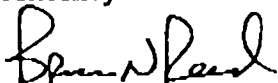
The Administration's plan is a fundamental change in the way the INS conducts business. The restructuring -- from top to bottom -- will address long-standing concerns about lines of authority and responsibility, consistency of policies and procedures, and performance within the INS. It will result in improved enforcement coordination, career paths that support greater professionalism, and measurable changes in the way INS provides services to the immigration community. Most important, it will greatly improve the ability of the INS to effectively and efficiently perform its duties. We look forward to working with you and other members of Congress to implement this restructuring plan and to ensure successful, long-term improvements in the Nation's immigration system.

Sincerely,



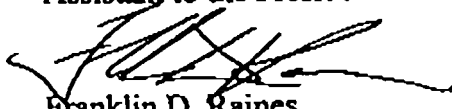
Janet Reno

Attorney General



Bruce N. Reed

Assistant to the President for Domestic Policy



Franklin D. Raines

Director

Office of Management and Budget

Enclosures

Identical Letters Sent To:

The Honorable Spencer Abraham
The Honorable Judd Gregg
The Honorable Ernest Hollings
The Honorable Edward Kennedy
The Honorable Alan Mollohan
The Honorable Lamar Smith
The Honorable Melvin Watt

03/31/88 TEL 10:31 FAX 202 305 5154 HQ011

A FRAMEWORK FOR CHANGE: The Immigration and Naturalization Service

Background

America has always been a nation of immigrants, and this Administration is proud of the significant progress we have made toward improving this Nation's immigration system. Over the last five years, the INS has worked hard to curtail illegal immigration through tougher border control, reform of a badly abused asylum system, and removing record numbers of criminal and other illegal aliens. The agency has also worked to redesign and strengthen the naturalization process. While the INS has made important progress, the Administration recognizes that the recent changes in the breadth and scope of the agency's mission require a rethinking of its structure.

In its final report to Congress last fall, the Commission on Immigration Reform (CIR) called for significant reform to our Nation's immigration system. The major thrust of the CIR's proposed reform would move many immigration functions to the Department of State and Labor and would consolidate all immigration enforcement into a new Federal law enforcement agency within the Department of Justice.

In response to the CIR's recommendations, the President asked the Domestic Policy Council (DPC) to "evaluate carefully the [CIR] proposal and other reform options designed to improve the executive branch's administration of the Nation's immigration laws." In conducting this review, the DPC, working closely with the Office of Management and Budget, consulted with the Departments of Justice, Labor, and State, CIR staff, immigration experts and advocacy groups, and other White House offices, including the National Security Council. This review examined organizational and restructuring options including those formulated by the CIR and members of Congress. From this effort, the Administration established a new framework for reform, and the Justice Department contracted with a management consulting firm to provide an independent assessment of structural options and assist in making the Administration's framework "operational."

The Administration's Framework for Change

The DPC review process concluded that the CIR report correctly diagnosed many of INS' longstanding problems -- insufficient accountability between field offices and headquarters, lack of consistency, need for greater professionalism, overlapping organizational relationships, and significant management weaknesses. These problems have hampered the INS' ability to effectively enforce our immigration laws both at our borders and in the interior, and efficiently provide immigration and citizenship services. Improving the ability of the INS to pursue these critical priorities must be the goal of any reform plan.

After careful consideration and study, the Administration concluded that the most effective way to achieve this goal is to implement dramatic and fundamental reforms *within* the INS. The Administration's reform plan untangles INS' overlapping and frequently confusing organizational structure and replaces it with two clear organizational chains of command -- one for accomplishing its enforcement mission and one for providing services. Each operation would be headed by an Executive Associate Commissioner (EAC) who would report directly to the Commissioner through the Deputy Commissioner.

