Management Team Meeting
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STRENGTHENING POLICY AND COORDINATION FUNCTIONS

I. *Should the Commission make recommendations to strengthen the capacity of the Executive Branch to formulate immigration policy and coordinate its implementation?*

Historically, the formulation of immigration policy has fallen to the Congress, with the Executive Branch acting in a largely reactive manner. Crisis management tends to overwhelm more deliberative policy development and implementation. Before she became Commissioner of INS, Doris Meissner testified [January 5, 1993]:

> I propose that the Commission think about how a more sustained, active and forward-thinking role [in policy development] could come from the executive branch. Its purpose would be to establish an executive branch focal point that is increasingly needed and unlikely, because of history and outlook, to arise from within the agencies that discharge immigration functions.

Four years later, some progress has been made: INS has moved towards developing an improved policy development and monitoring capacity within that agency; responsibility to coordinate Department of Justice [DOJ] immigration-related policies has been lodged in the Deputy Attorney General's office, thereby raising the visibility of these issues within DOJ; and a Presidential Directive recognized the need for government-wide attention to immigration policy and its implementation with the establishment of an interagency workgroup under the Domestic Policy Council to focus on a range of pressing immigration matters.

These useful first steps need to be more fully institutionalized and given the resources needed for sustained development, articulation, and coordination of immigration policy within and across the major departments responsible for its implementation.

Advantages. An affirmative answer to this question would place the Commission on record as supporting an active role for the Executive Branch in the formulation of immigration policy. It also reinforces the need for greater oversight and coordination of the implementation of immigration policy at all levels of government. In conjunction with the other recommendations the Commission is likely to make, an enhanced policy development and coordination capacity should help to improve the overall management of the immigration system. A modest infusion of additional resources to beef up oversight responsibilities may make more effective the use of the much more extensive resources that fund actual operations.

Disadvantages. The specific options to enhance Executive Branch policy development and coordination require an infusion of resources. Given the large increase in resources and the continued inefficiencies and management problems, Congress may not be amenable to a recommendation that requires still further funding for immigration matters.

[PLEASE NOTE: The following options are not mutually exclusive. The Commission may wish to recommend all or, at least, a combination of these options.]

Option A: Strengthen the Domestic Policy Council role in immigration policy development and coordination.

The Domestic Policy Council [DPC] was established by Executive Order 12859 on August 17, 1993 as one of the three main coordinative entities in the White House. The other two are the National Security Council [NSC] and the National Economic Council [NEC].

Under the direction of an Assistant to the President for Domestic Affairs, the main role of the DPC is policy coordination and supervision. The functions of the DPC enumerated in the Executive Order are: (1) to coordinate the domestic policymaking process; (2) to coordinate domestic policy advice to the President; (3) to ensure that domestic policy decisions and programs are consistent with the president's stated goals and to ensure that those goals are being effectively pursued; and (4) to monitor implementation of the President's domestic policy agenda. According to the Executive Order, "All executive departments and agencies, whether or not represented on the Council, shall coordinate domestic policy through the Council." It further states that "The Council may function through established or ad hoc committees, task forces or interagency groups." In addition, the Council is permitted to "have such staff and other assistance as may be necessary to carry out the provisions of this order."

One of the immigration-related *fora* established by the Clinton Administration is the White House Interagency Working Group on Immigration Issues, set up by the President's February 7, 1995 directive entitled "Deterring Illegal Immigration" [and subsequently published in the *Federal Register*].

The DPC has other roles within White House coordinating mechanisms [for example, representing domestic issues at meetings of the NSC and NEC] in overseeing interagency policymaking and decisionmaking processes, and in public liaison.

According to a non-DPC government official, the role of the DPC staff is to prepare issues papers after consultation with other agencies and then "force a decision-making process." To do this, the DPC staff manages domestic policy reviews, identifies immigration-related overarching and/or interagency policy issues to be reviewed, coordinates the input of affected agencies into the development of policy/action options and recommendations, prepares decision memoranda and manages their movement through the decisionmaking process. This process may culminate at a DPC meeting, it may involve a meeting of agency Deputies, or it may move up to the White House Chief of Staff for coordination and action. The Chief of Staff may then chair a meeting of principals, as needed, and decide the question at that level, or, when warranted, call a meeting of the full DPC chaired by the President, or at least seek the input and decision of the President on the matter at hand.

The Commission could recommend formally establishing and appropriately staffing an Office of Immigration Policy within the DPC. This formal office would augment the role and responsibilities of the current one-person Senior Policy Analyst overseeing immigration matters for the DPC. Such an Office would provide a high-level place within the Executive Branch to study and address broad questions of immigration policy. Historically, Congress has usually played the primary role in setting and articulating immigration policies. This function in the DPC would be instrumental in coordinating the development of Executive Branch immigration policymaking, articulating it to the Congress and the nation, and then coordinating and integrating its implementation among various Executive Branch departments and agencies.

The formal Office of Immigration Policy would directly oversee broad-brush immigration decisionmaking and coordination processes. It would provide a central focus for sustained policy development whether or not the system is in crisis. [It has been said that in times of crisis, there will always be sufficient attention given.] This policy development function could include review of broad issues of immigration policy, such as those involving exactly who we as a nation admit as immigrants, how many numbers, under what categories, with what priorities, with what linkages between the nonimmigrant and the immigrant systems, and with what consequences on the conduct of U.S. foreign policy?

