Office of the Deputy Attorney General
Washington, D.C. 20530

February 14, 1996

EXECUTIVE SUMMARY

This document is a summary of the Administration's views letter concerning S. 1394, the "Immigration Reform Act of 1995" as reported out of the Subcommittee on Immigration on November 29, 1995.

While the Administration strongly supports reform of the current immigration law that affects both illegal and legal immigration, and S. 1394 contains numerous responsible and thoughtful reforms, S. 1394 raises considerable concerns in specific areas that we hope the Committee will examine thoroughly before reporting the bill to the Senate floor. In particular, employment eligibility verification systems should contain necessary privacy protections and be piloted before any nationwide implementation. We urge the Committee to adopt our proposal to pilot programs for 3 years and then request Congressional authorization to implement only those pilot projects that work. Any increases in penalties for and enforcement of employer sanctions should be similarly increased for enforcement of laws against immigration related employment discrimination. The intentional discrimination standard in the document abuse provision of S. 1394 will severely undermine anti-discrimination enforcement. Labor and immigration law enforcement should be increased and coordinated. S. 1394 should adopt our proposal to hire 202 Department of Labor Wage and Hour Staff to investigate and prosecute labor standards and employer sanctions violators. The birth and death registry provision presents myriad constitutional, operational, and programmatic concerns and would impose a tremendous unfunded mandate on states and localities as well as a major burden on private individuals, such as having their fingerprints and Social Security numbers added to their birth certificates by age 16.

Expedited exclusion procedures should be established in extraordinary situations the Attorney General deems appropriate. Imposition of a 30 day time limit in which to apply for asylum would create needless protracted litigation on the issue of when an alien entered the United States (U.S.) rather than on the merits of the asylum claim. This would be detrimental to immigration law enforcement and humanitarian protections for true asylees.

Employer sponsored visas should be set at a level, 100,000 visas per year, to address both the needs of American businesses and workers. Family-sponsored visas for adult children of U.S. citizens and unlimited visas for mothers and fathers of U.S.

citizens must be maintained to protect our cherished principle of family reunification. Similarly, we support and want to reach agreement with Congress on an appropriate and equitable grandfathering process for persons in the fourth preference backlog that is consistent with our overall framework, priorities and principles.

The deeming provision for benefit eligibility should not create an unprecedented unconstitutional second class citizenship by extending beyond naturalization. The legislation should clarify that it does not call into question the full participation of any child in public elementary and secondary education, including pre-school and school lunch programs. We oppose the health and long term care insurance mandate imposed upon the mothers and fathers of U.S. citizens and disabled sons and daughters of U.S. citizens and lawful permanent residents. As currently drafted, the legislation requires purchase of coverage that is simply not available.

Repeal of the Cuban Adjustment Act would detract from the Administration's goal of returning democracy to Cuba and regularizing the flow of immigration from Cuba. In addition, restricting the Attorney General's parole authority will jeopardize the Attorney General's ability to quickly and appropriately respond to compelling immigration emergencies. Finally, we urge the Committee to ensure the bill's consistency with our international treaty obligations.

Many of the provisions in S. 1394 advance the Administration's strategy to control illegal immigration. This strategy calls for regaining control of our borders; removing the job magnet through worksite enforcement; aggressively pursuing the removal of criminal aliens and other illegal aliens; and securing from Congress the resources to assist states with the costs of illegal immigration. Many of the provisions of S. 1394 are identical or similar to provisions in the Administration's bill, S. 754, the "Immigration Enforcement Improvements Act of 1995."

The Administration endorses a framework of legal immigration reform that respects our immigration tradition while achieving a moderate reduction in overall admission numbers to promote economic opportunities for all Americans. The Administration seeks legal immigration reform that promotes family reunification, protects U.S. workers from unfair competition while providing employers with appropriate access to international labor markets to promote our global competitiveness, and promotes naturalization to encourage full participation in the national community.