The plan will eliminate the current field structure in which regional district offices serve both enforcement and service functions and will replace it with separate enforcement and service offices that bring the right mix of staff and skills to local service caseload and enforcement needs. The result will be an INS organization with strengthened accountability and improved efficiency and effectiveness. The plan will allow each operation to focus its unique knowledge, skills, and abilities, while also retaining the essential integration functions needed to coordinate these operations.

Improved Customer-Oriented Services

- **Creates new local service offices.** The new immigration services operation would locate new service offices in immigrant communities around the country. These offices would focus on providing efficient and effective service, while maintaining the integrity of application processing. The offices would provide a range of services including: providing information to applicants, taking fingerprints and photographs, testing, and interviewing. Depending on community needs, some offices would be configured as full-service centers and others could serve as satellite locations to perform specific functions. These new service facilities would have a standard "look and feel" with clear signs, comfortable waiting rooms, evening and weekend hours, and other customer-friendly features.
- **Establishes accountability and clear lines of authority.** The heads of the local service offices would report to an Area Service Director. The Area Service Director would report directly to the Executive Associate Commissioner for Immigration Services. Area Service Directors would have the flexibility to move case processing responsibilities among offices within their area to maximize efficiency.
- **Establishes clear standards for customer service.** The Area Service Directors would be held accountable for meeting a nationally-established standard for timely processing and courteous service at all locations throughout the area.

- **Offers high-tech answers.** This new framework provides high-tech ways for people to receive better service through remote service centers. As part of this restructuring effort, INS will re-examine the capabilities of the four service centers that handle the automated, bulk processing workload of the current district offices. These centers currently take applications, create electronic records of them, and conduct the pre-processing necessary before an examination is administered. Under the new structure, more work would be shifted to the service centers, thus allowing local offices to focus on core activities which require interaction with customers. In addition, the capabilities of the centralized phone centers which will provide information to applicants and the public will also be examined.

A Strengthened and Integrated Enforcement Operation

- **Establishing a single, coordinated enforcement function.** The plan creates an operational chain of command dedicated solely to immigration enforcement, focuses comprehensively on illegal immigration problems at the border, and establishes better linkages with interior enforcement through a single point of accountability for performance. This approach would strengthen professionalism and improve results. This structure also would ensure priorities are shared and allow close coordination of day-to-day operations among each enforcement discipline.
- **Integrating enforcement and strengthening accountability.** The new enforcement operations areas would combine all functions related to the enforcement of immigration laws. Each enforcement area would be organized according to four functions, and led by a single director. The Area Enforcement Director would report directly to the Executive Associate Commissioner for Enforcement.
- **Organizing enforcement areas by function.** The enforcement areas would be organized around four functional goals: managing the border; inspections and management at ports of entry; investigations and removals; and detention.
 - 1) Border Patrol. The Border Patrol would perform its current border management functions of deterring illegal immigration, apprehending illegal aliens, and working to dismantle smuggling rings.
 - 2) Inspectors. By putting inspectors in the enforcement chain of command, the plan recognizes the critical role that ports of entry play in INS' border management strategy. This would give the ports a stronger role in the enforcement side of the agency and inspectors a direct reporting relationship to the Area Enforcement Director.

3) Investigations and Removals. This plan would also bring investigators, intelligence officers, and deportation officers into one multi-disciplinary component to focus on removals and the pursuit of fraud, smuggling, and illegal employment at the workplace. Offices in the field would be located in areas with the greatest demand for those functions -- similar to the traditional Special or Resident Agent-in-Charge (SAC/RAC) law enforcement model used by the FBI.

4) Detention and Enforcement Support. This framework would improve the logistical coordination of transporting criminal and illegal aliens and detaining them in long-term facilities by centralizing the current district office detention and transportation operations. Under the new framework, this component would be better able to manage open bed space at INS and contract facilities and improve and monitor conditions at these facilities.

