

THE SIMPSON MOTOR VOTER KILLER AMENDMENT (DISCUSSION PAPER)

LANGUAGE SUBJECT TO INTERPRETATION (Emphasis added):

(a) **PROHIBITION.-** Notwithstanding the National Voter Registration Act of 1993 (42 U.S.C. g et seq.), no individual may register to vote in an election specified in section 4(a) of such Act (42 U.S.C. g-2(a)) by any method specified in such section, unless-

(1) the individual provides proof of United States citizenship as provided in subsection (b); or

(2) the individual would be eligible to use the method of registration under State law, or Federal law other than the National Voter Registration Act of 1993.

(b) **PROOF OF CITIZENSHIP.-**

I. POSSIBLE INTERPRETATIONS:

A. KILLS ALL NVRA MANDATED PROGRAMS:

The interpretation of the Simpson amendment that members of the national motor voter coalition currently are using is that the phrase in (a)(2), "other than the National Voter Registration Act," refers to both state and federal law. The Simpson citizenship exemption for voter registration applicants would apply only to state or federal voter registration programs, under law, that are not mandated by the NVRA. Under this interpretation, the federal mail-in program as well as NVRA mandated state programs (listed in section 4(a) of the NVRA) would require applicants to provide proof of citizenship whether these programs are covered under state law or not.

B. STATES RIGHTS

This version of the Simpson amendment interprets the first phrase in the exemption clause, (a)(2) "the individual would be eligible to use the method of registration under State law," as separate and distinct from the next phrase "or Federal law other than the NVRA." Under this interpretation, any program covered by state law, including voter registration programs mandated by the NVRA, would be exempt from the proof of citizenship requirement. The federal mail-in program would not be exempt, nor would any NVRA mandated program that is not covered by state law (if there is any).

Under this interpretation, states could effectively kill any NVRA mandated program under state law simply by repealing the relevant provisions of the state law. The NVRA would require states to offer these programs but they would be rendered ineffective by the proof of citizenship requirement.

C. OTHER INTERPRETATIONS?

II. GENERAL ARGUMENTS AGAINST THE SIMPSON AMENDMENT (UNDER ANY INTERPRETATION)

- 1) The Simpson amendment would kill the popular and successful federal motor voter law.
- 2) The amendment would turn back the clock on voting rights and voter participation
- 3) The Simpson amendment is completely unwarranted.
- 4) The amendment would particularly disadvantage young people, people with disabilities, low-income citizens and racial minorities, particularly language minority citizens.
- 5) The amendment is impractical, confusing and would create an unnecessary administrative burden for states.
- 6) (The amendment would set a terrible precedent).

III. STRATEGY

TYPES OF REGISTRATION SYSTEMS BY STATE

	State Central Computer	Mail	Election Day	Agency	Motor Voter	Deputized Registrars
AL	No	No	No	No	No	No
AK	Yes	Yes#	For Pres	Yes	Yes	Yes
AZ	No	No	No	No	Yes	Yes
AR	No	No	No	No	No	Yes
CA	Yes	Yes	No	No	No	May
CO	Yes	No	No	No	Yes	No
CT	No	Yes*	No	Yes	No	May
DE	Yes	Yes	No	No	No	Yes
DC	Yes	Yes	No	Yes	Yes	No
FL	No	No	No	No	No	Yes
GA	No	No	No	No	No	Yes
HI	Yes	Yes	No	Yes	Yes	Yes
ID	No	No	No	No	Yes	Yes
IL	Yes	No	No	Yes	No	Yes
IN	No	No	No	No	No	Yes
IA	Yes	Yes	No	Yes	Yes	May
KS	Yes	Yes	No	No	No	Yes
KY	Yes	Yes	No	No	No	No
LA	Yes	No	No	No	Yes	Yes
ME	No	Yes*	Yes	No	Yes	Yes
MD	Yes**	Yes	No	Yes	Yes	No
MA	No	No	No	No	No	May
MI	No	No	No	No	Yes	Yes
MN	Yes	Yes	Yes	Yes	Yes	No
MS	No	Yes	No	Yes	Yes	Yes
MO	No	No	No	No	No	Yes
MT	No	Yes#	No	No	No	Yes
NE	No	Yes+	No	No	No	Yes
NV	No	No	No	No	Yes	Yes
NH	No	No	No	No	No	May
NJ	No	Yes	No	Yes	No	No
NM	Yes	No	No	No	Yes	Yes
NY	No	Yes	No	Yes	Yes	No
NC	No	No	No	No	Yes	Yes
ND	N/A	N/A	N/A	N/A	N/A	N/A
OH	Yes	Yes	No	Yes	Yes	No
OK	Yes	No	No	No	No	Yes
OR	No	Yes	No	No	Yes	No
PA	No	Yes	No	No	No	May
RI	Yes	No	No	Yes##	Yes	Yes
SC	Yes	Yes+	No	No	No	Yes
SD	No	No	No	No	No	Yes*
TN	No	Yes#	No	No	No	No
TX	Yes	Yes	No	Yes	Yes	Yes
UT	No	Yes	No	No	No	No