Title I--Immigrant Control

Subtitle A--Law Enforcement

Part 1--Additional Enforcement Personnel

The Administration has already demonstrated that our borders can be controlled when there is a commitment to do so by the President and Congress. With an unprecedented infusion of resources since 1993, we have implemented a multi-year border control strategy of prevention through deterrence. We have carefully crafted long range strategic plans tailored to the unique geographic and demographic characteristics of each border area to restore integrity to the border.

- Border Patrol Agents: We have increased the number of Border Patrol agents by 40% since 1993, and we support a further increase of at least 700 agents per year to reach a total strength of at least 7,000 Border Patrol agents by the end of Fiscal Year 1998.

- Enforcement personnel: The President's Fiscal Year 1996 budget request calls for 202 new Department of Labor Wage and Hour personnel. S. 1394 does not provide for any additional Department of Labor Wage and Hour personnel. Additional personnel is critical to investigate and prosecute labor standards and employer sanctions violators, including sweatshop operators. We strongly urge the Committee to provide these enforcement personnel.

Part 2--Eligibility to Work and to Receive Government Benefits

Since jobs are the greatest magnet for illegal immigration, a comprehensive effort to deter illegal immigration, particularly visa overstaying, must make worksite enforcement a top priority. The Administration is deeply concerned by the provisions in this bill that will weaken employer sanctions and anti-discrimination enforcement. We urge the Committee to amend S. 1394 to be consistent with the Administration's proposal.

- Employment verification: S. 1394, in contrast to the Administration's bill, rejects the principal worksite enforcement recommendation of the Commission on Immigration Reform which was to thoroughly test and evaluate verification techniques before implementing them nationwide. We urge the Committee to adopt our proposal to pilot programs with necessary privacy protections for 3 years and then request Congressional authorization to implement only methods of verification that work, are cost-effective, and are proven to protect the rights of U.S. citizens and other work authorized individuals.

- Anti-Discrimination: Any increases in penalties for and enforcement of employer sanctions should be similarly made for enforcement of laws against immigration related employment discrimination. The intentional discrimination standard in the document abuse provision of S. 1394 will severely undermine anti-discrimination enforcement.

- Employment documents: We strongly support the reduction in the number of documents that can establish employment authorization.

- Birth and Death Registry: While we strongly support addressing document fraud, section 116 presents myriad constitutional, operational, and programmatic concerns and would impose a tremendous unfunded mandate on states and localities as well as a major burden on private individuals, such as having their fingerprints and Social Security numbers added to their birth certificates by age 16.

Part 3--Alien Smuggling; Document Fraud

The Administration is aggressively investigating, apprehending, and prosecuting alien smugglers. S. 1394 and the Administration bill have a common goal of significantly increasing penalties for alien smuggling, document fraud, and related crimes.

- Penalty increases: We support increases in the sentences for persons who commit document fraud or smuggle aliens.

- New criminal offenses: We support criminalizing the employment of an alien knowing that such alien is not authorized to work and that the alien was smuggled into the United States.

Part 4--Exclusion and Deportation

The Administration's comprehensive strategy for identifying and removing undocumented aliens has had significant success over the past three years. In Fiscal Year 1994, we deported a total of 39,788 undocumented aliens. In Fiscal Year 1995, we deported 28,500 criminal aliens and set a new record of 31,654 non-criminal alien removals. Our calendar year removals for 1995 are 14 percent higher than our removals in 1994 and 74 percent higher than the removals in 1990. The prospects for 1996 are even better because we will establish absconder removal teams and make strategic use of enhanced detention and transportation capacity.

- Special exclusion: We support special exclusion provisions which allow the Attorney General to order an alien excluded and deported without a hearing before an immigration judge when extraordinary situations threaten our ability to process cases and in the case of irregular boat arrivals.

- Interior Repatriation: We support pilot programs to deter multiple unauthorized entries, including interior and third country repatriation.