Shared Support

- **Providing the right tools.** The "shared support" operation (e.g., records and data management, technological support, employee relations, and administrative support) would serve as the administrative and technological backbone upon which both enforcement and service operations depend under the new framework. Under this new structural framework each side of the agency has the appropriate administrative and technological tools to do its jobs in the most efficient and cost-effective way. These would range from new computer software systems that are "user-friendly" for enforcement agents and service officers, to appropriate training to strengthen professionalism.
- **Improving accountability.** Under this restructuring plan the shared support function will be held accountable for meeting the needs of the enforcement and service operations in a timely and effective manner.
- **Managing essential records.** An important cohesive function of the shared support operation is the management of all of INS' files and electronic databases. INS' records are the foundation of its work -- whether in law enforcement or the provision of services to its customers. For example, the information contained in those records tells an INS deportation officer that an individual has overstayed his visa and the last address at which he might be found. It also tells an adjudicator whether a person has ever entered without inspection, therefore jeopardizing the alien's eligibility to become a legal permanent resident.

New "Strategy" Office

- **Setting priorities and assessing results.** The Administration's proposed structure includes the creation of a small, new "strategy" unit that would focus on setting priorities, long-range strategic planning, and policy development, as well as analyzing the effectiveness of their implementation. The unit would draw heavily on staff from headquarters and the field, as well as create subject area task forces to draw on the expertise of individuals accountable for each program.

New Chief Financial Officer Role

- **Enhancing accountability and efficiency.** The new structure establishes a Chief Financial Officer to ensure effective allocation, control, and monitoring of the agency's finances. This would enhance accountability for managing the agency's resources and ensure that immigrant services and enforcement have clearly separated and defined resource streams.

Other Management Improvements

INS recognizes that a fundamental restructuring is only one aspect of improving its ability to build a more effective organization. As part of its reform efforts, the agency also is planning management initiatives such as fundamentally redesigning outdated business processes and the creation of new training opportunities for employees.

Conclusion

Preserving our country's tradition as a Nation of laws and a Nation of immigrants requires one agency with clearly defined operational lines of authority and accountability. This new structure will allow our Nation to better control its borders and provide improved service and benefits to the immigrant community. The Administration's plan is a bold initiative to strengthen the INS' capacity to accomplish this critical mission.

***Restructuring and Reform of the Immigration and Naturalization Service (INS)
Comparison of the Administration and Commission on Immigration Reform (CIR) Proposals***

<i>CIR Recommendation</i>	<i>Administration Restructuring Proposal</i>	<i>Rationale</i>
<i>Immigration Enforcement:</i> Places responsibility for immigration enforcement at the border and in the interior of the U.S. in a new Bureau for Immigration Enforcement at the Department of Justice (DOJ).	Within the INS an Executive Associate Commissioner (EAC) for Enforcement Operations will be established with line responsibilities for all enforcement functions (Border Patrol, inspections, investigations, detention, and intelligence) reporting directly to the INS Deputy Commissioner/Commissioner. This functional split between enforcement and service operations extends from the field right to headquarters.	Consolidates border and interior enforcement into a single enforcement unit, while preserving integration/synergy between enforcement and service functions by keeping them within the INS. Establishes clear lines of authority and divisions of responsibility between these two operations. Maintains a single immigration focal point within the Department of Justice.
Bureau Director appointed for a set term (5-years).	INS Commissioner remains a Presidential appointee with no set term.	Ensures agency-head has the confidence of the Attorney General and President.
Bureau personnel should be upgraded to receive law enforcement pay and benefits commensurate with those of other DOJ law enforcement components.	The INS is reviewing pay options to ensure law enforcement officers, with similar duties, receive comparable pay and benefits.	The study will provide a clear assessment of pay disparities between enforcement agents performing similar tasks and provide guidance to promote increased professionalism and positive morale.
Establish a Uniformed Service Enforcement Branch that merges INS Inspectors, Border Patrol and detention offices into one uniformed service. Investigations/intelligence would constitute a "white-collar" division within this new bureau.	Consolidates all enforcement functions under area enforcement directors, but maintains distinct functions of Border Patrol agents, inspectors, investigators, and detention officers.	Union representatives and affected employees will be involved in the development of any pay reform proposal, which will require legislation and a phased implementation process. The Administration is also studying options for common entry level training and career paths for enforcement officers.
All uniformed officers (Border Patrol, inspections, and detention) within a particular geographic area would be under the authority of a single integrated enforcement manager.	All functional enforcement operations (Border Patrol, inspections, investigations, detention, and intelligence) will be consolidated into enforcement units under a single chain of command and report to an area enforcement director and EAC for Enforcement Operations.	Provides a single point of responsibility and accountability for enforcement operations and allows the agency to focus on integrated enforcement on a national or global scale. This approach is similar to a traditional law enforcement organizational model.
Establish a "Removal Officer" position that integrates the functions of investigations and deportation.	Investigations and deportation officers will be merged into an investigation and removal unit under an enforcement area director. The merits of merging the two occupational series are still under consideration.	Close coordination, oversight, and management will ensure the best use of this staff to expedite the removal of illegal aliens.