In particular, the DPC should be responsible for: overseeing federal immigration policy development across all of the departments responsible for immigration matters; monitoring the execution and impact of new legislation, policies and programs; resolving differences within the Executive Branch, focusing on those that impede the capacity of the federal government to deliver a single, coherent message about immigration policy and priorities; serving as a forum for discussion of new ideas; coordinating liaison with and the input of advocates and other nongovernmental agencies concerned with federal immigration decisionmaking; and relaying the resulting recommendations to Congress and the President.

This Office could be established with similar structure and functions of the office within the National Security Council responsible for overseeing immigration and refugee policies with national security implications. The NSC Office for Democracy, Human Rights and Humanitarian Affairs is headed by a Senior Director with rank of Special Assistant to the President. It brings together the working staff in each of the agencies that need to be consulted in the formulation of policies. Proposals are then made to a Deputies meeting that includes the Deputy Secretaries of each of the relevant Departments. Most policy decisions can be made at this level, but when needed, the NSC may call a Principals meeting involving the Cabinet levels members of the Council.

A similar Office within the DPC could provide activist leadership and proactive coordination of the work of various levels of interagency involvement. The Office would itself initiate and/or conduct policy reviews, identify options and various possible elements of the immigration agenda, oversee the interagency review and decisionmaking processes, and then direct formulation of a strategy for the articulation and dissemination of the resulting decision(s).

If the decisionmaking *fora* of an Office of Immigration Policy were to replicate those in the NSC, there would be three primary decisionmaking levels. The primary decisionmaking and coordination mechanism within the DPC/OIP would be the Deputies Committee, a standing decisionmaking entity concerned with cross-agency issues, coordination and integration of delivery, and articulation of Administration policy by the Assistant for Domestic Policy, by the White House Chief of Staff, or by the President. A working-level committee would function as input into principal DPC staff members dealing with immigration and assist the Office in the staffing of options papers and recommendations developed for Deputies Committee review. The DPC would also convene a Principals Committee [as called for in the Executive Order] to review and decide sensitive questions. The DPC would also provide staff support for Chief-of-Staff and/or Presidential policy discussions and decisionmaking.

Advantages. This structure within the DPC would permit a more deliberative process for policy development, bringing together on a regular basis the working-level and Deputy-level representatives of the Departments of Justice, State, Labor, Health and Human Services, and other agencies as needed. Moreover, an Office for Immigration Policy in the DPC would provide resources for monitoring implementation, anticipating and identifying issues before they become crises, and coordinating the development of new approaches when required.

Disadvantages. To date, the DPC has not shown a sustained interest in taking leadership on immigration matters (in contrast to the NSC's clear assumption of responsibility for overseeing refugee policy development and implementation). The assignment of a relatively junior staff person is one indice of the inattention paid at the DPC to immigration. Even though the incumbent staff person responsible for immigration is given high marks for *facilitating* interagency discussion, it does not appear that he is willing or able to *lead* the process. Moreover, DPC overall does not have the type of structures that characterize the NSC. Developing these for immigration matters may be difficult.

Option B. Strengthen Department-level policy formulation and coordination functions within the Department of Justice [DOJ].

Over the past several years, immigration-related matters in DOJ have grown in size, scope, and importance. Congress has allocated more and more funding to the immigration-related agencies/offices within DOJ. Indeed, it is conservatively estimated that the combined budget for the immigration-related functions/primary components across DOJ totals more than $3.2

billion. Given this expansion, most observers argue that a greater and more elevated emphasis should be placed on immigration policy planning, development, coordination, decisionmaking, and accountability within DOJ.

Pursuant to section 103 of the Immigration and Nationality Act, the Attorney General is responsible for administering and enforcing all laws relating to immigration and naturalization of aliens, except as those laws relate to the powers, functions, and duties conferred upon the President, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers. The Attorney General has delegated various aspects of this authority to a number of offices, divisions, and agencies located throughout the Department of Justice, the primary components being the Immigration and Naturalization Service [INS], Executive Office for Immigration Review [EOIR], Office of Immigration Litigation [OIL], and the Office of Special Counsel for Immigration-Related Unfair Employment Practices [OSC], although several other offices are involved in the process as well. Each of the components individually formulates policies and regulations, prepares budgets, and makes decisions regarding their specific missions.

These policies, regulations, and budgets must be consistent, integrated, and reflect the priorities and the immigration policies of the Department of Justice as a whole. In turn, these priorities and policies must be consistent with the federal government's overall national immigration policy. At present, the Attorney General, who has a personal interest in immigration, has placed the primary responsibility for coordination of immigration policy within the Department with the Deputy Attorney General [DAG], the second in command at DOJ. The DAG's office is relatively small—a staff of approximately twenty-one lawyers plus the Deputy. A Chief of Staff and a Principal Associate Deputy Attorney General report directly to the DAG. There are five SES-type Associate Deputy Attorney Generals under whom are five GS-15-type Legal Counsels. Under the counsels, there are GS-14-type Special Assistants. The constraints on the size of the DAG's office are based, at least in part, on Congressional directives.