VT	No	Yes	No	No	Yes	No
VA	Yes	No	No	No	No	May
WA	No	No	No	Yes	Yes	Yes
WV	No	Yes*	No	No	Yes	May
WI	No	Yes+	Yes	No	No	May
WY	Yes	No	Primaries	No	No	No

- * Requires notarization
- + Requires witness (WI requires 2)
- # Option of either witness or notarization
- ** Serving 14 counties only

DEFINITIONS FOR TYPES OF REGISTRATION SYSTEMS

State Central Computer refers to whether or not the State operates some form of computerized voter registration file covering or serving some or all of the local election jurisdictions.

Mail refers to whether or not the State provides for mail registration by all eligible citizens of the State rather than just subpopulations such as absentee, disabled, or military citizens.

Election Day refers to whether or not the State provides for voter registration on election day either at the polls or otherwise.

Agency refers to whether or not the State has a specific and ongoing program which requires them to provide for voter registration, or at least to provide voter registration forms, at public agencies (other than just motor vehicle offices) that deal extensively with the citizenry -- such as welfare offices and the like.

Motor Voter refers to whether or not the State has a specific and ongoing program which requires them to provide for voter registration, or at least to provide voter registration forms, at the public offices of the motor vehicle department.

Deputized Registrars refers to whether or not local jurisdictions officially deputize persons to serve as voter registrars. "May" implies that the power to deputize registrars is discretionary to the local election official while "Yes" implies that local officials are required to do so. "No" means that there is no official deputizing, although private individuals may nonetheless serve as unofficial registrars (as is so often the case in mail registration States when interest groups may obtain multiple forms for their own registration drives).



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 16 1996

Hon. Robert Dole
Majority Leader
United States Senate
Washington D.C. 20510

Dear Senator Dole:

I write to express the Administration's strong opposition to the proposed requirement for triple-tier fencing contained in S. 269, the "Immigration in the National Interest Act of 1995." This provision requires the construction of second and third fences, in addition to the existing 10 foot steel fence, along the 14 miles of U.S.-Mexico border in the San Diego Border Patrol Sector. The bill also requires roads to be built between the fences. Instead, we support an amendment, to be offered by Senators Feinstein and Boxer, to replace the requirement for triple fencing along portions of the Southwest border with an authorization of funds for the construction and improvement of physical barriers, lighting, sensors, and other technologies to detect and deter unlawful entry.

