

MEMORANDUM

TO: Elena Kagan

FROM: Julie A. Fernandes
Leanne A. Shimabukuro

DATE: December 10, 1997

RE: Options for INS Reform

The following is an outline of the options presented by our review of the final recommendations of the Commission on Immigration Reform ("CIR") and other reform proposals. As you will see, there are many ways that the various proposals could be combined. We have used three very broad categories as a guide to thinking about the issues: reforms within INS; reforms that involve changes within the Department of Justice structure; and reforms that impact other agencies.

I. Reform that would keep all functions within INS

A. Separate enforcement from services -- from field to Headquarters.

1. Create two Deputy Commissioners, with two separate lines of authority and chains of command: one with responsibility for enforcement and the other for services.
 - a. Could organize the enforcement side more like a police department: start as a border patrol agent (beat cop), move up to an investigator (detective) and further potential to move up in the chain of command to Headquarters.
 - i. Would address the concern that the border patrol agents are too isolated from the rest of enforcement, which creates the perception of lack of accountability.
 - ii. Could create a more substantial career path for agents.
 - b. Would create a direct line of authority between Headquarters and the district office, providing the accountability that many say is lacking under the current system.
 - c. Could be done in conjunction with creating a more regional model

for enforcement (including detention) and a more community-based model for services.

B. Separate enforcement from services -- district office level only.

1. Split enforcement from service functions at the field level, though keep the functions integrated at the regional office level and above.

Under either model, could put the Border Patrol in the chain of command, to address the issue of increasing alienation of the Border Patrol from the rest of INS. Also, could move law enforcement within INS up to the level (training, pay, etc.) of other law enforcement agencies with the DOJ. In addition, under either model could re-cast inspections as an enforcement function.

II. Reform that would keep all functions within the DOJ, but move some out of INS.

A. Move enforcement from INS to Main Justice

1. Would better integrate the border patrol into the Justice enforcement structure.
2. Would require costly changes in salary structure.
3. John Morton from DOJ informed us that Justice is generally reluctant to create another law enforcement sub-agency.

B. Create a high level person at the Department of Justice to handle immigration (e.g., an Assistant Attorney General for Immigration).

1. Could help make DOJ more institutionally responsive to immigration issues.

C. Consolidate administrative review within EOIR

1. Under the current system, there are several discreet administrative review functions being performed by INS and Labor.

III. Reforms that impact other agencies

Any of the following reforms but the first could be done in conjunction with a restructuring within the INS or within DOJ.

A. State Department

1. The creation of an Undersecretary for Migration at the State Department

who would head an office in charge of virtually all immigration services -- visas, adjustment of status, naturalization, labor certification, etc.

- a. Strongly opposed by advocates, INS, and DOJ.
2. State Department to perform all of the refugee applications overseas.
 - a. Strongly opposed by advocates. Apparently, it has been a long fight to get State out of this process, because of years of politicization (see, e.g., Central Americans).
3. Scale back the Department of State's role in the processing of petitions for non-immigrant visas.
 - a. Under the current system, State often re-adjudicates the application instead of just checking Interpol and possible foreign policy concerns. Instead, INS could control the process, but consult with State for the limited purpose of international checks.

B. Labor Department

1. Empower Labor to sanction employers for I-9 violations (rather than just referring them to INS, where there is often no follow-up).
 - a. Concern about protections for undocumented workers who report labor violations.
 - b. Concern that fear of deportation could chill the reporting of poor labor standards, which adversely affects all workers.
2. Move labor certification out of the Labor Department to INS (or State, if they are handling naturalization and visas).
 - a. Many criticize Labor for taking too long to process a labor certification, which then forces employers to hire workers with temporary visas until the paperwork is completed.
 - b. Labor believes that the link between employment-based immigration and the labor market supports the continued use of some sort of labor market test in deciding whether an employer is permitted to import a foreign worker.
3. Consolidate all non-immigrant visa programs and give them all a set of

labor standards that the Department of Labor could enforce.

- a. Could include making legal hiring a labor standard, enforced by the DOL as part of their general review of employers for compliance with other labor standards (minimum wage laws; equal pay for equal work; etc.)
- C. Create an independent agency to handle all administrative appeals.
 - 1. According to John Morton, strongly opposed by the DOJ. They do not want to diminish the Executive's adjudicative and policy-making role.
- D. Remove INS from the process of determining employment-based immigration (leaving decision to Labor and State).
- E. Create a permanent office at the White House to handle the various migration issues on a more global policy level.

MEMORANDUM

TO: Elena Kagan

FROM: Julie A. Fernandes
Leanne A. Shimabukuro

DATE: December 5, 1997

RE: INS Reform Meetings

The following is a summary of the meetings that we have held with various groups and agencies concerning our review of the final recommendations of the Commission on Immigration Reform ("CIR") and other reform proposals.

1. The Immigration and Naturalization Service (INS)
November 13, 1997

INS generally supports reform that would split enforcement functions from service functions at the field level, though they are in favor of keeping the functions integrated at the regional office level. Their proposal is heavily focused on improving the customer services orientation of non-enforcement employees. They also favor putting the Border Patrol in the chain of command, to address the issue of the increasing alienation of the Border Patrol from the rest of INS. The INS is also looking into ways to create pay parity between INS inspectors and inspectors with Customs as the disparity creates negative tension between officers that need to work together on the Border.

At that same meeting, OMB outlined their proposal of a higher level division between enforcement and services. OMB's view is that there is insufficient attention given to either of the two parts, so a more significant split would be a good remedy. OMB also advocates for the establishment of one enforcement officer for the border instead of the current organization of Border Patrol agents, inspectors and investigators.

2. The Department of State
November 19, 1997

The CIR recommended the creation of an Undersecretary for Migration at the State Department who would head an office in charge of virtually all immigration services -- visas, adjustment of status, naturalization, labor certification, etc. The CIR has also recommended that the State Department perform all of the refugee applications overseas. Under the current system, State's immigration role is limited to: (1) issuance of passports; (2) staffing consular offices

abroad; (3) the processing of approximately 6.5 million visas overseas (including six million non-immigrant and ½ million immigrant visas) in conjunction with the INS; (4) an advisory role re: asylum cases adjudicated in the U.S.; and (5) advising the President about world conditions to assist him in determining the annual number of refugees the United States will accept from various regions of the world.

The State Department representatives expressed some interest in exploring the possibility of assuming full responsibility for refugee processing. They seemed to view this as a way to control a fee-based process, and thus boost their consular offices (which are now, according to them, understaffed -- particularly in high growth countries). They also acknowledged the value of "one-stop shopping" for benefits and the consolidation of enforcement. This, in their view, would assist quality control -- primarily reducing fraud. State also agreed that the visa process needs to be more streamlined to reduce some of the duplication between agencies and greater clarification is needed regarding ultimate responsibility for certain decisions where more than one agency plays a role. To this end, State and INS have been involved in an effort called Data-Share, that would create a shared database between agencies. This effort started aggressively, but has stalled.

On the other hand, the State representatives voiced significant skepticism of their ability to assume the responsibilities of a large part of the INS -- particularly since they are in the process of absorbing both the USIA and ACTA. They were also very opposed to the CIR recommendation to make consular decisions reviewable (as part of their assuming greater, system-wide responsibility for the visa process). Finally, though they were in favor of the Administration having an immigration policy that recognized both the domestic and foreign policy aspects of this issue, they expressed a general philosophical view that immigration was more of a domestic issue, and thus was mis-matched with State.

3. Advocacy Groups (e.g., MALDEF, ABA, AILA, etc.)
November 21, 1997 (enforcement) and December 4, 1997 (services)

In general, the advocates believe that the most important reforms we could make would be in the areas of standards and accountability. Specifically, they are concerned that no direct line of authority exists between Headquarters and the District offices, leaving the District Directors as final decision makers on significant matters -- including interpretation of regulations. Further, many of those present advocated for a high level DOJ official to handle immigration (e.g., an Assistant Attorney General for Immigration). Their view is that without such a person, the DOJ is less institutionally responsive to immigration issues. In addition, there was support for the creation of a permanent office at the White House to handle the various migration issues on a more global policy level.

None of the advocates endorsed the CIR recommendations; in fact, they primarily criticized them. However, they did acknowledge some need to separate enforcement functions from services functions. According to the representative from AILA, this needs to be done, at a

minimum, at the district level, but the problem of mixing enforcement and services (to the detriment of services) exists throughout the agency. However, they expressed concern that complete separation between enforcement and services (as in the Reyes bill) may result in even less accountability by enforcement agents who are perceived as fairly independent. There is some belief that the fact that INS workers train in both enforcement and services mitigates the harshness of enforcement. However, there is also concern that promotions are generally only made from the enforcement side (most District Directors are former investigators), and thus that final services-related decisions are being made by enforcement officers.

On the general issue of State's role, the advocates were more comfortable with allowing the Department of Justice to retain control of the service process because of Justice's greater familiarity with and dedication to due process rights -- in contrast to State which frequently opposes administrative review of field decisions. Finally, all were opposed to giving State any enhanced authority in the area of refugees. Apparently, it has been a long fight to get State out of this process, because of years of politicization (see, e.g., Central Americans).

On the issue of streamlining, the advocates suggested scaling back the Department's role in the processing of petitions for non-immigrant visas. Under the current system, State often re-adjudicates the application instead of just checking Interpol and possible foreign policy concerns, which is simply duplicating processes. It was proposed that INS control the process, but consult with State for the limited purpose of international checks.

On the labor issues, the advocates seemed to generally favor permitting the DOL to sanction employers who fail to check whether their employees are authorized to work. However, they voiced concern about protections for undocumented workers who report labor violations. Also, the advocates expressed the view that the labor certification process for immigrant visas does not work well because it takes way too long, and is not responsive to rapid changes in the labor market. Though they expressed a preference for moving the process out of the Labor Department, they did not present a substantive reform proposal. However, according to Maria and others, there have been a couple of studies on this issue over the past couple of years.

Finally, on the issue of administrative review, the advocates favor a consolidation that would place all review at the INS, but ultimately favor a return to greater federal court review of BIA (or Attorney General) decisions.