Generally, the Deputy Attorney General has had direct oversight of the criminal-related operations of the department, while the Associate Attorney General has handled civil matters. Formerly, the immigration coordination function was the responsibility of the Associate Attorney General. To some, this reporting relationship underscored the lesser status accorded to immigration matters, relative to the work of the FBI or the DEA. When Jamie Gorelick took over as Deputy Attorney General, she received the immigration portfolio in addition to continuing direct responsibility for criminal matters. As an Associate Deputy Attorney General, Seth Waxman was assigned staff oversight of immigration and, according to staff, spent approximately one-half of his time on this issue. A Legal Counsel assigned to him worked on immigration issues 100 percent of the time. Another staffer spent two-thirds of her time on immigration. Gerri Ratliff replaced the former Legal Counsel and spends 100 percent of her time on immigration matters. When Seth Waxman left the DAG's office, his immigration work was in essence assigned to Gerri Ratliff. Although at a lower grade level than an Associate Deputy Attorney General, she reports directly to the Deputy Attorney General. She typically has one or two Special Assistants working for her at any given time. Hence, on average, two and one-half to three attorneys are working on immigration-related matters.

The Office of the DAG serves as the clearinghouse through which immigration-related concerns and policy matters pass. It is here that such issues are fleshed out and served up for consideration and decision to the Deputy Attorney General and the Attorney General. A regular series of meetings are conducted. The Attorney General meets weekly with a fluctuating group of fifteen to twenty representatives from across the Department. Gerri Ratliff attends representing immigration concerns. Ms. Ratliff has a weekly meeting with INS staff from the Chief of Staff on down. A representative of EOIR may attend this meeting, but only on an as-needed basis. At this meeting, Gerri Ratliff is kept informed of emerging issues, reviews the status of on-going work and specific already-assigned tasks (AG correspondence, request for memos/information), conveys information and relates the AG's concerns (most of which INS should already be working on), receives media updates, and discusses the agenda and necessary preparation for the standing meeting (as discussed below now conducted on a biweekly basis) of the DOJ immigration function component heads.

For the past few years, a formal meeting on immigration matters has been conducted every Thursday with the Attorney General, Deputy Attorney General, Legal Counsel to the DAG and her Special Assistant, the Commissioner of INS (Meissner) and Chief of Staff (Becraft), the Director of EOIR (Moscato), the Assistant Attorney General for Justice Management Division (Colgate), Deputy Assistant Attorney General for the Civil Division (Bartz), and high-ranking representatives from Public Affairs, Legal Affairs, Congressional, and Intergovernmental Affairs, and others (including other INS staff). This meeting is now conducted biweekly, although more frequent meetings may be held if necessary. The decision to go from a weekly to a biweekly meeting was based on a trust that working relationships among and between the various immigration components have been established, and they could be treated like the other components that meet every two weeks.

The purpose of this meeting is to discuss what was going on in each of the components since the last meeting, what is going on this week, and what is going on next week. The meetings are both informational and decisional. Ms. Ratliff generates the agenda on the basis of instructions from the AG or DAG (they may want to hear from specific agencies about specific matters), direct consultation with the components, requests by one component to discuss issues resting in the jurisdiction in another component, and disputes between components. Often the issues to be discussed are obvious, i.e, how are the IIRIRA regulations coming along; are we ready to implement IIRIRA? This process relies heavily on component heads to bring problems, needs, and matters of concern to the table for discussion and to the direct attention of the AG.

There is, however, an inherent problem with these agencies—any agency for that matter—not wanting to bring problems to the next higher level. On the one hand, it is the components themselves who know what issues are brewing. At the same time, the tendency can and does arise to effectively "hide" problems from higher authorities. This may be motivated by an agency wanting to be responsible and solving its own problems first and also *not* wanting to be micromanaged from on high. At the same time, if problems are not raised in a timely fashion or are not adequately foreseen, problems on a grander scale may result. Even if foreseen, the solutions chosen at a lower level may not be consistent with the position of the Attorney General.

In addition to determining matters needing decision, working issues, scheduling and convening meetings, tracking ongoing concerns, the Legal Counsel spends a great deal of each day working on "what's on fire." She also spends time reworking matters that should have been, but were not, properly completed by the components themselves. For example, in preparing replies to congressional correspondence or letters sent to the Attorney General, it is frequently the case that INS did not answer the question posed, or there is a problem with the wording and/or tone employed, or there are typos. Sometimes, a letter is sent back to INS three or four times. This is work that should be completed successfully at the component level and then just signed off by the DAG's office.

There is no staffing in either the DAG or the Attorney General's offices to support longer-range policy development or planning for immigration or other issues. Given the importance of immigration, as well as the current size of the combined budgets for the immigration-related agencies, offices, and components within DOJ, there is a continuing, if not an increasing, need for such a capability. Immigration-related functions needing to be performed on a Department-wide perspective include, but are not limited to, long-range and strategic policy planning, interagency policy integration, policy review, policy coordination, priority setting, budget formulation, decisionmaking, and accountability.

Two different approaches might be considered in strengthening DOJ policy formulation and coordination roles.

Option B-1. Strengthen the role of the Office of the Deputy Attorney General in overseeing DOJ-wide immigration policy and

programs by giving it sufficient staff and resources to undertake these responsibilities.