The requirement now in the bill, if enacted, would endanger the physical safety of Border Patrol agents. U.S. Border Patrol agent Joe Dassaro, Public Information Coordinator for Local 1613, U.S. Border Patrol Council, recently stated, "There is no support from U.S. Border Patrol agents in the field for the three tiered fence. We see it as a dangerous situation. If an agent goes between the three fences and gets into trouble, there is a longer response time for another Border Patrol agent to come to his/her aid. . . ." From a tactical perspective, agents travelling along roads surrounded by fencing present an easy target for alien smugglers and others ready to thwart our enforcement efforts. Our experience has shown that when agents travel in a single, predictable line, they and their vehicles are susceptible to attack with rocks and other objects.

Response time to an emergency situation in areas adjacent to fenced in areas will be greatly and unnecessarily increased if this provision is enacted. Agents that patrol between the sections of the fence will not have the ability to quickly and directly get out of the area at critical times. With triple fencing, smugglers can easily block a Border Patrol vehicle with

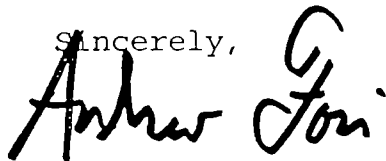
debris and limit agent mobility to the fixed path bounded by the fence. In addition, the rocky terrain and deep canyons in this region of California make a continuous road impossible to build and use. The challenges presented by this terrain are better met through the other tactics currently deployed in the San Diego Sector.

We support physical barriers along the border when and where they are appropriate and have erected 23 miles of fences along the California Border as an important part of our strategic plans. In order to build the fence that is now in place, it was necessary to construct an access road along the border. Rather than specifying barriers, we recommend funding to construct "all-weather roads", since the existing roads become impassable after relatively little rainfall. The current situation prohibits the Border Patrol from actually reaching the border and interrupts repair and maintenance on the fence. Rain also precludes the Border Patrol from working close to the border in a high visibility, deterrent posture. Agents must pull back and work from hardpacked or paved streets during these periods. With an all-weather road system, Border Patrol agents would have access to the fence even during the extended rainy season.

We fully recognize the usefulness and need for border fencing and have been at the forefront of fencing innovations for many years. Single fencing is a valid deterrent in many areas and we will continue to use this tool at various locations to meet the needs of the San Diego Sector Border Patrol. In some carefully selected areas, multiple fencing may be appropriate. Other deterrence technologies, such as enhanced communications systems, lighting, low light television systems and fixed infrared/daylight cameras also will compliment the existing and planned fencing. In our view, the actual deployment of personnel, physical barriers, technology and operational judgments are decisions best left to the Border Patrol with responsibility for the day-to-day operation at the ground level.

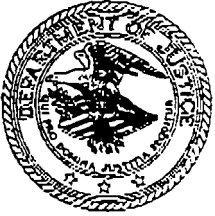
Please do not hesitate to contact me if I can be of further assistance. The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Foïs". The signature is stylized with a large, looped initial "A" and a cursive "Foïs".

Andrew Foïs
Assistant Attorney General

cc: Hon. Thomas A. Daschle
Minority Leader
United States Senate



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

April 29, 1996

The Honorable Robert Dole
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Senator Dole:

This letter expresses the Administration's views on S. 356, "The Language of Government Act of 1995." We understand that S. 356 will be offered as an amendment to S. 1664, the Immigration Control and Financial Responsibility Act of 1996. For the reasons set forth below, the Administration strongly opposes S. 356 and its addition to S. 1664.

S. 356 would declare English the official language of the Government and require the Government to conduct all of its official business in English. S. 356 defines "official business" generally as "governmental actions, documents, or policies which are enforceable with the full weight and authority of the Government." It would eliminate all governmental actions that are conducted in languages other than English, except: (1) teaching foreign languages; (2) actions, documents, or policies not enforceable in the United States; (3) actions, documents, or policies necessary for international relations, trade, or commerce; (4) actions or documents that protect the public health; (5) actions that protect the rights of victims of crimes or criminal defendants; and (6) documents that use terms of art or phrases from languages other than English.