4. Department of Labor November 24, 1997

Currently, Labor performs three basic immigration-related functions: (1) adjudication of applications by employers for employment-based visa categories (both temporary and permanent); (2) enforcement of labor standards which are part of the criteria for some employment-based visa categories (temporary and permanent); and (3) referral of findings of I-9 non-compliance (verification of employee work eligibility) to the INS. The CIR recommends

empowering Labor to sanction employers for I-9 violations (rather than just referring them to INS, where there is often no follow-up). The CIR also recommended eliminating Labor's role in the labor certification part of the visa process.

Labor has strong reservations about moving the labor certification process out of their agency (either to State or to INS). Though many criticize Labor for taking too long to process a labor certification (and thus forcing employers to hire workers with temporary visas until the paperwork is completed), they believe that the link between employment-based immigration and the labor market supports the continued use of a some sort of labor market test in deciding whether an employer is permitted to import a foreign worker. Labor believes that if this test is to have any meaning, it must be conducted by the Dept. of Labor.

Labor also believes that adjudication and compliance should be in the same agency. Thus, that Labor should have the authority to impose sanctions on employers for the wide range of violations related to labor standards -- including whether the employer adequately tested the labor market before hiring a foreign worker. Labor also favors consolidating all non-immigrant programs and giving them all a set of labor standards that the Department could enforce. In addition, Labor is in favor of their being permitted to sanction employers for failure to verify whether their employees are authorized to work in the U.S., though they do not want to be responsible for turning over employees who are possibly working illegally to the INS. They are concerned that a fear of deportation could chill the reporting of poor labor standards, which adversely affects all workers. Finally, in the area of employment-based immigration, Labor is in favor of moving from a three-step to a two-step process, which would include removing INS from the process entirely.

5. Michael Meyers
Chief Democratic Counsel, Senate Judiciary Committee
November 25, 1997

According to Meyers, there is little known support on the Hill for the CIR recommendations. Chairman Abraham has stated that he favors a split between enforcement and services, without expanding on what this means. Also, Meyers has received indications from Lamar Smith's staff that though they may be interested in changes to the INS, they are not likely to be interested in dispersing INS functions into different agencies. Meyers also believes that INS is not "mature enough" to be a separate agency, and it is unlikely that there would be much potential support for this type of option. He believes that the functions would best be kept within INS, but acknowledges that any "reform" proposal would need to be sold as dramatic change.

Meyers suggested that a possible option would be a split between enforcement and services within INS that goes all the way up -- would create two Deputy Commissioners, with two separate chains of command: one with responsibility for enforcement and the other for services. He also favors moving INS law enforcement up to the level (training; pay; etc.) of other law enforcement agencies within the DOJ. Meyers suggested that the enforcement side

could be organized like a police department: start as a border patrol agent (beat cop), move up to an investigator (detective) and further potential to move up to Deputy Commissioner. Under the current INS structure, the Border Patrol is almost completely set apart from the rest of the enforcement staff. Thus, the career ladder ends at a fairly early point, which causes the Border Patrol to lose a lot of good people. Also, they are generally isolated from the rest of enforcement, creating a perception of lack of accountability.

Meyers is very much in favor of the change that would allow the Department of Labor to sanction employers for failing to verify the work eligibility of employees. Though this would likely be disfavored by some Republicans (who tend to prefer the current, impotent system) it might be a good principled stand for us to take, even if the Republicans knock it down. Finally, Meyers also expressed support for the CIR's proposed consolidation of administrative review.

6. Commission on Immigration Reform
November 25, 1997

Several members of the CIR met with us to clarify some of the positions taken in their final report, and to answer our questions. In general, the CIR wanted to propose reforms that eliminated both perceived conflicting responsibilities within the existing structure, that made a greater distinction between legal and illegal immigration, and that made the system more efficient and easier to run and access.

On the enforcement side, the CIR recommended folding INS enforcement functions into Main Justice and upgrading it to a Division, which would require costly changes in salary structure. The CIR also recommended that the inspection function be re-cast as an enforcement function. On the services side, the CIR recommended that State assume responsibility for most of the service functions, with Labor left to enforce labor standards, including non-compliance with I-9 process.

The CIR believes that State has the capacity to handle all of the service functions now performed by the INS. In addition, the CIR views immigration policy ("international migration") increasingly becoming more of a foreign policy issue, thus more compatible with State's mission. They found attractive the idea of State building on its domestic capacity (passport offices). The CIR concluded that moving immigration services to State (a global fee-generating service) would allow them to save their consular offices abroad, which are at risk of being further devalued and de-funded.

The CIR looked at Canada and Australia to determine how this issue is handled in other countries. Both Canada and Australia have a Cabinet-level office that is in charge of migration generally. Their focus, however, is less on enforcement and more on facilitation of the process.

The CIR also recommended an independent appeals process, not located within DOJ or State. In the context of fewer issues being appealable to federal court, this would provide the

needed integrity for the administrative procedure. However, under their proposed system, this would also likely require review of consular decisions, to which State is very opposed.

When asked to recommend changes within the existing system, the CIR suggested that an interim step could be to upgrade of the Commissioner's position within the DOJ, and to create two deputies (one for services, one for enforcement), each with a separate line of authority. This would go a long way toward solving "mission overload," but would not address the problem of duplication of effort and dispersion of responsibility between agencies. Next, they suggested that Labor should be removed of their responsibility for labor certification. Though it is an open question how some other agency or entity would handle this, it is clear that the present system does not work well. Finally, they reiterated their support for allowing Labor to sanction employers for failure to comply with I-9 requirements, and possibly making the hiring of authorized workers a labor standard, enforced by the DOL.

7. Carnegie Endowment
December 1, 1997

The Carnegie Endowment is currently in the process of drafting a report on INS reform that will likely be ready in February 1998. Carnegie was not in favor of the CIR recommendations. However, they do think that more reform is needed, and attention on the CIR report may fuel the ability to make such reforms. In general, they favor reducing the redundancies in the processes, making it smarter, more transparent and more logical. They recognize that a more dramatic proposal that they might favor (possibly creating an independent agency) is not likely to get support on the Hill, and is thus no more realistic than the CIR recommendation.

There are, however, a set of reforms that Carnegie supports. On the labor front, Carnegie would like to see the DOL with the authority to sanction employers for failing to verify whether their employees are authorized to work (I-9 failures), but would like Justice to continue to prosecute employers for knowingly hiring unauthorized workers. They are also in favor of taking the labor certification process from DOL -- possibly to privatize it, which they believe would be more efficient and cheaper. Finally, they expressed interest in making legal hiring a labor standard, enforced by DOL as part of their general review of employers for compliance with other labor standards (minimum wage laws; equal pay for equal work; etc.)

On creating a more streamlined process, Carnegie is interested in looking at how to eliminate unnecessary steps in the visa process. They have called for more cooperation between agencies, that could possibly include data sharing -- with the appropriate privacy protections. Also, they are concerned that there continues to be a lack of high level policy coordination on the larger immigration questions. This could be rectified through elevating the Commissioner (to an AAG), or through the creation of a more permanent immigration or international migration office somewhere else in the Executive branch, including possibly the White House.

8. Department of Justice -- John Morton
December 2, 1997

The Attorney General is concerned with accountability within the existing system. Justice has thought about proposing a programmatic and policy split between services and enforcement within the INS that might create better lines of authority, and thus greater accountability. An open question remains as to how the split between enforcement and services would be structured. They seem at this stage to be inclined to consider a split that is more aggressive than the INS proposal to split at the district office level. Justice is also interested in proposals that better integrate the Border Patrol within the rest of the INS enforcement structure, in a way that upgrades the other components (though they have not thought about the police department model). In conjunction with a service/enforcement split, Justice is looking at breaking out of the district model, to (1) a more regional model for enforcement (including detention); and (2) a more community-based model for services (along the lines of the service centers now being piloted by INS).

Though Justice has not seriously considered moving enforcement out of INS and into Main, they are reluctant to create another law enforcement sub-agency within the Department. Also, DOJ is opposed to the creation of an independent agency for administrative review. They do not want to diminish the Executive's adjudicative and policy-making role.

Justice is interested in coordinating, to the extent possible, the DPC review with the Booze-Allen study that has been authorized. If we decide that internal restructuring is where we want to go, we should let INS and DOJ know our suggestions as soon as possible, so that they can use this study to look at areas of reform that we identify, rather than wasting time on those that we clearly oppose.

Finally, the Commissioner is set to propose several changes to the 1996 Immigration Act within the next couple of weeks to the DOJ. There is a question about whether this should proceed on a different track from the INS review process. We believe that a separate track would be advisable at this time.

INS Reform

Conclusions of Dec. mtg

- (1.) ~~the~~ DPC conclusion to recommend that INS stay together as one agency, but no final decision has been made.



Want Booze Allen to explore alternatives for making benefits/enforcement split.
(looking @ OMB proposal and others)

Statement of work: look @ problems raised and how they can be solved.

(by CIR, Regs, OMB, & others)

Looking @ whether structural or process problems.

MD: ① Want to understand status of Booze Allen work

BA was asked to develop organ. alternatives for INS that keep the agency together.
As input to INS for Meritbest proposal.

Have worked w/ INS staff to understand the issues & understand what is driving the issues.

What is driving problems & what structural things need to evaluate.

Met w/Commissioner @ key staff

Focus group of field reps

Field visits

Outreach (to other orgs & outreach
including State & Labor)

Booze-Alle

Should have some preliminary models by
next week

Booze will meet w/OMB to get info from
them re: budget issues that impact
their process.

MD — terribly concerned about this
wanted Booze to help us flesh out

(1) K to tell us how to implement OMB
alternative

or give us a couple of diff. alternatives
for the split.

(2) timing

by Feb. 2nd would have a clear idea
where they were heading

wanted March 1st decision

- Decisions re: budget have already been made.
- Booze's job should be to validate budget decisions that have already been made.

INS: OMB proposal should be the first among many that are looked @.
Booze-Allen knows that, but they have to be about alternatives.

MD: We have to look @ alternatives for the split.

We have strong feelings:
(reflected in budget doc)

Pres understands synergies, but that critically there has to be sep. of eng. from services both in field and HQ.

EK — When Booze talks to people, they should make clear that they are not duplicating our (DPC) powers.

This is the box that Booze-Allen has to work within

- INS reform
- Immigration
- PIR Board mts
- PIR Policy
- CR Enforcement
- EEOC

6 diff. colored notebooks

MD - Booz-Allen's job should be to take concept of separation (+ understanding synergies) to produce ~~separate alternatives~~ alternatives for how to do it.