<i>CIR Recommendation</i>	<i>Administration Restructuring Proposal</i>	<i>Rationale</i>
Field offices structured to address comprehensively the immigration enforcement challenges within that locality.	In place of the current district office structure, the plan consolidates all enforcement operations under an area enforcement director. The area enforcement director will report directly to the EAC for Enforcement Operations. Border Patrol agents will report to Border Patrol chiefs; inspectors will report to port-of-entry directors. These enforcement officers, along with investigation and removal personnel, will report to an area enforcement director who coordinates enforcement activities within a geographic area.	Creates an unambiguous enforcement chain of command with well-defined reporting relationships and a manageable span of control.
Regional offices would be retained for administrative and management oversight of field office operations.	Regional offices will be restructured to be operational rather than administrative. Instead of three regional offices, the plan creates geographic enforcement areas. Each area enforcement director will report directly to the EAC for Enforcement Operations.	Provides direct operational oversight of enforcement activities to better achieve coordination and execution of enforcement priorities.
<i>Immigration Services:</i> Adjudication of eligibility for immigration-related applications (immigrant, limited duration admissions, asylum, refugee, and naturalization) in the Department of State under the jurisdiction of a new Undersecretary for Citizenship, Immigration, and Refugee Admissions.	Within the INS an Executive Associate Commissioner (EAC) for Immigrant Services will be established consisting of all immigrant benefit and service functions reporting directly to the INS Deputy Commissioner/Commissioner. This functional split between immigrant service and enforcement operations extends from the field to headquarters.	Establishes a single immigration service organization but preserves integration/synergy between enforcement and service functions by keeping them within the INS. Establishes clear lines of authority and divisions of responsibility between these two operations. Maintains a single immigration focal point within the DOJ.
Establish a Bureau of Immigration Affairs at the Department of State to manage the immigration process including domestic adjudication/examination (work authorization/adjustment of status) and employment verification.	Naturalization functions included within a restructured EAC for Immigration Services.	Immigration enforcement responsibilities are integral to the benefit review and adjudication process. Neither mission can be conducted effectively if placed in separate agencies. Both enforcement and service operations enforce the same law (Immigration and Nationality Act) and consistent outcomes, require common processes, data collection, and employee cross-training.