S. 356 proposes to fix a problem that does not exist. As the President has stated, there has never been a dispute that English is the common and primary language of the United States. According to the 1990 Census, 97% of all residents speak English at least well and of the 13.8% of residents who speak languages other than English at home, 79% above the age of four speak English well or very well. In fact, there is overwhelming demand for adult English language classes in communities with large, language minority populations. For example, in Los Angeles, the demand for these classes is so great that some schools operate 24 hours per day and 50,000 students are on the waiting lists city-wide. In New York City, an individual can wait up to 18 months for classes. To help meet this need, the President's fiscal year 1997 budget proposes a 13% increase over 1995 for adult English education.

The overwhelming majority of Federal official business is conducted in English. According to a recent GAO study, only

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0.06% of Federal documents are in a language other than English - and these are translations of English documents. These non-English documents, such as income tax forms, voting assistance information, decennial census forms, and medical care information, assist taxpaying citizens and residents who have limited English proficiency (LEP) and are subject to the laws of this country. In those very few instances where the Government uses languages other than English, the usage promotes vital interests, such as national security; law enforcement; border enforcement; civil rights; communicating with witnesses, prisoners or parolees; protecting and promoting public health; and informing people of their legal rights and responsibilities.

S. 356 would invite frivolous litigation against the Government. It would create a vague, private cause of action -- and allow attorney fees -- for anyone who believed that he or she had been injured by the Government's communication in a language other than English. Actual injury due to a failure to conduct all activities in English is highly conjectural since virtually all of the Government's business is conducted in English. S. 356 would impede Federal agencies performing vital tasks and delivering important information.

Although it is difficult to predict how the Supreme Court ultimately would resolve arguments that S. 356 violates constitutional protections, Yniguez v. Arizonans for Official English, 69 F.3d 920 (9th Cir. 1995), cert. granted, 64 U.S.L.W. 3635, 3639 (U.S. Mar. 25, 1996) (No. 95-974), a case raising constitutional challenges to a similar State statute, is now pending before the Court. In that case, a divided Ninth Circuit Federal Court of Appeals ruled that the English-only requirements in the Arizona constitution were facially overbroad in violation of the free speech rights of State government employees. Although the dissent's argument in Yniguez is not without force, the existence of the Ninth Circuit's en banc decision raises a concern that the bill is vulnerable to First Amendment challenge.

If S. 356 applied to the legislative franchise of Members of Congress, it would violate the Speech or Debate Clause of the Constitution. If it prevented a Federal legislator, or the President or other Executive branch officials from communicating effectively with the persons he or she represented, a court might conclude that it interfered with a core element of representative government established by the Constitution. Since several ethnic and national origin minority groups in this country include large numbers of people with limited English proficiency, S. 356 could be challenged under the Equal Protection Clause of the Constitution, which prohibits discrimination on the basis of ethnicity or national origin. S. 356 also would be subject to attack on the ground that it violated the due process rights of

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non-English speakers who were parties to civil and administrative proceedings, such as deportation proceedings.

The broad language of S. 356 is at odds with the longstanding principle of government-to-government relations between the Federal government and Indian tribes. If broadly construed, S. 356 could repeal the specific mandates found in the Native American Languages Act, 25 U.S.C. §§2901-2905, and related statutes. Recognizing that Indian languages are an essential aspect of tribal culture, the Native American Languages Act authorizes tribes to "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages."

S. 356 would threaten the right of United States citizens to vote. It would effectively repeal the minority language provisions of the Voting Rights Act (VRA) which require the use of languages other than English in enforcement efforts, e.g., checking the accuracy of translations. The VRA also requires covered jurisdictions to provide election information and voting assistance to minority language citizens in a language they can better understand, to enable them to participate in the electoral process as effectively as English-speaking voters. The VRA helps many Native Americans and some other language minority citizens, especially older individuals, who continue to speak their traditional languages and to be affected by the lack of meaningful educational opportunities during their school years. In addition, over 3.5 million Puerto Ricans born and educated on the island are citizens by birth but often lack full English proficiency.