Part 5--Criminal Aliens

The Administration has made removals of criminal aliens a priority and achieved dramatic success. The number of criminal aliens removed from the United States jumped by 12% in 1993, and by 17.6% in 1994 over 1992 levels. More than four times as many criminal aliens were removed in 1994 than in 1988. Even more criminal aliens will be deported next year as we further streamline deportation procedures, expand the Institutional Hearing Program, and enhance the international prisoner transfer treaty program.

Subtitle B--Other Control Measures

Part 1--Parole Authority

Restricting the Attorney General's parole authority will jeopardize the Attorney General's ability to quickly and appropriately respond to compelling immigration emergencies.

Part 2--Asylum

The Administration, with critical resources from the Violent Crime Control and Law Enforcement Act of 1994, dramatically restructured the asylum process to allow the INS to quickly identify and promptly grant valid claims, and to refer all other cases to immigration court for deportation proceedings; to grant work authorization only to applicants who are granted asylum or when an applicant's case is not adjudicated within 180 days; and to streamline procedures to help asylum officers keep current with incoming applications.

To date, these reforms have had tremendous positive results. New asylum claims filed with the INS have dropped 57 percent. Asylum officers completed 126,000 cases in calendar year (CY) 1995 compared to 61,000 in CY 1994. Immigration Judges completed 40,000 asylum cases in CY 1995 compared to 17,000 in CY 1994--an increase of 135 percent. More than 98 percent of the new non-American Baptist Churches v. Thornburgh cases were completed by Immigration Judges within 180 days from the initial INS receipt of the asylum application. We have streamlined procedures without reducing the quality of our asylum decisions. INS has instituted quality assurance procedures to monitor the new system. Approval rates have not changed significantly.

- 30 Day Time Limit: Imposition of a 30 day time limit in which to apply for asylum would create needless protracted litigation on the issue of when an alien entered the United States rather than on the merits of the asylum claim. This would be detrimental to immigration law enforcement and humanitarian protections for true asylees and might hinder our reform's success.

Part 3--Cuban Adjustment Act

Repeal of the Cuban Adjustment Act would detract from the Administration's goal of returning democracy to Cuba and regularizing the flow of immigration from Cuba.

Title II--Financial Responsibility

Part 1--Receipt of Certain Public Benefits

The Administration generally supports the denial of means-tested benefits to undocumented immigrants. The only exceptions should include: (1) matters of public health and safety such as emergency medical services, immunization and temporary disaster relief assistance; (2) every child's right to full participation in public elementary and secondary education, including pre-school and school lunch programs; and (3) benefits earned as a result of United States military service. In addition, because housing assistance would continue to be governed by section 214 of the Housing and Community Development Act of 1980, it should be exempted from the provisions of this part. In denying means-tested benefits to undocumented aliens, care must be taken not to limit or deny benefits or services to eligible individuals or in instances where denial does not serve the national interest or where denial imposes an unreasonable burden on local or non-profit service providers.

The Administration generally supports tightening sponsorship and eligibility rules for non-citizens and requiring sponsors of legal immigrants to bear greater responsibility through legally enforceable sponsorship agreements for those whom they encourage to enter the United States. The Administration, however, opposes application of new eligibility and deeming provisions to current recipients, particularly with regard to the disabled who are exempted under current law, to immigrants who have become United States citizens, and to lawful immigrants seeking to participate in student financial aid programs. The Administration also opposes the application of deeming provisions to Medicaid and other programs where deeming would adversely affect public health and welfare.

Part 2--User Fees

We do not support a mandatory land border fee. A better alternative is to allow each state to determine at which, if any, ports the fee is to be collected.

Title III--Legal Immigrants: Classifications and Numerical Limits

The Administration seeks legal immigration reform that promotes family reunification, protects U.S. workers from unfair competition while promoting the global competitiveness of our employers, and promotes naturalization to encourage full participation in the national community. The Administration supports a reduction in the overall level of legal immigration consistent with these principles.