BB - Both in headquarters & the field $\neq$ all the way up and down the line.

MD - [Work of Booz-Allen should be to start w/ OMB proposal and translate into an operational proposal & then suggest different ways to ~~achieve that split~~ address problems w/ that split implemented fully.

→ Operationalize the OMB structural proposal.

MD - Booz must either say nothing about the budget or that the Pres.'s decisions (like 1,000 Border patrol agents) were good ones.

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

AILA Fax Cover Sheet

To: Leanne Shimabukuro

From: Judy Golub

Maria Echaveste

Fax #: 456-7028

Date: 1/21/98

456-2983

Re: AILA Principles/Goals re INS

of Pages: four (including cover)

As promised, here is AILA's statement of principles and goals that must result from any restructuring of the INS. We also gave this material to Commissioner Meissner.

We would appreciate the opportunity to discuss this with you in more detail. Thanks.

AMERICAN IMMIGRATION LAWYERS ASSOCIATION:
Statement of principles and goals that must result from any restructuring
of the INS

Please see attached Resolution adopted by the American Immigration Lawyers Association on October 25, 1997. AILA opposes the Commission on Immigration Reform's proposal to dismember the INS, and supports increasing the authority and independence of the Benefits branch of INS.

Benefits

1. The benefits side of INS must be given the resources it needs to complete adjudications in a timely fashion. Immediate improvement is needed as backlogs are growing exponentially in all benefits functions: nonimmigrant petitions, immigrant petitions, adjustments of status, and naturalization. These backlogs must be resolved immediately, as clearly qualified applications are delayed in some instances several years.
2. The benefits branch should retain 100% of funds generated by user fees, and user fees should be kept reasonable and affordable. Resources should be allocated in a balanced fashion between business, family, and naturalization applications.
3. The benefits branch should have sufficient independence and authority, including budgetary authority, to develop immigration policy, and to direct the implementation of benefits and services programs.
4. Any restructured INS should include provision for greater protection for career advancement of employees of the benefits branch.
5. Restructuring plans must include improved training and supervision of the adjudications branch to ensure consistency in decision-making. Prompt, effective communication to Service Centers and District Offices of policies established by Headquarters will be an essential step in improved consistency.
6. Duplicative readjudication of petitions by the Department of State should be eliminated.
7. Admissions determinations now conducted by Inspections must continue to be made by personnel from the Examinations/Benefits branch of INS with emphasis on fairness and due process considerations.

Enforcement

1. Steps must be taken to improve professionalism of the Border Patrol, including enhanced training, and better communication of Headquarters policies to the field.
2. Enforcement priorities should be set at the national level, and applied consistently by all INS offices. INS enforcement efforts should be closely coordinated with other law enforcement agencies to target the most egregious violations.
3. Protection of individual rights and due process is paramount in the enforcement context. Current practices must be improved through enhanced professional training.
4. Responsibility for and control of detention centers, including public and private facilities under contract with INS, must be maintained by INS to insure protection of rights and consistency of policy. Facilities must be maintained with the understanding that immigration violators are not criminal offenders, and should not be detained in criminal facilities.
5. The right to counsel must be protected in a meaningful way through access and ability to communicate with detained aliens.

**RESOLUTION OF
THE AMERICAN IMMIGRATION LAWYERS
ASSOCIATION ADOPTED OCTOBER 25, 1997**

RESOLVED

- 1. That AILA opposes the U.S. Commission on Immigration Reform's proposal to dismember the Immigration and Naturalization Service.**
- 2. That AILA supports the restructuring of INS to give the benefits branch increased budgetary authority, increased authority to develop immigration policy on benefits and services, increased authority to direct the implementation of benefits and services programs and greater protection for career advancement to ensure adequate funding and independence of the benefits branch.**

MEMORANDUM

CIR said X
pros/cons
other things looked at
recommenda-

TO: Elena Kagan

FROM: Julie A. Fernandes
Leanne A. Shimabukuro

DATE: December 11, 1997

RE: Options for INS Reform

We have done a very brief summary of the major INS reform proposals and provided an outline of the broad options which integrates aspects of the different proposals (as well as other informal suggestions that were made during our meetings) as a thinkpiece for you.

PROPOSAL SUMMARIES

Commission on Immigration Reform. The Commission on Immigration Reform (CIR) proposes significant structural reform to immigration operations. In its final report, the CIR proposed to eliminate the INS and restructure the immigration system into four main operations:

- **Immigration Enforcement:** All immigration enforcement (e.g., Border Patrol, inspectors, investigators) at both the border and the interior would be moved into a newly created Bureau of Immigration Enforcement and the Department of Justice.
- **Immigration Services:** The Department of State would assume responsibility for adjudication of all immigration-related applications, including immigrant, limited duration admissions (e.g., tourist, student visas), asylum/refugees and naturalizations. All immigration functions would fall under the jurisdiction of a new Undersecretary for Citizenship, Immigration and Refugee Admissions.
- **Worksite Enforcement:** All responsibility for enforcement of immigration-related standards for employers would be housed at the Department of Labor. This would include enforcing employer sanctions against employers who fail to verify I-9 forms for work authorization and monitoring compliance with employer attestations to sponsor skill-based immigrants.
- **Immigration Review:** An independent body within the Executive Branch would be created to hear appeals of immigration-related administrative decisions, including removal (e.g., deportation) hearings. Decisions by the appellate body would be binding over the Executive Branch. Only the federal courts and Congress would have the

authority to reverse.

*Pros
Cons*

Reyes Bill

Congressman — Reyes

- The Reyes ^{that} proposed legislation, "The Border Security Enforcement Act of 1997," would make a significant structural change to INS by putting its entire enforcement component into a newly-created agency within the Department of Justice. The Director of the new Office of Enforcement and Border Affairs would report directly to the Attorney General. All enforcement, including Border Patrol, detention, deportations, inspections, intelligence, and investigations, would be moved to the new agency. INS would continue all remaining non-enforcement functions.)

The **INS' Reorganization Proposal**. The INS proposal would reorganize their existing structure and contains various management reforms.

- **Separation of Enforcement and Services**: The INS plan is focused on reengineering their delivery of services and moving toward a customer-service orientation. To this end, the INS plan would create a clearer delineation between enforcement and service functions by physically separating the functions at the district office level. Services staff and enforcement staff would be trained separately. This would also mean that individuals seeking services from INS would never come into physical contact with enforcement officers when entering district offices.
- **Infrastructure Improvements**: The INS plan focuses on making significant enhancements to technology, including the centralization and automation of INS records, in order to improve both delivery of services and law enforcement needs.
- **Management Reforms**: The INS plan would overhaul career development systems, and address longstanding pay issues to improve standards of professionalism within the Service.

OMB Proposal. The OMB proposal, similar to the INS proposal, retains current INS functions within the Service.

- **Separation of Enforcement and Services**: The OMB proposal would reorganize INS and create two Executive Associate Commissioners (EACs): one for enforcement and one for services and benefits. The EACs would report directly to the Deputy Commissioner. The Enforcement EAC would be responsible for all of INS' enforcement agents -- which OMB recommends merging into one uniform service and a white collar investigate service (CIR proposal). The EAC for Services would be responsible for regional service centers, foreign operations for refugees/asylees and all existing district office operations.
- **INS Headquarters Reorganization**: Headquarters would be focused on policy, strategic

planning and management, budget, and compliance with policy and procedures.

OPTIONS OUTLINE

As the outline below reveals, there are many ways that the various proposals could be combined. We have used three very broad categories as a guide to thinking about the issues: reforms within INS; reforms that involve changes within the Department of Justice structure; and reforms that impact other agencies.

I. Reform that would keep all functions within INS.

A. Separate enforcement from services -- from field up to Headquarters.

1. Create two Deputy Commissioners, with two separate lines of authority and chains of command: one with responsibility for enforcement and the other for services.
 - a. Could organize the enforcement side more like a police department: start as a border patrol agent (beat cop), move up to an investigator (detective) and further potential to move up in the chain of command to Headquarters.
 - i. Would address the concern that the border patrol agents are too isolated from the rest of enforcement, which creates the perception of lack of accountability.
 - ii. Could create a more substantial career path for agents, resulting in lower turnover and greater professionalism.
 - b. Would create a direct line of authority between Headquarters and district offices, providing for greater accountability that many say is lacking under the current system.
 - c. Would allow for the creation of a more regional model for location of all enforcement resources (i.e., Southwest Border emphasis) and a more community-based model for services.
2. Create two Executive Associate Commissioners-- one for services and one for enforcement. Resulting stovepipe structure for all enforcement and service functions could be same as above but would merge at the Deputy Commissioner's office.

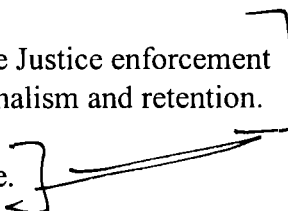
B. Separate enforcement from services at district office level only.

1. Split enforcement from service functions at the field level, though keep the functions integrated at the regional office level and above.
2. This option is favored by INS.

In addition, under either model, could better integrate the Border Patrol in the chain of command within enforcement, to address the issue of increasing alienation of the Border Patrol from the rest of INS. Also, could move law enforcement within INS up to the level (training, pay, etc.) of other law enforcement agencies with the DOJ. In addition, under either model could re-cast inspections as an enforcement function.

II. Reform that would keep all functions within the DOJ, but move some out of INS.

A. Move enforcement from INS to Main Justice

1. Would better integrate the Border patrol into the Justice enforcement structure, and may result in improved professionalism and retention.
 2. Would require costly changes in salary structure.
 3. John Morton from DOJ informed us that Justice is generally reluctant to create another law enforcement sub-agency. Other Justice law enforcement agencies (e.g., FBI, DEA) may also resist.
- 
- A handwritten bracket on the right side of items 1 and 2, with an arrow pointing from the bracket towards item 3.

B. Create a high-level person at the Department of Justice to handle immigration (e.g., an Assistant Attorney General for Immigration).

1. Could help make DOJ more institutionally responsive to immigration issues.
2. INS argues this would actually weaken stature of immigration function since Commissioner now reports directly to the Deputy Attorney General.