S. 356 could threaten public health. Although section 3 of the bill (creating section 165(2)(D)) excludes from its application "actions or documents that protect the public health," the "public health" is not defined and might not include programs within the Department of Health and Human Services (HHS) that promote the welfare of children and adults where an immediate public health risk does not exist, e.g., older Americans and AFDC recipients.

S. 356's mandate for "English only" would prevent the Government from making particularized judgments about the need to use languages in addition to English to provide or to obtain essential information. It is in the best interest of the Government -- as well as its customers -- for the public to understand clearly Government services and processes, and their rights.

S. 356 would hinder law enforcement and other governmental programs, such as tax collection; natural resource conservation; census data collection and other surveys; and promoting

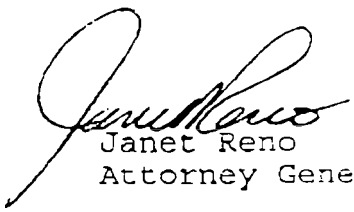
The Honorable Robert Dole

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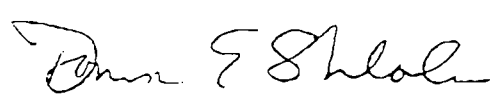
compliance with the law. S. 356 could affect HHS' ability to provide Medicaid and Medicare interpreter services; to print materials on HIV transmission, organ transplantation, food labeling, food safety, safe use of medicines and medical devices; and to produce Head Start publications, child support collection pamphlets, and child abuse prevention pamphlets in non-English languages. S. 356 could hamper enforcement of housing anti-discrimination laws by limiting the ability of the Department of Housing and Urban Development (HUD) to make complaint forms available in languages in addition to English. It could prevent interviews with witnesses in languages other than English. It would limit HUD's ability to provide housing counseling to many low-income and minority families and to people who use other languages, such as sign language.

S. 356 would promote division and discrimination rather than foster unity in America. It would exacerbate national origin discrimination and intolerance against ethnic minorities who look or sound "foreign" and may not be English proficient. It would keep many Americans from the political and social mainstreams. It would undermine efforts like those of the Justice Department's Community Relations Service to ease community and racial conflicts through conciliation and community outreach. Thus, the Administration strongly opposes S. 356 and its addition to S. 1664, illegal immigration enforcement legislation the Administration supports.

Sincerely,



Janet Reno
Attorney General


Donna E. Shalala
Secretary of Health
and Human Services
Henry G. Cisneros
Secretary of Housing
and Urban Development

cc: Honorable Thomas A. Daschle
Minority Leader

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

May 2, 1996

STATEMENT BY THE PRESIDENT

The Senate has taken an important step today by passing with bipartisan support the Immigration Control and Financial Responsibility Act of 1996, important legislation which ratifies my Administration's comprehensive immigration strategy to reverse decades of neglect and restore the rule of law to our immigration system.

This bill builds upon the historic progress we are making. Over the last three years, I have directed my Administration to use every tool at its disposal to crack down on illegal immigration and to reintroduce the rule of law at the border and in the workplace. We have made illegal crossings at the Southwest border tougher than ever before by increasing manpower by fifty percent and employing state-of-the-art technology. We are deporting record numbers of criminal and other illegal aliens from the United States, and we have put teeth into our immigration laws in the workplace. Earlier this year, I signed an executive order barring employers who knowingly hire illegal workers from receiving federal contracts.

I am pleased that the Senate has endorsed our strategy with legislation that answers my Administration's call for tougher penalties for alien smugglers, criminal aliens and manufacturers and sellers of fraudulent documents. The Senate bill also supports our plan to continue to increase the size of our Border Patrol and provides the Justice Department with new tools to fight illegal immigration. While this bill strongly supports our enforcement efforts, it still goes too far in denying legal immigrants access to vital safety net programs which could jeopardize public health and safety. Some work still needs to be done. I urge the Congress to move quickly to finalize and send me this key legislation.