- Employer-sponsored visas should be set at a level, 100,000 visas per-year, to address both the needs of American businesses and workers.

- Employment-based immigration to fill skill shortages is sometimes unavoidable. However, the hiring of foreign workers over domestic workers should be the rare exception, not the rule. If employers must turn to foreign labor, this is a symptom of defects in the Nation's skill-building system. A fee levied on employers sponsoring skill-based immigrants, with the proceeds dedicated to building the skills and enhancing the competitiveness of U.S. workers, forges an admirably direct link between the problem of skill shortages and the only valid long term solution--investment in the U.S. workforce.

We are proposing to reform legal family-sponsored immigration in ways that are consistent with the Jordan Commission's recommendations, that reduce annual levels of legal immigration, and that reach those lower numbers faster. We recommend promoting naturalizations to reduce the second preference backlog, which is a priority for the Commission and the Administration, and maintaining first and third family preferences for reunification of adult children of U.S. citizens.

- First and Third Preferences and Parents: Family-sponsored visas for adult children of U.S. citizens and unlimited visas for mothers and fathers of U.S. citizens must be maintained to protect our cherished principle of family reunification as a cornerstone of immigration policy.

- Fourth Preference: For U.S. citizens, whose brothers and sisters have already applied and are waiting in the backlog, we support and want to reach agreement with

Congress on an appropriate and equitable grandfathering process that is consistent with our overall framework, priorities and principles.

- Health Insurance: We oppose the health and long term care insurance mandate imposed upon the mothers and fathers of U.S. citizens and disabled sons and daughters of U.S. citizens and lawful permanent residents. As currently drafted, the legislation requires purchase of coverage that is simply not available. Erecting such barriers would undermine the goals of family reunification.

Title IV--Nonimmigrants

The Administration agrees with the general objectives of the nonimmigrant program changes in the bill to address abuses in these programs and provide adequate protections to U.S. workers. These protections should be targeted especially to those employers who seek to obtain relatively low-skilled "professional" workers. In particular, in nearly all situations it is entirely unreasonable that an employer in this country--as a matter of public policy--not only does not have to test the domestic labor market for the availability of qualified U.S. workers before gaining access to foreign workers, but is actually able to lay off U.S. workers to replace them with temporary foreign workers. This is exactly what is happening now; our public policy tolerates it, perhaps encourages it, and our policy must change.

Since this summary does not address all of the Administration's comments on S. 1394, we ask the Committee to carefully consider our comprehensive views letter. Throughout that letter we have noted potential inconsistencies between some of the provisions of S. 1394 and our international treaty obligations, particularly with regard to our commitments under the World Trade Organization's General Agreement on Trade in Services and the North American Free Trade Agreement. We urge the Committee to ensure the bill's consistency with our treaty obligations.

urgent humanitarian reasons or for a reason deemed strictly in the public interest. Humanitarian parole is restricted to medical emergencies for which an alien cannot otherwise receive treatment, for organ donations, or for imminent death of a close family member. Public interest parole is limited to matters in which the alien has assisted the United States government, such as a criminal investigation, espionage, or other similar law enforcement activities where the alien's presence is required by the Government or the alien's life is threatened.

The Administration has already stated its opposition to restricting the Attorney General's parole authority. We oppose section 524. The current law provides the Attorney General with appropriate flexibility to deal with compelling immigration situations. For example, the amendment would not permit the parole of an alien to attend the funeral of a close family member or of a parent to accompany a child paroled into the United States for an organ transplant. In addition, one advantage of the special exclusion provisions included in both H.R. 1915 and H.R. 1929 is the opportunity they would afford to bring aliens intercepted at sea to the United States for a brief period for "credible fear" screening without implicating a full panoply of hearing and appeal rights. It is unclear whether this option would be available in light of the proposed restrictions on the Attorney General's parole authority. As currently written the parole restriction would appear to limit the ability of the Attorney General to parole from custody an alien seeking admission. We do not believe that this was the drafters' intent. If the parole restrictions remain in the bill, an amendment clarifying this distinction between the two uses of the term should be adopted.

