

ADMINISTRATION MATERIALS ON H.R. 2202 (IMMIGRATION BILL)

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Office of the Deputy Attorney General

Washington, D.C. 20530

May 31, 1996

The Honorable Alan K. Simpson
Chairman, Subcommittee on Immigration
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the Administration on H.R. 2202, the "Immigration Control and Financial Responsibility Act of 1996". The Administration is reversing decades of neglect in controlling illegal immigration. Many of the provisions in both the House and Senate bills would ratify the Administration's efforts in the field to combat illegal immigration. The Administration's four-part strategy calls for regaining control of our borders; protecting U.S. workers through worksite enforcement; aggressively removing criminal and other deportable aliens; and obtaining the resources that are necessary to make the strategy work. Both the House and Senate bills contain many provisions that support the Administration's enforcement initiatives and are based on or similar to the Administration's legislative and budget proposals.

We look forward to working with the conference committee to craft a strong, fair, and effective immigration bill. However, H.R. 2202 raises serious concerns in specific areas that we hope the conference committee will examine thoroughly. In addition, a number of amendments to the Immigration and Nationality Act (INA) made by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104 -132, present substantial obstacles to the effective enforcement of the immigration laws. The conference committee has an opportunity to remedy some of those problems with a careful and more comprehensive approach to amending the INA. The Administration's views include, but are not limited to the following:

♦ The House-passed bill could result in the removal of many children from schools. Children denied education are more likely to engage in crime and other anti-social behavior and could fall prey to drug dealers and gangs. If H.R. 2202 were presented to the President with provisions that would jeopardize any child's right to full participation in public elementary and secondary education, including pre-school and school lunch programs, the Secretary of Education and the Attorney General would recommend

that the bill be vetoed. We urge the conference committee to adopt the Senate position.

♦ The Administration opposes providing welfare benefits to illegal immigrants and has effectively targeted its enforcement efforts at the cash and food assistance programs which are at risk for the most abuse. H.R. 2202, however, goes too far in limiting benefits to legal immigrants and therefore could jeopardize public health. The Administration strongly opposes broadening the application of deeming rules and the "public charge" provision from a well-defined set of cash assistance programs to nearly all means-tested programs including Medicaid and emergency medical services, child protective services, student financial assistance programs for postsecondary education, veterans benefits, and scores of additional programs. In addition, the Administration opposes applying the new deeming and eligibility restrictions to current program recipients as well as the disabled who are exempt under current law.

♦ We urge the conference committee to adopt the Senate provision which authorizes the hiring of 350 additional Wage and Hour investigators to enforce current Federal wage and hour laws in areas where there are high concentrations of illegal immigrants employed. We urge the conference committee to adopt the House position on increasing penalties for and enforcement of employer sanctions. Similar increases should be included for the enforcement of laws against immigration-related employment discrimination.

♦ Both the House and the Senate have made clear their intention to separate the issues of illegal and legal immigration. Consistent with that clear intent, we urge the conferees to drop Section 806 of the House bill, which deals with criteria for admission of one class of employment-based nonimmigrants (H-1B workers). Not only does the inclusion of this section in a bill on illegal immigration entangle two issues the Congress has decided to keep separate, but the provisions of Section 806 simply go in the wrong direction, eliminating essential U.S. worker protections in current law, which are already inadequate. These amendments would have the overall effect of substantially weakening protections for U.S. workers from unfair competition with foreign temporary workers rather than fixing serious flaws in the existing H-1B program.

♦ We urge the conference committee to adopt special exclusion authority that may be invoked at the discretion of the Attorney General in extraordinary migration situations and for interdictions at sea that permits the prompt removal of inadmissible aliens and includes a fair process for assessing

fear of persecution.

♦ We urge the conference committee to adopt a comprehensive change in removal procedures that consolidates exclusion and deportation processes and that retains discretionary authority--with current exceptions--to cancel removal in compelling cases of aliens who have resided in the United States for a lengthy period and whose removal would present an extreme hardship.

♦ The intentional discrimination standard in the document abuse provision of the Senate bill will severely undermine anti-discrimination enforcement. The House provision is also problematic and should be modified to require that employers may seek verification only if the employer has information that would lead a reasonable person to believe that the individual is not work authorized, and that the employer can terminate the individual only after the Immigration and Naturalization Service (INS) confirms that the individual is not work authorized.

♦ We urge the conference committee to adopt a streamlined process for judicial review that consolidates review in the courts of appeals and requires constitutional and statutory challenges to be raised in connection with the judicial review of an individual removal order.

♦ We strongly support the Senate's authorization of appropriations for the construction of appropriate physical barriers and the use of technology in high traffic areas along the southwest border. The House version does not take into account the safety of our Border Patrol agents and unnecessarily waives the Endangered Species Act.

♦ We urge the conference committee to allow the existing adjustment of status program established by section 245(i) of the INA to run its course through Fiscal Year 1997, and then to evaluate what, if any, changes are required.

♦ We strongly support the Senate's authorization to conduct pilot studies of employment and benefits eligibility verification that includes privacy and anti-discrimination safeguards although we would recommend enhancing the Attorney General's flexibility to identify which projects will be most effective within technological capabilities.

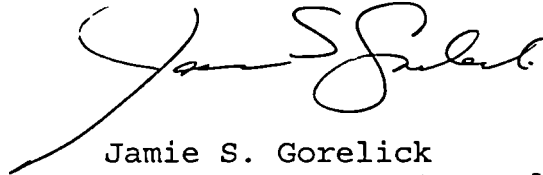
Attached is a discussion of some of the key issues. We will shortly provide you a comprehensive side-by-side comparison.

I appreciate this opportunity to provide the views of the Administration to the conference committee for the immigration

The Honorable Alan K. Simpson
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bill. The Administration is committed to working with the Congress to provide strong, fair, and effective measures for addressing illegal immigration to the United States.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jamie S. Gorelick", with a long, sweeping underline that extends to the left.

Jamie S. Gorelick
Deputy Attorney General

cc: The Honorable Orrin G. Hatch
The Honorable Strom Thurmond
The Honorable Charles E. Grassley
The Honorable Arlen Specter
The Honorable Jon L. Kyl
The Honorable Edward M. Kennedy
The Honorable Patrick J. Leahy
The Honorable Paul Simon
The Honorable Herbert H. Kohl
The Honorable Dianne Feinstein

DISCUSSION OF SOME OF THE KEY ISSUES

Denying Public Education to Undocumented Children

Denying an education to any child is costly, to the child and to our country. Undocumented alien children could grow up to become illiterate, unskilled adults if they are denied schooling. Such individuals would be unable to participate effectively in our economy, which relies increasingly on a highly skilled workforce, and would swell the ranks of the unemployed and those dependent on public assistance. In addition, as President Clinton has stated, children denied education are more likely to engage in crime and other antisocial behavior. This view is widely shared throughout the law enforcement community. Opponents of this provision include the Executive Director of the National Association of Police Organizations, Inc., the National President of the Fraternal Order of Police, the Los Angeles County Sheriff, the Superintendent of Police for the City of Chicago, and the International Secretary-Treasurer and Legislative Liaison for the International Union of Police Associations AFL-CIO. Moreover, it is fundamentally unfair to punish children--possibly for the rest of their lives--for the conduct of their parents, which they are powerless to control. Finally, requiring school districts and the INS to verify the immigration status of public school students would be extremely burdensome and would divert carefully targeted resources from other enforcement priorities including border enforcement and criminal alien removal.

Benefits

H.R. 2202's approach to immigrants' eligibility for benefits is preferable to the approach taken in H.R. 4, the welfare reform bill, which would have imposed an outright ban on benefits for most legal immigrants. However, the approach taken in H.R. 2202 is at variance with the Administration's position as stated in our welfare reform proposal, and therefore, the Administration opposes these provisions. By requiring states to apply new deeming rules to scores of programs including Medicaid, emergency medical services within Medicaid, child protection services, and student financial assistance for postsecondary education, H.R. 2202, as passed by the Senate, could jeopardize public health and safety and could create a significant unfunded mandate on local and state governments. Furthermore, the Senate bill's deeming provisions would establish an inequitable situation where legal immigrants could no longer receive benefits for which undocumented immigrants would still be eligible such as Medicaid's emergency medical services.

We urge the conference committee to clarify that non-U.S. citizens residing abroad should not be considered "ineligible aliens" for purposes of entitlement to various federal benefits,

including pensions. We also urge the conference committee to clarify that Cuban and Haitian entrants will continue to be eligible for assistance to avoid placing an undue burden on State and local governments. We oppose the House provisions to require that payments of public assistance benefits be made only "through" an individual who is not ineligible to receive such benefits on the basis of immigration status because it would likely harm children who are U.S. citizens and legal immigrants. This provision also requires the government to insert an outside third party into the family. In addition, we oppose provisions in both versions of the bill that would make a legal immigrant who received federal benefits and services for which they are eligible deportable on public charge grounds. This is particularly objectionable when the immigrant received the benefit without his or her knowledge such as subsidized child care and transportation services for the disabled and elderly. Finally, the House provision requiring that sponsors have an income equal to 200 percent of the federal poverty level would keep many U.S. families from being able to reunite with their immediate relatives.

Special Exclusion

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104-132, amended the INA to require the Attorney General to order the removal of an alien who is inadmissible for having presented fraudulent documents or because of a lack of proper documents without a hearing before an immigration judge. There is an exception for asylum applicants who can demonstrate a credible fear of persecution based on an interview with an asylum officer. Aside from a review of the officer's "credible fear" determination, there is no administrative review of such an order and judicial review is limited. These provisions would become effective on November 1, 1996. The special exclusion provisions of the House bill are virtually identical to those added by the AEDPA.

Expedited exclusion authority is critically important to our ability to deal with organized alien smuggling and fraud at our ports of entry. The Coast Guard frequently interdicts illegal aliens on the high seas and is required to keep the aliens at sea while arrangements are made for their repatriation or for a third country to accept the aliens so they may be resettled. This is neither resource efficient nor cost effective. Two interdiction cases in 1995 consumed a total of 105 cutter days and 548 aircraft hours in order to deliver the interdicted migrants to El Salvador and Mexico. Using standard rates, these cases cost in excess of \$7 million. Rapid delivery of the aliens to the United States for special exclusion would allow the Coast Guard vessels to promptly return to their primary law enforcement mission, including drug interdiction and search and rescue. Accordingly, the Administration has strongly supported expedited exclusion

provisions that have appropriate safeguards and reflect a proper concern for practical and sensible administration.

In this light, the AEDPA changes raise a major concern. The expedited exclusion procedures would operate at all times in parallel with the normal exclusion process. This is unnecessary and an inappropriate use of resources. The Administration's proposal and the Senate immigration bill, on the other hand, would authorize expedited exclusion, but would provide the Attorney General the flexibility to determine the circumstances in which it should be implemented.

We recommend that the conference committee adopt the Senate provisions at section 141 with several important modifications: First, in addition to extraordinary migration situations, the Attorney General should have the explicit authority to apply special exclusion to aliens who are interdicted at sea without the need to find that an extraordinary migration situation exists. Second, the definition of "asylum officer" should be amended to afford more flexibility in assigning appropriately trained officers to assess asylum applications. Third, the conference report should make clear that by using the term "manifestly unfounded" the committee intends to adopt the international standard, as reflected, e.g., in the resolution on "manifestly unfounded" asylum applications adopted by the immigration ministers of the European Union, and not to revive the now repealed INS regulations defining "frivolous" asylum applications. Finally, the committee should adopt provisions for judicial review of special exclusion procedures and administrative review of special exclusion orders that afford prompt consideration appropriate for and consistent with an expedited process. We would be happy to work with the committee to develop language for such review.

Normal Exclusion and Deportation Proceedings

The House bill undertakes a comprehensive re-write of the procedures for removal of aliens. It would consolidate exclusion and deportation proceedings into one removal proceeding. Aliens who enter without inspection (EWI) would be subject to exclusion, but would continue to be eligible for relief from deportation upon a showing of seven years continuous presence, good moral character, and extreme hardship. This relief was eliminated for EWIs under the AEDPA amendments that become effective November 1, 1996, a change that will likely result in thousands of private bill requests being filed with the Congress on behalf of aliens in compelling circumstances. Both the Senate and the House provisions would restore, with specific exceptions, relief from deportation for long-term permanent residents who are deportable on the basis of criminal convictions, with an exception for aggravated felons who have been sentenced to imprisonment for five years or more.

We strongly recommend adoption of the House provisions contained in sections 301¹ (except 301(c) and (f)), 303, 304, 305, 307, 308, and 309. However, an amendment must be made to strike section 241(d) (added by the AEDPA) which provides that aliens "found in" the United States without having been inspected and admitted are inadmissible. This language is problematic; will lead to litigation; and is inconsistent with the House immigration bill. In addition, there is no waiver provision for inadmissibility under the newly-created section 212(a)(9), even for immediate relatives of U.S. citizens. We strongly recommend the inclusion of a discretionary waiver of inadmissibility.

We note that an error was apparently made in compiling the bill passed by the House. The text should be amended at page 86, lines 14 and 15, by inserting "or excludable" after "is deportable." We also note an inadvertent omission in compiling the House bill. The text should be amended at page 90, line 3, by inserting 'or deportable under subparagraph (a)(4)(D) of section 241' after 'section 237(a)(4)'. The Senate amendment (sec. 142(b)) to section 242B of the INA which limits stays of final orders of deportation should be incorporated into the House bill.

Intent to Discriminate

Under current law, an employer's request for additional or specific work authorization documents constitutes an unfair immigration-related employment practice. The Senate immigration bill makes such a request an unfair immigration-related employment practice only if the request is made "for the purpose or with the intent of discriminating". This intent requirement will severely undermine anti-discrimination enforcement. Intent is hard to prove, and virtually all employers could allege that they requested additional or specific documents for the purpose of avoiding employer sanctions and not with the intent of discriminating. An intent standard will deprive a U.S. citizen, denied employment because she did not have an employer-specified document, of a legal remedy.

¹ With regard to section 301(b), we support adding the ground of exclusion for aliens who are unlawfully present in the United States, but we object to the effect that section 301(b) in the absence of a waiver provision will have on aliens who are otherwise eligible to obtain a visa or to adjust status. Accordingly, we strongly urge the committee to provide a discretionary waiver for the ground of inadmissibility added by section 301(b). We also strongly support the exception for battered spouses and children; however, we believe that a waiver for such persons would be preferable to an exception for consistency and practicality.

While the House provision is less problematic, the vagueness of the phrases "reason to believe" and "confirmation" will lead to discrimination against "foreign" looking or sounding work authorized individuals. The conference report should require the employer to possess "information that would lead a reasonable person to believe" that the individual is not an authorized worker, and the employer should be able to terminate the individual only after the INS confirms the individual is not work authorized. Only with these modifications, we urge the conference committee to adopt the House provision.

Judicial Review in Deportation and Exclusion Proceedings

Both bills would streamline judicial review by eliminating a layer of review in exclusion cases, shortening the time period to file for review, and permitting the removal of inadmissible aliens pending review in the case of exclusion proceedings. The Senate bill, however, goes too far in restricting judicial review. Under the Senate provisions there would be no judicial review of deportation orders against criminal aliens and no review of denials of discretionary relief from deportation. We support limiting judicial review in cases involving criminals, but not eliminating review altogether. We also support retaining judicial review of denials of discretionary relief, particularly in asylum cases. Accordingly, we recommend that the conference committee adopt the House provisions contained in section 306 with modifications.

We recommend adding the Administration's proposal regarding the standard of review of factual determinations. The Administration's proposal, S. 754, would provide that all findings of fact supporting an order of deportation or exclusion are conclusive unless a reasonable adjudicator would be compelled to conclude to the contrary. In addition, we recommend that the House bill be modified to include the Senate provisions eliminating the automatic stay of deportation upon the filing of a petition for review and requiring that constitutional and statutory challenges relating to removal actions be raised only in connection with review of an administratively final order of removal. We would be happy to work with the committee to craft the appropriate language to accomplish these recommendations.

Mandatory Custody

Section 414(c) of the AEDPA amended the INA to require the Attorney General to assume custody of all aggravated felons and most other criminal aliens and to maintain custody without exception until removal. This provision severely restricts the Attorney General's discretion and cannot be fully implemented without a massive increase in detention resources. Under an amendment added in 1990, the INA permitted release of a lawfully admitted alien who had been convicted of an aggravated felony, if

he or she were found not to be a threat to the community and likely to appear for hearings. Before that amendment, numerous court decisions had questioned the constitutionality of the previous "no-release" rule or held it invalid. The AEDPA essentially reinstates the earlier questionable provision and invites renewal of litigation. A number of habeas corpus petitions challenging mandatory custody already have been filed. In addition, the AEDPA amendments require the detention of aliens who have been convicted of lesser crimes and who may not have been sentenced to confinement for those crimes. We believe the Attorney General should be allowed to retain her discretion to determine who must be held in custody during the pendency of the hearing process.

The capacity to detain non-criminal aliens is a vital component of a balanced immigration enforcement strategy. We must have the authority to release less serious criminal offenders who may be eligible for relief and who pose no danger to the community in order to continue to detain aliens apprehended at worksites, those encountered in anti-smuggling operations, and recidivist illegal entrants along the Southwest border. We recommend rejecting section 164 of the Senate bill and adopting the House provisions at sections 303 and 305 which will accomplish the goal of prompt removal of criminal aliens while providing the Attorney General with the appropriate discretion regarding the use of detention facilities. In addition, the conference committee should reject the Senate bill's expansion of the definition of aggravated felony in section 161. A similar definition is in the AEDPA. By expanding the group of aliens for whom detention is strictly required, the Senate approach would effectively negate the more favorable House provision related to mandatory custody.

Verification of eligibility for employment and benefits

The Senate bill, which provides for the completion and evaluation of demonstration programs prior to the enactment by Congress of a new verification system for employment and benefit eligibility, is consistent with the Administration's proposal. We strongly support the approach to verification adopted in sections 111 through 113 with two reservations. First, section 112(a)(1)(A)(iv) limits the executive branch's discretion to choose appropriate demonstration projects by requiring the testing of three specified systems. The Administration recommends that the Attorney General retain flexibility to identify which projects will be the most instructive, taking into account technical feasibility and lessons learned from earlier pilots. Second, section 111(e) relieves an employer from liability under section 274A of the INA under certain conditions while section 111(g) limits liability under section 274A of the INA for any person who takes an action adverse to an individual in good faith reliance on information relating to that individual

gained from the new verification system or a demonstration project. The presence of two provisions which seemingly address the same issue, i.e. employer liability under the INA, is confusing, and we recommend that section 111(g) be stricken because it excuses an employer from liability even if she fails to comply with her voluntarily assumed responsibilities under the pilot. If both provisions are to be retained, their relationship should be clarified. Overall, we prefer the verification system provisions contained in the Senate bill except for section 117, intent to discriminate which is discussed above.

We also support the limits in section 116 of the Senate bill upon the number of documents which establish both employment authorization and identity and the number of documents which establish employment authorization. The House bill deletes from section 274A(b)(1)(C), "other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable." These documents are critical to the transition phase of document reduction, and we recommend that they be retained. We strongly prefer the Senate bill provisions on document reduction, but recommend that the effective date be 18 months as provided by the House bill to permit appropriate time for the promulgation of regulations.

We support adoption of section 403(d) of the House bill which specifically defines the term "entity" to include an entity in any Branch of the Federal Government. But we strongly oppose adoption of section 403(f) which mandates that not later than 180 days after the date of the enactment of this Act, the Attorney General shall issue regulations which shall provide for the electronic storage of Forms I-9. The INS currently is conducting a demonstration project involving the electronic generation, completion, and storage of the Form I-9. At present, forensic examination of Form I-9 is essential to the successful prosecution of fraud cases. It is premature at this time for Congress to mandate regulations providing for electronic storage within 180 days.

However, we support the House provision to study and conduct pilot studies to eliminate the fraudulent use of birth certificates.

Asylum

The House bill would require that all applications for asylum, both affirmative and defensive, must be filed within 180 days of arriving in the United States. There is an exception for "fundamentally changed" circumstances in the alien's country that affect eligibility for asylum. The Senate bill would require that defensive asylum claims (those filed for the first time in deportation or exclusion proceedings) must be filed within one

year of arrival. There is a "good cause" exception for having failed to file timely. The Administration is opposed to filing deadlines for asylum. We believe enforcement of the deadlines would unnecessarily divert resources from the adjudication of claims, create a new class of fraud, and have a negative effect on productivity. In our view, recent improvements in the asylum process make legislative asylum reform unnecessary. In addition, we believe that returning a refugee to a country where he or she would face a threat to life or freedom simply because the refugee failed to make a timely request for protection substantially undermines U.S. leadership in refugee protection. However, if the conference committee is intent on imposing a deadline on asylum applications, we recommend that the committee adopt the Senate version, as we believe it is essential to include an exception for good cause in order to maintain the flexibility to continue to protect bona fide refugees.