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

April 15, 1996
(Senate)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

S. 1664 - Immigration Control and Financial Responsibility Act (Hatch (R) Utah)

The Administration supports Senate passage of S. 1664. Some provisions, however, continue to raise serious concerns (described below and in the Attachment). The Administration will work with the Senate to seek adoption of amendments to satisfactorily address these concerns, and to ensure that the Administration's illegal immigration reform initiatives are not undermined.

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:

- Worksite Enforcement. (1) Increase penalties for employer sanctions violations and provide a parallel increase in penalties for immigration-related employment discrimination; and (2) clarify the circumstances under which an employer may request certain employment eligibility or identity documentation to protect against discriminatory application.
- Migration Control. (1) Replace the requirement for multiple layers of fencing along portions of the southwest border with authorized funds for the construction and

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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.

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- 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.



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

April 15, 1996
(Senate)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

S. 1664 - Immigration Control and Financial Responsibility Act (Hatch (R) Utah)

The Administration supports Senate passage of S. 1664. Some provisions, however, continue to raise serious concerns (described below and in the Attachment). The Administration will work with the Senate to seek adoption of amendments to satisfactorily address these concerns, and to ensure that the Administration's illegal immigration reform initiatives are not undermined.

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:

- Worksite Enforcement. (1) Increase penalties for employer sanctions violations and provide a parallel increase in penalties for immigration-related employment discrimination; and (2) clarify the circumstances under which an employer may request certain employment eligibility or identity documentation to protect against discriminatory application.
- Migration Control. (1) Replace the requirement for multiple layers of fencing along portions of the southwest border with authorized funds for the construction and

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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.

* * * * *

Date: Thursday, March 21, 1996 1:18 pm
From: SMO02(TRASVINA)
Subject: House floor action on Immigration bill

This House will finish action on the Smith Immigration bill today. Key votes will be on the Chrysler/Berman/Brownback amendment to strike the legal immigration provision from the bill. The Administration is heavily involved in whipping votes in support of the amendment. Debate starts at after 1:30 with an hour of debate. Comm. Meissner is making numerous calls. Right now we are a little short. Much will depend on whether we get 60 Republicans to support it. Other key votes today: Up to 3 amendments to add Guest Workers to the bill. Vote on final passage around 6pm.

Key Votes Yesterday:

Galleghy Amendment to overturn Plyler v. Doe, passed, 257-163. Permits states to deny public education to illegal immigrants. Administration strongly opposed. Dept of Ed considering today a veto recommendation over this amendment. (NOTE: We already have one on Guest Workers, if added to the bill; Sec. of Labor has hinted broadly on one if the bill does not protect American workers.)

Chabot and Galleghy Amendments defeated: The former would have eliminated employment verification; the latter would have made pilots mandatory. We opposed both amendments. Defeat of these amendments clears the way for the Administration Pilots currently in the Senate bill. This is a major step forward for us to be able to prevail in conference.

McCollum Amendment to require changes in the Social Security card to prevent fraud, defeated 191-221. SSA opposed this amendment because of cost and because it would lead to a national ID card.

Bryant Amendment to require public hospitals to report immigration status of patients to INS defeated, 170-250: DOJ and HHS strongly opposed this amendment.

Canady Amendment to require English language proficiency for diversity visa immigrants passed, 210-207: DOJ opposed this amendment. The narrowness of Canady's victory is a good signal that harsher English Only measures can be defeated.

Smith/Schiff Amendment to strike the cap on refugee admissions, passed by voice vote: We supported this amendment and were able to get this provision struck from the Senate bill. If we keep it off on the Senate floor, we will be in very good shape.

Brownback/Gutierrez Amendment to revise the Sunset Provision of Legal Immigration, passed by voice vote: We supported this amendment because the sunset provision could have meant a virtual moratorium on family based immigration if Congress could not agree on a continued immigration level after the sunset.