Section 524[4] would dramatically transform the character of asylum proceedings in the United States. In general, the Department of Justice is strongly opposed to such extensive changes in the asylum process at the present time. Pursuant to a presidential directive, the Department engaged in extensive study and analysis of how to address abuse by mala fide asylum applicants and an ever-growing backlog of unadjudicated cases which resulted in the promulgation of asylum regulations in December 1994. These new regulations, which went into effect in January 1995, sought to address the problems in the asylum process by establishing procedures that permit the quick identification and granting of meritorious claims and the referring of all others to immigration court for deportation proceedings, the decoupling of eligibility for employment authorization from the asylum application process, and the streamlining of asylum procedures to help asylum officers keep up with incoming applications. In addition, Congress appropriated

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[4] McCollum's amendment creates a new section 524.

substantial additional funds for the asylum program, which has made possible an increase of asylum officers from 150 to 330 and an increase of immigration judges from 116 to 179 in the current fiscal year. In FY 1996 we expect to have approximately 200 immigration judges.

To date, these reforms have had tremendous positive results. Interviews of asylum applicants are being scheduled at the rate of 162 percent of the level of new receipts, therefore permitting the adjudication of backlogged cases as well as of current receipts. Asylum officers have completed over 61,000 cases in the first eight months of FY 1995, compared with nearly 35,000 cases in the first eight months of FY 1994, an increase of 76 percent. 94 percent of all interviewed asylum applicants are returning to the Asylum Offices about 10 to 14 days after their interviews to personally pick up the decisions in their cases. Rejected asylum claimants are automatically moving into deportation proceedings at that time. The number of asylum claims filed since implementation of the reforms has dropped by 14 percent when compared with the same period in fiscal year 1994. In short, the reforms are working even though the INS has yet to fill all of its authorized 330 asylum officer positions (to date, 242, or 75 percent of the authorized positions have been filled). Once all the asylum officers authorized for this fiscal year are hired and on duty, the reforms will work even better.

The revisions to section 208 would require extensive changes in current asylum procedures. Such changes could not only derail the current asylum reforms but could set back the overall processing of asylum claims as a whole. The Department of Justice objects to such radical changes when the asylum program is now getting its feet on the ground. In addition, several of the proposed changes would render U.S. law inconsistent with its international legal obligations under the 1967 Protocol relating to the Status of Refugees. For these reasons, we strenuously oppose these amendments.

The Administration's views on the individual provisions of section 208, as rewritten, follow.

Section 208(a) provides that any alien who is physically present in the United States or who arrives at a port of entry is eligible to apply for asylum. This provision reflects current law.

Section 208(b) requires a mandatory grant of asylum where an alien can establish that it is more likely than not that such alien's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. In essence, the section requires that asylum be granted where the alien meets the current withholding of deportation standard (Section 243(h)) as construed by the Supreme Court. See INS v. Stevic, 467 U.S. 407, 429-30 (1984). Correspondingly, section 307 of the bill eliminates withholding of deportation altogether.

Under current law, the legal standard for withholding of deportation is higher than the well-founded fear standard used in asylum determinations. An alien who is denied asylum as a matter of discretion is eligible for a mandatory grant of withholding of deportation if the alien meets a higher standard of proof. The purpose of withholding of deportation is to prevent the return of a person to a country where his or her life would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. Although the standard for withholding of deportation is higher than that for asylum, the benefits that result from a grant of withholding of deportation are fewer than the benefits that result from a grant of asylum. For instance, the beneficiary of a grant of asylum may bring his or her immediate family members to the United States or may adjust his or her status to that of a lawful permanent resident and, eventually, to that of a citizen. On the other hand, the beneficiary of a grant of withholding of deportation is not eligible to bring his or her immediate family members to the United States or to adjust his or her status to that of a lawful permanent resident. (Under INS regulations, if the alien was denied asylum solely as a matter of discretion and the alien is subsequently granted withholding, precluding admission of the alien's spouse and children, the denial of asylum must be reconsidered.)