C. Consolidate administrative review within EOIR at Justice.

1. Under the current system, there are several discreet administrative review functions being performed by INS and Labor.

III. Reforms that impact other agencies

Any of the following reforms but the first could be done in conjunction with a restructuring within the INS or within DOJ.

A. State Department

1. The creation of an Undersecretary for Migration at the State Department who would head an office in charge of virtually all immigration services -- visas, adjustment of status, naturalization, labor certification, etc.
 - a. Strongly opposed by advocates, INS, and DOJ.
 - b. Strong reservations raised by State Department.
2. State Department to perform all of the refugee applications overseas.
 - a. Strongly opposed by advocates. Apparently, it has been a long fight to get State out of this process, because of years of politicization (see, e.g., Central Americans).
3. Scale back the Department of State's role in the processing of petitions for non-immigrant visas.
 - a. Under the current system, State often re-adjudicates the application instead of just checking Interpol and possible foreign policy concerns. Instead, INS could control the process, but consult with State for the limited purpose of international checks.

B. Labor Department

1. Empower Labor to sanction employers for I-9 violations, rather than simply referring to INS, where there is little follow through.
 - a. Concern about protections for undocumented workers who report labor violations.
 - b. Concern that fear of deportation could chill the reporting of poor labor standards, which adversely affects all workers.
2. Move labor certification out of the Labor Department to INS (or State, if they are handling naturalization and visas).
 - a. Many criticize Labor for taking too long to process a labor

Have not specifically take
a position on increasing or not

the H1B visas.

Have been in
favor of
shortening length
6 yrs. to 3 yrs.

~~last year~~

Except
for took
position of
combining

H1B

H2B

(seasonal)

Program needs to be reformed. (useful)
~~(maybe shorten length).~~

~~"What the govt. can do"~~

"our admin. does not support an
increase in the cap on
visas for high skilled immigrants."

for the benefit of Amer. workers,
we must focus on
home grown American
workers.

NO

Per OMB & Labor
we have said want

changes in H1B

including reducing

auth. stay from

6-3 yrs.

(similar impact)

certification, which then forces employers to hire workers with temporary visas until the paperwork is completed.

- b. Labor believes that the link between employment-based immigration and the labor market supports the continued use of some sort of labor market test in deciding whether an employer is permitted to import a foreign worker.
- 3. Consolidate all non-immigrant visa programs and give them all a set of labor standards that the Department of Labor could enforce.
 - a. Could include making legal hiring a labor standard, enforced by the DOL as part of their general review of employers for compliance with other labor standards (minimum wage laws; equal pay for equal work; etc.)
- C. Create an independent agency to handle all administrative appeals.
 - 1. According to John Morton, strongly opposed by the DOJ. They do not want to diminish the Executive's adjudicative and policy-making role.
- D. Remove INS from the process of determining employment-based immigration (leaving decision to Labor and State).
- E. Create a permanent office at the White House to handle the various migration issues on a more global policy level.

Tom
Kalish told by Labor Dept.

Anne Lewis in NEC

When NEC started talking to Digo Tech
people wanted to upgrade U.S. population.

quote

Daley said not politically feasible
to raise cap

Reflected where Admin. was when
discussed in 104th

our
emphasis
on upgrading
existing workforce
as opposed to

No intention of
reopening

reforming
immigration
laws to solve
the problem
of lack of
skilled workers.

raising cap
on
H1B
visas.

John Martin
told me to
call.

616-7977
Alex Gisser

Have we ever said that we oppose it?

INS Gen Counsel,
visas

Kent Hughes - Assoc Dpt Secy

482-~~6317~~

Commerce

6315

H1B visas

Info / Technology
worker questi

H1B visa cap.

5366
~~6317~~
[Tom Kalil @ NEC]
Labor Dpt.

Seay Daley said Admin.
does not want to raise the cap.

John M... → Daley is in Turkey

→ Got from Labor public affairs office.

Foot on neck

We need to know if we
have taken a written
position on this.

Admin. position

May be accurate historically
May not be position now.

We would like to see any new
leg. proposals.

was it right
that we took this
position -
In context of our
not using full
complement
of visas

We would review it.

~~No current pos~~
aware of proposals.

MEMORANDUM

TO: Elena Kagan

FROM: Julie A. Fernandes
Leanne A. Shimabukuro

DATE: December 5, 1997

RE: INS Reform Meetings

The following is a summary of the meetings that we have held with various groups and agencies concerning our review of the final recommendations of the Commission on Immigration Reform ("CIR") and other reform proposals.

1. The Immigration and Naturalization Service (INS)
November 13, 1997

INS generally supports reform that would split enforcement functions from service functions at the field level, though they are in favor of keeping the functions integrated at the regional office level. Their proposal is heavily focused on improving the customer services orientation of non-enforcement employees. They also favor putting the Border Patrol in the chain of command, to address the issue of the increasing alienation of the Border Patrol from the rest of INS. The INS is also looking into ways to create pay parity between INS inspectors and inspectors with Customs as the disparity creates negative tension between officers that need to work together on the Border.

At that same meeting, OMB outlined their proposal of a higher level division between enforcement and services. OMB's view is that there is insufficient attention given to either of the two parts, so a more significant split would be a good remedy. OMB also advocates for the establishment of one enforcement officer for the border instead of the current organization of Border Patrol agents, inspectors and investigators.

2. The Department of State
November 19, 1997

The CIR recommended the creation of an Undersecretary for Migration at the State Department who would head an office in charge of virtually all immigration services -- visas, adjustment of status, naturalization, labor certification, etc. The CIR has also recommended that the State Department perform all of the refugee applications overseas. Under the current system, State's immigration role is limited to: (1) issuance of passports; (2) staffing consular offices

abroad; (3) the processing of approximately 6.5 million visas overseas (including six million non-immigrant and ½ million immigrant visas) in conjunction with the INS; (4) an advisory role re: asylum cases adjudicated in the U.S.; and (5) advising the President about world conditions to assist him in determining the annual number of refugees the United States will accept from various regions of the world.

The State Department representatives expressed some interest in exploring the possibility of assuming full responsibility for refugee processing. They seemed to view this as a way to control a fee-based process, and thus boost their consular offices (which are now, according to them, understaffed -- particularly in high growth countries). They also acknowledged the value of "one-stop shopping" for benefits and the consolidation of enforcement. This, in their view, would assist quality control -- primarily reducing fraud. State also agreed that the visa process needs to be more streamlined to reduce some of the duplication between agencies and greater clarification is needed regarding ultimate responsibility for certain decisions where more than one agency plays a role. To this end, State and INS have been involved in an effort called Data-Share, that would create a shared database between agencies. This effort started aggressively, but has stalled.

On the other hand, the State representatives voiced significant skepticism of their ability to assume the responsibilities of a large part of the INS -- particularly since they are in the process of absorbing both the USIA and ACTA. They were also very opposed to the CIR recommendation to make consular decisions reviewable (as part of their assuming greater, system-wide responsibility for the visa process). Finally, though they were in favor of the Administration having an immigration policy that recognized both the domestic and foreign policy aspects of this issue, they expressed a general philosophical view that immigration was more of a domestic issue, and thus was mis-matched with State.

3. Advocacy Groups (e.g., MALDEF, ABA, AILA, etc.)
November 21, 1997 (enforcement) and December 4, 1997 (services)

In general, the advocates believe that the most important reforms we could make would be in the areas of standards and accountability. Specifically, they are concerned that no direct line of authority exists between Headquarters and the District offices, leaving the District Directors as final decision makers on significant matters -- including interpretation of regulations. Further, many of those present advocated for a high level DOJ official to handle immigration (e.g., an Assistant Attorney General for Immigration). Their view is that without such a person, the DOJ is less institutionally responsive to immigration issues. In addition, there was support for the creation of a permanent office at the White House to handle the various migration issues on a more global policy level.

None of the advocates endorsed the CIR recommendations; in fact, they primarily criticized them. However, they did acknowledge some need to separate enforcement functions from services functions. According to the representative from AILA, this needs to be done, at a

minimum, at the district level, but the problem of mixing enforcement and services (to the detriment of services) exists throughout the agency. However, they expressed concern that complete separation between enforcement and services (as in the Reyes bill) may result in even less accountability by enforcement agents who are perceived as fairly independent. There is some belief that the fact that INS workers train in both enforcement and services mitigates the harshness of enforcement. However, there is also concern that promotions are generally only made from the enforcement side (most District Directors are former investigators), and thus that final services-related decisions are being made by enforcement officers.

On the general issue of State's role, the advocates were more comfortable with allowing the Department of Justice to retain control of the service process because of Justice's greater familiarity with and dedication to due process rights -- in contrast to State which frequently opposes administrative review of field decisions. Finally, all were opposed to giving State any enhanced authority in the area of refugees. Apparently, it has been a long fight to get State out of this process, because of years of politicization (see, e.g., Central Americans).

On the issue of streamlining, the advocates suggested scaling back the Department's role in the processing of petitions for non-immigrant visas. Under the current system, State often re-adjudicates the application instead of just checking Interpol and possible foreign policy concerns, which is simply duplicating processes. It was proposed that INS control the process, but consult with State for the limited purpose of international checks.

On the labor issues, the advocates seemed to generally favor permitting the DOL to sanction employers who fail to check whether their employees are authorized to work. However, they voiced concern about protections for undocumented workers who report labor violations. Also, the advocates expressed the view that the labor certification process for immigrant visas does not work well because it takes way too long, and is not responsive to rapid changes in the labor market. Though they expressed a preference for moving the process out of the Labor Department, they did not present a substantive reform proposal. However, according to Maria and others, there have been a couple of studies on this issue over the past couple of years.

Finally, on the issue of administrative review, the advocates favor a consolidation that would place all review at the INS, but ultimately favor a return to greater federal court review of BIA (or Attorney General) decisions.

4. Department of Labor
November 24, 1997

Currently, Labor performs three basic immigration-related functions: (1) adjudication of applications by employers for employment-based visa categories (both temporary and permanent); (2) enforcement of labor standards which are part of the criteria for some employment-based visa categories (temporary and permanent); and (3) referral of findings of I-9 non-compliance (verification of employee work eligibility) to the INS. The CIR recommends

empowering Labor to sanction employers for I-9 violations (rather than just referring them to INS, where there is often no follow-up). The CIR also recommended eliminating Labor's role in the labor certification part of the visa process.