This option would retain policy and operational oversight and coordination with the Deputy Attorney General but strengthen the capacity of this office to undertake the activities required to perform these functions. In recent years immigration-related matters have received greater focus at a higher level in the Department than in the past, but this may be attributed to the personal interest in this area of this Attorney General and the former Deputy Attorney General and to the otherwise high visibility of this issue for the public at large. As there is no guarantee that future office holders will share this interest—or that in any event, such interest will be sustained when immigration no longer falls into the category of a "hot topic"—this option would institutionalize the arrangements within the DAG's office. For example, an Office of Immigration Policy and Oversight could be established statutorily within the DAG's office to oversee the formulation of policy and coordination of activities.

Advantages. Keeping the coordination of immigration policy and programs in the Office of the Deputy Attorney General helps to ensure to the extent possible that these issues receive the elevated attention they need and merit. This option would help ensure that the immigration portfolio within this Office is augmented to ensure adequate oversight of immigration issues within the Department of Justice.

Disadvantages. In addition to INS and EOIR, the Associate Attorney General (and his or her reporting portfolio), the Solicitor General, and approximately twenty other components (i.e., FBI, DEA, Bureau of Prisons, Executive Office of U.S. Attorneys, Office of Legal Affairs, etc.) report directly to the DAG. As such, many Departmental interests necessarily compete for the direct time and attention of the DAG. Consequently, first-line responsibility for overseeing immigration concerns would likely continue to be vested in staff who are junior in rank relative to the agency personnel whom they coordinate.

Option B-2. Create by statute an Associate Attorney General for Immigration who would be responsible for policy development and oversight of DOJ immigration-related agencies.

This option would establish an Associate Attorney General whose sole responsibility was oversight of immigration policy and the agencies responsible for its coordination. Under this option, the top hierarchy of the Justice Department would be the Attorney General; the Deputy Attorney General, who would serve as the Chief Operating Officer and would retain direct oversight of the agencies responsible for criminal matters [FBI, DEA, BOP, etc.]; an Associate Attorney General for civil justice matters; and an Associate Attorney General for immigration matters. As formulated, under this option, the AAG would have within his or her office a division of Policy and Planning to do Department-wide immigration planning and policy development.

Advantages. Given the importance of immigration policy, the size of the budget now allocated to immigration-related matters and activities within the Department ($3.2 *billion*, conservatively estimated) and the persistent management problems within INS that require sustained Justice Department attention, the creation of an Associate Attorney General specifically for immigration is merited. Although the level of the reporting relationship would be lowered by this change (from DAG to AAG), the effect would be to heighten the real day-to-day level of attention. The AAG for Immigration would perform the responsibilities now being performed by a staff person within the Office of the Deputy Attorney General.

By following this route, the responsibility for immigration policy formulation and coordination would be institutionalized by statute. The AAG for Immigration would have no responsibilities other than those related to the immigration concerns of the Department.

Disadvantages. Moving the reporting relationship from the Deputy AG to an Associate AG will give the appearance of a reduction in the level of attention given to immigration matters in the Justice Department. There may be some resistance to the recommendation because it may open up the possibility for still more reorganization of DOJ. Some may argue, for example, that if there is an Associate Attorney General for Immigration, why shouldn't there be one for Criminal Matters? The combined budget for the components responsible for criminal matters is larger than the combined budget for immigration. Additionally, it can be argued that the Attorney General should not be constrained as to how the Department leadership is structured and who should perform which tasks. Further, going the statutory route in this area sets a precedent for future congressional tinkering with the Department's leadership offices.

Option C. Strengthen policy formulation and coordination at INS.

The closest approximation to a formal Office of Policy and Planning for immigration is found within INS. Under the agency's 1994 reorganization, an Office of Policy and Planning [OPP]) was created, headed by an Executive Associate Commissioner [EAC] for Policy and Planning under the direction and supervision of the Commissioner and Deputy Commissioner of INS.

The EAC for Policy and Planning "directs and coordinates agency-wide policy and planning activities and conducts analysis of these as well as of issues which cross program lines or have national implications."

Review of the 1994 reorganization of INS and subsequent observations from many managers in INS indicate that OPP may be misplaced within the INS organization. At present, OPP is seen as one of four equal (sometimes competing) branches of INS rather than an arm of the Commissioner in promoting more effective policymaking and planning. At least on paper, the Commissioner has a personal staff of three: a Special Assistant, a Counselor, and a Legal Counsel. The Deputy Commissioner is "the Chief Operating Officer [COO] of the INS." Yet, she has a personal staff of one Special Assistant and a Chief of Staff who has two assistants. Neither the Commissioner nor the Deputy Commissioner have policy analysts and/or program planners reporting directly to them. Observers comment that this situation seriously constrains not only the ability of the Deputy to exercise her responsibilities of COO over the four EACs of INS, but also the ability of the Commissioner and the Deputy Commissioner to ensure adequate follow-up and compliance with their directives. Some observers believe that the Office of Policy and Planning should be located within the Office of the Commissioner rather than as a separate domain as one of four EACs.

The EAC is assisted by an Associate Commissioner and two Assistant Commissioners, for policy and planning, respectively. At present, OPP has a staff of eighty-seven and a budget of $5 million for personnel. The FY 1998 budget request would augment the office by an additional fifteen staff. This relatively high level of staffing (relative, at least, to CIR's twenty staff) is somewhat misleading, however, because not all staff are involved in policy and planning. About one-third of the staff are in the Statistics branch. OPP also houses the historical library, an intergovernmental affairs unit, and a research and development unit focusing on technology. Another $1-2 million funds research programs.