Pursuant to a presidential directive to address asylum abuse, the Department of Justice dramatically restructured the asylum process in January 1994. In addition, the Administration requested and Congress provided the resources necessary to do the job in the Violent Crime Control and Law Enforcement Act of 1994 which more than doubled the authorized number of INS asylum officers from 150 to 377 and increased the number of Immigration Judges from 116 to 179. By the end of Fiscal Year 1996, we expect to have approximately 210 immigration judges. The new asylum process allows 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 that are not part of the American Baptist Churches v. Thornburgh class action lawsuit (non-ABC) filed with the INS 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-ABC 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.

In addition to restructuring the asylum process, the INS has stepped up its fraud investigation of preparers of spurious asylum claims. Investigations have resulted in indictments of preparers in Los Angeles, San Francisco, New York, and Arlington,

VA. In addition, INS requested and received additional funding in Fiscal Year 1996 for detention of absconders, including failed asylum seekers.

Triple Fence

This Administration has built and reinforced physical barriers along the Southwest border. Over the past several years, the INS with the support of military personnel and the National Guard has built miles of strategically placed fencing along the border to control drug trafficking, alien smuggling, crime, and illegal immigration. For example, there are now 28 miles of fencing in the San Diego Sector to support the Administration's increased deployment of Border Patrol agents, resources, and sophisticated technology. Recently, we began construction of a 1.3 mile fence along the border at Sunland Park, New Mexico. We support the Senate provision because it defers to the experience of the INS to determine whether multiple fencing would be safe and effective and allows for incorporation of necessary safety features to ensure the well-being of Border Patrol agents. We also support the Senate version because it does not waive the Endangered Species Act (ESA). We oppose providing ESA waivers to government agencies because it undercuts the general applicability of the ESA and undermines the government's credibility in enforcing it. Requirements and regulations under the ESA have been and continue to be streamlined to balance the interests underlying the ESA with those of the regulated community.

Adjustment of Status

Section 245(i) of the INA permits otherwise qualified aliens who entered the United States illegally or who were employed in the United States without authorization to adjust status in the United States upon the payment of a substantial penalty fee to the Examinations Fee Account. Relatives of legalized aliens who are permitted to remain in the United States under the "family unity" provisions may adjust under this provision without payment of the fee. Section 245(i), which expires in 1997, was intended to eliminate pro forma immigrant processing overseas for qualified applicants who were residing in the United States. This provision has enabled the INS dramatically to improve its services and the State Department to reduce its overseas visa processing staff.

Section 808 of the House Bill would make 245(i) available only for family unity beneficiaries. Since family unity beneficiaries are exempt from the fee requirement, this amendment would eliminate a substantial source of funding which would be spent by applicants, instead, to travel abroad to obtain immigrant visas. Section 245(i) revenues totaled \$135,000,000 in fiscal year 1995. If Congress either repeals or fails to extend

section 245(i), the new positions created by section 245(i) revenues will be eliminated and there will be a large adverse fiscal impact on the quality and level of services given to adjudicating petitions and applications for immigration benefits. Furthermore, as a result of 245(i), the Department of State has been able to reprogram positions to high priority anti-fraud and nonimmigrant visa work. Returning this pro forma immigrant visa processing to the Department of State without sufficient resources would cause severe disruption of service to the public. If the conference committee decides not to extend 245(i) adjustment authority beyond September 30, 1997, it should amend section 245(i) to provide adjustment authority for applications filed on or before that date. As currently written, the authority will sunset with respect to any application not adjudicated before September 30, 1997. Such an amendment would enable the INS to properly investigate and adjudicate pending cases without adversely affecting other priorities, e.g., naturalization, and will prevent forum shopping among INS district offices.

The Senate bill does not amend section 245(i) directly, but limits the underlying eligibility of certain alien status violators for immigrant status. Section 317 of the Senate bill provides that no petition may be approved on behalf of an alien who at any time has been apprehended for entering without inspection or who has failed to depart the U.S. within one year of the expiration date of any nonimmigrant visa (subject to a "good cause" exception) unless the alien has been outside of the U.S. for 10 years. Such an alien is inadmissible and ineligible to adjust status. This provision also prohibits such an alien from seeking a new nonimmigrant classification during the 10-year bar. Certain exceptions are prescribed, and Family Unity beneficiaries are exempt. Similarly, sections 301(b) and (c) of the House bill affect the eligibility of aliens to adjust status. Any alien present in the U.S. without inspection or who arrives in the U.S. without inspection is inadmissible. There is no waiver of this ground. Any alien who has been unlawfully present in the U.S. for an aggregate period of at least one year is inadmissible unless the alien remains outside the U.S. for at least ten years. There are waivers for close relatives of U.S. citizens and lawful permanent residents and those whose admission is deemed to be in the national interest.

The Administration opposes the restrictions on admissibility and eligibility to adjust contained in section 317 of the Senate bill and section 301 of the House bill. These provisions will not deter illegal immigration, but will likely result in a class of aliens who would otherwise be eligible for legal status remaining undocumented and in hiding. In particular, we oppose the provision in the House bill which attaches restrictions on those present unlawfully for a period of one year or more. This provision will generate needless and costly litigation on the

issue of the time period during which the alien was unlawfully present in the United States.

International Obligations

We are concerned over whether certain provisions in H.R. 2202 are consistent with U.S. international trade obligations, and would appreciate the opportunity for a discussion of these issues so that they may be taken up in the conference.



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-_____

April 15, 1996

Honorable Robert Dole
Majority Leader
United States Senate
Washington, DC 20510

Dear Senator Dole:

As the Senate prepares to debate S. 1664, the "Immigration Control and Financial Responsibility Act of 1996," we would like to express our strong opposition to any amendment that would affirmatively authorize States either to exclude from the public schools undocumented children, or to admit such students on a tuition basis--which in many cases would be the functional equivalent of exclusion. If S. 1664 were to reach the President's desk containing such a provision, we would recommend that he veto the bill.

The plain purpose of such an amendment is to attempt to circumvent the decision of the Supreme Court in Plyler v. Doe, 457 U.S. 202 (1982), which holds that States may not, consistent with the Equal Protection Clause of the Fourteenth Amendment, withhold from undocumented children the same free public education they provide to other children residing in the State. The public schools of this country are a vitally important part of the foundation of our diverse and inclusive democracy and strong national economy. We have the following objections to requiring or authorizing States to exclude children from our public schools:

(1) Denying an education to any child is costly, to the child and to our country. Uneducated children are vastly more likely to wind up on the streets, engaging in unlawful behavior and otherwise placing burdens on their communities. President Clinton has stated that children denied education will "be on the street and then the increased risks of crime and other antisocial behavior will go up." This view is widely shared throughout the law enforcement community:

Robert T. Scully, Executive Director of the National Association of Police Organizations, Inc., recently wrote "[l]aw enforcement's position on the Gallegly amendment is based on our profession, protecting the peace of America--a job that would become much more difficult and dangerous if thousands of children are put

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on the nation's streets to grow into criminals or fall as victims. Overburdened local law enforcement agencies are ill-equipped to handle the certain resulting flood of juvenile crime and violence."

Gilbert C. Gallegos, National President of the Fraternal Order of Police, recently wrote that "[p]utting hundreds of thousands of additional children on some of the toughest streets in our country translates into a windfall of potential new victims for the predators who work those streets. The cost of education pales by comparison to the cost of public safety in the neighborhoods where these kids are forced to live."

Matt L. Rodriguez, Superintendent of Police for the City of Chicago, recently wrote "[f]orcing young people out of school and onto the streets would have disastrous long-term effects on public safety as well. Every study that has ever been done on the subject has found a close correlation between the absence of education and increased criminality. Our communities are made safer when our young people--in particular, young people from families that are already at risk--are given the opportunity to stay in school and to learn."

Arthur J. Reddy, International Secretary-Treasurer and Legislative Liaison for the International Union of Police Associations AFL-CIO, recently wrote "[h]ow can anyone advocate throwing thousands of children onto the streets without supervision where they will become both victims and criminals. Local law enforcement officers, our members, will be overwhelmed at a time we can ill afford the extra pressure."

(2) It is fundamentally unfair, and unworthy of us as a great Nation, to penalize children for the conduct of their parents, conduct those children are powerless to control. As the Supreme Court said in Plyler, "legislation directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice," and "it is...difficult to conceive of a rational justification for penalizing these children for their presence within the United States." Plyler, at 220. It should be remembered, as well, that the punishment of undocumented children that the amendment would authorize would, in many families, be visited arbitrarily among siblings, because under the Fourteenth Amendment all children who are born in the United States are United States citizens.

(3) Not only is it wrong to penalize children for their parents' unlawful entry by denying them a basic education, it is

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ineffective. Education services are not the incentive to illegal immigration that job opportunities are, and, in any event, many of the children who would be affected by the amendment are here now, and are likely to remain here. Moreover, even assuming that exclusion from the public schools would have a deterrent effect on illegal immigration, that effect would be undermined by the "crazy quilt" pattern of implementation that would result from State choice in the matter. Indeed, if a deterrent effect is assumed, such an amendment would presumably channel illegal immigration to those States that decline the invitation to turn their backs on our national traditions.

(4) Schools--which is where, inevitably, such an amendment would be implemented--are ill-suited by their nature to make determinations about the immigration status of their students. Imagine the burden and cost of training teachers and school administrators about the procedures of the Immigration and Naturalization Service (INS) and related documentary requirements; imagine further the burden and cost to parents (presumably, all parents in order to avoid charges of discriminatory implementation by school systems) of implementing such requirements. Certainly, implementation efforts by schools are likely to ensnare them in costly litigation. The INS Commissioner has also written to Congress describing the burden associated with this type of amendment, including its likely effect of diverting INS resources away from more pressing priorities.

(5) Forcing schools to act as extension agents of our immigration authorities would likely intimidate and estrange not only the students who are subject to exclusion and their families, but also students and families--of a variety of ethnicities--who are not subject to exclusion, but who are either uncertain of their rights or fear, rightly or wrongly, stigmatization. We need to do all we can to increase family involvement in education and reduce the drop-out rate, not undercut those efforts through divisive policies such as this.

The fundamental issue raised by such an amendment is not whether the United States needs to do a better job of protecting the integrity of its borders. Every responsible person agrees on this imperative, and this Administration is taking strong steps to fulfill this need. The fundamental issue is whether we should harm the undocumented children who live here--and ourselves and our values--for the transgressions of their parents. In this connection, we would remind you that less than two years ago, the Congress declared it to be the policy of the United States "that a high-quality education for all individuals and a fair and equitable opportunity to obtain that education are a societal good, are a moral imperative, and improve the life of every

Page 4

individual, because the quality of our individual lives ultimately depends on the quality of the lives of others." Section 1001(a)(1) of the Elementary and Secondary Education Act of 1965. This policy reflects both the practical wisdom of our national experience and "the better angels of our nature" that President Lincoln invoked.

Some will argue, no doubt, that if excluding undocumented children from the public schools is such a bad idea, there is little harm in authorizing the States to do so, because few States would do it. We strongly disagree with this reasoning. By this logic, the more unwise the proposal, the more willing we should be to authorize the States to implement it. The issues here are plainly not about federalism or the wisdom of the States; the issues here are about our historical belief in the power of our public schools to promote opportunity, understanding, cooperation, and economic progress for us all.

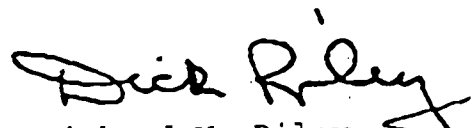
Others will argue that the obligation of the States under the Equal Protection Clause to avoid discrimination against these children should be seen as an unfunded mandate. The short answer to this rhetorical device is that under the terms of the recently enacted Unfunded Mandates Reform Act of 1995, P.L. 104-4, the Constitutional obligations of the States plainly are not unfunded mandates. Nor do we believe that the States' basic obligations under the Constitution--such as the right of all accused persons to a jury trial--should ever be considered as such.

Any amendment that would have the effect of denying or restricting public education benefits to undocumented children would have grave implications for public safety. It would not only harm innocent children, it would continue to harm them for the remainder of their lives. It would not deter illegal immigration. It would have our public schools screening children for their immigration status, an expensive and burdensome task for which they are not suited or prepared. For all these reasons, we urge you to oppose any such amendment.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program and that enactment of S. 1664 with a provision that would deny or limit public elementary or secondary education benefits to undocumented children would not be in accord with the program of the President.

Sincerely,


Janet Reno
Attorney General


Richard W. Riley
Secretary of Education

UNITED STATES
DEPARTMENT OF EDUCATION

NEWS

FOR IMMEDIATE RELEASE
June 10, 1996

Contact: Rick Miller
(202) 401-3026

**STATEMENT BY U.S. SECRETARY OF EDUCATION RICHARD W. RILEY
regarding the Gallegly amendment to the immigration bill**

As House and Senate conferees work to craft a bipartisan immigration bill, I urge them to follow the Senate's lead and leave out the destructive "Gallegly Amendment" contained in the House version of the legislation.

I oppose this provision because it is fundamentally wrong to punish innocent children for the mistakes of their parents by depriving them of an education and an opportunity to become self-sufficient. It is also shortsighted: we don't help solve the illegal immigration problem by creating a new class of illiterate children in America, pushing them out of the schoolhouse and into the streets.

This provision would attempt to circumvent the Supreme Court's 1982 decision in Plyler v. Doe and authorize States to exclude undocumented children from public elementary and secondary schools.

Children prohibited from attending school are much more likely to wind up victimized by gangs, engaging in unlawful activity or otherwise burdening their communities. As the National President of the Fraternal Order of Police recently wrote, "[p]utting hundreds of thousands of additional children on some of the toughest streets in our country translates into a windfall of potential new victims for the predators who work the streets." This concern is so great that the Attorney General and I recently wrote leading senators pledging that we would recommend a presidential veto if the bill contains this "poison pill" amendment.

Any policy that requires schools to exclude undocumented children would also force teachers and principals to serve as immigration officials -- a burdensome task for which they are not suited or prepared. Excluding undocumented children from public schools would also create a climate of mistrust and division. Parents could be forced to prove that their children are not undocumented, potentially burdening *all* families and estranging those legal immigrant and citizen students and families who may be uncertain of their rights or fear stigmatization. And in some families, children born in the U.S. -- *citizens* -- might be eligible to attend school while their undocumented siblings could not.

Excluding undocumented children would penalize children, harm communities, burden teachers and principals, and frustrate attempts to increase family involvement in education without reducing illegal immigration. For all of these reasons, I strongly urge the Conferees to drop the Gallegly Amendment.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

March 20, 1996

The Honorable Orrin Hatch
Chairman
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the Administration, I would like to express our strong support for three of the amendments that may be offered during the Senate Judiciary Committee mark-up of Title II of S. 1394, the Immigration Reform Act of 1995.

We understand that an amendment will be offered to limit the application of deeming rules to programs that currently "deem" an immigrant's income to include the income of his or her sponsor (AFDC, Food Stamps, and SSI). The Administration supports this amendment. As currently drafted, S. 1394 would broaden the application of deeming rules to all means-tested programs. This would include Medicaid, the Maternal and Child Health Services programs, the School Lunch program, student financial assistance programs for postsecondary education and scores of other Federal programs. The Administration opposes deeming under the Medicaid program. Broadening the scope of deeming could endanger the public health and safety by precluding immigrants in need of health care from receiving assistance. In addition, this provision would significantly complicate the administration of programs that do not currently deem, especially those programs run by local charities and non-profit organizations.

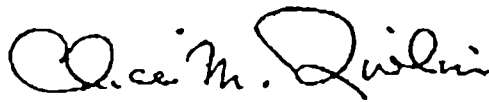
The Administration also supports an amendment that would limit the application period of deeming rules until the sponsored immigrant becomes a naturalized U.S. citizen. Under S. 1394, future immigrants would be subject to deeming -- even after attaining citizenship -- until they have worked 40 qualifying quarters. Thus, a sponsored immigrant would be subject to deeming for a minimum of 10 years, or potentially 5 to 7 years after becoming a U.S. citizen. A sponsored immigrant who did not fulfill the 40 quarters requirement would be subject to deeming forever. Deeming beyond citizenship would treat naturalized citizens differently from natural born citizens, creating two classes of citizens. It would be a mistake to relegate naturalized U.S. citizens -- who have demonstrated their commitment to our country by undergoing the naturalization process -- to a kind of second class citizenship status. Furthermore, the Department of Justice has serious concerns about the constitutionality of this provision as applied to naturalized citizens.

In addition, the Administration supports an amendment that would make the binding affidavit of support legally binding only until the sponsored immigrant becomes a naturalized U.S. citizen. Under the proposed legislation, the affidavit of support would be legally binding for a

period of 40 qualifying quarters. This section would hold a sponsor legally liable to support a sponsored immigrant, even after the immigrant has become a U.S. citizen. While the Administration supports making the current affidavit of support legally binding, we oppose an affidavit of support which would be binding after the immigrant has naturalized. We have been advised by the Department of Justice that there may be constitutional concerns related to this section as well.

We strongly urge you and other members of the Committee to support these amendments.

Sincerely,



Alice M. Rivlin
Director

Identical letters sent to The Honorable Joseph Biden, The Honorable Thomas Daschle,
and The Honorable Robert Dole.



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

June 4, 1996

Honorable Edward M. Kennedy
Committee on Labor and Human Resources
United States Senate
Washington, DC 20510

Dear Senator Kennedy:

I am writing in response to your request for the views of the Department of Education as you prepare to go to conference on the House and Senate versions of H.R. 2202, the "Immigration Control and Financial Responsibility Act of 1996" regarding their respective "deeming" provisions (and the related "public charge" provisions). As you know, the Administration has many other concerns with H.R. 2202 as expressed in the recent letter by the Department of Justice; in this letter, I will address only how certain of the provisions would affect postsecondary students receiving aid under the student financial assistance programs authorized by the Higher Education Act of 1965 (HEA).

The Administration strongly opposes language that would apply deeming and public charge rules beyond a discrete list of cash and food assistance programs. These provisions, as well as the cosignature requirements in the House bill, would prevent or seriously impede a large number of legal immigrants from improving their skills and becoming more productive through participating in postsecondary student financial assistance programs. Indeed, the public charge provision in the Senate bill would make legal immigrants subject to deportation for merely receiving a grant or loan to attend college. Furthermore, these provisions are complex and vague and would be very burdensome for the Federal Government or institutions of higher education to implement. As a result, they would cause serious disruptions in the student financial aid process for all students, not just legal immigrant students.

Deeming

Under section 204 of the Senate version of H.R. 2202, when determining an alien's eligibility for, and amount of benefits under, any Federal program of assistance for which eligibility is based on need, the income and resources of the alien would be deemed to include the income and resources of the alien's sponsor (and sponsor's spouse). This provision includes an exception for student assistance under titles IV, V, IX, and X of the HEA for aliens who have received, or been approved to receive, such aid in an academic year that begins or ends in the year of enactment. This exception would apply only for the period normally required

Page 2 - Honorable Edward M. Kennedy

to complete the course of study for which the alien receives the aid.

Under section 631 of the House version, there is a similar deeming requirement, but a broader list of exceptions. The exceptions to deeming that relate to education include School Lunch and Child Nutrition programs, the Head Start program, student assistance under titles IV, V, IX, and X of the HEA, and benefits under any means-tested programs under the Elementary and Secondary Education Act of 1965. These exceptions would be permanent, not just "grandfather" in certain current recipients, as under the Senate version.

The Administration's approach to deeming, which would extend the deeming period only for those programs which currently deem (SSI, AFDC, and Food Stamps), is vastly preferable to the House and Senate bills. However, in the context of the two bills, I strongly prefer the House version of the deeming rules with respect to education programs, although the House version needs to be more explicit that if State and local governments choose to apply deeming rules to State and local programs, they must also apply exceptions that are equivalent to the Federal exceptions.

The Senate deeming requirement would render most sponsored aliens totally ineligible for need-based student aid, such as Pell Grants, although few sponsors would actually provide the contribution expected of them under the student aid need analysis formula. In theory, to make up the difference, the student or his parents could borrow PLUS and unsubsidized Stafford loans. In reality, however, the prospect of taking on significantly greater student loan debt would represent an insurmountable barrier for many legal immigrant families. The net result is that the Senate deeming requirement would sharply limit access to postsecondary education. (The House cosigner requirement, discussed below, would further exacerbate this access problem.)