Labor has strong reservations about moving the labor certification process out of their agency (either to State or to INS). Though many criticize Labor for taking too long to process a labor certification (and thus forcing employers to hire workers with temporary visas until the paperwork is completed), they believe that the link between employment-based immigration and the labor market supports the continued use of a some sort of labor market test in deciding whether an employer is permitted to import a foreign worker. Labor believes that if this test is to have any meaning, it must be conducted by the Dept. of Labor.

Labor also believes that adjudication and compliance should be in the same agency. Thus, that Labor should have the authority to impose sanctions on employers for the wide range of violations related to labor standards -- including whether the employer adequately tested the labor market before hiring a foreign worker. Labor also favors consolidating all non-immigrant programs and giving them all a set of labor standards that the Department could enforce. In addition, Labor is in favor of their being permitted to sanction employers for failure to verify whether their employees are authorized to work in the U.S., though they do not want to be responsible for turning over employees who are possibly working illegally to the INS. They are concerned that a fear of deportation could chill the reporting of poor labor standards, which adversely affects all workers. Finally, in the area of employment-based immigration, Labor is in favor of moving from a three-step to a two-step process, which would include removing INS from the process entirely.

5. Michael Meyers
Chief Democratic Counsel, Senate Judiciary Committee
November 25, 1997

According to Meyers, there is little known support on the Hill for the CIR recommendations. Chairman Abraham has stated that he favors a split between enforcement and services, without expanding on what this means. Also, Meyers has received indications from Lamar Smith's staff that though they may be interested in changes to the INS, they are not likely to be interested in dispersing INS functions into different agencies. Meyers also believes that INS is not "mature enough" to be a separate agency, and it is unlikely that there would be much potential support for this type of option. He believes that the functions would best be kept within INS, but acknowledges that any "reform" proposal would need to be sold as dramatic change.

Meyers suggested that a possible option would be a split between enforcement and services within INS that goes all the way up -- would create two Deputy Commissioners, with two separate chains of command: one with responsibility for enforcement and the other for services. He also favors moving INS law enforcement up to the level (training; pay; etc.) of other law enforcement agencies within the DOJ. Meyers suggested that the enforcement side

could be organized like a police department: start as a border patrol agent (beat cop), move up to an investigator (detective) and further potential to move up to Deputy Commissioner. Under the current INS structure, the Border Patrol is almost completely set apart from the rest of the enforcement staff. Thus, the career ladder ends at a fairly early point, which causes the Border Patrol to lose a lot of good people. Also, they are generally isolated from the rest of enforcement, creating a perception of lack of accountability.

Meyers is very much in favor of the change that would allow the Department of Labor to sanction employers for failing to verify the work eligibility of employees. Though this would likely be disfavored by some Republicans (who tend to prefer the current, impotent system) it might be a good principled stand for us to take, even if the Republicans knock it down. Finally, Meyers also expressed support for the CIR's proposed consolidation of administrative review.

6. Commission on Immigration Reform
November 25, 1997

Several members of the CIR met with us to clarify some of the positions taken in their final report, and to answer our questions. In general, the CIR wanted to propose reforms that eliminated both perceived conflicting responsibilities within the existing structure, that made a greater distinction between legal and illegal immigration, and that made the system more efficient and easier to run and access.

On the enforcement side, the CIR recommended folding INS enforcement functions into Main Justice and upgrading it to a Division, which would require costly changes in salary structure. The CIR also recommended that the inspection function be re-cast as an enforcement function. On the services side, the CIR recommended that State assume responsibility for most of the service functions, with Labor left to enforce labor standards, including non-compliance with I-9 process.

The CIR believes that State has the capacity to handle all of the service functions now performed by the INS. In addition, the CIR views immigration policy ("international migration") increasingly becoming more of a foreign policy issue, thus more compatible with State's mission. They found attractive the idea of State building on its domestic capacity (passport offices). The CIR concluded that moving immigration services to State (a global fee-generating service) would allow them to save their consular offices abroad, which are at risk of being further devalued and de-funded.

The CIR looked at Canada and Australia to determine how this issue is handled in other countries. Both Canada and Australia have a Cabinet-level office that is in charge of migration generally. Their focus, however, is less on enforcement and more on facilitation of the process.

The CIR also recommended an independent appeals process, not located within DOJ or State. In the context of fewer issues being appealable to federal court, this would provide the

needed integrity for the administrative procedure. However, under their proposed system, this would also likely require review of consular decisions, to which State is very opposed.

When asked to recommend changes within the existing system, the CIR suggested that an interim step could be to upgrade of the Commissioner's position within the DOJ, and to create two deputies (one for services, one for enforcement), each with a separate line of authority. This would go a long way toward solving "mission overload," but would not address the problem of duplication of effort and dispersion of responsibility between agencies. Next, they suggested that Labor should be removed of their responsibility for labor certification. Though it is an open question how some other agency or entity would handle this, it is clear that the present system does not work well. Finally, they reiterated their support for allowing Labor to sanction employers for failure to comply with I-9 requirements, and possibly making the hiring of authorized workers a labor standard, enforced by the DOL.

7. Carnegie Endowment
December 1, 1997

The Carnegie Endowment is currently in the process of drafting a report on INS reform that will likely be ready in February 1998. Carnegie was not in favor of the CIR recommendations. However, they do think that more reform is needed, and attention on the CIR report may fuel the ability to make such reforms. In general, they favor reducing the redundancies in the processes, making it smarter, more transparent and more logical. They recognize that a more dramatic proposal that they might favor (possibly creating an independent agency) is not likely to get support on the Hill, and is thus no more realistic than the CIR recommendation.

There are, however, a set of reforms that Carnegie supports. On the labor front, Carnegie would like to see the DOL with the authority to sanction employers for failing to verify whether their employees are authorized to work (I-9 failures), but would like Justice to continue to prosecute employers for knowingly hiring unauthorized workers. They are also in favor of taking the labor certification process from DOL -- possibly to privatize it, which they believe would be more efficient and cheaper. Finally, they expressed interest in making legal hiring a labor standard, enforced by DOL as part of their general review of employers for compliance with other labor standards (minimum wage laws; equal pay for equal work; etc.)

On creating a more streamlined process, Carnegie is interested in looking at how to eliminate unnecessary steps in the visa process. They have called for more cooperation between agencies, that could possibly include data sharing -- with the appropriate privacy protections. Also, they are concerned that there continues to be a lack of high level policy coordination on the larger immigration questions. This could be rectified through elevating the Commissioner (to an AAG), or through the creation of a more permanent immigration or international migration office somewhere else in the Executive branch, including possibly the White House.

8. Department of Justice -- John Morton
December 2, 1997

The Attorney General is concerned with accountability within the existing system. Justice has thought about proposing a programmatic and policy split between services and enforcement within the INS that might create better lines of authority, and thus greater accountability. An open question remains as to how the split between enforcement and services would be structured. They seem at this stage to be inclined to consider a split that is more aggressive than the INS proposal to split at the district office level. Justice is also interested in proposals that better integrate the Border Patrol within the rest of the INS enforcement structure, in a way that upgrades the other components (though they have not thought about the police department model). In conjunction with a service/enforcement split, Justice is looking at breaking out of the district model, to (1) a more regional model for enforcement (including detention); and (2) a more community-based model for services (along the lines of the service centers now being piloted by INS).

Though Justice has not seriously considered moving enforcement out of INS and into Main, they are reluctant to create another law enforcement sub-agency within the Department. Also, DOJ is opposed to the creation of an independent agency for administrative review. They do not want to diminish the Executive's adjudicative and policy-making role.

Justice is interested in coordinating, to the extent possible, the DPC review with the Booze-Allen study that has been authorized. If we decide that internal restructuring is where we want to go, we should let INS and DOJ know our suggestions as soon as possible, so that they can use this study to look at areas of reform that we identify, rather than wasting time on those that we clearly oppose.

Finally, the Commissioner is set to propose several changes to the 1996 Immigration Act within the next couple of weeks to the DOJ. There is a question about whether this should proceed on a different track from the INS review process. We believe that a separate track would be advisable at this time.

STATEMENT OF WORK

Provide Support to the Department of Justice for the Implementation of an Organizational Restructuring of the Immigration and Naturalization Service that Separates Enforcement and Services Functions, Improves Accountability and Clarifies Lines of Authority

I. Purpose and Objectives

The purpose of the tasks listed in the statement of work is to coordinate closely with the Department of Justice (DOJ), the Immigration and Naturalization Service (INS), and the Executive Office of the President (EXOP) to: (1) examine the organizational restructuring of the INS proposed by the Office of Management and Budget (OMB) and outlined in Budget passback; (2) develop an implementation plan for this restructuring proposal built on the principle that enforcement and benefit/services operations are separated -- both in headquarters and the field; and (3) recommend focused, specific alternatives to organizational and management recommendations contained in the OMB passback proposal, where necessary and appropriate. The objective of this effort is to maintain INS' enforcement and benefit functions within one agency; develop an implementation strategy that achieves a separation of enforcement and benefit functions with clear and distinct lines of reporting and accountability; and, details improvements in management, organization and structural support functions that will enhance this separation and result in improved agency operations.

II. Statement of Work

✓ In response to the purposes and objectives outlined above, the contractor shall perform the following services:

The contractor shall develop an organizational implementation plan based on the restructuring proposal outlined in the OMB passback and the President's Budget narrative. The project shall include the completion of the following tasks:

Task 1. Interviews and Data Collection.

Conduct structured interviews with INS, Department and EXOP policy officials.

Convene a series of focus groups in Washington, D.C. for key INS and senior management officials, including field-based officials, such as Regional Directors, District Directors, Chief Border Patrol Agents, Regional and District Counsels, and INS Headquarters officials, including the Commissioner and other senior agency, department and EXOP officials.

Task 2. Recommend an Implementation Strategy for INS Restructuring

Based on the restructuring proposal outlined by OMB and the data and information obtained from the interviews and data collection conducted under Task 1, propose an implementation strategy that adheres to the principles contained in Section I of this document.

III. Progress Reports and Status Reporting

The contractor shall provide detailed, written progress reports to, and meet weekly with, a Senior Policy Board and brief this Board on the progress of the project, solicit input and receive guidance. Board membership shall include representative from the INS, DOJ and EXOP.