<i>CIR Recommendation</i>	<i>Administration Restructuring Proposal</i>	<i>Rationale</i>
Establish a Bureau of Refugee Admissions and Asylum Affairs at the Department of State responsible for overseas refugee admissions and refugee and asylum functions conducted by the INS.	Functions included within a restructured EAC for Immigration Services.	Same as above. INS and State will initiate an operational review to minimize overlap and duplication within INS and State-run visa, refugee, and asylum programs.
Establish a Bureau of Citizenship and Passport Affairs at the Department of State responsible for naturalization and determinations of citizenship and passport issuance.	Functions included within a restructured EAC for Immigration Services.	The State Department is not equipped to conduct the service and enforcement processes required in the naturalization program. Moreover, this reallocation of functions to State may conflict with its foreign policy mission. The naturalization redesign addressed the concerns raised by the CIR while retaining this responsibility within the INS.
Establish Quality Assurance Officers to oversee records management, procedure monitoring, fraud investigations, and internal review.	INS has expanded its INSpect program to assist in internal review and audits. The EAC for Immigration Services will establish an office to monitor and ensure quality service, benefit processes, products, and operations.	The naturalization redesign has established quality assurance checks throughout the process. The redesign incorporates sweeping changes in processes, records management, data flow and retention, and customer service as measures of integrity.
Establish a field structure that uses existing INS Regional Service Centers and State's National Visa Center and create a local office structure that is separate from immigration enforcement offices.	Local service offices will move from the current district office configuration to a community-based operation modeled on immigrant population density data. Service offices will not necessarily be located in the same location as enforcement operations. The EAC for Immigration Services will also rely heavily on direct mail to existing INS service centers.	The naturalization redesign study has recommended direct-mail to service centers for benefit processing and INS is implementing these recommendations. Beginning April 15 all naturalization processing will be direct-mail and phased implementation of direct mail processing for all other benefit applications is planned for completion over the next two years.
Immigration-related Functions: Consolidate enforcement of immigration-related employment standards in the Department of Labor.	Enforcement of immigration-related labor and employment standards will be shared between the Department of Labor (DOL) and INS. DOL and INS will develop an MOU to improve coordination and promote more effective worksite enforcement and worker protection.	Will provide a mechanism for more effective enforcement of immigration-related labor laws.

<i>CIR Recommendation</i>	<i>Administration Restructuring Proposal</i>	<i>Rationale</i>
All worksite investigations to ascertain employers' compliance with employment eligibility verification requirements should be conducted by the Department of Labor.	The authority to verify compliance for violations of employment eligibility will be shared between INS and DOL. The Administration is studying options for more effective DOL involvement in worksite enforcement of immigration-related labor standards.	Will provide a mechanism for the more effective enforcement of employment verification requirements.
Upon the adoption of an expedited process for the admission of both immigrant and temporary workers, DOL should be given responsibility and resources for enhanced monitoring of employers' fulfillment of the attestation terms they filed to bring in workers.	DOJ and DOL will work together to develop reforms to the current immigration-related employment programs to streamline the certification process and strengthen employer monitoring.	DOL is evaluating its immigration structure in order to streamline the current processes while ensuring labor protections. With sufficient delegation of authority from DOJ, DOL will further streamline the certification process and increase its enforcement of employer obligations.
Administrative Review: Administrative review of all immigration-related decisions should be consolidated and considered by a newly-created independent agency, the Agency for Immigration Review.	Maintains the current review and appeals mechanism.	The Administration is studying options to consolidate some review and appeals functions currently in the INS and DOL into the Executive Office of Immigration Review under the Attorney General.
Organization headed by a Presidentially appointed Director with no say in the substantive decisions reached on cases considered by any division or component of the agency.	Maintains the existing Department-head appeal process/final decision.	Placement of the adjudication process within a Department ensures executive oversight of administrative appeals and uniform and consistent national immigration policy.
Agency-wide Reforms: The Commission urges the Federal Government to make needed reforms to improve management of the immigration system.	Significant management improvements have been accomplished at INS over the past five years. This restructuring plan addresses a number of management and process weaknesses that remain within INS.	INS has accomplished major management, system, and process improvements in the face of a highly visible and growing mandate, large increases in resources and staffing, and unceasing historic demands for immigrant services.