In addition to the harmful impact on legal immigrants, wishing to improve their skills, implementation of the Senate deeming requirement would place a staggering burden, not only on the Department, but on participating institutions of higher education and all student aid applicants.

To illustrate this burden, consider the Senate deeming provision which would view all of the income and "resources" of the sponsor to be included in the student's income and resources. (This provision would not apply to current student aid recipients, who would be "grandfathered.") This raises several problems. Under current law, the contribution expected from a student (whether considered dependent or independent of his or her parents) is a proportionally greater share of discretionary income and assets than the share a parent would be expected to contribute. Under the Senate provision, therefore, a sponsor apparently would be

Page 3 - Honorable Edward M. Kennedy

expected to contribute even more of his or her income and "resources" (an undefined term) to pay for the postsecondary education of the sponsored alien student than for the sponsor's own child.

By extending the responsibility for college financing beyond the parent and student to the sponsor, deeming would result in a new category of student for financial aid purposes--an independent student who is required to provide financial information from someone other than a spouse. Dependent legal immigrant students would be required to provide financial information from both their parents and their sponsors (if they are different). Adding a new set of data about an additional person (who is not necessarily a relative of the student) complicates the aid application process immensely. The Department would have to develop procedures for determining whether an eligible non-citizen was required to have a sponsor and whether he or she did indeed have a sponsor, as well as collect the necessary data from the sponsor--all of which would have to be verified. These procedures would have to be added to the current student aid application and delivery system, and institutions would likely be faced with significantly increased complexity and burden. In addition, all students, not just legal immigrants, would likely face extra steps in the aid application process.

If the Department were to collect and process centrally the additional data elements that must be added to the calculation of need for student assistance, it would require extensive modifications to the delivery systems. Changes would also be needed to EDEXpress (the school-based management software provided by ED) and FAFSA Express (the software individuals can use to apply for aid electronically). If the Senate provisions were to be effective for the 1997-98 award year, serious delays (that would affect all students, not just legal immigrants) could be expected in FAFSA (the aid application form used by all students seeking Federal aid) clearance, forms distribution, and processing system start-up. A very rough, preliminary estimate of the cost of these changes is well over \$10 million for the first year alone, with only slightly lower costs in subsequent years.

Alternatively, if the Department were not to address these issues using our centralized systems, the full burden of carrying out this provision would be borne by institutions of higher education. If institutions were made responsible for implementing the Senate deeming provision (which would be necessary if the provision were effective any sooner than the 1997-1998 academic year, and perhaps even in that year), they would have to develop and process their own forms, including editing, returning for correction, verifying, and re-processing corrected forms, informing students and the Department of the results, and handling appeals. Institutions would not be able to

Page 4 - Honorable Edward M. Kennedy

do this without significant guidance and training by the Department due to the complexities of the need analysis formulas and the numerous questions raised by the Senate deeming requirement. Institutions would also have to develop or purchase software and enhance their computer capabilities, and would be at risk of incurring significant legal and financial liabilities if they improperly processed eligible non-citizens' applications and awarded Federal aid to ineligible students. Even under a centralized system, institutions would shoulder a very large part of the information collection and verification burden, and would need to assist students, their parents, and their sponsors with this confusing new twist on an already complex process.

This is but a summary description of the numerous thorny issues that would have to be resolved before deeming provisions, the Senate's version in particular, could be implemented--and which would make the effective date for such provisions, and the terms of any "grandfathering" exception, critical.

The Senate deeming requirements would be effective upon enactment, which would create additional problems for the student aid programs. Such an effective date would be incalculably disruptive to the centralized Federal student aid application and delivery systems for the 1996-97 award year because processing for 1996-97 has been going on since January. It appears that the language "grandfathering" aliens who have received, or been approved to receive, student aid in an academic year that begins or ends in the year of enactment would probably not require deeming for 1996-97, but that language contains numerous unanswered questions that are likely to create further complexities and disruptions to the application for and delivery of student aid.

Even if the Senate deeming requirement were first effective for the 1997-98 award year, it still would cause major disruptions and delays to the application process, since systems and forms development for 1997-98 are well underway, with distribution of the form set for this fall. Another impediment to implementation is the statutory "Master Calendar" (20 U.S.C. 1089), which governs the deadlines for each phase of the development and processing of student aid forms, and which requires a delay of the effective date of any regulations not published in final form by December 1 to the second award year after that date.

"Public charge"

Under section 202 of the Senate version, an alien would be considered a public charge, and thus deportable, if he or she received any of a wide variety of benefits for at least 12 months within 5 years of the date of his or her entry into the United States. There is an exception to this provision (among others) for student financial assistance under titles IV, V, IX, or X of the Higher Education Act of 1965 (HEA) that is received, or

Page 5 - Honorable Edward M. Kennedy

approved for receipt, by an alien in an academic year which ends or begins in the calendar year of enactment "until the matriculation of their education." Under section 622 of the House version, an alien would be considered a public charge only if he or she received benefits under certain non-education programs (SSI, AFDC, Medicaid, Food Stamps, State general cash assistance, and housing assistance) for at least 12 months within 7 years of his or her date of entry into the U.S.

In general, the Administration prefers the House provisions with some modifications. The House provision is significantly preferable with respect to the treatment of postsecondary education, because it does not include any education-related programs among those that may result in an alien being considered a public charge. It makes no sense to consider a legal immigrant a burden on society and deportable merely for trying to go to college; our Nation should encourage, not discourage, its legal residents who seek to improve their skills and productivity. The exception in the Senate version is insufficient, because all student aid recipients should be exempted (as well as beneficiaries of any elementary, secondary, preschool, or school nutrition programs that may be based on need). In any event, the use of the term "matriculation" to describe the end of the period during which the student may receive assistance is incorrect.

Cosignature of student loans

The final student aid-related provision in the House version of H.R. 2202 that I must bring to your attention is section 633, which would require an otherwise eligible, lawfully admitted, sponsored alien to have his or her sponsor, or another credit-worthy U.S. citizen or national, cosign any student loans under title IV of the HEA. I oppose this provision, both as a matter of policy and because the administrative burden that would be associated with such a requirement would outweigh any imagined benefit from it. Requiring cosignature in this situation would clearly restrict access to postsecondary education, because the need to obtain a cosigner is likely to prove an insurmountable obstacle in many instances. Just as it is unrealistic to assume that most sponsors will actually pay a share of the student's postsecondary costs under the Senate deeming requirement, most sponsors will also be unwilling to cosign student loans. Finding another creditworthy U.S. citizen or national to cosign the loan will also prove very difficult, and the burden on lenders will be increased by the requirement that the cosigner's creditworthiness be established. The cosignature requirement is also unrelated to the creditworthiness of the individual legal immigrant seeking the loan; there are no data to indicate that student loans borrowed by legal immigrants are at a greater-than-usual risk of default.

Page 6 - Honorable Edward M. Kennedy

Conclusion

I appreciate your efforts to safeguard educational opportunity under this complex and important immigration bill. Please let me or my staff know if the Department can provide you with any further information or assistance.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Yours sincerely,


Richard W. Riley



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY

WASHINGTON, D.C. 20410-0001

JUN - 4 1996

Honorable Alan K. Simpson
Chairman, Subcommittee on Immigration
Committee on the Judiciary
United States Senate
Washington, D.C. 20510-5002

Dear Mr. Chairman:

I would like to express to you, as a Conferee of the House and Senate immigration bills, H.R. 2202, the Administration's opposition to many of the provisions which would affect eligibility of immigrants for benefits. The Justice Department's letter of May 31, 1996, has detailed the Administration's concerns on this matter. I would like to provide you with some additional information on how these provisions would affect HUD's housing assistance programs. The bills would amend HUD's current statutory authority regarding the provision of housing assistance to noncitizens in a way that would seriously hinder HUD's ability to fully carry out that authority.

Currently under section 214 of the Housing and Community Development Act of 1980, and regulations recently issued to implement that section, HUD has a consistent, coherent, and responsible mechanism for ensuring that housing assistance benefits are provided only to citizens, or to noncitizens who are otherwise in compliance with this Nation's immigration laws. The House and Senate immigration bills would substantially disrupt that mechanism, and create confusion and uncertainty for millions of low-income families eligible for housing assistance, State and local governments, over 3,400 public housing agencies (PHAs), and thousands of multifamily project owners. It could also jeopardize progress made between HUD and INS to fully implement section 214.

By extending the scope of benefit restrictions to virtually every Federal assistance program, both bills would create substantial administrative problems for State and local governments. For example, State and local governments that administer HUD's Federal Housing Administration mortgage insurance programs and Community Development Block Grant programs would have the administrative burden of identifying noncitizens who may indirectly benefit from these non-direct assistance programs. Similarly, provisions in the bills extending "deeming" requirements to all Federal assistance programs (section 631 of the House bill, section 204 of the Senate bill), would also be administratively difficult to implement, and pay as you go savings would not be achieved by this change.

Amendments made by the House and Senate bills directly to section 214 also raise serious concerns (sections 611-614 of House bill, sections 221-227 of Senate bill).

Provisions of the House and Senate bills, for example, (sections 612(6) and 226, respectively), make uncertain whether HUD can provide prorated housing assistance to a "mixed family" -- those families with members that have been determined to be eligible and ineligible for assistance. The effect of these provisions would be to force the division of families in order to receive housing assistance. HUD's rule implementing section 214 has a carefully crafted proration approach that ensures that the amount of housing assistance provided to a mixed family reflects only the number of members of the family eligible for assistance. The bills would limit HUD's ability to fully implement and assess the approach provided in its rule.

The bills would also reduce the time period for the deferral of termination of assistance to one three month period (with the House bill applying this change retroactively to families) -- thereby creating a hardship for families due to the short period of time that they would have to find alternative housing when their assistance is terminated (section 611(3) of the House bill, section 223(3) of the Senate bill). Under current law, deferrals of terminations may be provided to families for 6 months, and may be renewed for an aggregate period of up to 3 years. While the Senate bill would allow an additional month beyond the proposed 3 month period if a hearing is requested, we strongly believe that a deferral of termination period of 6 months should be permitted, with the period renewable for up to 18 months -- and any change should have prospective application. The limited period provided by the House and Senate bills would not allow for an orderly transition for families who could be forced into homelessness due to tight rental housing markets.

The House bill eliminates the section 214 fair hearing process, and both bills eliminate the section 214 fair hearing procedures (section 612(6) of the House bill, section 224(6) of the Senate bill). The fair hearing process and the procedures provide individuals a final opportunity to demonstrate that they are not ineligible for assistance based on immigration status. These changes raise the potential for increased and costly litigation faced by the government and PHAs by families who believe that their assistance has been wrongly terminated. The fair hearing process and procedures should be maintained.

We also specifically oppose provisions of the bills that would: (1) limit to 30 days, without any exception for good cause, the amount of time an individual has to demonstrate

satisfactory immigration status (section 612(4) of the House bill, section 224(4) of Senate bill); (2) require verification by citizens (section 612(2) of House bill, section 224(2) of the Senate bill (the Senate bill makes this permissive on the part of HUD or a PHA)); and (3) make ineffective HUD's noncitizen rule if regulations implementing the changes made by the bills were not issued within 60 days of enactment (section 614 of the House bill, section 227 of the Senate bill).

In 1995 HUD issued its final rule implementing section 214. Before making changes in program coverage or procedures, this rule should be given a full opportunity to work, and its effectiveness fully reviewed and assessed. The House and Senate bills would undermine this process.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program. I am sending a similar letter to all other conferees of H.R. 2202.

I look forward to working with you on this important legislation.

Sincerely,


Henry G. Cisneros

cc: Honorable Orrin G. Hatch
Honorable Strom Thurmond
Honorable Charles E. Grassley
Honorable Arlen Specter
Honorable Jon L. Kyl
Honorable Edward M. Kennedy
Honorable Patrick J. Leahy
Honorable Paul Simon
Honorable Herbert H. Kohl
Honorable Dianne Feinstein

TITLE: Former President Bush Urges Restraint in Immigration Debate
EST. PAGES: 1
DATE: 06/04/96
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SOURCE: The Associated Press Political Service; APOL
CATEGORY: State And Regional
ORIGIN: RENO, Nev.
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RENO, Nev. (AP) - Former President George Bush criticized the anti-immigration fervor and called for a gentler approach to illegal immigration.

Speaking on Monday at the National Association of Mortgage Brokers convention, Bush criticized "some" House Democrat leaders, "big labor," Ross Perot and Republican Pat Buchanan for creating an atmosphere that could make immigration a key issue in this year's presidential race.

"I believe they are wrong when they selfishly play on people's fears about the future or selfishly exploit the immigration issue," Bush said.

"We have to control our borders. We have to do a better job to insure our laws are being followed. But you don't have to do it with a bitterness that takes a little 7-year-old kid out of school ... and shoves him back across a bridge dividing our country."

The former Republican president also said the United States cannot forget its role in global affairs.

"This idea that the mission is over and we have done our part is too selfish for the generous spirit of America," he said.

Bush did not comment on the current presidential race, but offered some advice to political observers.

"Don't believe early polls. You are looking at a living, walking expert on early polls," Bush said to a burst of laughter from the audience.

"This time in early June, I was 12 to 15 points ahead of the now president of the United States. I put that under the heading of bad news.

"But the good news is that this time in 1988, I was 20 points behind Michael Dukakis."

Reasonable Immigration Reform ^{NYT} 5-29-96

The House and Senate have come a long way in refining their immigration bills. But more work is needed. President Clinton rightly threatens to veto legislation unless it sticks to the worthy goal of barring illegal immigrants at borders, airports and workplaces and discouraging the abusive use of welfare programs by legal immigrants.

The two bills, which are now being reconciled, initially imposed unwarranted restrictions on legal immigration. Commendably, these limitations were eliminated. The Senate also dropped provisions denying due process to asylum seekers, although it retained infringements on the right to appeal discretionary rulings by immigration officials.

The bills remain badly flawed. The House would let states, contrary to a Supreme Court ruling, deny public education to the children of illegal immigrants. Both bills would unwisely penalize legal immigrants for taking part in the kind of Government-subsidized education and training programs most likely to make them productive citizens, including English and vocational courses.

Under the Senate bill, participation in these programs for a total of 12 months during a legal immigrant's first five years in America would make the immigrant subject to deportation. The

House bill would penalize participation during an immigrant's first seven years.

The Senate bill would also make many legal immigrants ineligible for Medicaid coverage and programs for treating communicable diseases for 10 years or more after arrival. They would be excluded when the total of their income and the income of their sponsors exceeded eligibility requirements. The House would bar participation for seven years and allow some exceptions for public health and higher education.

Under current law, a sponsor's income is only counted in determining eligibility for welfare, food stamps and Supplemental Security Income. Curtailing immigrant access to emergency medical programs could threaten public health.

The American people want to make sure that immigrants come here seeking opportunity, not welfare. They also want the Federal Government to do a better job of excluding those who try to enter the country illegally. If Congress can agree on a fair approach to benefits for legal immigrants, public education for all immigrant children and due process safeguards in the handling of immigration claims, it can enact a useful bill that President Clinton can comfortably sign.

/ School Doors Should Not Be Closed to Immigrant Kids

Lott would get off to a good start by blocking the ban

Forty-seven senators—42 Democrats and five Republicans—sent a sensible letter Monday to then-Majority Leader Bob Dole urging him to remove the ban on public schooling for immigrant children from a House immigration bill in conference committee. But Dole retired from the Senate Tuesday without taking action on the request. A copy of the letter has gone to Trent Lott of Mississippi, Dole's anticipated successor as majority leader, and he should heed its advice. School-age kids should be in classrooms, whatever their immigration status. Here is an opportunity for the Senate's incoming GOP leader to do the right thing. Dump this provision. It is an overreaction to the extremely complex problem of immigration law.

If the provision stays, Lott may face a filibuster on the Senate floor by the 47 signers of the letter. And that could hold up or even defeat the entire immigration bill, including those aspects that control illegal immigration.

These children are not likely to go back to their countries of origin, even if their parents do, studies have shown. They will remain here, and without an opportunity for education it's unlikely they would turn out to be fully productive members of American society. Barred from classrooms, they would face the prospect of life on the streets, with all that means in

terms of lost hope and opportunity and, too often, of crime.

Further, there is the cruel weight such a provision in federal law might place on teachers. Many, perhaps most, children of illegal immigrants are born in the United States and thereby constitutionally have citizenship—and the right to a public education. The House bill would deny this right to children born abroad and illegally brought to this country. So who would have the task of trying to sort out which is which? Possibly the schools and the teachers.

Wouldn't it be better to educate all children? Wouldn't it benefit this country to train the labor force of the future in values, language and skills? The argument here does not touch on the far wider questions of immigration reform and the right of Congress to make laws to regulate entry to the United States. This is an issue of common sense. The right course is education.

Some of this is politics, of course. There are GOP strategists who would bar immigrant children from schools in order to force President Clinton's veto during a presidential campaign in which immigration is a hot-button issue.

Let Bob Dole, as a man whose reputation was made as a conciliator, send to his Senate successor a signal that there is too much at stake to spear immigration reform with an ill-conceived provision.

The San Diego Union-Tribune.

A Copley Newspaper

W. JEFF GATEWOOD
Founder, Oct. 10, 1868

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"The Ring of Truth"

Unalloyed politics

Election maneuvers threaten immigration bill

The destructive consequences of illegal immigration are felt more acutely here than in any other region of the country. That's why San Diego has so much at stake in the immigration reform measure pending in Congress.

And that's why we are urging Sen. Bob Dole to reject a plan hatched by some GOP lawmakers to sacrifice the immigration bill in order to hamper President Clinton's chances of winning California in November.

The plan, reportedly favored by some House Republicans and Gov. Pete Wilson, is to present Clinton with legislation; he will be forced to veto. Needless to say, a veto of the immigration bill would be extremely unpopular with California voters.

This scenario indeed might make it harder for Clinton to defeat Dole in California, whose 54 electoral votes are fully one-fifth of the total needed to win the White House. But it also would deliberately forfeit a critically important measure that, among other things, would double the size of the Border Patrol, crack down on alien smuggling, counter document fraud and make it easier for employers to verify whether prospective workers are legal.

The "poison pill" that Dole is being urged to embrace is a provision in the House-passed version that would encourage states to expel the children of illegal immigrants from public schools. The White House has suggested the president will veto the final bill if it includes that amendment, authored by Rep. Elton Gallegly, R-Simi Valley.



Elton Gallegly

This week, a conference committee is to begin working out the differences between the House and Senate versions. Unlike the House bill, the Senate measure does not target schoolchildren, and Dole himself voted with a majority of Senate Republicans to kill a similar amendment in 1982.

But the Senate conferees are expected to take their cue from Dole on whether to go along with the Gallegly amendment. Further clouding the bill's prospects is a threatened filibuster by Senate Democrats. Their aim is to kill the Gallegly amendment before it reaches Clinton's desk, sparing him the need for an unpopular veto.

In essence, the Gallegly amendment seeks to extend to the entire nation the most punitive features of voter-approved Proposition 187, which would deny elementary and secondary schooling to illegal alien children. Gallegly's objective is to overturn a 1982 Supreme Court ruling which held that kicking immigrant students out of the classroom violates the equal-protection clause of the Fourteenth Amendment. That ruling is the main reason the courts have blocked implementation of Proposition 187 in California.

Beyond the constitutional concerns, however, is the fundamental question of whether it is sensible social policy to create an underclass of uneducated immigrants who are unable to speak English or even read and write. The specter of hundreds of thousands of immigrant youths roaming city streets instead of attending classes has prompted police chiefs throughout the nation to urge defeat of the Gallegly amendment.

Immigration reform is too important to be turned into a political football. Sen. Dole has an opportunity to display real leadership by directing Senate Republicans to oppose the ill-conceived Gallegly amendment.

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CHICAGO
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6/7/96

SL 1, PG. 23

Border press

Rep. Hyde should use his clout to squash proposed reforms which harm children of illegal immigrants

I don't want to say that Rep. Henry Hyde is a pushover, but there are times when he is just a bit of a soft touch.

There are plenty of people, particularly abortion supporters, who would gag at such a description of the Illinois Republican. But it's true. I like that he's a soft touch, particularly when it comes to kids. If the House Republicans had a few more people willing to be a soft touch now and then, Newt Gingrich and his cohorts wouldn't be bottom-feeding in the opinion polls.