An alien granted mandatory asylum would be eligible to apply for adjustment of status under section 209 and could be granted adjustment of status as a matter of discretion, if otherwise admissible. Under section 208(d)(3), as rewritten, the Attorney General could terminate mandatory asylum if another country was willing to accept the alien. Currently, the United States has the legal right to deport an alien granted withholding to another country but this very rarely occurs. Thus, persons who are granted withholding of deportation generally remain in the United States indefinitely in an indefinite status. Although rare, such cases pose unusual and sometimes burdensome administrative issues for INS. We support the goal of providing a mechanism for the Attorney General to adjust the status of an alien provided withholding of deportation to a more permanent status. However, we recommend that the Committee create an analogue to section 209 for adjustment of status of aliens provided withholding of deportation rather than by creating mandatory asylum. The authority should be permissive, so as not to unduly limit the flexibility of the Attorney General.

On a more fundamental level, we strongly prefer to retain distinct provisions for asylum and withholding of deportation, with the former discretionary and the latter mandatory. Current law reflects the scheme of international refugee law, pursuant to which there is no "right to asylum" per se but only a right to freedom from deportation to a place of persecution. We have never before accepted "a right to asylum" under either international or domestic law and do not believe it is appropriate to do so here. Moreover, the practical effect of this proposed amendment would be to limit the Attorney General's discretion to deny the substantial benefits associated with a grant of asylum to aliens who are undesirable, for foreign policy or other reasons, but who are nevertheless entitled to non-refoulement.

Therefore, we would prefer to work with the Committee to create a discretionary authority for the Attorney General to adjust the status of an alien granted withholding of deportation to that of an alien lawfully admitted for permanent residence, and we would prefer to retain a distinct mandatory provision for withholding of deportation.

[INS, OMB reconcile. INS states: Mandatory asylum would provide the administrative flexibility to permit a beneficiary of withholding of deportation to adjust to the status of a lawful permanent resident or, in the time prior to adjustment, to deport or remove the person to another country if one were available. We are, therefore, not opposed to such a provision.]

Section 208(b)(3)(A)(vi) precludes a grant of asylum where a country is willing to accept the alien and the alien is unable to establish that he or she would face a threat to life or freedom on account of one of the five grounds in such country. This provision establishes a new statutory ground of ineligibility for asylum. We agree with the intent of this provision. In fact, INS has already implemented a similar provision as part of the recent asylum regulations. 8 CFR 208.14(e) provides that

> [a]n application from an alien may be denied in the discretion of the Attorney General if the alien can and will be deported or returned to a country through which the alien traveled en route to the United States and in which the alien would not face harm or persecution and would have access to a full and fair procedure for determining his or her asylum claim in accordance with a bilateral or multilateral arrangement with the United States governing such matter.

Although there are no bilateral or multilateral arrangements in place at present that would permit denial of an asylum application under this provision, the United States is presently negotiating a bilateral arrangement with Canada on such cases and expects to sign such an agreement early next year.

While we agree with the purpose of the proposed statutory provision, we believe that the above regulation accomplishes the same purpose more effectively. First, the statutory provision fails to take account of countries where, even though the alien may not be at risk of persecution in that country, the alien might be at risk of removal to another country where such alien may face a threat to life or freedom. In this respect, the provision is arguably inconsistent with the duty of non-refoulement by which the U.S. is bound under the 1967 Protocol relating to the Status of Refugees. The language of the regulation takes into account such concern by requiring that the country to which the person is deported or returned has "a full and fair procedure for determining [the] asylum claim."