IV. Period of Performance

The duration of this project will be two months, beginning on December 31, 1997. The contractor will provide a draft report to the Board described in Section III no later than Monday, February 16, 1998, with a final report, reflecting guidance provided by the Board, to the Department of Justice by March 1, 1998.

V. Government Support

The contractor will receive the following Government support for the performance of these tasks:

- A. Documentation. Access to reports, studies, data and related materials necessary to perform these tasks.
- B. Technical Assistance. Points of contact will be designated by applicable DOJ, INS and EXOP offices to ensure consistency in areas related to data exchange and verification and other liaison matters. This assistance normally will be available only during normal business hours.
- C. Senior Policy Board Input. The contractor will meet weekly with a Senior Policy Board of INS, DOJ and EXOP to discuss progress and problems related to the successful completion of these tasks and deliverables in accordance with the approved workplan and schedule. The Policy Board will provide assistance, guidance and direction to the contractor as necessary.

VI. Deliverables

In performance of the above tasks and in accordance with the above purpose and objectives, the contractor shall submit the following deliverables:

<u>Deliverable</u>	<u>Due Date</u>
Conduct Interviews and Data Collection	January 31, 1998
Present Draft Report to Board	February 16, 1998
Present Final Report to the Department	March 1, 1998

Final Narrative
FY 1999 President's Budget
Enforcing the Law -- Meeting the Challenges of Immigration
January 20, 1998

Organization and Structure: The final report issued by the Commission on Immigration Reform called for major changes in how the Federal Government sets and implements immigration policy. In particular, it urged a separation of the enforcement and benefit functions that INS now performs.

The Administration has studied these and other reform proposals and is developing a plan to enhance immigration law enforcement while improving the delivery of immigration services and benefits. It recognizes that enforcement and benefits are interrelated and, thus, neither should be addressed without the other in mind. The plan, however, will make Federal immigration activities more efficient and effective by separating enforcement and benefit/service operations -- both in headquarters and in the field -- thereby strengthening accountability and lines of authority. In addition, the plan will enhance coordination among Federal agencies involved in immigration and establish greater accountability within each agency. Together, these reforms within individual agencies and across the Government will support and sustain the Administration's progress over the last five years in enforcing our immigration laws and fulfilling the Nation's commitment to its immigration heritage.

INS Reorganization

In response to the September 1, 1997, release of the final report of the Commission on Immigration Reform (CIR), the President directed the Domestic Policy Council (DPC) to review the CIR report and recommend ways to improve and streamline Federal immigration policy development and management. The DPC working group will use the President's FY 1999 budget as the vehicle to transmit the President's proposal to the Congress. Towards that end, the following organizational option for the INS has been developed. This reorganization proposal permits INS to meet the fundamental programmatic challenges facing the agency in a way that addresses the concerns identified by the CIR while permitting INS' core functions to remain intact. The Department and INS are requested to address this organizational proposal as part of any appeal.

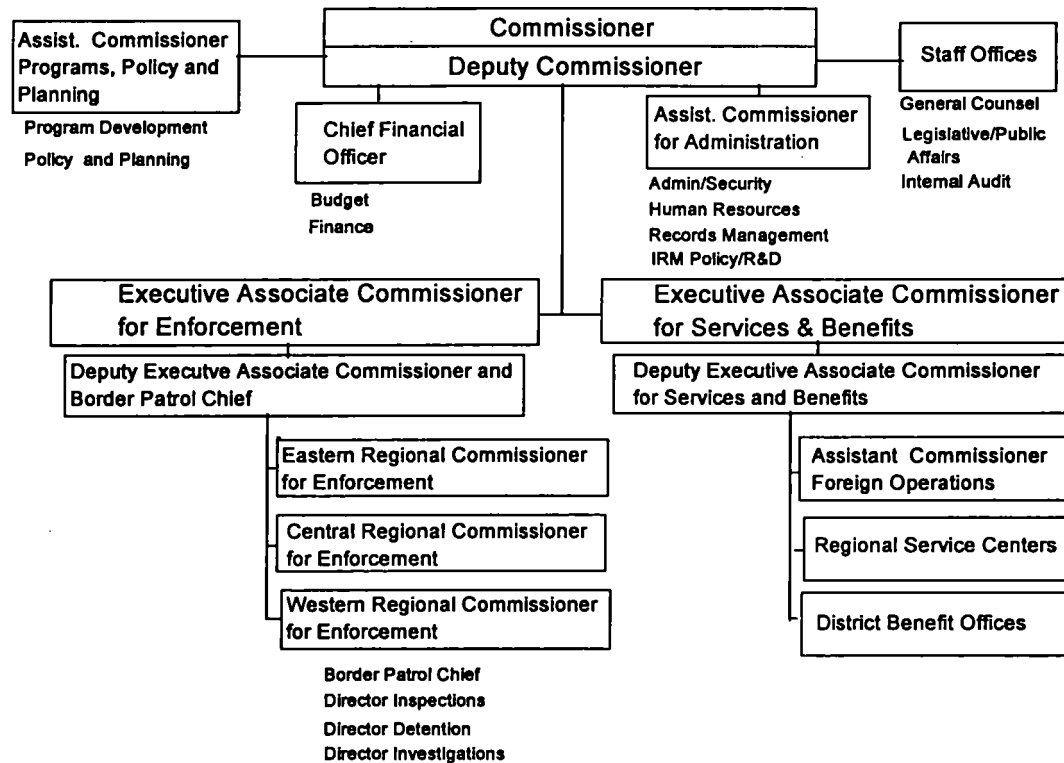
Restructure Headquarters:

Up until 1993, INS operated with insufficient resources, weak or non-existent management systems and processes, and lackluster internal management. Since then INS has made progress implementing major changes to enforcement and benefit systems, improving management practices, and upgrading staff capabilities at a time when resources and responsibilities have grown significantly. Instead of dismantling an improved INS as recommended by the CIR, an effort should be made to build on the accomplishments of the past four years. What INS requires is a streamlined organizational structure based on programmatic priorities and clear lines of authority, responsibility and accountability. Such a structure would focus attention and assign responsibilities to those charged with carrying out INS' dual enforcement and benefit roles. We believe these dual but interrelated responsibilities should remain within one agency and properly within DOJ. A future INS organization should have these features:

INS Headquarters, lead by a Commissioner and Deputy Commissioner, would focus on policy, strategic planning and management support (finance, records, Information Resource Management (IRM) policy and R&D); budget formulation; and compliance with policy and procedures. All line management and operational authority for agency-wide support systems like finance, budget, IRM policy, R&D, and records management would be consolidated in Headquarters.

- Reflecting the importance of INS' fee and fine account receipts (\$1.4+ billion) and the deficient condition of INS' financial operations, a separate Chief Financial Officer (CFO) would be established and report directly to the Commissioner. The CFO organization would include agency-wide budget formulation and execution.
- IRM policy and standards and all R&D initiatives would be consolidated within Headquarters. Operational and support IRM functions would report to the respective program offices.

- A small policy and planning office would develop long-range strategic plans, perform GPRA implementation and monitoring, and improve INS' important statistically policy and measurement responsibilities.
- Headquarters Administration should focus on consolidating records management, improving agency facilities, and managing a streamlined administrative service center operation to effectively meet the needs of field operations.



Programmatic Focus:

While the CIR recommends splitting the agency, a programmatic split that maintains the enforcement/benefit link necessary to function effectively accomplishes the same goal. The reorganization would separate **Enforcement** and **Services** under the leadership of two **Executive Associate Commissioners** (EAC). The creation of these two EACs would ensure that clear lines of authority, responsibility and accountability exist in program operations, help bring a field perspective to Headquarters decision making, and reduce stovepipe operations currently

prevalent in enforcement operations. The CIR recommendation to merge INS' enforcement agents (Border Patrol, inspection and detention) into one uniform service and a white-collar investigative service should be implemented. This reorganization supports this evolutionary initiative by putting the Border Patrol Chief in a direct line of authority for all enforcement activities and operations organized along Border Patrol sector and regional boundaries. The CIR also calls for higher visibility and focused management attention on the provision of services and benefits to immigrants, and to ensure organizational safeguards exist so that fee account receipts support fee-related activities. The division of responsibilities as proposed under this reorganization and improved financial systems will help achieve these goals. Under this proposed organizational structure, the EACs for Enforcement and Services would be responsible for the following:

Executive Associate Commissioner for Enforcement would coordinate all enforcement operations and staff (Border Patrol, investigation, inspections, intelligence and detention).

- A Deputy Executive Commissioner, who is also the Border Patrol Chief, would have line authority for all enforcement activities to ensure coordination between enforcement components.
- Three Regional Enforcement Commissioners would be responsible for coordinating INS enforcement functions within the regions. A Deputy Regional Commissioner would also be the Regional Border Patrol Chief with line authority in that region.
- INS enforcement functions would be organized along the Border Patrol sector model with sector chiefs for each function reporting to the region.

Executive Associate Commissioner for Services and Benefits would be responsible for providing efficient service and effective and accurate delivery of benefits to the immigration community.

- Regional Service Centers, which will play an expanded role as direct mail benefit processing comes on line, will report to this EAC.
- Foreign Operations, which has dual benefits and enforcement responsibilities for refugees, asylees and international anti-terrorism efforts would report to this EAC.
- All existing District Office operations (31 district offices or the expanded 80 suboffices currently under development) would report directly to the Deputy EAC. This direct reporting relationship will ensure that standards are consistent agency-wide and these standards and operating procedures are understood and applied consistently within all of INS' districts.

* Peter Greenberg ~~66620~~
Leg Res and
Abraham

Peter
Jacobs

Leeotis
Stuart Anderson

Wed. @ 4pm Rm 208
part of NGO group
Copy of Treaty

White House Will Reject Advice to Abolish Immigration Service, Officials Say

By ERIC SCHMITT

WASHINGTON, Jan. 20 — The White House is preparing to reject a Federal advisory commission's recommendation to abolish the troubled Immigration and Naturalization Service and assign its duties to other Government agencies, officials said today.

Instead, the Clinton Administration proposes reorganizing the agency to clarify its dual — some say conflicting — roles of battling illegal immigration and giving benefits to legal immigrants. Toward that end, it has hired a major consulting firm, Booz-Allen & Hamilton, to help work out the details of the redesign.