Hyde fervently believes that abortion should be prohibited. He also believes that society therefore has some obligation to kids, including kids who are born because their mothers made a decision not to have an abortion.

That's why he broke Republican ranks to support the Family and Medical Leave Act, which requires employers to give parents time off to take care of the kids.

I think children entered into Hyde's thinking when he took a courageous stand in favor of the federal ban on semi-automatic assault weapons. His vocal support was the key to getting it out of the Judiciary Committee and through the House. When Hyde speaks, many Republicans listen.

Hyde has another opportunity coming up to show that he has a heart for kids.

The House will soon appoint members to a conference committee that will work out an agreement with the Senate on immigration reform. Hyde will be one of the most influential members of that conference committee.

The House and Senate versions of immigration reform do a lot of good things, and some bad things. They would reduce illegal immigration at the border, and make the sponsors of legal immigrants live up to their obligations, and that's just fine.

But there's one piece of the House bill that is just malicious. It would allow the states to target children who are here illegally and banish them from school.

This was sponsored by Rep. Elton Gallegly (R-Calif.) whose only claim to fame before this was that he beat one of Bob Hope's kids to get to Congress. Gallegly sermonizes that people who break our laws should not be rewarded with such benefits as a free education.

That assumes some 7-year-old is a lawbreaker. If you're in 2nd grade, it's unlikely that you made the decision yourself to hop on the back of a truck and sneak into Texas or California. No, you were told to go along for the ride.

It's also unlikely that your parents are religiously reading the Congressional Record to keep up with the prospects of the Gallegly amendment so if it becomes law they can pack their bags and head home.

R. Bruce Dold



that the children of illegal immigrants will not get a formal education. Some of them will get an informal education in how to get by when you don't have a diploma, courtesy of instructors such as the Gangster Disciples, who won't feel obligated to abide by the Gallegly amendment. This will make Elton Gallegly feel good, at least until the day he gets his wallet lifted by some 15-year-old who has no school and no job but a lot of time on his hands. For some reason the House Republican leadership really wanted this, and it passed in March with only 20

Republicans opposing it. Hyde voted for it. It's interesting that Republican Rep. Jerry Weller of Illinois, who has generally been one of the freshman hardliners, voted against it. "I'm a strong proponent of illegal immigration reform. But I do not believe the children of illegal immigrants, who are totally innocent, should be denied school," Weller told me. "Why do we want a subpopulation of uneducated children in the country which could potentially be a greater burden on society?"

He's got it exactly right. If the government wants to secure its border, fine. If it wants to find and deport those who are here illegally, fine. But if it's going to kick kids out of school and consider the job done, well, that's cruel and stupid.

The key now is Hyde, who will carry a lot of clout in the conference committee and has

enough compassion and political sense to go in there and bury the Gallegly amendment. It wouldn't be a stretch. The Senate bill didn't include it. The House can nobly concede the point.

If it survives, the Republican leadership will be inviting a veto from President Clinton, who can live with just about anything else in the immigration bills but has objected strongly to the school ban.

That may be what the GOP chiefs want, a Clinton veto, so they can parade it up and down California in November. But they might remember how clever they thought they were in the budget debate. Yet Clinton came out looking noble and the Republicans looked like kid-devouring trolls.

My guess is the average voter doesn't look at a 7-year-old and wonder whether he's legal or illegal. He's a kid.

So here's an appeal to Henry Hyde, who's a soft touch some of the time, but a smart politician



Los Angeles Times

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Giuliani Urges Illegal Immigrants Receive Schooling

By MARC LACEY
TIMES STAFF WRITER

WASHINGTON—Highlighting deep fissures within Republican ranks on immigration policy, New York City Mayor Rudolph W. Giuliani urged Congress on Thursday not to approve legislation to remove illegal immigrant children from public schools and suggested that California Gov. Pete Wilson and other backers of the measure are motivated by fear.

The Republican mayor said during a Washington visit that the proposal would devastate America's cities by forcing thousands of school-age children into the streets.

Giuliani urged Sen. Bob Dole of Kansas, the presumptive Republican presidential nominee, not to heed his campaign advisors—including Wilson—on the issue. Instead, he said, Dole should act like a statesman and think about what is best for America.

"What he might gain by taking the politically popular position might not be as lasting as showing he's a leader," Giuliani said in a speech to the Carnegie Endowment for International Peace here.

The controversial proposal, inserted in a House immigration bill by Rep. Elton Gallegly (R-Simi Valley), would give states the option of denying public schooling to illegal immigrant children. The Senate legislation does not include the provision and House-Senate conferees are now debating whether to include it in the compromise version of the measure—and possibly bring a veto.

Giuliani, the grandson of Italian immigrants, stands apart from many of his

party's leaders on immigration policy. He opposes reductions in legal immigration and expresses far more tolerance toward illegal immigration.

"Among people who are illegal immigrants or undocumented are good people, average people and bad people," Giuliani said.

"We're never going to have a perfect solution to illegal immigration," he said later. "If this bill passes—and I hope it doesn't—you're still going to have many, many illegal immigrants in this country."

Under the bill, each state would decide if illegal immigrant children would be barred from its public schools. Giuliani said that the effect would be to create a patchwork of differing immigration policies that would affect the entire nation.

In contrast to Giuliani's strong stand, Los Angeles Mayor Richard Riordan, also a

Republican, has been silent on the issue. His spokeswoman, however, suggested Thursday that Riordan has problems with Gallegly's amendment.

"The mayor has said no one should be denied a public education, health care and nutrition and he still believes that," spokeswoman Noelia Rodriguez said. "Those are basic rights people are entitled to."

Still, some immigrant rights groups criticized Riordan for not taking a more public stance against the legislation—as County Supervisor Gloria Molina, Los Angeles County Sheriff Sherman Block and Santa Ana Police Chief Paul Walters did at a press conference in Los Angeles earlier this week.

"The silence is deafening," said Frank Sharry, executive director of the National Immigration Forum. "For the mayor of one

of America's top gateway cities to stand on the sidelines while Congress is on the verge of throwing tens of thousands of children out of school is a dereliction of his leadership responsibilities."

Wilson, a prime backer of the measure, contends that opponents are exaggerating when they suggest that illegal immigrant children will be led to lives of crime if they are barred from school.

"That's the big lie," said Wilson spokesman Sean Walsh. "The bottom line is we expect and would demand that the federal government repatriate the children and their families who are in the country illegally."

The governor agrees that every child deserves an education, Walsh said. But the question remains, he said, whether Sacramento should pay for it instead of "Ottawa, Mexico City, Guatemala City and San Salvador."

The New York Times

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PAGE: B-3

Giuliani Criticizes G.O.P. And Dole on Immigration

He Hardens His Reputation as Party Pariah

By ERIC SCHMITT

WASHINGTON, June 6 — Mayor Rudolph W. Giuliani criticized Senator Bob Dole today for supporting Republican-sponsored legislation that would restrict Government aid to immigrants and called those restrictions "a terrible, terrible mistake."

Mr. Giuliani cited measures in the legislation that would restrict public benefits to legal immigrants, allow states to bar illegal immigrant children from public schools and force local authorities and hospitals to report undocumented aliens who report a crime or seek emergency medical aid.

The Mayor did not single out Mr. Dole during a speech before the Carnegie Endowment for International Peace, a policy and research organization. But in response to questions from the audience, he warned that Mr. Dole, the likely Republican Presidential candidate, would be committing a damaging political mistake if he followed public opinion polls that show broad antipathy to illegal immigrants and to immigrants who receive public benefits.

"He'd be responding to the political consultants' analysis of how he should run for President as opposed to a more intuitive analysis, which would be: This is an opportunity to show you're a leader, a statesman and that you can step beyond the most immediate form of public opinion and really go to the core of what makes America such a great country," Mr. Giuliani commented after his speech.

Speaking to reporters afterward, Mr. Giuliani again challenged Mr. Dole's leadership on the immigration issue, saying: "Maybe there's a chance when Senator Dole takes a really close look at this, what he might gain in doing what appears to be the politically popular thing might not be as lasting as what he would gain in showing that he's a leader."

As if to confront Mr. Dole with a historical comparison, Mr. Giuliani several times in his speech cited the example of Abraham Lincoln as a principled Republican who stood up to the anti-immigrant policies of the

Know-Nothing Party of the 1850's.

Mr. Giuliani's views on immigration are well known. As the grandson of Italian immigrants and the Mayor of an immensely diverse metropolis, he has for years promoted the view that immigrants — legal and illegal — are productive, hard-working contributors to New York's vibrant economy and culture.

But by traveling here to restate those views, and in the details of his remarks today, he broke new ground at a politically important juncture: Mr. Dole is set to leave the Senate on Tuesday to begin campaigning full time, and House and Senate negotiators are preparing to reconcile their respective immigration bills. Many of the provisions Mr. Giuliani criticized are at the heart of the debate.

President Clinton is expected to veto any legislation that includes the education ban.

The Mayor's comments drew immediate fire from House Republicans who support the bill, and solidified Mr. Giuliani's position as a pariah to the conservative wing of his own party. "Rudy Giuliani is out of step with America and has a group of people he has to pander to," said Representative Elton Gallegly, a California Republican who is the sponsor of the education provision.

A spokeswoman for Mr. Dole did not have an immediate comment on Mr. Giuliani's comments.

Ever since his endorsement of Mario Cuomo for Governor of New York State, Mr. Giuliani has made it clear that he is not afraid to take positions he believes beneficial to New York City — where Democrats outnumber Republicans by 5 to 1 — even if they clash with his party's views or embrace Democratic policies.

Mr. Giuliani spoke today at the invitation of Doris Meissner, the Commissioner of the Immigration and Naturalization Service, who was a colleague of the Mayor when the two served in the Justice Department. Ms. Meissner, a Clinton Administration appointee, has voiced many of the concerns about the legislation that Mr. Giuliani mentioned today.

Some of the Mayor's concerns focused on legal immigrants. Both House and Senate bills, for example, would restrict legal immigrants from applying for such public benefits as job-training programs, child care and college loans.

"People who are legal resident aliens should be entitled to benefits, all the benefits that exist for citizens," Mr. Giuliani said after his speech.

But his address focused on illegal immigration, the centerpiece of the proposed legislation.

Mr. Giuliani took specific aim at the provision that would allow states to bar illegal immigrant children from public education. California, which spends nearly \$2 billion a year educating these children, favors this approach. But the Mayor joined a large number of educators and law enforcement officials who fear the measure would force onto the streets 60,000 to 80,000 schoolchildren in New York City alone.

"The reality is that they are here, and they're going to remain here," Mr. Giuliani said of the children. "The choice becomes for a city what do you do? Allow them to stay on the streets or allow them to be educated? The preferred choice from the point of view of New York City is to be educated."

The Mayor also criticized Congressional efforts to overturn a 10-year-old city executive order that bars city agencies from notifying the immigration service of illegal immigrants if such notification would prevent illegal immigrants from enrolling their children in school, reporting a crime or seeking medical aid.

"If legislation like this passes, there will be no real impact on illegal immigration," Mr. Giuliani said. "There will be a tremendous amount of scapegoating and punitive measures put into place. In many cases, cities will opt to take care of problems that the Federal Government should take care of."

Giuliani Calls On GOP Leaders to Reject Tough Anti-Immigration Measures

By William Branigin
Washington Post Staff Writer

New York Mayor Rudolph W. Giuliani, a Republican maverick representing what he likes to call "the capital of the world," called on Sen. Robert J. Dole (R-Kan.) and other Republican leaders yesterday to refrain from "political pandering" and reject tough anti-immigrant measures in legislation pending before Congress.

Giuliani urged Dole, the likely Republican presidential nominee, to demonstrate that he is "a leader and a statesman" and not "cave in to public opinion polls" showing that a large majority of Americans favor reduced levels of immigration. Passage of an immigration bill with provisions that are currently in the House and Senate

versions would be a "terrible, terrible mistake," he said.

Giuliani's remarks, in a speech at the Carnegie Endowment for International Peace here, echoed comments by former president George Bush Monday and appeared to reflect sharp divisions among Republicans over efforts to crack down on illegal immigration.

Bush, speaking at a convention of the National Association of Mortgage Brokers in Reno, Nev., criticized Ross Perot, Republican presidential contender Patrick J. Buchanan, "big labor" and unidentified House Democratic leaders who he said "selfishly exploit the immigration issue," the Associated Press reported.

"We have to control our borders," Bush was quoted as saying. "We have

to do a better job to insure our laws are being followed. But you don't have to do it with a bitterness that takes a little 7-year-old kid out of school . . . and shoves him back across a bridge dividing our country."

Bush referred to perhaps the most controversial aspect of the pending legislation: a provision in the House bill that would give states the option of denying free public education to illegal immigrant children. Bush's son, Texas Gov. George W. Bush (R), has rejected the use of any such measure in his state. The Clinton administration has warned that a bill containing the provision would face a likely presidential veto.

According to congressional staffers, Republicans in the House and Senate are trying to iron out differ-

ences within their party behind the scenes before holding a conference committee to reconcile the two versions of the bill. Both bills are aimed at cracking down on illegal immigration through such measures as beefing up the Border Patrol, increasing penalties for alien smuggling and streamlining deportation procedures.

Provisions to reduce legal immigration levels were rejected in both houses. But pro-immigration groups charge that measures requiring the sponsors of immigrants to earn significantly more than the poverty level would effectively reduce legal immigration anyway. The Senate bill would require a sponsor's income to be at least 125 percent of the poverty level, while the House bill would make it 200 percent.

Noting that 40 percent of U.S. citizens do not earn 200 percent of the poverty level, the American Immigration Lawyers Association said that adopting such a requirement would be "a covert means to slash family immigration."

In his speech yesterday, Giuliani said immigration was a source of continuous "renewal" and "the single most valuable thing that has happened to New York City." He asserted that even the city's illegal immigrants, who number up to 400,000, make a positive contribution for the most part and that it would be wrong to enact legislation that might make many of them pull their children out of public schools. He said 60,000 to 80,000 illegal immigrant children attend his city's public schools.

Immigration Bill's Effects Debated

Measure Aimed at Illegal Aliens Has Consequences for Legal Residents

By Lena H. Sun

Washington Post Staff Writer

Luis Lara, 4, loves painting and playing with the toy dinosaurs at his brightly decorated Head Start classroom in Falls Church. His mother is proud of how quickly he is learning English and following directions in the year since he arrived here from his native Peru.

But under immigration legislation pending in Congress, future immigrants like Luis could be deported if they spend more than a year in a means-tested program such as Head Start during their first five years in the United States.

The deportation provisions are among the measures aimed at legal immigrants in separate Senate and House immigration bills.

The main thrust of the legislation is to control illegal immigration. But several other proposals would deny legal

residents a wide array of needs-based benefits under new eligibility standards that would count the income of their sponsors as their own. In addition, even if the immigrants qualify, they risk deportation if they receive more than 12 months of benefits.

Supporters say the measures reinforce the century-old policy intended to prevent immigrants from becoming "public charges." Critics say the proposals prevent immigrants from assimilating and endanger public health. States will also have to spend millions of dollars to administer the costs of verifying citizenship and immigration status for everything from children's soccer leagues to foster grandparents to English classes.

A bipartisan consensus has developed in favor of restricting public benefits offered to legal immigrants. It is driven by the need to finance welfare reform plans and by concern that el-

derly immigrants have become one of the fastest growing groups receiving aid. But congressional Republicans and Democrats and the Clinton administration differ on how far the restrictions should go.

Similar restrictions were included in the vetoed welfare and budget bills. But an immigration bill is likely to become law. A House-Senate conference committee is to be formally named in early June, but Republican staff members from both houses are already drafting a final bill under which millions of legal immigrants would be effectively barred from receiving a host of benefits, including Medicaid, and possibly, financial aid for college.

Illegal aliens are not eligible for most programs under current law.

Most legal immigrants are sponsored by relatives who promise to support the newcomers under current law, and recent immigrants can be deported if they become "public charges." Neither provision has been enforced much. One proposal that has broad support would enforce sponsors' pledges of support by making the promises legally binding.

"All we are saying is the sponsor, the person who made the move to bring in the legal immigrant, is going to be responsible," said Sen. Alan K. Simpson, (R-Wyo), the driving force behind the legislation. "Why should the rest of us cough up the money when the sponsor has not done it yet?"

In addition, the bills would also extend the time and scope of programs for which a sponsor's income is counted as the immigrant's own in determining eligibility for between 50 to 80 needs-based federal, state or local government programs. The more restric-

tive Senate bill includes college loans, job-training and Head Start.

Although a legal immigrant could have a low enough income to qualify for benefits, many would become ineligible once the income of their sponsors and their sponsors' spouses are counted.

At the City University of New York, for example, that would affect about 25 percent of the 27,000 incoming freshmen, an official said.

The Senate bill would apply to all fu-

ture immigrants and current legal residents in the country less than five years. Under the GOP proposals, the ineligibility period would extend to citizenship or until the immigrant has worked at least 10 years, earning enough to pay income tax. For immigrants already here, that period would remain in effect for five years.

The sponsor's income now is counted along with the immigrant's only for Aid to Families with Dependent Children, Supplemental Security Income

and food stamps and only for three to five years, depending on the program.

But for the first time, legal immigrants would be barred from receiving Medicaid because their sponsors' incomes would be counted as their own. They would lose diagnostic screening, immunizations and treatment for communicable diseases, health experts said, increasing the public health risk.

"Tuberculosis and other communicable diseases do not respect distinctions

between citizens and noncitizens," said E. Richard Brown, president of the American Public Health Association.

Health experts say medical care, unlike food, shelter or money, cannot be shared between a sponsor and an immigrant. Immigrants who cannot get treated would be forced to use expensive emergency and hospital services.

Some public hospitals, such as Jackson Memorial Hospital in Miami, will then force the local community to raise taxes or consider cutting services if they cannot get Medicaid reimbursement for treating the immigrants, said Sen. Bob Graham, (D-Fla.).

Unless the immigrant would be left homeless and hungry, Simpson maintains there should be no exception to holding the sponsor—not taxpayers—responsible for all the immigrant's needs.

"It does not matter what type of extraordinary situation you want to describe to us all," he said, during debate on the bill. "All of them will be genuinely and authentically touching, they will move us, maybe to tears. . . . All we are saying is that the sponsor will pay first."

Critics say the bills go too far because they remove the safety net from legal immigrants who must pay taxes and serve in the military. Even if sponsors refuse to help out, their incomes

are still counted as those of the immigrants, and in most cases, the immigrants would be effectively barred from receiving aid.

"This goes to their ability to access basic health and safety and education programs," said Josh Bernstein, a policy analyst for the National Immigration Law Center, an advocacy group.

The immigration bills also broaden the grounds for deportation as a "public charge."

With narrow exceptions, both bills would deport any legal, permanent residents who receive certain needs-based assistance for 12 months, within five to seven years after coming to the United States.

Under the Senate bill, for example, immigrants who receive college financial aid—including work-study—risk deportation.

If the Senate bill had been law when Luis Lara came to the United States two years ago as a toddler, he could be sent back to Peru this fall.

Not only would this be unfair to immigrant children, said his mother, Lucia Cabrera, a home-care provider, but "how could I pay for all those plane tickets back and forth?"

Dick Day, chief counsel to the Senate immigration subcommittee replied:

"Who wants to keep a kid out of Head Start? But there's not enough money for all American-born kids to get into Head Start."

The House bill has fewer grounds for deportation. But unlike the Senate version, which has a five-year statute of limitations, the House bill would allow U.S. officials to deport an immigrant at any time on the grounds that they once received government benefits.

That means future immigrants like Maria Cruz, 23, a receptionist at a District legal services clinic, could be sent back to El Salvador because she received Medicaid seven years ago.

"I think it's very bad," said Cruz. "I used those benefits to stand up on my feet."

President Clinton has warned that the legislation goes too far in restricting health and other benefits for legal residents, but he is unlikely to veto the bill because of those measures, analysts said.

Budget officials estimate the bills will save the federal government between \$5 billion and \$7 billion over seven years. But critics say any federal savings will shift costs to states and counties because all states will be required to verify citizenship, immigration and sponsorship status.

An analysis by the National Conference of State Legislatures estimates the cost of administering 10 of 54 means-tested programs is \$744 million.

The New York Times

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Provisions on Legal Immigrants Jeopardize Bill on Illegal Aliens

Legislation Would Severely Restrict Public Aid

By ERIC SCHMITT

WASHINGTON, May 27 — As House and Senate negotiators prepare to iron out the last details of a bill whose chief target is illegal immigration, a battle with the White House is looming over provisions that would drastically restrict public assistance to legal immigrants.