Beilenson Amendment to strike the provision requiring a triple fence be built along California Border, defeated, 120-290: We supported this amendment. There was some confusion about the Administration's position on the House floor (not during the debate; while they were voting one of the Comm Dems said, mistakenly, that the Admin wanted a NO vote). This affected the

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OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO: Steve Martens
Jeff Ashford
Stacy Dean
Stephen Whitman
cc: Jim Jukes

- Take necessary action ☐
- Approval signature ☐
- Comment ☐
- Prepare reply ☐
- Discuss with me ☐
- For your information ☒
- See remarks below ☐

FROM: Ingrid Schroeder

DATE: October 12, 1995

REMARKS

HR 2202 - Immigration markup - update

Date: Thursday, October 12, 1995 9:46 am
From: SMO02(KOHLUCY)
Subject: October 11 Immigration Mark Up

The big news is that Berman's amendment to sever the legal immigration provisions failed 14-20. Also on legal immigration, the Committee by voice vote adopted Lamar Smith's amendment to guarantee parents of U.S. citizens 25,000 visas per year and McCollum's amendment to prohibit family based admissions which exceed the family based ceiling from borrowing visa numbers from skilled workers and professionals. In order to research its full fiscal impact, Becerra withdrew his amendment to reimburse family based immigrants, who are in the backlog for categories which will be eliminated, for their petition fees. Hyde supports this amendment.

Regarding asylum reform, Jackson-Lee's amendment to extend the deadline for filing an asylum application from 60 to 180 days failed 9-14. Pending are McCollum's amendment, which restores EOIR's role in asylum adjudication but requires that asylum applications be filed within 30 days of entry to the U.S., and Frank's amendment to McCollum's which extends the filing deadline and creates an exception for changed circumstances. Markup will continue at 10 a.m. today. More legal immigration amendments are expected. The title on benefits as well as 2 other titles must also be addressed.

Date: Wednesday, September 20, 1995 12:21 pm
From: SMO02 (TRASVINA)
Subject: Morning Report on House Immig. Markup

House Judiciary Committee markup continued this morning. We're still in the enforcement section of the bill. A Goodlatte amendment passed, 14-8, which creates a permanent bar for re-entry of aggravated felons (instead of 20 years). A Watt amendment was defeated which would have struck the bar on discovery of information obtained through electronic surveillance in terrorist special removal cases. Other amendments relating to alien terrorism are expected.

We are working with Schumer and McCollum on our Asset Forfeiture language and on Asylum Reform.

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ROUTE SLIP

TO: Steve Mertens	Take necessary action	☐
Stacy Dean	Approval signature	☐
Jeff Ashford	Comment	☐
Stephen Wainath	Prepare reply	☐
	Discuss with me	☐
CC: Jim Jukes	For your information	☒
	See remarks below	☐
FROM: Ingrid Schroeder	DATE: October 13, 1995	
REMARKS		

HR 2202 - Smith immigration bill --
markup update.

Please note: Rep Smith does not expect floor
action on HR 2202 until next
year.

10/10/95 10:30 202 514 5488 ULA 002

Date: Thursday, October 12, 1995 8:29 pm
From: SMO02(TRASVINA)
Subject: Immigration Bill Markup Report

*The last 2 days of markup have been slow but major decisions have been made. First, Rep. Smith says the bill is unlikely to go to the House floor until next year. (Sen. Simpson's staff indicates his legal immigration bill is still being drafted.) *

Second, on a 20-14 vote the House Judiciary Committee voted not to split the legal immigration from the enforcement provisions of the bill. Expectations were that it would be a close vote but it was not. Fallout today came from Rep. Howard Berman who offered an amendment on employment visas which he said was offered in part in frustration because business groups failed to deliver Republicans on the "splitting the bill" vote. (The amendment failed.)

*We are saying that the President wants a bill this year but that, while the debate over legal immigration is an important that Congress must have, the enforcement provisions we all want (e.g., expedited exclusion, increased penalties for alien smuggling, fraudulent documents) should not be held up by this debate.