A White House official who participated in the review, speaking on the

condition of anonymity, said, "Right now, we're not ready to embrace the commission's proposal to disband the I.N.S., but many of its points are valid, and reform is necessary."

White House officials insist that President Clinton and his top aides have not made any final decisions and that Mr. Clinton will outline his plan in the fiscal 1999 budget he proposes to Congress early next month. But other Government and Congressional officials say they have been notified that a White House review has decided in principle against splitting up the agency, as the United States Commission on Immigration Reform recommended in September.

Even before the Administration's plan was formally announced, Re-

publicans on Capitol Hill who have been exploring the idea of disbanding the agency, expressed skepticism that a reorganization plan would solve the problems.

"The proposal to split the agency is an issue that needs to be vetted further," said Senator Judd Gregg, the New Hampshire Republican who heads the Senate appropriations subcommittee that controls the immigration service's spending. "It is a major move and I don't subscribe to it carte blanche, but it may be the best way to go. But I don't think this requires another outside consultant to review the management structure."

At issue is the advisory panel's conclusion that the immigration service suffers from such "mission

overload" that it can no longer manage its many priorities effectively.

The panel recommended that the Justice Department, the immigration service's parent agency, retain responsibility for controlling the border and removing illegal immigrants. The State Department, which now deals with visas at American embassies overseas, would handle immigration services and benefits, like citizenship requests. The Labor Department would assume a greater role in overseeing the hiring of foreign workers.

Breaking up the immigration service is an idea that has bounced around Washington for at least a decade. But the proposal has gained greater currency lately as Congress and many of the nation's governors are growing increasingly exasperated with the immigration service's inability to cope with soaring requests for citizenship, to weed out criminal aliens living in the United States and to crack down on the steady stream of illegal immigrants entering the country.

Republicans greeted the Administration's plan for a reorganization and outside review with skepticism, and said they would continue to consider more drastic changes.

Senator Spencer Abraham, the Michigan Republican who heads the Senate immigration subcommittee, said last August, "We should consider splitting the I.N.S. up into one law enforcement agency and one legal immigration agency to increase the efficiency of both."

A spokesman for Mr. Abraham, Joe McMonigle, said today that the Senator stood by his remarks and would hold hearings early this year on reorganizing the agency.

The House Appropriations Committee last summer directed Attorney General Janet Reno to review the commission's report and, along with other Federal agencies, develop a restructuring plan by April 1 that would allow the immigration service to perform its duties more efficiently.

In response, the White House's Domestic Policy Council interviewed a wide variety of officials in Govern-

ment, Congress and independent groups about the advisory panel's conclusions. "For the most part, there was support for reform but not for the commission's recommendation" to disband the agency, said the White House official who was involved in the review.

Ms. Reno and Doris M. Meissner, the Commissioner of Immigration and Naturalization, vociferously opposed any proposal to abolish the agency, and urged the White House to let them solve the agency's prob-

*The new goal:
revamp an agency.
And a consulting
firm will help.*

lems

Mrs. Meissner argued that the agency had recently achieved significant victories in tightening the nation's asylum system and the border with Mexico south of San Diego, and deserved a chance to clean its own house.

At the same time, other agencies that would assume duties from the immigration service were cool to the idea. The State Department, for example, argued that it was already absorbing the Arms Control and Disarmament Agency and the United States Information Agency.

Mrs. Meissner said White House officials notified her in late December that the immigration agency would remain intact. The immigration service then hired Booz-Allen to a two-month contract for \$374,498 that requires the consultants to give their recommendations by March 1.

By laying out a detailed reorganization before Congress's April 1 deadline, Administration officials say they hope to head off any effort by Republicans to use the agency's troubles as a political issue in the 1998 elections.



Paul Hosefros/The New York Times

A Day for the Medal of Honor

Maj. Gen. James L. Day, retired, received the Medal of Honor from President Clinton yesterday in a White House ceremony. General Day, 72, was recognized for heroism as a Marine corporal in Okinawa in

1945. He repelled a Japanese advance while dragging four wounded comrades to safety. His award was delayed for 52 years because of a series of mixups and paperwork mistakes.

STATEMENT OF WORK

Provide Support to the Department of Justice for the Implementation of an Organizational Restructuring of the Immigration and Naturalization Service that Separates Enforcement and Services Functions, Improves Accountability and Clarifies Lines of Authority

I. Purpose and Objectives

The purpose of the tasks listed in the statement of work is ~~to work and~~ ^{to} coordinate closely with the Department of Justice (DOJ), the Immigration and Naturalization Service (INS), and the Executive Office of the President (EXOP) to: (1) examine the organizational restructuring of the INS proposed by the ~~Office of Management and Budget (OMB) and outlined in Budget passback,~~ ^{OMB and outlined in} (2) develop an implementation plan for this restructuring proposal that reflects the principle that enforcement and benefit/services operations ~~are separated~~ ^{should be} -- both in headquarters and the field; and (3) recommend focused, ~~specific alternatives to organizational and management~~ ^{OMB and EXOP} recommendations contained in the ~~passback proposal,~~ where necessary and appropriate. The objective of this effort is to maintain INS' enforcement and benefit functions within one agency and ~~building off of the OMB passback proposal,~~ develop an implementation strategy that achieves a separation of enforcement and benefit functions and details improvements in management, organization and structural support functions that will enhance this separation and result in improved agency operations.

II. Statement of Work

In response to the purposes and objectives outlines above, the contractor shall perform the following services:

The contractor shall develop an organizational implementation plan based on the restructuring proposal ~~detailed in the November 25, 1997, passback to the Department of Justice and outlined in~~ the President's Budget narrative. The project shall include the completion of the following tasks:

Task 1. Interviews and Data Collection.

Conduct structured interviews with INS, Department and ~~EXOP~~ ^{EOP} policy officials.

Convene a series of focus groups in Washington, D.C. for key INS and senior management officials, including field-based officials, such as Regional Directors, District Directors, Chief Border Patrol Agents, Regional and District Counsels, and INS Headquarters officials, including the Commissioner and other senior agency, department and ~~EXOP~~ ^{EOP} officials.

Task 2. Recommend an Implementation Strategy for INS Restructuring

Based on the restructuring ~~proposal outlined in passback~~ ^{scheme proposed by the INS put forth by OMB} and the data and information obtained from the interviews and data collection conducted under Task 1, propose an implementation strategy that adheres to the principles contained in Section I of this document.

III. Progress Reports and Status Reporting

The contractor shall provide detailed, written progress reports to, and meet weekly with, a Senior Policy Board and brief this Board on the progress of the project, solicit input and receive guidance. Board membership shall include representative from the INS, DOJ and EXOP.

IV. Period of Performance

The duration of this project will be two months, beginning on December 31, 1997. The contractor will provide a draft report to the Board described in Section III no later than Monday, February 16, 1998 with a final report, reflecting guidance provided by the Board, to the Department of Justice by March 1, 1998.

V. Government Support

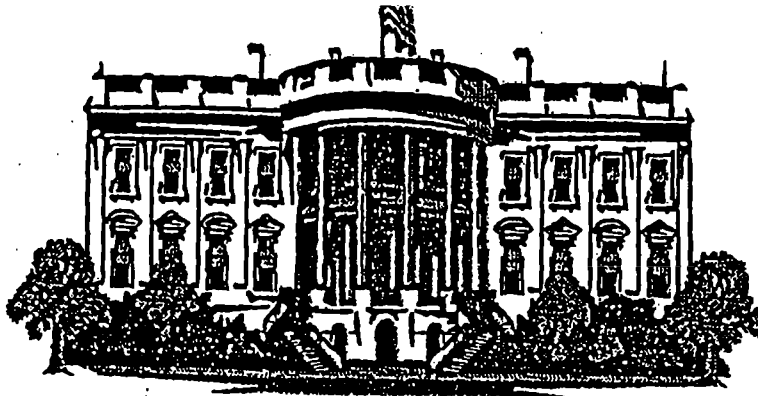
The contractor will receive the following Government support for the performance of these tasks:

- A. Documentation. Access to reports, studies, data and related materials necessary to perform these tasks.
- B. Technical Assistance. Points of contact will be designated by applicable DOJ, INS and EXOP offices to ensure consistency in areas related to data exchange and verification and other liaison matters. This assistance normally will be available only during normal regular business hours.
- C. Senior Policy Board Input. The contractor will meet weekly with a Senior Policy Board of INS, DOJ and EXOP to discuss progress and problems related to the successful completion of these tasks and deliverables in accordance with the approved workplan and schedule. The Policy Board will provide assistance, guidance and direction to the contractor as necessary.

VI. Deliverables

In performance of the above tasks and in accordance with the above purpose and objectives, the contractor shall submit the following deliverables:

<u>Deliverable</u>	<u>Due Date</u>
Conduct Interviews and Data Collection	January 31, 1998
Present Draft Report to Board	February 16, 1998
Present Final Report to the Department	March 1, 1998



THE WHITE HOUSE

Domestic Policy Council

DATE: Jan 22, 1998

FACSIMILE FOR: Steve Mertens

FAX: 495-0850

PHONE: 495-4935

FACSIMILE FROM: Julie Fernandes

FAX: 456-5581

PHONE: 456-6558

NUMBER OF PAGES (INCLUDING COVER): 3

COMMENTS: Steve -

Upon some reconsideration, I think
that we should refer to the storepage
as the "OMB proposal" or the "plan put
forth by OMB," unless EK or MD

are prepared to go stronger (on their
own). As you know, we have no official
sign-off on this proposal as of this
moment. JK

Let's email

INS/OMB

INS Reform

12/22/97

- ① What goes into the Budget
What goes into the Contract

Booze-Allen

(What particular things do we want them to look at)

Budget

DM: Would want something said in Budget
not sure what

Budget as Presidential vehicle (Keep it Presidential)
Early deadline; lets us stay in charge of this thing

no organizational
chart;

rather, establish principles

① directive on what this
ought to achieve

MD: Level of detail (?)
(for Budget)

DM: Review completed

Admin. determined that INS a single agency

② Labor
Dept.

Agency st

Eng. / Serv. functions ought to be separated
(w/ particular attr. to...)

③ Customer
and INS
data to improve
dmg. simm

④ improved
integrated
activities across
agency lines
(data transfers)
w/ DOS.