The bill would allow for the deportation of legal immigrants who exceeded tough new requirements and would do more to hold immigrants' sponsors financially responsible for them.

Supporters say the legislation would slash the number of immigrants using Government programs like prenatal care, Medicaid and supplemental security income, and would make public assistance less of an attraction for coming to the United States.

"The American people want people to come to work," said Senator Phil Gramm, Republican of Texas. "They do not want people to come to go on welfare."

Indeed, the General Accounting Office, the investigative arm of Congress, said last week that 25 percent of elderly Supplemental Security Income recipients were legal immigrants.

Critics say the legislation takes a reasonable approach too far by effectively cutting off tax-paying immigrants from the very types of programs — child care, job training, English classes and college loans — that enable them to stay off welfare and increase their chances of success in the United States.

"Latinos with green cards are able to move out of poverty into a higher standard of living, but they can't do it if they can't learn English, if their babies aren't born healthy, if they can't join job-training programs and if they can't go to college," said Lori M. Kaplan, executive director of the Latin American Youth Center, an agency here that serves 5,000 mostly Hispanic and Vietnamese youths and their families.

Republicans and Democrats have been competing this year to be seen as being tough on illegal immigration, and the current bills would

nearly double the size of the Border Patrol, increase penalties for smuggling aliens and restrict asylum. But divisions in the Republican Party caused several broader proposals for limiting legal immigration to be dropped from the legislation, and many Democrats oppose the limits on public assistance that remain.

House and Senate negotiators are set to begin working out differences in their two bills. President Clinton said earlier this month that the Senate bill in particular "goes too far in denying legal immigrants access to vital safety net programs." The President has raised the possibility of a veto, although his strongest objection has been to a proposal in the House bill involving public education for illegal immigrants.

Doris M. Meissner, the Commissioner of the Immigration and Naturalization Service, said the legislation's proposals on legal immigrants were problematic. "Yes, a sponsor's responsibilities have to be tightened up," Ms. Meissner said in an interview. "But this is incredibly overreaching and would be impossible to enforce. It's going to create a serious second-class-citizen problem."

Emilio Monzon is the kind of immigrant the legislation's critics cite. After coming to the United States to escape the civil war in his native El Salvador, Mr. Monzon nine years ago qualified for two federally financed programs where he learned typing, computer skills and English.

At night, he mopped floors in a Washington nursing home for \$5 an hour to help pay for his further schooling. By 1994, Mr. Monzon was teaching the same classes at the Latin American Youth Center that he once attended, winning citywide acclaim for placing young immigrants in clerical jobs. Mr. Monzon, who became a citizen last year, is now working on a college degree in computers.

"I'd love to continue teaching and work in my own business some day," said Mr. Monzon, 37, surrounded by desktop computers in a classroom at the youth center, where he teaches each Saturday.

But under the provisions in the House and Senate immigration bills, Mr. Monzon would probably have been deported years ago for being a drain on society.

He says he has never accepted a dollar of food stamps, public-housing aid or any other traditional welfare. But he did attend the job-training classes for low-income people for more than 12 months in his first five years as a legal immigrant. And under the pending Senate bill, that is ground for deportation. (The House bill has a seven-year standard.)

"This isn't a handout," said Ms. Kaplan, Mr. Monzon's employer. "Learning Windows 95 so you can get a decent job is not welfare."

Backers of lower levels of legal immigration say the changes are necessary. "We're admitting too many immigrants who are too poor and too poorly educated," said Dan Stein, executive director of the Federation for American Immigration Reform. "It's very difficult to understand why poor immigrants who

need all this training should be admitted at all."

Underlying this debate are two basic questions: Do legal immigrants receive more in public assistance than citizens do? And should immigrants receive public assistance at all?

The second question is one of philosophy, dividing even members of the same party. But the first question also defies objective answer: each side supports its view using different definitions of public assistance and different census information.

The Urban Institute, a research organization, says that 95 percent of immigrants do not receive welfare. George J. Borjas, a professor of public policy at the John F. Kennedy School of Government at Harvard, says that 21 percent of all immigrant households receive some type of public assistance, compared with 14 percent of native households.

Legal immigrants are typically sponsored by relatives or by busi-

nesses interested in their work skills. Under current law, sponsors of immigrants promise that anyone they bring into the country will not become a "public charge." Over time, however, that pledge has become unenforceable in court. The bills would insure that the promise of support was binding.

In addition, the bills combine the incomes of the immigrant and the sponsor to determine if an immigrant is eligible for public assist-

Cont'd

ance. Currently, that approach, called deeming, is used only when immigrants apply for welfare, food stamps or Supplemental Security Income in their first three to five years in the country.

The Senate bill would broaden that approach to cover ~~all~~ low-income assistance, even aid not usually considered welfare, including gang-prevention programs and screenings for lead poisoning. The House bill would exempt several public assistance programs, including school lunches, college loans, emergency Medicaid

and short-term disaster relief.

Under the bills, a sponsor would be legally responsible for supporting the immigrant until the immigrant became a citizen or for 10 years, assuming the immigrant had earned enough to pay taxes in that period.

Pro-immigration groups have called the legislation unfair. Health officials fear that emergency rooms at public hospitals will be swamped with immigrants who will no longer use preventive-care clinics.

"Right now, 90 percent of women come in within their first three months of pregnancy," said Maria Gomez, director of Mary's Center for Maternal and Child Care, a private agency in Washington that gives counseling and pediatric care to 575 women and 1,200 children a year. "I'm afraid if this goes into effect and women are asked about their status, they will delay their care and wait until they are about to deliver."

The legislation draws opposition on a more bureaucratic level as well: the National Association of Counties and the National League of Cities say it would place an expensive and time-consuming burden on state and local agencies to check every participant's legal status.

Supporters of the bill discount these criticisms as overinflated fears and say that immigrants' sponsors should pay for health care, English classes and whatever other services their charges need.

"Why should the rest of us cough up the money when the sponsor has not done it yet, or has not run out of money?" said Senator Alan K. Simpson, the Wyoming Republican who is the main author of the Senate bill.

"Whether it is blindness, whether it is disability, whether it is veterans, whether it is kids, whether it is senior citizens, whatever plucks genuinely at your heart strings," Mr. Simpson said, "the issue is that none of those people should become a burden on the taxpayers if they had a sponsor that remains totally able."

But sponsors may die, go bankrupt or become estranged from the immigrant. The legislation would allow immigrants to use public assistance if those things happened. But it would not waive the threat of deportation if the immigrant used assistance for more than a total of 12 months.

"This is such a negative attitude," Mr. Monzon said of the legislation. "I've just tried to get decent jobs, help my family and, ultimately, be a good citizen."

WSJ

THURSDAY, JUNE 6, 1996

POLITICS & POLICY

**White House Asks Congress
To Keep Immigration Rule***By a WALL STREET JOURNAL Staff Reporter*

WASHINGTON—Clinton administration officials urged Congress to drop an immigration-bill provision they say would undermine efforts to protect U.S. workers from unfair foreign competition.

In a recent letter to Republican Sen. Alan Simpson of Wyoming, chairman of the Senate's immigration subcommittee, Deputy Attorney General Jamie Gorelick said one section of the legislation eliminates "already inadequate" worker protections.

The measure would end the requirement that businesses notify employees in all locations where a foreign guest worker may be assigned. The notification is designed to inform U.S. workers that an employer is using foreign labor, which at times has been used to undercut American wages.

The House and Senate passed differing versions of the immigration legislation. They must be resolved by a joint committee of members from both chambers, before a final bill is sent to the president.

While acknowledging the "defensible purpose" of the regulation, a report prepared by the House immigration subcommittee staff says it goes too far.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

LEGISLATIVE REFERENCE DIVISION
Economics-Science-General Government Branch

5/29/96

TO: Steve Warnath

FROM: JIM JUKES

Voice: 202-395-3458

Fax: 202-395-3109

14 PAGES FOLLOW THIS COVER SHEET

COMMENTS:

This version reflects all agree-upon changes
except expedited exclusion, which was circulated
separately this afternoon.

Support the Administration's enforcement initiatives and are based on or similar to the Administration's legislative and budget proposals.

DRAFT

5/24 7 PM

The Honorable Lamar Smith/Alan Simpson
Chairman, Subcommittee on Immigration
Committee on the Judiciary
U.S. House of Representatives/Senate
Washington, D.C. 20515/20510

The Administration's focus is

the Administration has made
control of illegal immigration
a top priority.

Dear Mr. Chairman:

After decades of neglect, it
would ratify

efforts in the field
to combat

This letter presents the views of the Administration on H.R. 2202, the "Immigration Control and Financial Responsibility Act of 1996". Many of the provisions in both the House and Senate bills advance the Administration's ~~four-part strategy to control~~ illegal immigration. ~~This strategy calls for regaining control of our borders; protecting U.S. workers and removing the job magnets through worksite enforcement; aggressively removing criminal and other deportable aliens; and securing from Congress the resources to support the Administration's illegal immigration enforcement strategy and to assist states with the costs of illegal immigration.~~ Both the House and Senate bills contain many provisions that ~~are identical or similar to the Administration's legislative proposal, S. 754 and H.R. 1929, the "Immigration Enforcement Improvements Act of 1996", and the Administration's enforcement initiatives and overall strategy.~~

obtaining
the
resources
that are
necessary
to make
the
strategy
work.

We look forward to working with the conference committee to craft a strong, fair, and effective immigration bill. However, H.R. 2202 raises serious concerns in specific areas that we hope the conference committee will examine thoroughly. In addition, a number of amendments to the Immigration and Nationality Act (INA) made by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, present substantial obstacles to the effective enforcement of the immigration laws. The conference committee has an opportunity to remedy some of those problems with a careful and more comprehensive approach to amending the INA. The Administration's views include, but are not limited to the following:

- If H.R. 2202 were presented to the President with provisions that would jeopardize any child's right to full participation in public elementary and secondary education, the Secretary of Education and the Attorney General would recommend that the bill be vetoed. We urge the conference committee to adopt the Senate position.

The House-passed bill could result in the removal of hundreds of thousands of children from schools. Children denied education are more likely to engage in crime and other antisocial behavior, and could fall prey to drug dealers and gangs.

including preschool and school lunch programs

(previously discussed)

The Administration opposes providing development to immigrants and has effectively targeted its enforcement efforts at the cash and food assistance programs ~~which are at risk for the most flagrant abuse.~~ ~~which are at risk for the most flagrant abuse.~~ H.R. 2707, however, goes too far and could jeopardize public health. ~~in limiting benefits to legal immigrants~~ ~~specifically,~~

• The Administration strongly opposes broadening the application of deeming rules and the "public charge" provision from a well-defined set of cash welfare programs to nearly all means-tested programs including Medicaid and emergency medical services, child protective services, student financial assistance programs for postsecondary education, veterans benefits, and scores of additional programs. We oppose the House provisions to require that payments of public assistance benefits shall be made "through" an individual who is not ineligible to receive such benefits on the basis of immigration status because it would likely harm children who are U.S. citizens and legal immigrants. In addition, the Administration opposes applying the new deeming and eligibility restrictions to current program recipients as well as the disabled who are exempt under current law.

• We urge the conference committee to adopt the Senate provision which authorizes the hiring of 350 additional Wage and Hour investigators to enforce current Federal wage and hour laws in areas where there are high concentrations of illegal immigrants employed. We urge the conference committee to adopt the House position on increasing penalties for and enforcement of employer sanctions. Similar increases should be included for the enforcement of laws against immigration-related employment discrimination.

• Both the House and the Senate have made clear their intention to separate the issues of illegal and legal immigration. Consistent with that clear intent, we urge the conferees to drop Section 806 of the House bill, which deals with criteria for admission of one class of employment-based nonimmigrants (H-1B workers). Not only does the inclusion of this section in a bill on illegal immigration entangle two issues the Congress has decided to keep separate, but the provisions of Section 806 simply go in the wrong direction, eliminating essential U.S. worker protections in current law, which are already inadequate. These amendments would have the overall effect of substantially weakening protections for U.S. workers from unfair competition with foreign temporary workers rather than fixing serious flaws in the existing H-1B program.

• We urge the conference committee to adopt special exclusion authority that may be invoked at the discretion of the Attorney General in extraordinary migration situations and for interdictions at sea that permits the prompt removal of inadmissible aliens and includes a fair process for assessing fear of persecution.

• We urge the conference committee to adopt a comprehensive change in removal procedures that consolidates exclusion and deportation processes and that retains discretionary authority--with current exceptions--to cancel removal in compelling cases of aliens who have resided in the United States for a lengthy period

and whose removal would present an extreme hardship.

- The intentional discrimination standard in the document abuse provision of the Senate bill will severely undermine anti-discrimination enforcement. The House provision is also problematic and should be modified to require that employers may seek verification only if the employer has information that would lead a reasonable person to believe that the individual is not work authorized, and that the employer can terminate the individual only after the Immigration and Naturalization Service (INS) confirms that the individual is not work authorized.

- We urge the conference committee to adopt a streamlined process for judicial review that consolidates review in the courts of appeals and requires constitutional and statutory challenges to be raised in connection with the judicial review of an individual removal order.

- We strongly support the Senate's authorization of appropriations for the construction of appropriate physical barriers and the use of technology in high traffic areas along the southwest border. The House version does not take into account the safety of our Border Patrol agents and unnecessarily waives the Endangered Species Act.

- We urge the conference committee to allow the existing adjustment of status program established by section 245(i) of the INA to run its course through Fiscal Year 1997, and then to evaluate what, if any, changes are required.

- We strongly support the Senate's authorization to conduct pilot studies of employment and benefits eligibility verification that includes privacy and anti-discrimination safeguards although we would recommend enhancing the Attorney General's flexibility to identify which projects will be most effective within technological capabilities.

Attached is a discussion of some of the key issues. We will shortly provide you a comprehensive side-by-side comparison.

I appreciate this opportunity to provide the views of the Administration to the conference committee for the immigration bill. The Administration is committed to working with the Congress to provide strong, fair, and effective measures for addressing illegal immigration to the United States.

Sincerely,

Jamie S. Gorelick
Deputy Attorney General

cc: Senate conferees
House Judiciary Subcommittee on Immigration and Claims

DISCUSSION OF SOME OF THE KEY ISSUES

Denying Public Education to Undocumented Children

Denying an education to any child is costly, to the child and to our country. Undocumented alien children could grow up to become illiterate, unskilled adults if they are denied schooling. Such individuals would be unable to participate effectively in our economy, which relies increasingly on a highly skilled workforce, and would swell the ranks of the unemployed and those dependent on public assistance. In addition as, President Clinton has stated, children denied education are more likely to engage in crime and other antisocial behavior. This view is widely shared throughout the law enforcement community. Opponents of this provision include the Executive Director of the National Association of Police Organizations, Inc., the National President of the Fraternal Order of Police, the Los Angeles County Sheriff, the Superintendent of Police for the City of Chicago, and the International Secretary-Treasurer and Legislative Liaison for the International Union of Police Associations AFL-CIO. Moreover, it is fundamentally unfair to punish children--possibly for the rest of their lives--for the conduct of their parents, which they are powerless to control. Finally, requiring school districts and the INS to verify the immigration status of public school students would be extremely burdensome and would divert carefully targeted resources from other enforcement priorities including border enforcement and criminal alien removal.

Benefits

While H.R. 2202's approach to immigrants' eligibility for benefits is preferable to the approach taken in H.R. 4, the welfare reform bill, which would have imposed an outright ban on benefits for most legal immigrants, the Administration continues to oppose some of the benefit provisions in H.R. 2202. By requiring states to apply new deeming rules to scores of programs including Medicaid, emergency medical services within Medicaid and child protection services, H.R. 2202, as passed by the Senate, could jeopardize public health and safety and could create a significant unfunded mandate on local and state governments. Furthermore, under the Senate bill's deeming provisions, legal immigrants could no longer receive benefits for which undocumented immigrants would still be eligible such as Medicaid's emergency medical services.

We urge the conference committee to clarify that non-U.S. citizens residing abroad should not be considered "ineligible aliens" for purposes of entitlement to various federal benefits, including pensions. We also urge the conference committee to clarify that Cuban and Haitian entrants will be eligible for means-tested benefits to avoid placing an undue burden on State

and local governments. We oppose the House provisions to require that payments of public assistance benefits be made only "through" an individual who is not ineligible to receive such benefits on the basis of immigration status because it would likely harm children who are U.S. citizens and legal immigrants. This provision also requires the government to insert an outside third party into the family. In addition, we oppose provisions in both versions of the bill that would make a legal immigrant who without his or her knowledge received federal benefits and services, such as subsidized child care and transportation services for the disabled and elderly, deportable on public charge grounds. Finally, the House provision requiring that sponsors have an income equal to 200 percent of the federal poverty level would keep many U.S. families from being able to reunite with their immediate relatives.

Special Exclusion

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104-132, amended the INA to require the Attorney General to order the removal of an alien who is inadmissible for having presented fraudulent documents or because of a lack of proper documents without a hearing before an immigration judge. There is an exception for asylum applicants who can demonstrate a credible fear of persecution based on an interview with an asylum officer. Aside from a review of the officer's "credible fear" determination, there is no administrative review of such an order and judicial review is limited. These provisions would become effective on November 1, 1996. The special exclusion provisions of the House bill are virtually identical to those added by the AEDPA.

Expedited exclusion authority is critically important to our ability to deal with organized alien smuggling and fraud at our ports of entry. The Coast Guard frequently interdicts illegal aliens on the high seas and is required to keep the aliens at sea while arrangements are made for their repatriation or for a third country to accept the aliens so they may be resettled. This is neither resource efficient nor cost effective. Two interdiction cases in 1995 consumed a total of 105 cutter days and 548 aircraft hours in order to deliver the interdicted migrants to El Salvador and Mexico. Using standard rates, these cases cost in excess of \$7 million. Rapid delivery of the aliens to the United States for special exclusion would allow the Coast Guard vessels to promptly return to their primary law enforcement mission, including drug interdiction and search and rescue. Accordingly, the Administration has strongly supported expedited exclusion provisions that have appropriate safeguards and reflect a proper concern for practical and sensible administration.

In this light, the AEDPA changes raise a major concern. The

expedited exclusion procedures would operate at all times in parallel with the normal exclusion process. This is unnecessary and an inappropriate use of resources. The Administration's proposal and the Senate immigration bill, on the other hand, would authorize expedited exclusion, but would provide the Attorney General the flexibility to determine the circumstances in which it should be implemented.

We recommend that the conference committee adopt the Senate provisions at section 141 with several important modifications: First, in addition to extraordinary migration situations, the Attorney General should have the explicit authority to apply special exclusion to aliens who are interdicted at sea without the need to find that an extraordinary migration situation exists. Second, the definition of "asylum officer" should be amended to afford more flexibility in assigning appropriately trained officers to assess asylum applications. Third, the definition of credible fear should be amended to permit a credibility assessment to be made. Also, the conference report must make clear that by using the term "manifestly unfounded" the committee intends to adopt the international standard, as reflected, e.g., in the resolution on "manifestly unfounded" asylum applications adopted by the immigration ministers of the European Union, and not to revive the now repealed INS regulations defining "frivolous" asylum applications.

Exclusion and Deportation Proceedings

The House bill undertakes a comprehensive re-write of the procedures for removal of aliens. It would consolidate exclusion and deportation proceedings into one removal proceeding. Aliens who enter without inspection (EWI) would be subject to exclusion, but would continue to be eligible for relief from deportation upon a showing of seven years continuous presence, good moral character, and extreme hardship. This relief was eliminated for EWIs under the AEDPA amendments that become effective November 1, 1996, a change that will likely result in thousands of private bill requests being filed with the Congress on behalf of aliens in compelling circumstances. Both the Senate and the House provisions would restore, with specific exceptions, relief from deportation for long-term permanent residents who are deportable on the basis of criminal convictions, with an exception for aggravated felons who have been sentenced to imprisonment for five years or more.

We strongly recommend adoption of the House provisions contained in sections 301 (except 301(c)), 303, 304, 305, 307, 308, and 309. However, an amendment must be made to strike section 241(d) (added by the AEDPA) which provides that aliens "found in" the United States without having been inspected and admitted are inadmissible. This language is problematic; will lead to litigation; and is inconsistent with the House

immigration bill. In addition, there is no waiver provision for inadmissibility under the newly-created section 212(a)(9), even for immediate relatives of U.S. citizens. We strongly recommend the inclusion of a discretionary waiver of inadmissibility.