<i>CIR Recommendation</i>	<i>Administration Restructuring Proposal</i>	<i>Rationale</i>
Set more manageable and fully-funded priorities (realistically-achievable short and long-term goals and greater numerical specificity on expected annual outcomes to which agencies should be accountable).	The INS has developed strategic performance plans and measures in both enforcement and service operations. We believe that these plans and measures are manageable and will accurately capture agency performance. As measures are refined, annual outcomes can help judge performance and highlight strengths and weaknesses that require management attention.	INS' FY 1999 Budget justification provides measurable performance goals in enforcement and service operations. The goal is result-oriented performance measures that allow management to judge performance in the aggregate and provide line-managers with the data necessary to do their job effectively.
More fully develop the capacity for policy development, planning, monitoring, and evaluation. Domestic Policy Council (DPC) responsible for overseeing Federal immigration policy development.	The Administration plan will consolidate long-term immigration planning within its strategic planning office reporting to the Commissioner. This group will coordinate agency-wide policy development. The DPC has established a policy-level group that includes immigration-related agencies and Executive Office of the President staff. This group looks at short and long-term immigration policy issues and concerns and coordinates the development of the Administration's position on immigration matters.	Will improve Government-wide immigration policy development and oversight.
Improve systems of accountability and measures of performance.	The key feature of this restructuring plan is to build clear lines of responsibility and accountability within the INS. The restructuring will ensure that line managers have the necessary tools to do the job effectively and performance can be measured. Current confusing and overlapping organizational relationships will be eliminated and replaced with clear lines of command in enforcement, services, and within the administrative support functions -- vital to INS' operational effectiveness.	Much of the work INS performs requires close coordination between enforcement and services. Under this restructuring coordination is maintained while reporting relationships remain clear so that policy can be developed, coordinated, and applied consistently.

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Improve the recruiting and training of managers. Expand the ranks of skilled and properly trained supervisors and managers.	INS has consolidated its recruitment effort to ensure consistency and quality and has emphasized the importance of basic, advanced, and management training. Training is a core element of the Commissioner's professionalism initiative. Performance in meeting training goals is measured by INS and DOJ. INS has sought to infuse new skills and thinking by hiring from both public and private sectors.	Consolidated and consistent recruiting has been achieved by establishing a central operation in Minneapolis, MN for hiring. Similarly, INS has established a management training facility in Dallas, TX, and equipped the Border Patrol training facility in Charleston, S.C. In concert with the establishment of these facilities is the creation of advanced and management training modules for enforcement, service, and professional staff.
Strengthen the customer service orientation. Establish a separate career track for benefit and service operation employees.	This restructure establishes separate career paths for enforcement and service personnel.	Lack of a clear career paths for enforcement and service personnel means INS often loses its best employees. By creating a separate career path for enforcement and service operations, this restructuring will increase retention and, therefore improve overall morale.
Use fees for immigration services more effectively. Fees should reflect true costs, cover the costs of services provided, result in timely and courteous service, and provide flexibility in their use to meet changing service requirements and demands.	This restructuring, combined with the naturalization redesign, should address this concern. INS completed an activity-based-costing (ABC) review of its benefit fee structure which has resulted in a proposed fee increase that accurately estimates the cost of providing benefits. INS will begin to conduct a "base" funding examination of its fee structure in FY 1998 to ensure benefit and service fee receipts support service-related operations. The establishment of a Chief Financial Officer within INS, combining budget and financial operations, will also strengthen its ability to manage appropriated and fee-receipt funds.	Fees should reflect true costs, cover the costs of services provided, result in timely and courteous service, and provide flexibility in their use to meet changing service requirements and demands. The base funding review of its fee structure and the ABC review should help assure all interested parties that fees reflect true costs and that they support fee services.

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We have to orchestrate this and be prepared for the backlash.

→ Let President know.

Do you have an external plan?

Q: test this change in a region?

more than
one
district

S-visa initiative - this Fall?

Design a demonstration

how many districts
where

how long

how to assess

~~then~~ whether to combine w/ alternative

complaint mechanisms

Separate more from this.

Updated range document to ME
Memo to ER (E)

re: most important issues
for Wyden/Erskine

what is wrong with what he has done
what can we offer.

Q to
Bob B
re: what
else jumps
out from
Wyden's
bill