Second, the statutory proposal applies to any country willing to accept the alien, while the regulation applies only to countries "through which the alien traveled en route to the United States." As a practical matter, it is difficult to imagine countries that might accept an alien where that alien has not previously traveled through or resided in the country. Moreover, the most important bilateral and multilateral readmission agreements regarding asylum seekers involve aliens who have traveled through another safe country on their way to the country where they are applying for asylum. Thus, we believe the regulatory language is more practical and consistent with relevant international agreements and principles than the legislative proposal.

Third, we believe it unlikely that a country will be willing to accept an alien absent an agreement that requires it to do so. The regulation also acknowledges this fact. Fourth, the statutory proposal requires a mandatory denial of an alien's claim where the alien can go to another country; the regulation leaves such a consideration to the discretion of the Attorney General. Given the complex nature of the factors involved in returning an alien to another country, we believe that such a consideration is better left as a discretionary factor in the decisionmaking process. For these reasons, we believe that the purpose underlying this proposed statutory grounds of ineligibility would be better fulfilled by the regulation in place than by the statutory provision itself.

Section 208(b)(3)(B) deems an alien convicted of an aggravated felony to have committed a particularly serious crime. For the reasons articulated in section 305, we recommend that H.R. 1915 adopt the provision in H.R. 1929 which deems an alien convicted of an aggravated felony for which the sentence imposed is five years or more as having been convicted of a particularly serious crime, to ensure consistency with U.S. obligations under the Refugee Protocol.

Section 208(d)(3) would permit the termination of asylum status where a "country willing to accept the alien has been identified to which the alien can be removed or deported...." This section has the same problems as section 208(b)(3)(A)(vi) as described above. INS believes that promulgation of a regulation similar to 8 CFR 208.14(e) would be a more appropriate way of dealing with such cases.

Section 208(f)(1)(A) would impose new deadlines for the filing of asylum claims. An alien must have filed notice of intention to file an asylum application within 30 days of arrival in the U.S. and the application itself must be filed within 60 days of arrival in order to be considered for asylum. The only circumstances in which an alien is exempt from these deadlines is if the alien can show by clear and convincing evidence that circumstances in his or her country of origin that may affect eligibility for asylum have changed. Given that the bill replaces withholding of deportation with asylum, such an absolute time requirement for the filing of an asylum claim runs afoul of the duty of non-refoulement by which the U.S. is bound under the 1967 Protocol relating to the Status of Refugees and other relevant international guidelines. See e.g. UNHCR Executive Committee Conclusion No. 15(i)(1979) ("While asylum seekers may be required to submit their asylum request within a certain time limit, failure to do so, or the non-fulfillment of other formal requirements, should not lead to an asylum request being excluded from consideration.") The duty of non-refoulement applies to any refugee who would face a threat to life or freedom in the country of origin, regardless of the time that alien makes known a need for such protection to the state concerned. To impose such deadlines could subject bona fide refugees to persecution in their countries of origin. Moreover, we believe that it would be very difficult, if not impossible, to enforce such deadlines given that many asylum applicants enter the U.S. illegally. In such cases, there is no record of the date of the alien's arrival in the United States, thus making it unlikely that a deadline could be identified. We believe the deadlines will create needless litigation on the issue of when an alien entered the country and will prolong the asylum adjudication process. We strongly oppose such a provision.

Section 208(f)(2)(A)(i) would require that asylum interviews be conducted not later than 45 days after the filing of an asylum application. Under the current asylum program asylum officers are striving to conduct interviews within 60 days of the filing of an application. This goal is being met in the vast majority of the cases. However, circumstances sometimes arise which do not permit the achievement of this goal. The imposition of a mandatory 45-day deadline for the scheduling of an asylum interview is unrealistic given such unforeseeable circumstances. Moreover, the remedy for failure to meet this deadline is unclear. It is possible that the Department will routinely become subject to lawsuits in cases where a interview has not be held within 45 days. This would detract from the overall efficiency of the asylum program. In sum, the program is currently processing claims on a timely basis; a statutory provision attempting to accomplish the same would likely create more confusion and problems.