We note that an error was apparently made in compiling the bill passed by the House. The text should be amended at page 86, lines 14 and 15, by inserting "or excludable" after "is deportable." We also note an inadvertent omission in compiling the House bill. The text should be amended at page 90, line 3, by inserting "or deportable under subparagraph (a)(1)(D) of section 241" after "section 237(a)(4)". The Senate amendment (sec. 142(b)) to section 242B of the INA which limits stays of final orders of deportation should be incorporated into the House bill.

Intent to Discriminate

Under current law, an employer's request for additional or specific work authorization documents constitutes an unfair immigration-related employment practice. The Senate immigration bill makes such a request an unfair immigration-related employment practice only if the request is made "for the purpose or with the intent of discriminating". This intent requirement will severely undermine anti-discrimination enforcement. Intent is hard to prove, and virtually all employers could allege that they requested additional or specific documents for the purpose of avoiding employer sanctions and not with the intent of discriminating. An intent standard will deprive a U.S. citizen, denied employment because she did not have an employer-specified document, of a legal remedy.

While the House provision is less problematic, the vagueness of the phrases "reason to believe" and "confirmation" will lead to discrimination against "foreign" looking or sounding work authorized individuals. The conference report should require the employer to possess "information that would lead a reasonable person to believe" that the individual is not an authorized worker, and the employer should be able to terminate the individual only after the INS confirms the individual is not work authorized. Only with these modifications, we urge the conference committee to adopt the House provision.

Judicial Review in Deportation and Exclusion Proceedings

Both bills would streamline judicial review by eliminating a layer of review in exclusion cases, shortening the time period to file for review, and permitting the removal of inadmissible aliens pending review in the case of exclusion proceedings. The Senate bill, however, goes too far in restricting judicial review. Under the Senate provisions there would be no judicial

review of deportation orders against criminal aliens and no review of denials of discretionary relief from deportation. We support limiting judicial review in cases involving criminals, but not eliminating review altogether. We also support retaining judicial review of denials of discretionary relief, particularly in asylum cases. Accordingly, we recommend that the conference committee adopt the House provisions contained in section 306 with modifications.

We recommend adding the Administration's proposal regarding the standard of review of factual determinations. The Administration's proposal, S. 754, would provide that all findings of fact supporting an order of deportation or exclusion are conclusive unless a reasonable adjudicator would be compelled to conclude to the contrary. In addition, we recommend that the House bill be modified to include the Senate provisions eliminating the automatic stay of deportation upon the filing of a petition for review and requiring that constitutional and statutory challenges relating to removal actions be raised only in connection with review of an administratively final order of removal. We would be happy to work with the committee to craft the appropriate language to accomplish these recommendations.

Mandatory Custody

Section 414(c) of the AEDPA amended the INA to require the Attorney General to assume custody of all aggravated felons and most other criminal aliens and to maintain custody without exception until removal. This provision severely restricts the Attorney General's discretion and cannot be fully implemented without a massive increase in detention resources. Under an amendment added in 1990, the INA permitted release of a lawfully admitted alien who had been convicted of an aggravated felony, if he or she were found not to be a threat to the community and likely to appear for hearings. Before that amendment, numerous court decisions had questioned the constitutionality of the previous "no-release" rule or held it invalid. The AEDPA essentially reinstates the earlier questionable provision and invites renewal of litigation. A number of habeas corpus petitions challenging mandatory custody already have been filed. In addition, the AEDPA amendments require the detention of aliens who have been convicted of lesser crimes and who may not have been sentenced to confinement for those crimes. We believe the Attorney General should be allowed to retain her discretion to determine who must be held in custody during the pendency of the hearing process.

The capacity to detain non-criminal aliens is a vital component of a balanced immigration enforcement strategy. We must have the authority to release less serious criminal offenders who may be eligible for relief and who pose no danger to the community in order to continue to detain aliens

apprehended at worksites, those encountered in anti-smuggling operations, and recidivist illegal entrants along the Southwest border. We recommend rejecting section 164 of the Senate bill and adopting the House provisions at sections 303 and 305 which will accomplish the goal of prompt removal of criminal aliens while providing the Attorney General with the appropriate discretion regarding the use of detention facilities. In addition, the conference committee should reject the Senate bill's expansion of the definition of aggravated felony in section 161. A similar definition is in the AEDPA. By expanding the group of aliens for whom detention is strictly required, the Senate approach would effectively negate the more favorable House provision related to mandatory custody.

Verification of eligibility for employment and benefits

The Senate bill, which provides for the completion and evaluation of demonstration programs prior to the enactment by Congress of a new verification system for employment and benefit eligibility, is consistent with the Administration's proposal. We strongly support the approach to verification adopted in sections 111 through 113 with two reservations. First, section 112(a)(1)(A)(iv) limits the executive branch's discretion to choose appropriate demonstration projects by requiring the testing of three specified systems. The Administration recommends that the Attorney General retain flexibility to identify which projects will be the most instructive, taking into account technical feasibility and lessons learned from earlier pilots. Second, section 111(e) relieves an employer from liability under section 274A of the INA under certain conditions while section 111(g) limits liability under section 274A of the INA for any person who takes an action adverse to an individual in good faith reliance on information relating to that individual gained from the new verification system or a demonstration project. The presence of two provisions which seemingly address the same issue, i.e. employer liability under the INA, is confusing, and we recommend that section 111(g) be stricken because it excuses an employer from liability even if she fails to comply with her voluntarily assumed responsibilities under the pilot. Accordingly, we recommend that both provisions be stricken. If both provisions are to be retained, their relationship should be clarified. Overall, we prefer the verification system provisions contained in the Senate bill except for section 117, intent to discriminate which is discussed above.

We also support the limits in section 116 of the Senate bill upon the number of documents which establish both employment authorization and identity and the number of documents which establish employment authorization. The House bill deletes from section 274A(b)(1)(C), "other documentation evidencing authorization of employment in the United States which the

Attorney General finds, by regulation, to be acceptable." These documents are critical to the transition phase of document reduction, and we recommend that they be retained. We strongly prefer the Senate bill provisions on document reduction, but recommend that the effective date be 18 months as provided by the House bill to permit appropriate time for the promulgation of regulations.

We support adoption of section 403(d) of the House bill which specifically defines the term "entity" to include an entity in any Branch of the Federal Government. But we strongly oppose adoption of section 403(f) which mandates that not later than 180 days after the date of the enactment of this Act, the Attorney General shall issue regulations which shall provide for the electronic storage of Forms I-9. The INS currently is conducting a demonstration project involving the electronic generation, completion, and storage of the Form I-9. At present, forensic examination of Form I-9 is essential to the successful performance of fraud cases. It is premature at this time for Congress to mandate regulations providing for electronic storage within 180 days.

However, we support the House provision to study and conduct pilot studies to eliminate the fraudulent use of birth certificates.

Asylum

The House bill would require that all applications for asylum, both affirmative and defensive, must be filed within 180 days of arriving in the United States. There is an exception for "fundamentally changed" circumstances in the alien's country that affect eligibility for asylum. The Senate bill would require that defensive asylum claims (those filed for the first time in deportation or exclusion proceedings) must be filed within one year of arrival. There is a "good cause" exception for having failed to file timely. The Administration is opposed to filing deadlines for asylum. We believe enforcement of the deadlines would unnecessarily divert resources from the adjudication of claims, create a new class of fraud, and have a negative effect on productivity. In our view, recent improvements in the asylum process make legislative asylum reform unnecessary. In addition, we believe that returning a refugee to a country where he or she would face a threat to life or freedom simply because the refugee failed to make a timely request for protection substantially undermines U.S. leadership in refugee protection. However, if the conference committee is intent on imposing a deadline on asylum applications, we recommend that the committee adopt the Senate version, as we believe it is essential to include an exception for good cause in order to maintain the flexibility to continue to protect bona fide refugees.

Pursuant to a presidential directive to address asylum abuse, the Department of Justice dramatically restructured the asylum process in January 1994. In addition, the Administration requested and Congress provided the resources necessary to do the job in the Violent Crime Control and Law Enforcement Act of 1994 which more than doubled the authorized number of INS asylum officers from 150 to 377 and increased the number of Immigration Judges from 116 to 179. By the end of Fiscal Year 1996, we expect to have approximately 210 immigration judges. The new asylum process allows 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 that are not part of the American Baptist Churches v. Thornburgh class action lawsuit (non-ABC) filed with the INS 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-ABC 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.

In addition to restructuring the asylum process, the INS has stepped up its fraud investigation of preparers of spurious asylum claims. Investigations have resulted in indictments of preparers in Los Angeles, San Francisco, New York, and Arlington, VA. In addition, INS requested and received additional funding in Fiscal Year 1996 for detention of absconders, including failed asylum seekers.

Triple Fence

This Administration has built and reinforced physical barriers along the Southwest border. Over the past several years, the INS with the support of military personnel and the National Guard has built miles of strategically placed fencing along the border to control drug trafficking, alien smuggling, crime, and illegal immigration. For example, there are now 26 miles of fencing in the San Diego Sector to support the Administration's increased deployment of Border Patrol agents, resources, and sophisticated technology. Recently, we began construction of a 1.3 mile fence along the border at Sunland Park, New Mexico. We support the Senate provision because it

defers to the experience of the INS to determine whether multiple fencing would be safe and effective and allows for incorporation of necessary safety features to ensure the well-being of Border Patrol agents. We also support the Senate version because it does not waive the Endangered Species Act (ESA). We oppose providing ESA waivers to government agencies because it undercuts the general applicability of the ESA and undermines the government's credibility in enforcing it. Requirements and regulations under the ESA have already been streamlined to balance the interests underlying the ESA with those of the regulated community.

Adjustment of Status

Section 245(i) of the INA permits otherwise qualified aliens who entered the United States illegally or who were employed in the United States without authorization to adjust status in the United States upon the payment of a substantial penalty fee to the Examinations Fee Account. Relatives of legalized aliens who are permitted to remain in the United States under the "family unity" provisions may adjust under this provision without payment of the fee. Section 245(i), which expires in 1997, was intended to eliminate pro forma immigrant processing overseas for qualified applicants who were residing in the United States. This provision has enabled the INS dramatically to improve its services and the State Department to reduce its overseas visa processing staff.

Section 806 of the House Bill would make 245(i) available only for family unity beneficiaries. Since family unity beneficiaries are exempt from the fee requirement, this amendment would eliminate a substantial source of funding which would be spent by applicants, instead, to travel abroad to obtain immigrant visas. Section 245(i) revenues totaled \$135,000,000 in fiscal year 1995. If Congress either repeals or fails to extend section 245(i), the new positions created by section 245(i) revenues will be eliminated and there will be a large adverse fiscal impact on the quality and level of services given to adjudicating petitions and applications for immigration benefits. Furthermore, as a result of 245(i), the Department of State has been able to reprogram positions to high priority anti-fraud and nonimmigrant visa work. Returning this pro forma immigrant visa processing to the Department of State without sufficient resources would cause severe disruption of service to the public. If the conference committee decides not to extend 245(i) adjustment authority beyond September 30, 1997, it should amend section 245(i) to provide adjustment authority for applications filed on or before that date. As currently written, the authority will sunset with respect to any application not adjudicated before September 30, 1997. Such an amendment would enable the INS to properly investigate and adjudicate pending

cases without adversely affecting other priorities, e.g., naturalization, and will prevent forum shopping among INS district offices.

The Senate bill does not amend section 245(i) directly, but limits the underlying eligibility of certain alien status violators for immigrant status. Section 317 of the Senate bill provides that no petition may be approved on behalf of an alien who at any time has been apprehended for entering without inspection or who has failed to depart the U.S. within one year of the expiration date of any nonimmigrant visa (subject to a "good cause" exception) unless the alien has been outside of the U.S. for 10 years. Such an alien is inadmissible and ineligible to adjust status. This provision also prohibits such an alien from seeking a new nonimmigrant classification during the 10-year bar. Certain exceptions are prescribed, and Family Unity beneficiaries are exempt. Similarly, sections 301(b) and (c) of the House bill affect the eligibility of aliens to adjust status. Any alien present in the U.S. without inspection or who arrives in the U.S. without inspection is inadmissible. There is no waiver of this ground. Any alien who has been unlawfully present in the U.S. for an aggregate period of at least one year is inadmissible unless the alien remains outside the U.S. for at least ten years. There are waivers for close relatives of U.S. citizens and lawful permanent residents and those whose admission is deemed to be in the national interest.

The Administration opposes the restrictions on admissibility and eligibility to adjust contained in section 317 of the Senate bill and section 301 of the House bill. These provisions will not deter illegal immigration, but will likely result in a class of aliens who would otherwise be eligible for legal status remaining undocumented and in hiding. In particular, we oppose the provision in the House bill which attaches restrictions on those present unlawfully for a period of one year or more. This provision will generate needless and costly litigation on the issue of the time period during which the alien was unlawfully present in the United States.

International Obligations

We are concerned over whether certain provisions in H.R. 2202 are consistent with U.S. international trade obligations, and would appreciate the opportunity for a discussion of these issues so that they may be taken up in the conference.

conf. report - July 4th recess

Mon 3p.m. going over news letter w/ Dem. staff.

Tues - walk through for Republican staff



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

September 15, 1995

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Hyde:

This letter presents the views of the Administration concerning H.R. 2202, the "Immigration in the National Interest Act of 1995," as introduced on August 4, 1995.

Many of the provisions in H.R. 2202 advance the Administration's four-part 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 that are a result of failed enforcement policies of the past. The Administration's legislative proposal to advance that strategy is H.R. 1929, the "Immigration Enforcement Improvements Act of 1995," introduced by Representative Howard Berman on June 27, 1995. We are pleased that the bill before the Committee follows our policies to a significant extent. Our positions on the provisions in the bill are summarized in the following discussion.

Title I - Deterrence of Illegal Immigration Through Improved Border Enforcement and Pilot Programs

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 700 agents per year to reach a total strength of at least 7,281 Border Patrol agents by the end of FY 1998.

- Document Security: We support improved security of Border Crossing Cards and other documents, using advanced technology, within a reasonable period of time.
- Interior Repatriation: We support pilot programs to deter multiple unauthorized entries, including interior and third country repatriation.
- Penalty for illegal entry: We are currently prosecuting more repeat criminal alien illegal entry offenders than ever. Our increase in prosecutions is preferable to a burdensome civil penalty.

Title II - Enhanced Enforcement and Penalties against Alien Smuggling; Document Fraud

The Administration is aggressively investigating, apprehending, and prosecuting alien smugglers. H.R. 2202 and the Administration bill have a common goal of significantly increasing penalties for alien smuggling, document fraud, and related crimes. In fact, our bill goes beyond the provisions of H.R. 2202 by making conspiracy to violate the alien smuggling statutes a RICO predicate and by providing for civil forfeiture of proceeds of and property used to facilitate alien smuggling.

- Penalty increases: We support increases in the sentences for aliens who fail to obey a deportation order, illegally re-enter the U.S. after deportation, or commit passport or visa fraud.

Title III - Inspection, Apprehension, Detention, Adjudication, and Removal of Inadmissible and Deportable Aliens

Removals of criminal aliens have increased rapidly during this Administration. More than four times as many criminal aliens were removed in 1994 than in 1988. We will nearly triple the number of criminal alien removals from 20,138 in FY 93 to 58,200 in FY 96 by streamlining deportation procedures, expanding the Institutional Hearing Program, and enhancing the international prisoner transfer treaty program. Immigration and Naturalization Service (INS) technology enhancements have also played a critical role in removing criminal aliens, as have INS alternatives to formal deportation, such as stipulated, judicial, and administrative deportation.

- 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.
- Removal procedures: We support consolidating exclusion and

deportation into one removal process and facilitating telephone and video hearings which save resources.

- Authorization for removals: We urge the Committee to increase the authorization for funding the detention and removal of inadmissible or deportable aliens to \$177.7 million, the amount in the President's FY 96 budget request, rather than the \$150 million in H.R. 2202.
- Relief from deportation: We support consolidating the processes and restricting the grounds which permit relief from deportation.

Title IV - Enforcement of Restrictions against Employment

The Administration strongly believes that jobs are the greatest magnet for illegal immigration and that a comprehensive effort to deter illegal immigration, particularly visa overstaying, must make worksite enforcement a top priority. The Administration is concerned by the cautious steps back H.R. 2202 takes with regard to enforcement of employer sanctions and will continue to work with the Committee to address this priority enforcement area.

- Enforcement personnel: The President's FY 96 budget request calls for 202 new DOL Wage and Hour personnel while H.R. 2202 calls for 150. We support the levels of new INS investigations personnel and new DOL Wage and Hour personnel requested in the President's FY 96 budget. These resources will enhance enforcement of laws prohibiting employment of illegal aliens and the minimum labor standards laws.
- Employment verification: H.R. 2202, in contrast to the Administration's bill, rejects the principle worksite enforcement recommendation of the Commission on Immigration Reform which was to thoroughly test and evaluate verification techniques before implementing them nationwide. We support continued pilot projects which will aid in the development of a system for accurate verification of a potential employee's status. Such a system will greatly assist employers in meeting their obligation to hire only authorized workers. Testing what works -- from business impact, cost effectiveness, privacy and discrimination perspectives -- is a necessary prerequisite for a nationwide verification system.
- Employment documents: We strongly support the reduction in the number of documents that can establish employment authorization.

Title V - Reform of Legal Immigration System

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 encourages 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.

We are proposing to reform legal 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 are also proposing a few ideas on how to use naturalization to reduce the second preference backlog numbers, which is a priority for the Commission and the Administration, while maintaining first and third family preferences for reunification of adult children of U.S. citizens.

- Refugee admissions: We do not support a statutory cap on the number of refugees resettled in the U.S. Refugee admissions, which have declined in recent years, are better determined through the established consultation process between the President and the Congress.
- Asylum proceedings: We do not support extensive changes in the asylum process which would reverse the significant progress the Administration has made in the asylum area.

TITLE VI - Restrictions on Benefits for Unauthorized Aliens

The Administration supports the denial of benefits to undocumented immigrants. The only exceptions should include matters of public health and safety--such as emergency medical services, immunization and temporary disaster relief assistance--and every child's right to a public education. In so doing, 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. The Administration also 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, strongly opposes application of new eligibility and deeming provisions to current recipients, including the disabled who are exempted under current law. The Administration also is deeply concerned about the application of deeming provisions to Medicaid and other programs where deeming would adversely affect public health and welfare.

TITLE VII - Facilitation of Legal Entry

The Administration is committed to improving services for legal entrants, and we support the provisions of this bill which

enable us to do so. We are already conducting commuter lane pilot programs on the Northern border to facilitate traffic at the ports of entry. Revenues from new service charges will enable us to hire additional inspectors and to enhance customer service to the traveling public at land border ports of entry.

As for air travel, our pre-inspection facilities enable us to expedite inspection at the arrival airports. In addition, we are already working with the travel industry to deter illegal traffic and improve customer services. For the past five years we have conducted a Carrier Consultant program at both United States and foreign locations in which we train airline employees and foreign government officials in the detection of fraudulent travel documents. This has resulted in a marked reduction of mala fide arrivals at United States gateway airports.

Title VIII - Miscellaneous

- Adjustment of status: We do not support limiting the class of aliens who can adjust status under section 245(i) of the Immigration and Nationality Act. This section has eliminated a burdensome paper process, and allowed resources to be shifted to anti-fraud and naturalization efforts.

Mr. Chairman, we want to work with you on bipartisan immigration enforcement legislation that is in the national interest. We look forward to working with you to address the core issues of worksite enforcement, border control, criminal alien deportation and comprehensive immigration law enforcement.

The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

COPY

Jamie S. Gorelick
Deputy Attorney General

Focus on Illegal Aliens

CONGRESS HAS ducked, for the time being, the difficult question of how many immigrants should be admitted to the country each year, and which groups should have preferences for these coveted slots. These matters may be too ticklish for an election year. But politicians can't lose by clamping down on illegal immigrants, who have no lobby and few sympathizers. That's what the Senate did last week.

The measure is far from revolutionary. Essentially it beefs up federal efforts designed to make it more difficult for undocumented aliens to enter and work. There will be more border guards, more investigators and more Labor Department inspectors. Thousands of new beds will be made available in detention or deportation. An effort will be made to stem the counterfeiting of documents; sentences for crimes involving fraudulent documents and smuggling will be increased. A 14-mile triple fence will be constructed on the border near San Diego where the traffic in illegal immigrants is heaviest. Whether all this will substantially reduce the flow is yet to be seen. But none of these steps represents a new approach, and none should be controversial.