*Another major issue was lifting the refugee cap. After a variety of parliamentary maneuvers, (one of which backfired on Democrats), this amendment failed by one vote. As you will recall, we defeated the cap in the Senate so this will go to conference if it survives further votes in both houses.

A McCollum Amendment which replaced the language he added to the bill previously which would have gutted our asylum reforms passed. It gives us almost everything we sought. It brings the IJ's back into the process; eliminates mandatory asylum; gives the AG authority to reject asylum claims from being heard if a 3rd country which has a good asylum system will accept the applicant for consideration; and requires applicants to apply within 30 days of arrival unless there is a change in their country's conditions.

*Finally, a non-partisan skirmish broke out when Rep. John Bryant called the Schumer-Flanagan-Hoke amendment to restore the diversity visa program a "White Europeans amendment." This brought angry responses and Hyde gaveled the markup to a close. Bryant had opened the first day of markup by stating that the need for the bill was exemplified by the lack of native U.S. citizens driving cabs at National Airport. Instead, these jobs are now filled by people from countries far away from the U.S. Bryant, the ranking Democrat on the Immigration Subcommittee, has voted with Republicans against almost every major Democratic amendment at full committee.

*The Committee remains on Title V of the bill. Benefits provisions and a few other key issues remain. Markup will continue on into next week, if not longer.

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ROUTE SLIP

TO: Steve Mertens	Take necessary action	☐
Janet Himler	Approval signature	☐
Stacy Dean	Comment	☐
Jeff Ashford	Prepare reply	☐
Stephen Warnath	Discuss with me	☐
Jim Jukes	For your information	☒
	See remarks below	☐
FROM: Ingrid Schroeder		
DATE: Sept. 25, 1995		
REMARKS		

Re: HR 2202 markup- 9/21/95 - readout

Will keep you posted on further developments.

Date: Thursday, September 21, 1995 6:33 pm
From: SMO02(TRASVINA)
Subject: House Jud. Immigration Markup--Day 3

After very intense debate, the House Judiciary Committee rejected the motion to strike the new Verification System from the bill by a vote of 17-15. This was not a party line vote--Frank, Schumer, and Berman voted with Hyde and Smith to retain the verification provision while freshman Republicans joined Becerra, Conyers, Schroeder and Nadler against it. The best news is that another Republican amendment (Hoke of Ohio) passed to make the verification system a true pilot, just like the Administration's. Under the Hoke Amendment, the AG will report to Congress and permanent authorization for national implementation will take another Congressional vote in 1999. Automatic implementation is out thus allowing the Administration to fully address the cost, civil liberties, privacy, etc. concerns and to recommend only "what works" for national implementation.

Two more good outcomes: Hyde Amendment striking the provision which would have limited admission of parents of U.S. citizens to those who had a majority of their children in the U.S. as citizens or permanent residents passed as did a Hyde Amendment restoring AG discretion on National Interest Waivers for labor cert on certain employer sponsored visas.

One bad outcome: A Goodlatte Amendment was adopted without debate that strips authority of the Office of Special Counsel to charge employers with violating anti-discrimination provisions unless they intend to discriminate based on national origin or citizenship status. Currently, there is no intent standard for a discrimination case to be brought. Our strategy will be to fight Senate consideration of such an amendment so that it is a conferenceable item.

One other significant amendment: A Barr amendment passed which would exempt employers of 3 or fewer employees from the verification system.

Politically Significant Debate: Berman offered an amendment to increase DOL investigators, increase fines where labor law and employer sanctions violations co-existed; and provide subpoena power to DOL. These provisions were from the Administration bill. While the amendment was defeated 13-18 on a party line vote, Republicans went on record that labor law violations did not need higher penalties and that the American people don't want government interference in the workplace.

* **SLOWDOWN:** The Committee returns to the bill (we're halfway done) for two hours next Wednesday and then nothing is scheduled until the week of October 10.