With regard to section 208(f)(2)(A)(ii), we recommend that 'international conditions' be replaced with 'international refugee and domestic asylum law' as this is the relevant training necessary for sound asylum adjudications, in addition to knowledge of the human rights records of foreign countries.

Sections 208(f)(2)(B) and 208(i) would empower only asylum officers to make asylum decisions in the Executive Branch and permit the appeal of such decisions only to the federal circuit courts. Thus, immigration judges and the Board of Immigration Appeals would no longer consider asylum claims. This would cause dramatic changes in current asylum procedures. First, if their decisions are to be directly reviewed by the circuit courts, asylum officers would have to create a record of the proceedings before them. Under current asylum procedures, asylum officers are not qualified, trained or equipped to create such a record. Such a change would require the hiring of a whole new group of asylum officers since asylum officers are presently not lawyers and a concomitant change in procedures. The new cadre of asylum officers would be duplicative of the present immigration judge corps. Such dramatic changes would set back the current asylum program dramatically, and would in fact require replicating the present immigration judge process to include a hearing by a lawyer, with a full developed and recorded record, and the opportunity for presentation of evidence and cross-examination.

The elimination of the Board of Immigration Appeals from the asylum decisionmaking process would also deny asylum adjudicators a centralized legal authority that might issue a unified set of legal standards to govern administrative asylum decisionmaking. Asylum officers could now look only to the federal circuit courts for guidance in decisionmaking. The elimination of immigration judges and the Board of Immigration Appeals would also mean that many more asylum decisions would be appealed directly to the federal circuit courts. This would inundate the circuit courts with asylum decisions. Since the federal circuit courts have significant backlogs, direct appeal to these courts will delay asylum adjudication. As is the case in most other administrative programs, we believe that it is much more effective to have an administrative entity review first-instance decisions before requiring the involvement of the federal courts.

This section would require a duplicative process that would require more hearings, more adjudicators, more lawyers, and consequently, more delay. Presently, immigration judges review asylum denials in deportation or exclusion proceedings. This section would require immigration judges to stay deportation or exclusion proceedings pending appeal to the federal circuit courts. This section gives asylum applicants two opportunities to appeal to the federal circuit courts--once for the asylum issues and a second time for deportation or exclusion issues. It will have the effect of slowing the process for both the INS and the alien, by delaying the INS's ability to get a final order of deportation and the alien's ability to get final resolution of his status.

Section 525 provides for the admission, subject to the worldwide level specified in section 201(e), of qualified immigrants of special humanitarian concern to the United States, selected on a case-by-case basis after having been identified for potential eligibility by the Attorney General. An alien who is a refugee is not entitled to admission as a humanitarian immigrant unless there are compelling reasons in the public interest to admit the alien under this provision.

This section also limits issuance of humanitarian visas to 50 percent of a single foreign state's (or 15 percent of a dependent area's) allotted level of immigrant visas. The Attorney General may waive the public charge ground of inadmissibility in the case of a humanitarian immigrant. We support establishing an immigrant category for persons who do not meet the definition of refugee but who are of special humanitarian concern to the United States. We are concerned, however, that the numerical ceiling on humanitarian immigrant admissions will prove insufficient to address the need for such visas as may the proposed waivers of grounds of ineligibility for parole.

Section 551 provides that amendments made by this title take effect on October 1, 1996, and apply beginning with FY 1997, except that the provisions of section 523 and 554 take effect on the date of enactment of H.R. 1915.

Section 552 provides for transition of current classification petitions to the amendments made by this title.

Section 553 provides for special transition numbers for spouses and children of legalized aliens. It provides that 150,000 (or, if greater, 1/5 of the number of petitions pending) visas shall be available in each year from 1997 to 2001 for aliens who are classified as spouses or minor children of lawful permanent residents. The visas will be available in the order in which the petition was filed and will first be available to the spouses and children of lawful permanent residents who did not gain that status under the legalization or special agricultural worker programs.

Section 554 provides that the per country numerical