The specific functions to be performed by OPP, as described by INS, are many, varied, and include: (1) serving as principal advisor on matters of policy and planning; (2) formulating, reviewing, integrating, and disseminating national INS policy; (3) serving as a clearance point for the coordination/dissemination of program-specific policy, regulations, etc; (4) establishing an Administration position on broader-than-INS immigration policy questions; (5) analyzing new legislative/regulatory proposals and procedural changes; (6) developing and coordinating the agency-wide planning process, including long-range strategic plans and the annual Priorities Management Process; (7) performing organizational analysis to assist in the allocation of resources, identification of structural deficiencies, and avoidance of duplication of functions; (8) conducting cross-program analyses and studies; (9) implementing federally-directed government-wise initiatives; (10) providing statistical information; (11) improving and expanding technology assessment and research; and (12) participating in the budget formulation and execution processes.

Some observers would note that OPP is not the proper place for, as is described in the statement of one of its functions, "establishing an Administration position on broader-than-INS immigration policy questions, through the initiation of interagency deliberations, stimulation and sharing of non-government research, and the examination of broad policy questions." Such broad functions are more appropriately performed at the White House or on a Department-wide basis. Nevertheless, INS is likely to remain the lead agency on immigration matters and it will continue to be asked to identify and assess policy options.

Advantages. This option should give INS, as the lead government agency responsible for immigration, a more developed capacity to formulate policy, monitor its implementation, and evaluate its effectiveness. Establishment of an Office of Policy and Planning was a step in the right direction, but this Office requires adequate staffing and resources. [See the section on INS organization regarding the placement of OPP within the agency.]

Disadvantages. Even with adequate staffing and resources, OPP faces a range of management problems impeding its effectiveness. Enhancing its role may not make sense in light of these problems. The Commission staff have witnessed firsthand the various ways in which the office has become a bottleneck, rather than a facilitator, of policy information and analysis. For example, efforts to systematize the release of statistics have led to major delays in the dissemination of routine data. The problems appear related, at least in part, to the management style of the EAC, but also to the tendency to use the office for damage control, crisis management, and special projects, rather than for systematic policy analysis and planning.

Option D. Strengthen the Department of Labor [DOL] capacity to analyze and help determine Executive Branch policy with regard to labor force issues affected by and affecting legal and illegal immigration.

Immigration policy affects and is affected by a wide range of labor issues. The foreign born represent a large proportion of the growth in the labor force even though they represent a smaller part of the overall labor force. As a proportion of the unskilled workforce, immigrants represent an even larger proportion and potential impact. The effects of immigration are not limited only to those who enter under the employment-based categories as family members, refugees, and diversity immigrants also work after entry. Nor are effects simple to gauge; in some cases, immigration has positive effects on other workers, while in other cases, it may pose negative impacts.

The Department of Labor 's role in policy discussions of immigration tends to focus on the specific areas of its operational responsibility rather than the overall labor market effect of immigration. While it does not have lead responsibility on immigration matters, DOL plays a major role in implementing immigration laws. Several agencies within DOL share responsibility for immigration programs and issues. The main efforts of the Employment and Training Administration [ETA] focus on processing the various applications/ attestations that are filed by employers seeking to hire immigrant and nonimmigrant workers. The Employment Standards Administration [ESA] is primarily responsible for all DOL enforcement related to immigration. Within ESA, the Wage and Hour Division [Wage/Hour] is charged with investigating possible violations of the regulations, contract requirements, or attestations under the H-2A, H-1A, H-1B, D and F visa programs. It also is involved with enforcing the SAW reporting requirements and, with the Office of Federal Contract Compliance Programs [OFCCP], in reviewing employment eligibility verification requirements (I-9s) as part of its regular investigatory duties. The Office of the Assistant Secretary for Policy [ASP] and the International Labor Affairs Bureau [ILAB] concentrate on policy and research aspects of immigration. The Board of Alien Labor Certification Appeals [BALCA] is empowered to review all denials of applications for labor certification for which review is requested. The Office of the Solicitor [SOL] provides legal support for all DOL immigration programs and functions.

In recent years, the Secretary of Labor has designated a focal point for coordinating immigration policy development. Currently, the Deputy Assistant Secretary for Policy, Office of Program Economics, is charged with that duty. Previously, the Wage/Hour Deputy Administrator filled that role. These designated officials assert that policy is adequately developed and articulated through the coordinating process that they oversee. Others believe that this system is largely reactive to events, such as to national media coverage of flaws in the H-1B nonimmigrant program. They argue that DOL would never have developed any legislative agenda on these issues unless forced by such events. They point to the lack of sustained analysis and policy development at DOL regarding labor force issues affected by and affecting legal and illegal immigration as evidence that the agency largely operates in a reactive mode.

> **Advantages.** This option would encourage DOL to systematize its policy development role, with a particular focus on the interconnection between immigration policy and labor policy.

Disadvantages. Immigration issues have not tended to garner substantial policy attention at DOL and designation of a focal point will not necessarily bring them greater visibility.