Objections have been raised about two provisions

in both House and Senate bills. The first would expand and make mandatory pilot programs already underway to test systems by which employers can determine work eligibility of job applicants. We do not share the fear that such programs present major civil liberties problems. Americans already have to produce Social Security cards to work. They are used to showing driver's licenses and other forms of photo IDs. And a simple 800-number verification system of the kind used to check credit card validity would be efficient for employers and effective in enforcing the law against those working in this country without valid immigration papers.

The second provision would make real the understanding that those who sponsor immigrants have a responsibility to keep them from becoming public charges. This would be done by combining the sponsor's and the immigrant's income in determining the latter's eligibility for certain welfare benefits. There is no injustice in that, only the enforcement of an obligation freely undertaken. Nothing in the Senate version of the bill should create any problems for the White House or for anyone who believes, as we do, that these laws must be effective if the better more open features of the country's immigration policies are to be sustained.

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- IV. INS Commissioner Meissner letter opposing the Plyler amendment
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National Association of Police Organizations, Inc.
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International Union of Police Associations AFL-CIO
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Many of the provisions in S. 1664 are similar or identical to the President's 1995 legislative proposal, comprehensive enforcement initiatives, and overall strategy to deter illegal immigration. To reverse decades of neglect, the Administration's strategy calls for regaining control of the Nation's borders; protecting legally employed workers by improving worksite enforcement; aggressively pursuing the removal of criminal aliens and other illegal aliens; and securing from Congress the resources to support the Administration's comprehensive enforcement activities and assist States with the costs of illegal immigration. The President's strategy is already being implemented and is making significant progress toward achievement of its goals.

The Administration supports many provisions in S. 1664, including provisions that: (1) authorize increased resources to improve border infrastructure and more enforcement personnel to restore integrity to the border; (2) establish four-year employment verification pilot programs with appropriate privacy and anti-discrimination protections; (3) increase penalties for alien smuggling, document fraud, and related crimes; (4) limit the number of documents which may be used to establish employment authorization; and (5) "deem" a sponsor's income to an immigrant only until citizenship is obtained.

The Administration has serious concerns with several anticipated floor amendments to S. 1664. If certain floor amendments, described on the next page, are added to S. 1664, various Cabinet members have indicated that they would recommend that the President veto the bill.

Concerns with S. 1664

The Administration has several serious concerns with S. 1664. These concerns, and proposed amendments to address them, are described in detail in the Attachment. In summary, the Administration recommends that S. 1664 be amended, as follows:

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Serious Concerns With Anticipated Floor Amendments

If S. 1664 were presented to the President with provisions that would jeopardize any child's right to full participation in public elementary and secondary education, including pre-school and school lunch programs, the Secretary of Education and the Attorney General would recommend that the bill be vetoed.

If S. 1664 were presented to the President with a provision creating a new agricultural guestworker program, the Attorney General and the Secretary of Labor would recommend that the bill be vetoed. The Administration strongly opposes a new agricultural guestworker program because it would: (1) reduce work opportunities for U.S. citizens and other legal residents; (2) depress wages and work standards for U.S. farmworkers; (3) not be a sustainable solution to any labor shortage that might develop; and (4) increase illegal immigration. The Administration is prepared, however, to work with Congress and other interested parties, as appropriate, to address ways to improve the existing H-2A guestworker program in a way that will not jeopardize worker protections.

The Administration strongly opposes any amendment which would require all persons registering to vote to present certain documents to prove that they are citizens. If S. 1664 were presented to the President with an amendment that would effectively repeal the National Voter Registration Act and create a difficult obstacle for U.S. citizens to register to vote, the Attorney General would recommend that the bill be vetoed.

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Work Authorization Verification and Worker Enforcement. Since jobs are the greatest magnet for illegal immigration, the Administration has made it a top priority to deter illegal immigration through worksite enforcement. Although the Administration supports certain worksite enforcement provisions in S. 1664, such as the four year employer verification pilot program with appropriate privacy and anti-discrimination protections, other provisions continue to raise serious concerns. The Administration recommends that the Senate adopt amendments which would:

- Increase penalties for employer sanctions violations and provide a parallel increase in penalties for immigration-related employment discrimination. Tougher measures are necessary to reduce the job magnet for illegal immigration; deter the hiring of unauthorized aliens; and foster compliance with the law. Failure to increase both penalties could create a financial incentive for employers to discriminate in order to avoid employer sanctions.
- Clarify the circumstances under which it may be appropriate for an employer to request additional employment eligibility or identity documentation from a job applicant or employee who presents documentation that appears to be genuine to protect against discriminatory application.

Migration Control Provisions. The Administration has demonstrated its strong commitment to controlling U.S. borders through the implementation of a multi-year border control strategy focused on prevention through deterrence. The Administration has worked with communities to carefully craft long range strategic plans tailored to the unique geographic and demographic characteristics of each border area to restore border integrity. In an ongoing effort to work with Congress to further improve border management and control, the Administration recommends that S. 1664 be amended to:

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- Restore the original definition of "aggravated felony" which includes crimes with a sentence of five years or more. Expanding the definition to include crimes with a sentence of one year or more eliminates the chance to consider individual circumstances even in the most deserving cases and risks violating U.S. obligations under the 1967 United Nations Protocol Relating to the Status of Refugees.
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The bill as currently drafted may jeopardize public health and safety and create a significant unfunded mandate on local and State governments by requiring them to apply new deeming rules to programs that do not currently require deeming. For these reasons, the Administration opposes applying new deeming rules to the Medicaid program, particularly emergency Medicaid, and other non-cash assistance programs. It is simply unworkable, administratively burdensome, and costly to State and local assistance agencies as well as small businesses. In addition, the Administration opposes applying new deeming rules to current recipients; the disabled who are exempt under current law; and legal immigrants seeking to participate in student financial aid programs.

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- Migration Control. (1) Replace the requirement for multiple layers of fencing along portions of the southwest border with authorized funds for the construction and

improvement of physical barriers, lighting, sensors, and other technologies to detect and deter unlawful entry along the southwest border, (2) preserve the Attorney General's parole authority; (3) restore the original definition of "aggravated felony"; (4) delete the repeal of the Cuban Adjustment Act; and (5) delete the deadline for applying for asylum.

- Eligibility for Benefits. Replace the provisions restricting immigrants' eligibility for public benefits with the Administration's proposal, as described in the Attachment. This would result in (1) limiting the application of "deeming" requirements (under which an immigrant's income is deemed to include the income of his or her sponsor) to the programs which currently deem (e.g., would not include Medicaid or public health programs); and (2) exempting those immigrants with special circumstances from the deeming provisions (e.g., the disabled).

Serious Concerns With Anticipated Floor Amendments

If S. 1664 were presented to the President with provisions that would jeopardize any child's right to full participation in public elementary and secondary education, including pre-school and school lunch programs, the Secretary of Education and the Attorney General would recommend that the bill be vetoed.

If S. 1664 were presented to the President with a provision creating a new agricultural guestworker program, the Attorney General and the Secretary of Labor would recommend that the bill be vetoed. The Administration strongly opposes a new agricultural guestworker program because it would: (1) reduce work opportunities for U.S. citizens and other legal residents; (2) depress wages and work standards for U.S. farmworkers; (3) not be a sustainable solution to any labor shortage that might develop; and (4) increase illegal immigration. The Administration is prepared, however, to work with Congress and other interested parties, as appropriate, to address ways to improve the existing H-2A guestworker program in a way that will not jeopardize worker protections.

The Administration strongly opposes any amendment which would require all persons registering to vote to present certain documents to prove that they are citizens. If S. 1664 were presented to the President with an amendment that would effectively repeal the National Voter Registration Act and create a difficult obstacle for U.S. citizens to register to vote, the Attorney General would recommend that the bill be vetoed.

The Administration strongly opposes an amendment to place restrictions on Federal Government use of languages other than English. Such an amendment would have a direct, adverse effect on Federal efforts to ensure equal access to education and government services, impair the right of citizens to vote, and hamper law enforcement and other important government functions. Moreover, it fails to do anything to increase needed opportunities for adult English literacy. English classes, not language laws, are needed to assist people who want to learn English.

Pay-As-You-Go Scoring

S. 1664 would affect direct spending and receipts; therefore, it is subject to the "pay-as-you-go" requirement of the Omnibus Budget Reconciliation Act of 1990. OMB's scoring of this legislation is under development.

* * * * *

AttachmentConcerns with S. 1664 (Additional Details)

Work Authorization Verification and Worker Enforcement. Since jobs are the greatest magnet for illegal immigration, the Administration has made it a top priority to deter illegal immigration through worksite enforcement. Although the Administration supports certain worksite enforcement provisions in S. 1664, such as the four year employer verification pilot program with appropriate privacy and anti-discrimination protections, other provisions continue to raise serious concerns. The Administration recommends that the Senate adopt amendments which would:

- Increase penalties for employer sanctions violations and provide a parallel increase in penalties for immigration-related employment discrimination. Tougher measures are necessary to reduce the job magnet for illegal immigration; deter the hiring of unauthorized aliens; and foster compliance with the law. Failure to increase both penalties could create a financial incentive for employers to discriminate in order to avoid employer sanctions.
- Clarify the circumstances under which it may be appropriate for an employer to request additional employment eligibility or identity documentation from a job applicant or employee who presents documentation that appears to be genuine to protect against discriminatory application.

Migration Control Provisions. The Administration has demonstrated its strong commitment to controlling U.S. borders through the implementation of a multi-year border control strategy focused on prevention through deterrence. The Administration has worked with communities to carefully craft long range strategic plans tailored to the unique geographic and demographic characteristics of each border area to restore border integrity. In an ongoing effort to work with Congress to further improve border management and control, the Administration recommends that S. 1664 be amended to:

- Replace the requirement for multiple layers of border fencing along portions of the southwest border, which will endanger Border Patrol Agents, with authorized funds for the construction and improvement of physical barriers, lighting, sensors, and other technologies to detect and deter unlawful entry along the southwest border.
- Preserve the Attorney General's parole authority to maintain the ability to respond quickly and appropriately to compelling immigration emergencies.
- Restore the original definition of "aggravated felony" which includes crimes with a sentence of five years or more. Expanding the definition to include crimes with a sentence of one year or more eliminates the chance to consider individual circumstances even in the most deserving cases and risks violating U.S. obligations under the 1967 United Nations Protocol Relating to the Status of Refugees.
- Delete the provision repealing the Cuban Adjustment Act. Repeal would eliminate the flexibility that may be needed to respond to migration crises until such time as the Administration's goal of fostering democracy in Cuba can be realized.

- Delete the deadline on applying for asylum. This provision may lead to needless litigation regarding an alien's date of entry which will divert resources from consideration of the merits of the asylum claim.

Eligibility for Benefits. The Administration is committed to strengthening "deeming" requirements, under which an immigrant's income is deemed to include the income of the sponsor, and to making affidavits of support legally enforceable. S. 1664's approach to immigrants' eligibility for benefits is highly preferable to the approach taken in H.R. 4, the vetoed welfare bill, which would have imposed an outright ban on benefits for most legal immigrants. However, while S. 1664 makes many improvements in this area, the Administration continues to have concerns with some aspects of these provisions.

The bill as currently drafted may jeopardize public health and safety and create a significant unfunded mandate on local and State governments by requiring them to apply new deeming rules to programs that do not currently require deeming. For these reasons, the Administration opposes applying new deeming rules to the Medicaid program, particularly emergency Medicaid, and other non-cash assistance programs. It is simply unworkable, administratively burdensome, and costly to State and local assistance agencies as well as small businesses. In addition, the Administration opposes applying new deeming rules to current recipients; the disabled who are exempt under current law; and legal immigrants seeking to participate in student financial aid programs.

The Administration supports replacing the provisions in S. 1664 restricting immigrants' eligibility for certain public benefits with the Administration's proposal, which would:

- Adopt a definition of eligible alien and apply this definition to only the four primary needs-based programs – Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Medicaid, and Food Stamps. This approach would eliminate significant administrative burdens and costs on State and local governments and social service providers.
- Apply the deeming provision only to SSI, AFDC, and Food Stamps. The application of deeming to Medicaid, including emergency Medicaid, and other programs would adversely affect public health and safety.
- Exempt from the application of new eligibility and deeming provisions those aliens who are: (1) current recipients under programs to which the new provisions would apply; (2) disabled and blind persons who are exempt under current law; and (3) students seeking financial assistance for post-secondary education.
- Maintain the current-law deeming formula that takes into account the needs of the sponsors and their families.
- Protect every child's right to fully participate in free public elementary and secondary education, including pre-school and school-related nutrition programs.

* * * * *

I. Basically a Good Senate Bill

- You [Simpson] should be commended for a job well done. It was tough work and we appreciate the bipartisan way in which you proceeded. Your work with Kennedy, with Feinstein, with us and others created an environment necessary to produce a meaningful and sensible bill.
- We both want a bill out of conference that can be signed. We think that this is achievable.

II. The Gallegly Amendment -- The Priority Item

- We have serious concerns with the Gallegly (or "Plyler") Amendment coming out of conference.
- We share a view that this is not the best approach to addressing illegal immigration and ultimately won't be good for the country. We see it increasing crime, punishing innocent children, raising public health and safety concerns. And it won't work -- It won't be an effective way to reduce illegal immigration.
- Is there a way to get this dropped outright?

[Background: We are told by Kennedy staffers that there is a sizeable block of opposition to this in the Senate -- the prospect of a filibuster is being explored, if necessary.]

Or, if necessary, is there a way to explore an acceptable alternative: perhaps authorizing money.

III. The Leahy Amendment Issue

- We know that you are concerned about this issue (expedited exclusion and the asylum review standard). We worked with you along the way to craft an acceptable approach. There is some of the Leahy amendment that we liked, but not all of it. Perhaps our staffs can look at scaling this back some to result in something nearer to what you want.

IV. Other Issues

- My people tell me that there are some other areas that we would like to address in conference. Hopefully our staffs can talk about them, including:

1. Preserving as much U.S. worker protections as possible in contrast to provisions in the House bill that weaken existing protections.

[This includes DOL enforcement personnel and subpoena authority. And the House's weakening of U.S. worker protections in the H-1B temporary worker program.]

2. Asylum application filing deadline

[Both the House and Senate would reject asylum applications after a deadline no matter how compelling the case of persecution. We don't think humanitarian considerations support a deadline. Of the two, the Senate bill (generally a year) is better than the House bill (180 days).]

3. Benefits restrictions for legal immigrants

[Still broader than we want -- for all needs-based programs including Medicaid and public health programs. This also will place significant and costly administrative burdens on the programs. There are a handful of benefits-related issues in the bills to address. Simpson argued strongly for these restrictions during debate.]

4. Replacing the House mandatory triple fencing with the Senate approach

[The House bill mandates 14 miles of triple fence along the San Diego border and waives environmental protections where necessary to do it. We want Feinstein's Senate approach which permits some discretion in erecting such a barrier.]

5. Some antidiscrimination protections are weakened in employer sanctions enforcement

[The legislation would make it very difficult to show discrimination by changing the standard to require a demonstration of an employer's intent to discriminate. DOJ says this will gut meaningful antidiscrimination enforcement.]

SUMMARY OF IMMIGRATION BILL

The Administration reached agreement with the Congress on sweeping illegal immigration enforcement legislation. This bill supports the Administration's strategy of regaining control of our borders; protecting legal workers thorough worksite enforcement; and aggressively removing criminal and other deportable aliens.

While this legislation provides additional tools to fight illegal immigration, the Administration was successful in protecting legal immigrants. We are pleased that the provision to deny public education to some children was dropped. This provision would have shifted enforcement from the borders and worksites to classrooms and made children susceptible to gangs and violence.

This bill supports our enforcement efforts by:

- * Increasing border personnel, equipment and technology.
- * Increasing enforcement personnel at land and air, ports of entry.
- * Increasing anti-smuggling authority.
- * Increasing penalties for failure to depart, illegal reentry and passport and visa fraud.
- * Increasing INS investigators for worksite enforcement, alien smuggling and visa overstayers.
- * Increasing detention space for criminal and other deportable aliens.
- * Establishing three voluntary pilot programs to confirm the employment eligibility of workers.
- * Reducing the number and types of documents that may be presented to employers for identity and eligibility to work.
- * Barring re-entry of individuals who renounced their U.S. citizenship in order to avoid U.S. tax obligations.

The final agreement conforms to the Administration's principles of fighting illegal immigration without sacrificing the nation's proud heritage of legal immigration.

* The Administration worked to focus this legislation on immigration enforcement rather than severe reductions in legal immigration which were inconsistent with pro-family, pro-work and pro-naturalization principles.

* The original bill was a backdoor attempt to significantly curtail legal immigration. It set sponsorship requirements so high that 36% of U.S. citizens and 60% of legal permanent residents would have been denied the ability to reunite with

close family members. The agreement, setting income requirements for sponsors of legal immigrants at 125% of poverty level and making affidavits of support enforceable, strengthens the sponsorship requirement while preserving the basic ability of families to reunify.

* The original legislation would have significantly eroded health care for immigrants. The compromise assures that public health protections will be preserved for the benefit of the nation as a whole.

* The original legislation contains a provision which imposes a new "intent requirement" in unfair immigration-related employment cases. The Attorney General has been asked to take necessary steps to alleviate any potential discrimination that this may cause against U.S. citizens and authorized workers, who, by their appearance or accent, may appear to be foreign.

Finally, the bill restores the Attorney General's traditional discretion to determine whether people fleeing persecution can be provided safe haven in the United States while assuring that asylum abusers cannot take advantage of our nation's generosity and compassion. Steps will also be taken to correct provisions which impose rigid deadlines for asylum application.

IMPROVEMENTS MADE IN BENEFITS FOR IMMIGRANTS PROVISIONS IN
FINAL IMMIGRATION BILL

Six month grace period for current Food Stamp recipients from
immigrant bans enacted in Welfare Reform.

* Grace period would provide current Food Stamp recipients affected by the Welfare Reform immigration ban with benefits until April 1, 1997 in order to provide time to adjust to the denial of benefits. It would make the Food Stamp provision more consistent with the implementation schedule for the SSI immigrant ban.

Reductions in income level requirements for sponsoring legal
immigrants support family reunification.

* The Immigration conference bill would have required immigrants to have incomes at 140% of poverty to sponsor a spouse or a son or daughter and 200% to sponsor other family members. The final bill provides for a 125% of poverty level for all immigrants and removes other obstacles to sponsoring immigrants. The changes support the goal of the family reunification by establishing reasonable income standards for sponsoring family members.

Requirements to deport and deny naturalization for immigrants who
use means-tested benefits dropped.

* The final bill drops punitive public charge provisions for immigrants who use means-tested programs.

Application of deeming rules to immigrants currently in the
country dropped.

* The Immigration conference bill would have required immigrants in the country for less than 5 years to be subject to deeming for their first five years in the country. The final bill drops this provision and makes this policy consistent with Welfare Reform.

New significant exemptions to the restrictions in Welfare Reform
law.

* New exemption provided for non-profit charitable organizations from verification requirements in Welfare Reform.

* New exemption provided for battered immigrants and indigent immigrants from deeming restrictions in Welfare Reform.

Drops the provision that would have restricted HIV treatment to
immigrants.

* The Immigration conference bill would have restricted HIV

treatment for immigrants. The final bill drops this provision.

Burdensome verification requirements substantially moderated.

* The Immigration conference bill would have significantly expanded the verification requirements already enacted in Welfare Reform. The final bill replaces this provision with language that ensures a person applying for benefits provides proof of citizenship in a fair and nondiscriminatory manner.

Restrictions on use of emergency medicaid dropped.

* The Immigration conference bill would have held sponsors of immigrants legally responsible for emergency medicaid costs. The final bill drops this provision.



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW.
Washington, DC 20536

ADMINISTRATION IMMIGRATION
ACCOMPLISHMENTS

Asylum

- The Administration secured resources to undertake asylum reform in the 1994 Crime Bill which more than doubled the authorized number of INS asylum officers from 150 officer to 325, and DOJ dramatically increased the number of Immigration Judges from 112 to 179.
- Under the restructured asylum process, DOJ is able to quickly identify and promptly grant valid claims, and refer all other cases to the immigration court to begin deportation proceedings. Eighty-four percent of cases scheduled for interview at an asylum office were adjudicated within 60 days of receipt in 1995.
- New asylum claims filed with the INS dropped from 123,000 in Calendar Year 1994 to 53,000 in CY1995, a decline of 57 percent, indicating a decrease in frivolous claims filed.
- In CY1995, productivity more than doubled. The INS Asylum Corps completed 126,000 cases compared to 61,000 in CY1994. The Asylum Corps more than doubled its issuance of charging documents placing those individuals in deportation proceedings, from 29,000 in CY1994 to 65,000 in CY1995.
- Immigration Judges completed approximately 40,000 asylum cases, compared to less than 17,000 in CY1994 -- an increase of 135%. More than 98% of new non-ABC cases are completed by Immigration Judges within 180 days from the initial INS receipt of an asylum application.
- INS has stepped up its fraud investigation of preparers of spurious claims, resulting in indictments and convictions of preparers in Los Angeles, San Francisco, New York and Arlington, VA.
- INS has installed important technology. An automated asylum database, the Refugees, Asylum and Parole Systems (RAPS), is in place at all eight asylum offices. Asylum offices can now access the immigration court's computer system, the Automated Nationwide System for Immigration Review (ANSIR), to quickly schedule referred applicants for hearings before Immigration Judges.
- Also, to better address asylum issues, INS opened an asylum office in New York City in January 1995.