① improved customer service

② possible geographic
separation
③ standard & consistent
practices

EK: Should budget document specify the level of the split (?)

DM: No. That is org. chart stuff.
Wants done through Booz-Allen contract.
Most sensitive issue for the agency itself.
Build some internal consensus — buy-in.

NPR: PBO(?) — very severe separation.
How creative do we want to be w/ Booz-Allen or do we want to guide them to a solution.

DM: INS can't answer how to best separate eng. from services. Need Booz-Allen to tell us.

MD: Probably better off not contemplating PBOs for INS services.

What is wrong w/OMB passback(?)

DM: Only speaks to HQ.
Need to solve Q of "better" @ each level of organization.

Not comfortable w/ arriving @ a conclusion @ level of split before a more detailed analysis (including comparable to other agencies) takes place.

Look for a process @ arriving @ that conclusion.

EK: OMB wants a statement that split will go all the way up to HQ.

DM: INS not comfortable that a split all the way up (right now)

MD: We need clear directions on how the reform should take place.

On Feb. 1 ① Keep INS whole

② gain from separately w/in INS
clear lines of command from field to HQ.

We'll figure out over next couple of months how best to do that.

DM: Agree w/ everything but believing that we have to say on Feb. 2 that lines of command from field to Commission.

Not sure it achieves the best operational outcomes

Org. chart by April 1st

→ Boone-Allen report by March 1st

AG believes strongly that there needs to be a regional voice for INS in various cities.

(District Director)

SSA pt. of integration is @ field operational level

MD: No one thinks the current system functions well.
Why not make the change (?)

WAC: Can we frame our directive to Booz-Allen that we are looking to store pipe cap / services but we have concerns about lower level of integration.

NPR: Consider diff. structure in different cities (?)

MD: Is worried that Booz-Allen is given such an amorphous task

NPR: What are policy outcomes that Admin. wants.

DM: ① Standards / consistency
② Cross-agency data sharing; get rid of redundancy
③ Operations of land ports - of entry b/w
Customs and INS
Effective immigration law and drug
enforcement + facilitate legal movement

ER: Should not give Booz-Allen the CIR. We have decided not to do that.

Shouldn't delegate big Qs. Should give them principles to work with.

✓ In Budget, a presumption that committed
to separate HQ to Field.
Does not preclude integratin @ other levels.

DM: Let's draft a statement & see if we can agree
on language

WHC: Are we concerned w/ consultant reminder to world? DM: Yes

MD: Calander for work (?)

DM: Set up policy board to meet every 2 wks
w/ Booz-Allen to ensure that stay on track

MD: Oversight group to report back to DRC in
February (?) 2nd ?)

DM: Would rather have us participate

After budget, what (?)

MD: Supplementary materials on Feb 2nd
(that comes out w/ the budget)

What beyond this would we
be willing to say.

Any way that in Feb 2nd we could
have more to say? (from Booz-Allen)

The more detail we can have in our Feb. 2nd
~~Sta~~ press releases, the better.

To the extent that we can talk about coordinated
processes, the better.

Make people see how ambitious the INS plan is
"change the way INS does business"

Boery - Allen meetings (?)

Meet last week in Dec.

Start work first working day in January

THEMES

Build on the successes we have had in enforcement

Strengthen the Labor piece

Pro-legal immigration and naturalization. Helping citizens to integrate. Honor and Responsibility.

INS Reform -- Time frames

November 25th:	OMB passback to Justice
December 4th:	Deadline for DOJ appeal of OMB recommendations OMB then forwards budget recommendations to the President and policy recommendations to us.
Early January:	Draft to Larry Haas (OMB public liason?)
Jan. 12th to 15th:	All comments on OMB proposal
January 21st:	Final print of the Budget

CIR proposal (key points)

- * State would be responsible for: naturalization and determinations of citizenship, adjudication of all immigration and limited duration admission petitions, work authorizations and work-related permits and adjustments of status, refugee status determinations abroad and asylum claims;
- * overseas citizenship services would continue at State
- * State would then have sole responsibility for filing petition, visa issuance, green cards and work authorization and naturalization
- * transfer of INS and DOL staff to State (5,000 ees)
- * creation of Undersecretary responsible for domestic and overseas migration
 - Bureau of Immigration Affairs-- immigration and LDA-- adjudication and exams, work authorization (operate employment verification system)
 - Bureau of Refugee Admissions and Asylum Affairs- combines Bureau of Refugees and Migration with INS functions and DOS Asylum office in Democracy, Human Rights and Labor
 - Bureau of Citizenship and Passport Affairs- naturalization, issuance of passports and determinations of citizenship
- * Quality Assurance offices-- oversee records management, integrity and fraud in immigration and naturalization benefits
- * Need for DOS to develop a comprehensive internal review process that ensures that errors are corrected

UNITED STATES
DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

OFFICE OF SPECIAL COUNSEL
FOR IMMIGRATION RELATED
UNFAIR EMPLOYMENT PRACTICES



TELECOPIER COVER SHEET

10/3

Date

1030

Time

Number of pages including this page. 3

TO: Laenne Shimabukuro 458-7028

John Morten 4-3392

FROM: JOHN TRASVINA

Special Counsel

Phone: _____

Phone: 202/616-5528

FAX NUMBER: 514-9077 -(Morten)

FAX NUMBER: 202/307-2874

Comments:

FYI. Andy Striay wrote this for a legal reporter recently. He was
Active Special Counsel a number of years ago. I don't necessarily agree
with all that is here but it's a worth while and educated perspective.

- J/ha

SOLVE THE PROBLEMS,
DON'T JUST PASS THEM ON AND CREATE MORE

by

Andrew M. Strojny*

In a slow news summer, it has permeated the public consciousness what those who regularly deal with INS have known for years. INS has serious problems. In true Washington fashion, a solution is being proposed - reorganize. Organization does count and structure can eliminate or help ameliorate some problems. Unfortunately, just as there is a tendency in government to pass a problem employee from one agency to another because that is easier than dealing with the employee, the same holds true with problem agencies. INS has problems. That has been reported for years. Organizational change can help focus on those problems, but, by itself, cannot solve them.

I. Bureau of Border Enforcement

It has been proposed that a new Bureau of Border Enforcement be established within the Department of Justice. This new agency would include the Border Patrol. Its duties would center on preventing entry and removal of illegal aliens. A separate Bureau allows the public and the Congress to more easily focus on whether it is accomplishing its mission. It either is or it isn't.

One of the problems with INS, as it is now exists, is that local offices, be they INS District offices or Border Patrol Sector offices, often operate as separate fiefdoms. Sometimes local offices ignore policies established by INS Headquarters. This lack of accountability can and must be solved, but it requires hard management decisions. Merely shuffling the organizational boxes will not solve it. Unless there is accountability between local offices and headquarters, this reorganization will fail and may spawn the feeling that the country's borders cannot be controlled. That would be unfortunate because it is not true.

II. Department of Labor Employer Sanctions Enforcement

It has also been suggested that employer sanctions enforcement be transferred from INS to the Department of Labor, because the Labor Department has experience in enforcing labor standards. Some believe that making it unlawful for employers to employ illegal aliens is just another labor standard and the fit is a natural one. It is not. This reorganization will not solve a problem, it will create new ones. Currently, the Department of Labor enforces labor standards **for the benefit of employees**. It depends heavily on **employee** cooperation in enforcing the wage and hour laws, the overtime laws, and other labor standards. While in the long run these standards benefit the workforce at large, in the short run, they benefit the

employees of the employer in question. Labor Department enforcement punishes employers who violate labor standards, but first and foremost they provide the employees with better working conditions. Thus to a degree, labor standards can be self-policing. A smart employer knows his workforce will turn him/ her in if the standards are violated and so avoids violating them.

The incentives are not the same when it comes to enforcing employer sanctions. No benefit will accrue to employees if they turn in their employer for employing illegal aliens. If the employee is illegal, s/he will be fired and risk deportation. True, they may get a check making up for illegally deficient wages, but that benefit pales in light of deportation. It is the fear of deportation that allows an unscrupulous employer to hold illegal workers in near-slavery conditions. If the employee is legal, no benefit will accrue to them except seeing an illegal worker fired and perhaps deported. This may not be viewed as a benefit, if the illegal employee was a friend. If legal workers do not want to see illegal workers they know deported, they may even be dissuaded from reporting wage and hour violations. The mission of policing employers so they do not employ illegal aliens and the mission of ensuring that employees get the benefits of labor standards are NOT compatible ones. We will end up compromising both missions, if they are merged.

If the purpose of employer sanctions is to deter illegal immigration and not to provide a tool to let unprincipled employers hold illegal aliens in bondage, sanctions enforcement logically belongs with the proposed Bureau of Border Enforcement. It is this Bureau that would have the mission of controlling the country's borders. Employer sanctions were sold as a border control measure, i.e., cutting off the pull or magnet of jobs that encourage people to cross the border illegally. If a government agency is overzealous in enforcing sanctions, it should be held accountable. We shouldn't create a situation that allows friends and critics alike to equate employer sanctions enforcement with minimum wage enforcement because they are both "labor standards" and hopelessly confuse the issues. Increased enforcement of wage and hour laws and other employee benefit measures already on the books, would reduce the benefit unscrupulous employers get from employing illegal workers. This would reduce the economic incentive to hire illegal workers, while improving labor conditions for the entire workforce.

III. Department of State Granting of Immigration Benefits

Finally, it has been proposed that responsibility for granting immigration benefits be moved from the Department of Justice to the Department of State. Why? We say that we oppose illegal immigration because we are a nation of laws and it is important for immigrants to follow those laws. That argues that legal immigration is primarily a matter of law enforcement and not a method of carrying out U.S. foreign policy interests. If that is true, why move the function? The current problems are

not caused by where the function is placed. They are problems of faulty records, inconsistent decisions (because headquarter's policies are not being followed in the field), and something as basic as the lack of courteous service. Unless something magical happens to an organization when it ceases being part of the Justice Department and becomes a part of the State Department, merely changing the name on the letterhead will not solve these problems.

INS does have problems. Separating border control and deterrence of illegal immigration from other INS missions makes sense. But INS' problems are mostly management problems, not organizational ones. Unless and until those are addressed, no reorganization, no matter how well intentioned, will improve matters.