Option E. Strengthen the Department of State capacity to analyze and help determine Executive Branch policy with regard to foreign policy issues affected by and affecting legal and illegal immigration.

Immigration issues traditionally have been given secondary status in the Department of State [DOS] because they have been perceived as domestic matters and more within the purview of the Congress and INS. Our foreign policies toward many countries, such as the former Soviet Union, did not include a calculus of their possible domestic impact on migration, immigration, or refugee movements to the United States. The Haitian boat people crisis, the continuing dilemma of Cuba, illegal Mexican border crossers, and Chinese alien smuggling have made it clear that immigration issues do affect foreign policy. What is less obvious is that DOS has no overall policy feel for these matters, for their impact on bilateral relations, and for how the Department might shape foreign policy, at least in part, on a better and more consistent understanding of immigration. Under this option, the Commission would urge DOS to consider how immigration and refugee issues can be factored into foreign policy formulation on a systematic, continuing basis. This would also involve high-level coordination with other federal agencies.

The key player in DOS, certainly in resources, is the Bureau of Consular Affairs [CA], which staffs the twelve domestic passport offices, the Visa Office in Washington, and the National Visa Center in New Hampshire, and which administratively controls consular and visa functions at embassies and consulates worldwide. Other concerned bureaus are Population, Refugees and Migration [PRM] and Democracy Labor and Human Rights [DRL]. There is no "seventh floor" policy office that systematically or routinely ties these bureaus together or deals with other departments on immigration issues or policies. As much of consular work is mandated by law, the Department's principal work is execution of immigration policy, not its formulation.

Despite this generally reactive approach to immigration, Consular Affairs has taken the lead within the Department in automating various systems to address rising work demands, reductions in personnel, and new requirements mandated by the Congress (diversity visas, advising American citizen travelers, etc.). The expanding pilot program for sharing of immigrant visa data with INS and SSA promises great improvements in efficiency and tracking of the one-half-million foreigners who obtain immigrant visas abroad each year.

In seeking a designated focal point in the Department for policy formulation on immigration issues, the recent establishment of an Undersecretary of Global Affairs [G] on the seventh floor is one possibility. The Undersecretary for Management [M] also could serve as the Department's high-level focus. But existing bureaucratic lines of authority would have to be addressed: PRM comes under Global Affairs for its overall policy direction while CA and DRL come under M's wing. In particular, CA's relatively large resource base (and its large contribution in the form of machine readable visas and passport fees) is the reason for M's direct interest. Just as important, neither G nor M presently are staffed to handle immigration policy formulation on anything more than an *ad hoc* basis. Thus, any effective, wide-ranging and long-term policy formulation on immigration at that level would probably require a shifting of authority lines and the establishment of a dedicated core staff on State's seventh floor. A less likely option is the Secretary's Policy Planing Staff [S/P], the Department's "big picture" group—small, flexible and very talented. S/P's work is shaped by the needs and desires of the Secretary, e.g., the Middle East peace process, China, NATO/Russia, and it would not consider immigration policy unless suggested by the Secretary. Finally, an alternative policy forum would give expanded authority and resources to CA's existing policy office, which does not now deal in issues beyond that bureau's supervision. It is questionable whether CA alone could play a full-fledged policy development role.

Staffing the policy function is another issue. The expertise in immigration and visas lies within CA, while refugees movements are the business of PRM, and asylum casework is reserved for DRL (in coordination with INS).

Most key positions in all three Bureaus are filled by Foreign Service officers with consular experience in Washington and abroad who have a general sharing of points of view and understanding of bureaucratic methods as well as the critical experience of living and working in a variety of foreign cultures and languages. CA, PRM, and DRL staffers work closely with all geographic bureaus on a variety of immigration matters. Indeed, most Foreign Service officers in the three bureaus already have had assignments in the regional bureaus or in other nonconsular functions. If an immigration policy formulation function is to be established in the Department, the expertise would come from these people. However, the more-or-less permanent assignment of Foreign Service officers to a single-issue office, even as important as immigration, would be considered detrimental in terms of career development. On the other hand, if consular officers have the opportunity to become involved in policy formulation at some point during their careers, the consular career track may become more attractive.

Advantages. The establishment of a senior focal point would enable the Department of State to provide greater leadership in assessing the implications of migration for foreign policy, and *vice versa*. It may help permit better preparation for or even avoid some of the consequences of foreign policy decisions for migration. Clearer enunciation and understanding of national interests on immigration issues (which may accrue from the presence of a senior focal point) would tend to improve the conduct of bilateral relations with many countries. It also would improve coordination within the Department.

Disadvantages. This option would permit the Department of State to play a greater role in formulation of what is in essence domestic policy regarding the admission of immigrants. Some observers believe too much attention already is given to the interests of foreign governments in setting immigration policy.

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Divider Title: 2

IMPROVING MAJOR FUNCTIONS

II. *Should the Commission make recommendations to restructure the major immigration functions executed by the federal government?*

The Commission has heard discussions of a range of options to reorganize roles and responsibilities, including proposals to establish a Cabinet-level Department of Immigration Affairs, to separate services and enforcement responsibilities, and to transfer responsibilities for specific activities from one agency to another. While the problems that such proposals attempt to address are of concern, we have also heard that the structure of government does not appear to be the principal constraint on the effective development and implementation of immigration policy. Rather, persistent management problems, aggravated by the need to respond to the rapid growth in both responsibilities and personnel of the past few years, are believed by some to be by far the greater impediment to a credible immigration system.