Naturalization

- INS is making the largest effort in its history to help eligible immigrants become U.S. citizens through a national initiative called Citizenship USA. The goal is to be current with citizenship applications nationwide by the end FY1996.
- INS completed more than 500,000 citizenship applications in FY1995, a 100% increase

over 1993 completions.

- Since last summer, INS has been hiring more than 850 new permanent and temporary officers and support staff, including contract clerical employees, to augment existing citizenship personnel.
- INS is streamlining its work flows, expanding use of its Service Centers for initial paperwork and data entry, improving testing and interview processes, redesigning the N-400 application form, piloting technological improvements, and expanding citizenship ceremony capacity.
- INS is substantially expanding its relationships with community organizations to provide better information and application assistance to potential citizens and to increase overall community involvements in the citizenship process.
- Last fall, INS detailed more than 100 officers and clerks to Los Angeles, Miami, New York, Chicago and San Francisco to perform citizenship duties in the interim before Congress approved INS' request for additional spending authority in 1996.
- INS has expanded and opened new facilities and has plans to open more facilities in the near future. INS expanded and opened new facilities in Laguna Niguel, Oakland, San Jose, Bellflower (CA), Chicago, IL and Miami, FL. INS will soon open new citizenship office in New York, Fresno, and El Monte, CA.
- INS has expanded community-based interviews. Four days a week, a team of INS officer in Los Angeles conduct on-site interviews. Chicago District conducts 50% of its interviews in the community.
- INS has increase the number of interviews. In Los, Angeles, interviews have increase from about 650 a day last August to more than 1600 a day in January and will reach 2500 a day when fully staffed.
- Also, as a result of increased permanent staff hired with 1995 funding and detailed officers, the waiting times from filing to interview has begun to decrease. Last year the wait in Los Angeles was 15 months; it is now 10 months.

Border Enforcement

- Border Patrol Agents: In FY 1994 and 1995, the Administration received funding for a total of 1,150 new Border Patrol agents. Of these agents, more than 500 new agents have been deployed in San Diego, more than 140 in El Paso, and 510 agents going to Tucson, Del Rio, and McAllen. INS has successfully met its goal of having 4,829 Border Patrol agents trained and on the border. In fact INS had 4,881 agents on board at the end of FY 1995.

- In FY 1996, 800 new Border Patrol agents are targeted for assignment to the Southwest border. In addition 200 positions will be redeployed from interior locations to the border. With the agents to be added this fiscal year, the Border Patrol force will have increased by more than 40 percent in just over 3 years.
- Inspectors: INS hired 110 new land border inspectors with FY1995 funding and will hire 536 new inspectors for ports of entry along the Southwest border with FY 1996 funding. The additional inspectors to be added this year will increase current staffing levels by 50% -- the most significant port of entry staffing increase in the history of the agency.
- Vehicles and Equipment: Over the past three years, INS has purchased more than 1500 new vehicles and more than 900 replacement vehicles. INS will continue to purchase two new vehicles for every three agents hired. This year we will make our agents even more effective with portable radios for all new agents. INS will install a new radio network in San Diego with to handle encrypted voice communication.
- Fencing and Roads: INS, with the support of military personnel and the National Guard, has built many miles of fencing along the border to control drug trafficking, alien smuggling, crime and illegal immigration. In San Diego, the Federal government completed 7 miles of fencing by 1993 and with construction over the last 3 years, there are now 23 miles of fencing in the Sector. In Yuma, Arizona Sector, the agency has built close to 6 miles of fencing. INS has plans to build an additional 18 miles of new fencing this year in San Diego, El Centro, Nogales, and El Paso.
- Lighting: In 1995, San Diego sector installed 5 miles of lighting in the Imperial Beach Station. Other parts of the sector have utilized portable lights. This year, INS will install additional lighting in San Diego and El Paso.
- Border Patrol has received state of the art technologies to support the detection and apprehension of illegal crossers. Twenty-five infrared scopes were deployed in San Diego and El Paso and 105 sensors were places along the crossing routes in San Diego, Tucson, and Yuma, Arizona. In addition, INS has deployed a valuable new automated fingerprint identification system on the border, called the IDENT system. For the first time, INS can readily identify criminal aliens, track illegal crossing patterns and collect recidivism data.

Removals

- INS plans on removing 62,000 criminal and non-criminal illegal aliens in FY1996.
- INS removed a record numbers of illegal aliens (51,000 in 1995), including criminal aliens (32,000 in 1995), from our streets, communities and prisons.
- This removal effort increases the total number of aliens removed since 1993 to 145,000.

- A key component to criminal removals is the Institutional Hearing Program (IHP), an on-site hearing-program in which deportation hearings are conducted while inmates serve their sentences. INS was able to expand IHP from five to seven states.
- Because of this program, 1995 IHP removals have increased 59% over 1994 IHP removals.
- The INS Fingerprint Identification System (IDENT) has been implemented in several locations along the Southwest border two months ahead of schedule. IDENT is an automated identification system that store fingerprints and photographs and rapidly and accurately identify criminal aliens and repeat crossers.

Worksite Enforcement

- Cracked down on employers who hire illegal workers -- ensuring U.S. jobs for to legal workers.
- In 1995, INS was able to complete 113% of the targeted number of investigations of high risk employers and identified potential cases.
- Over 4,700 employer sanctions cases were completed for 1995.
- Approximately 1,500 fines were issued to employers who knowingly hired illegal aliens or violated the laws pertaining to employer sanctions.
- INS reviews of previous workplace violators increased to 426 or 150% of the initial target set for FY1995, a 205% increase over the number pursued in FY1994.
- With the assistance of the Department of Labor, INS addressed illegal employment and the exploitation of labor, resulting in 480 investigations for FY1995.
- Worksite enforcement efforts in FY1995 saw successes due to the use of new deterrence strategies in geographic areas and industries not previously targeted, and in the removal of illegal workers and backfilling jobs with legal workers.
- The byproduct of these innovative strategies included the removal of more than 11,000 illegal workers from jobs in work sites across the country.
- One major initiative alone, Operation SouthPAW (Protect America's Workers), over 4,000 illegal aliens were apprehended and more than 2,700 of these jobs were quickly filled by legal workers.
- Operation SouthPAW resulted in protecting over \$55 million in yearly salary opportunities for U.S. citizens and other authorized workers.

- Operation Jobs, a major initiative in 18 states, established opportunities for employers to ensure the use of an authorized workforce.
- Operation Jobs resulted in the removal of nearly 5,000 illegal workers and the subsequent establishment of new jobs for legal workers.
- Operation Jobs was honored with two awards: the Hammer Award, established by the National Performance Review (NPR), and with the Ford Foundation's prestigious Innovations in American Government Award.
- INS redesigned the "green card" in March 1996 to incorporate the latest technology and security innovations to address the card's misuse.
- INS redesigned the Employment Authorization Document (EAD) and reengineered the process for issuance to increase security and efficiency of issuance and create a data base that provides a more accurate and timely future verification of authenticity.
- INS is preparing to reduce nearly in half the number of both INS and non-INS issued documents required for employment transactions from 29 to 16 and we support reducing issued documents even further.
- INS has expanded its use of the pilot Telephone Verification System in Orange County, California, from 9 employers to over 200 this fiscal year, with plans to further increase it to 1,000 by year's end.

Professionalism

- INS will pursue professionalism at all levels of the agency as it continues to rapidly increase the size of the officer workforce and support staff.
- The "challenge" is to hire, recruit and train the best possible employees and provide both new and current employees with all the tools necessary to do their jobs to the best of their abilities.
- In order to meet the challenge, Commissioner Meissner made professionalism INS's #1 priority, as a sign of her commitment to get the job done well.
- INS has streamlined and targeted recruitment and examination activities to shorten processing time and attract a highly qualified, diverse applicant pool.
- INS has expanded its ability to provide basic, advanced and supervisory training through increased capacity and innovative delivery methods.
- INS has focused on strategies to retain trained, experienced employees, especially in areas most impacted by growth and change.
- INS's deployment plans ensure that new employees entering on duty are supported by a

professional work environment, appropriate equipment and technology.

- The INS Office of Internal Audit (OIA) was established in early 1992 and represents INS' significant commitment of resources to the elimination of fraud, waste, abuse, mismanagement, and employee misconduct in the INS. The INS OIA reports directly to the Commissioner and is completely independent of field control and influence.
- OIA's special studies function conducts independent reviews of the Service's programs and operations. Some of its more significant recent efforts include reviews of cases of criminal misconduct on the part of INS employees in order to identify and correct the systemic weaknesses which allowed the violations to occur.
- Conducting intensive civil rights training for field supervisors highlighting their important role in preventing civil rights abuses by creating an atmosphere in which civil rights violations are punished and proper conduct is rewarded.
- The OIA Director established working relationships with immigrant rights groups in Southern California and Texas, notably the American Friends Service Committee, the California Rural Legal Assistance, and the Immigration Law Enforcement Monitoring Project.
- The Citizens' Advisory Panel (CAP) was chartered in 1994 to provide recommendations to the Attorney General on ways to reduce the number of complaints of abuse made against INS employees, and, most importantly, to minimize or eliminate the causes for those complaints. The OIA administers the CAP.

Arguable Legislative "Wins"

- Support for Administration's border control activities
- Endorsement of our computer work authorization verification pilots
- Strengthened antismuggling tools & penalties
- Administration's proposals for tougher criminal and civil penalties for immigration violations (e.g. document fraud)
- Enhanced detention and deportation and identification of criminal aliens
- Pilot program to address visa overstayers
- Expedited exclusion authority (although it may not be exactly our proposal)
- Some reduction in overall legal numbers

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UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-_____

April 15, 1996

Honorable Thomas A. Daschle
Minority Leader
United States Senate
Washington, DC 20510

Dear Senator Daschle:

As the Senate prepares to debate S. 1664, the "Immigration Control and Financial Responsibility Act of 1996," we would like to express our strong opposition to any amendment that would affirmatively authorize States either to exclude from the public schools undocumented children, or to admit such students on a tuition basis--which in many cases would be the functional equivalent of exclusion. If S. 1664 were to reach the President's desk containing such a provision, we would recommend that he veto the bill.

The plain purpose of such an amendment is to attempt to circumvent the decision of the Supreme Court in Plyler v. Doe, 457 U.S. 202 (1982), which holds that States may not, consistent with the Equal Protection Clause of the Fourteenth Amendment, withhold from undocumented children the same free public education they provide to other children residing in the State. The public schools of this country are a vitally important part of the foundation of our diverse and inclusive democracy and strong national economy. We have the following objections to requiring or authorizing States to exclude children from our public schools:

(1) Denying an education to any child is costly, to the child and to our country. Uneducated children are vastly more likely to wind up on the streets, engaging in unlawful behavior and otherwise placing burdens on their communities. President Clinton has stated that children denied education will "be on the street and then the increased risks of crime and other antisocial behavior will go up." This view is widely shared throughout the law enforcement community:

Robert T. Scully, Executive Director of the National Association of Police Organizations, Inc., recently wrote "[l]aw enforcement's position on the Gallegly amendment is based on our profession, protecting the peace of America--a job that would become much more difficult and dangerous if thousands of children are put



on the nation's streets to grow into criminals or fall as victims. Overburdened local law enforcement agencies are ill-equipped to handle the certain resulting flood of juvenile crime and violence."

Gilbert C. Gallegos, National President of the Fraternal Order of Police, recently wrote that "[p]utting hundreds of thousands of additional children on some of the toughest streets in our country translates into a windfall of potential new victims for the predators who work those streets. The cost of education pales by comparison to the cost of public safety in the neighborhoods where these kids are forced to live."

Matt L. Rodriguez, Superintendent of Police for the City of Chicago, recently wrote "[f]orcing young people out of school and onto the streets would have disastrous long-term effects on public safety as well. Every study that has ever been done on the subject has found a close correlation between the absence of education and increased criminality. Our communities are made safer when our young people--in particular, young people from families that are already at risk--are given the opportunity to stay in school and to learn."

Arthur J. Reddy, International Secretary-Treasurer and Legislative Liaison for the International Union of Police Associations AFL-CIO, recently wrote "[h]ow can anyone advocate throwing thousands of children onto the streets without supervision where they will become both victims and criminals. Local law enforcement officers, our members, will be overwhelmed at a time we can ill afford the extra pressure."

(2) It is fundamentally unfair, and unworthy of us as a great Nation, to penalize children for the conduct of their parents, conduct those children are powerless to control. As the Supreme Court said in Plyler, "legislation directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice," and "it is...difficult to conceive of a rational justification for penalizing these children for their presence within the United States." Plyler, at 220. It should be remembered, as well, that the punishment of undocumented children that the amendment would authorize would, in many families, be visited arbitrarily among siblings, because under the Fourteenth Amendment all children who are born in the United States are United States citizens.

(3) Not only is it wrong to penalize children for their parents' unlawful entry by denying them a basic education, it is

ineffective. Education services are not the incentive to illegal immigration that job opportunities are, and, in any event, many of the children who would be affected by the amendment are here now, and are likely to remain here. Moreover, even assuming that exclusion from the public schools would have a deterrent effect on illegal immigration, that effect would be undermined by the "crazy quilt" pattern of implementation that would result from State choice in the matter. Indeed, if a deterrent effect is assumed, such an amendment would presumably channel illegal immigration to those States that decline the invitation to turn their backs on our national traditions.

(4) Schools--which is where, inevitably, such an amendment would be implemented--are ill-suited by their nature to make determinations about the immigration status of their students. Imagine the burden and cost of training teachers and school administrators about the procedures of the Immigration and Naturalization Service (INS) and related documentary requirements; imagine further the burden and cost to parents (presumably, all parents in order to avoid charges of discriminatory implementation by school systems) of implementing such requirements. Certainly, implementation efforts by schools are likely to ensnare them in costly litigation. The INS Commissioner has also written to Congress describing the burden associated with this type of amendment, including its likely effect of diverting INS resources away from more pressing priorities.

(5) Forcing schools to act as extension agents of our immigration authorities would likely intimidate and estrange not only the students who are subject to exclusion and their families, but also students and families--of a variety of ethnicities--who are not subject to exclusion, but who are either uncertain of their rights or fear, rightly or wrongly, stigmatization. We need to do all we can to increase family involvement in education and reduce the drop-out rate, not undercut those efforts through divisive policies such as this.

The fundamental issue raised by such an amendment is not whether the United States needs to do a better job of protecting the integrity of its borders. Every responsible person agrees on this imperative, and this Administration is taking strong steps to fulfill this need. The fundamental issue is whether we should harm the undocumented children who live here--and ourselves and our values--for the transgressions of their parents. In this connection, we would remind you that less than two years ago, the Congress declared it to be the policy of the United States "that a high-quality education for all individuals and a fair and equitable opportunity to obtain that education are a societal good, are a moral imperative, and improve the life of every

individual, because the quality of our individual lives ultimately depends on the quality of the lives of others." Section 1001(a)(1) of the Elementary and Secondary Education Act of 1965. This policy reflects both the practical wisdom of our national experience and "the better angels of our nature" that President Lincoln invoked.

Some will argue, no doubt, that if excluding undocumented children from the public schools is such a bad idea, there is little harm in authorizing the States to do so, because few States would do it. We strongly disagree with this reasoning. By this logic, the more unwise the proposal, the more willing we should be to authorize the States to implement it. The issues here are plainly not about federalism or the wisdom of the States; the issues here are about our historical belief in the power of our public schools to promote opportunity, understanding, cooperation, and economic progress for us all.

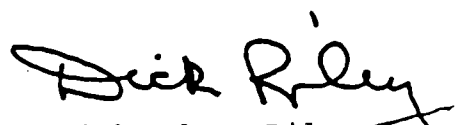
Others will argue that the obligation of the States under the Equal Protection Clause to avoid discrimination against these children should be seen as an unfunded mandate. The short answer to this rhetorical device is that under the terms of the recently enacted Unfunded Mandates Reform Act of 1995, P.L. 104-4, the Constitutional obligations of the States plainly are not unfunded mandates. Nor do we believe that the States' basic obligations under the Constitution--such as the right of all accused persons to a jury trial--should ever be considered as such.

Any amendment that would have the effect of denying or restricting public education benefits to undocumented children would have grave implications for public safety. It would not only harm innocent children, it would continue to harm them for the remainder of their lives. It would not deter illegal immigration. It would have our public schools screening children for their immigration status, an expensive and burdensome task for which they are not suited or prepared. For all these reasons, we urge you to oppose any such amendment.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program and that enactment of S. 1664 with a provision that would deny or limit public elementary or secondary education benefits to undocumented children would not be in accord with the program of the President.

Sincerely,


Janet Reno
Attorney General


Richard W. Riley
Secretary of Education



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW
Washington, DC 20536

April 15, 1996

The Honorable Robert Dole
Majority Leader
U.S. Senate
Washington, D.C. 20510

Dear Senator Dole:

This is to express the strong opposition of the Immigration and Naturalization Service (INS) to any amendment to S. 1664, the "Immigration Control and Financial Responsibility Act of 1996," which would threaten the right of every child in the United States to public elementary and secondary education. I understand that the Attorney General and the Secretary of Education will be writing to you to express the Administration's views concerning this issue as a matter of substantive education and law enforcement policy; I am writing to you to address the burden that would be imposed by such an amendment.

Make no mistake that a vote for this provision is a vote to weaken other meaningful illegal immigration enforcement efforts.

School districts cannot by themselves make immigration status determinations about students or their parents and therefore would have to work with INS to implement any amendment, which would be extremely burdensome for the states and localities, and detrimental to other, more critical enforcement efforts. The local educational authorities could not be directly linked to our automated databases without creating vast opportunity for privacy violations. INS would have to divert carefully targeted resources from other enforcement priorities, including border enforcement and the removal of criminal aliens, to check both our automated and other records of aliens in the United States. Finally, the labor intensive requirements contemplated by such an amendment, such as the substantial training for state and local officials that would be required, as well as the need to increase efforts to field a flood of inquiries regarding implementation could not be assured without extensive new resources.

Last year, the INS removed a record number of criminal and unauthorized aliens from the United States. Rather than strengthen immigration law enforcement, this amendment would make enforcement more difficult and jeopardize the progress already made.

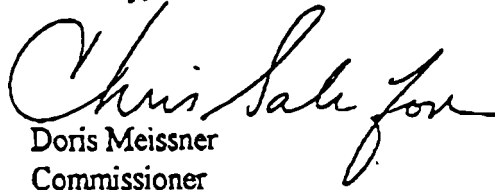
Honorable Robert Dole

April 15, 1996

page 2

As I stated before, the Attorney General and the Secretary of Education are writing to you regarding additional concerns about this provision which I share. Thank you for your consideration of our views. The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,



Doris Meissner
Commissioner

cc: Senator Thomas A. Daschle, Minority Leader, U.S. Senate
all U.S. Senators



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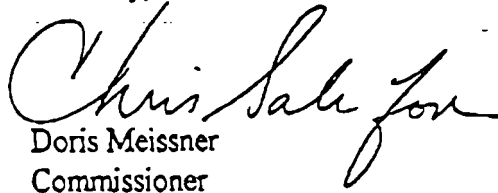
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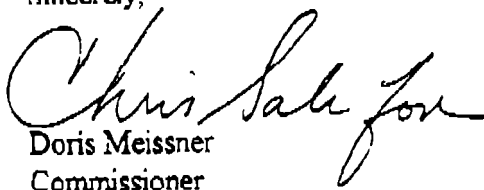
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Sincerely,

A handwritten signature in cursive script, appearing to read "Chris Salazar", is written over the typed name and title.

Doris Meissner
Commissioner

cc: Senator Thomas A. Daschle, Minority Leader, U.S. Senate
all U.S. Senators