> **Advantages.** Some restructuring of the federal agencies, largely within existing organizations, may help to clarify roles and responsibilities and streamline processes to make the immigration system more effective and efficient.
>
> **Disadvantages.** A Commission emphasis on structure may divert attention from its recommendations on improving the policy development and management of the system, all of which can be accomplished under the current structures.

[PLEASE NOTE: The following options are not mutually exclusive. The Commission may wish to recommend a combination of them.]

Option A. Restructure the benefits adjudication function.

The adjudication function regarding immigration and naturalization benefits is currently performed by four agencies: INS (nonimmigrant and immigrant petitions, naturalization applications); DOL (nonimmigrant and immigrant attestations/certification applications); USIA (J visa applications and waivers of the two-year home residence requirement); and DOS (visa issuance). Three different issues regarding this function have been raised: (1) streamlining the process; (2) development of a professional, customer-oriented staff; and (3) establishing an investigations unit within the benefits adjudication function.

Some observers believe that the benefits adjudication process, particularly where three different agencies play a role with regard to a single application, should be streamlined. The example often given concerns the H-1B process. First, an employer files an attestation of the terms of contemplated hire (a Labor Condition Application [LCA]) with the appropriate region DOL office. A DOL official reviews the LCA for "completeness and obvious inaccuracies." If the LCA is complete and has no obvious inaccuracies, the DOL certifying officer returns a copy of the LCA noted with his or her certification. The copy then is filed with the appropriate INS Service Center along with an H-1B petition. The employer is notified of an approved petition, and that notification can be used by the alien to obtain issuance of an H-1B visa at a U.S. consulate. If the petition is denied, the employer is notified of the reasons, together with the right to appeal to the INS Administrative Appeals Unit [AAU].

Proposals to consolidate the various benefits processes range from bringing together the functions performed by two or more of these agencies, to the establishment of an independent agency or department.

Option A1. Maintain the status quo, recommending a streamlining of admission policies and procedures (rather than structures) to increase efficiencies.

Under this option, the Commission would point out that the inefficiencies in the systems for determining who will be admitted as an immigrant or nonimmigrant are related to flaws in policy and procedures that must be addressed before any major structural reform is considered.

Advantages. This option permits the Commission to reiterate its criticisms of the current policies for admitting immigrants. It recognizes that consolidation of activities will not necessarily increase efficiencies if one agency must continue doing all of the functions now done by several agencies.

Disadvantages. This option does not permit a restructuring of responsibilities that may make at least marginal improvements in the adjudication of benefits.

Option A2. Restructure the benefits adjudication function within INS, recognizing that INS has the lead responsibility.

Under this option, the Commission would recommend what is, in essence, a separation of service and enforcement functions within INS [see Section III for additional questions on organization of INS]. The goal would be to establish a division at INS that has responsibility for adjudicating applications for immigrant, nonimmigrant, and naturalization benefits. The division would be responsible for program development, operations, and monitoring activities, including the detection of fraud and abuse. The division would have its own career track and it would provide the opportunity to reward staff who perform well in all aspects of benefits adjudication. The skills needed to manage a benefits adjudication system are different from those required for border or interior enforcement, although there is some overlap in the detection of fraud. A separate benefits adjudication division would permit recruitment of staff with prior experience managing large-scale service programs that must speedily determine eligibility for benefits while maintaining the integrity of the service system.

Today's headlines regarding naturalization underscore how central various controls are to the credibility of the selection system. One of the most important controls is over fraud. Currently, investigations reports to the

Associate Commissioner for Enforcement at INS. Relying on the enforcement part of INS to investigate fraud in the benefits adjudication function (for example, by the naturalization testing or fingerprinting services) has lessened the capacity of the agency to regulate its services effectively. Investigation of benefits fraud competes directly with numerous other types of investigations: employer sanctions, criminal aliens, anti-smuggling, fraudulent documents.

Advantages. Under this option, benefits adjudication remains within INS but is given greater visibility and the agency should have greater capacity to manage the process of selecting immigrants, nonimmigrants, and citizens. Major structural reform is avoided, but management improvements and the establishment of a greater customer orientation should be facilitated.

Disadvantages. This option does not address redundancies in the overall adjudication system.

Option A3. Establish an independent agency.

Under this option, the benefits adjudication functions of INS, Labor Department, and Department of State would be consolidated into a single, independent agency.

Advantages. The Asencio Commission concluded that establishing a separate agency for immigration benefits would lead to cost efficiencies and improved service to the public.

Disadvantages. It is not clear that simply consolidating functions within a single agency will improve service delivery. If the new agency (which will presumably be staffed by people from the existing agencies responsible for these functions) has the same lack of customer orientation, no improvements will have been made.

Option A4. Consolidate responsibilities in one of the existing agencies. See Appendix A on more specific consolidation options.

A second approach would move part or parts of a function out of one agency to an office within one of the other agencies. There are essentially four sets of skills needed in benefits adjudication: determining eligibility criteria; deciding if the criteria are met in individual cases; ferreting out abuse; and reviewing determinations [the review function is discussed more systematically in Option 2E, below]. An examination of the locus of these skills in the three main agencies—INS, DOL, and DOS—suggests that no one agency offers any greater expertise than any other with respect to the first three skills (DOS does not have execute a formal review function). Each currently determines eligibility criteria, decides if the criteria are met, and screens for fraud. This is not to say that these skills do not need strengthening, but simply that the expertise, to the extent that it exists, is not in any one agency.

For example, the expertise to adjudicate skill-based petitions theoretically might lie with DOL. However, the INS has developed skills to perform this function with respect to numerous immigrant and nonimmigrant categories. Some observers believe that the benefits adjudication role that DOL now plays with respect to skill-based attestations and certifications should be transferred (perhaps along with certain personnel) to INS, and that DOL should focus exclusively on investigating abuse in the benefits adjudication system. The Commission already has judged the permanent labor certification system a failure; the replacement system proposed by the Commission provides DOL with a more serious enforcement role. As far as the nonimmigrant worker categories are concerned, DOL's main involvement is with the H-1B category through a review of attestations for completeness and obvious inaccuracies (a very quick screening) and certification of the unskilled nonimmigrant worker programs.

Alternatively, the benefits adjudication function could be consolidated at DOS. Consular Affairs has demonstrated an ability to develop new systems that provide better tracking and customer service with respect to the handling of visa petitions through its National Visa Center. With respect to the actual decisions on individual petitions, however, DOS does not have a formal review process and is not set up to handle challenges in the courts. Both the DOL (through BALCA) and INS (through the AAU and the BIA) systems are tested in the courts. Placing the responsibility for the petition as well as the visa decisions at DOS would involve the development of considerable skills and expertise that do not currently exist.

Advantages. Some efficiencies and reductions in redundancies would accompany a consolidation of responsibilities within one of the existing agencies.

Disadvantages. No one agency has a clear advantage over the others for such a consolidation, meaning that any choice would result in some reduction in expertise and experience. As in the previous option, it is not clear that simply consolidating functions will improve service delivery.

Option B. Restructure border management.

Having two agencies share responsibilities for inspections at the border is not the most efficient system. Although significant improvements have been made in coordinating operations at ports of entry, concerns persist that neither INS nor Customs does an adequate job in inspecting both people and goods in a system in which staff receive minimal cross-training. Further, having separate Border Patrol and inspections offices within INS makes little sense when decisions taken along one part of the border affect the others.

The Commission has studied many previous recommendations suggesting a border management agency. We also have heard testimony at our consultations suggestion the advantages and disadvantages and the reasons why this recommendation has not been implemented in the past.

Currently INS and Customs share inspections duties at the ports of entry and the Border Patrol enforces between the ports. [See consultations briefing materials prepared for more information on current operations and proposed alternatives.]

Option B1. Maintain current system, urging continued progress in coordinating Customs and INS operations at ports of entry.

Under this option, the Commission would make no recommendations for restructuring the border management function. The Commission could urge that cooperative initiatives now underway, such as INS and Customs cross-designated training and staffing of the lanes, continue.

Advantages. Making a proposal for fundamental restructuring is unlikely to succeed and may divert attention from a more realistic realignment of functions. While expert groups repeatedly have recommended establishing a border management agency, the proposal has never received serious consideration. The realities of the congressional committee structure (in which separate committees have jurisdiction over INS and Customs) as well as the interests of both the Justice and Treasury Departments explain why such proposals have had little success.

Disadvantages. The current system has been flawed for many years, and this option does not address any of the weaknesses.

Option B2. Recommend a division of responsibility between Customs and INS.

Under this option, the Commission would recommend that INS conduct all "people" inspections and Customs conduct all "cargo" inspections. Each agency would do secondary inspection if the primary inspectors believed a violation of the other agency's rules had occurred. That is, if the driver of a cargo truck appeared not to have authorization to enter the U.S. or was carrying illegal aliens, Customs would notify INS. If a pedestrian or occupant of a car appeared to be carrying contraband, INS would notify Customs. [Please Note: This option could be combined with Option B3.]

Advantages. This option addresses some of the major coordination problems encountered in the dual management of ports of entry by dividing responsibilities. It does not involve the type of major structural reform that may preclude implementation. INS and Customs are already experimenting with this approach.

Disadvantages. Customs has had more staff and therefore more capacity to staff inspection lanes at land ports. This option will not work unless Congress provides INS with sufficient resources to make up the difference in staffing.

Option B3. Combine border management functions within INS.

Under this option, INS Inspections and Border Patrol would be combined into a single unit responsible for border management at and between ports of entry. Within this consolidated unit, anti-smuggling would also be included; customs would remain separate.

Advantages. This option would make INS more effective in running its programs on the border. Combining the INS functions would coordinate a single mission of border control to its agents.

Disadvantages. Staff sees no disadvantages to this option.

Option B4. Create a border management agency.

The Border Management Agency would include all border enforcement activities from Customs and INS, including people and cargo inspections, Border Patrol, and Anti-smuggling activities (again, both people and goods).

Advantages. Numerous expert groups have recommended a single border management agency as a means to a more coordinated, coherent border policy and program. Besides the simplicity of administering one agency, that agency is also easily held accountable for its actions. Also only one set of appropriations from Congress would be necessary.

Disadvantages. The disadvantages of combining border management into a single agency are that neither the Departments of Justice or Treasury wants to lose its turf; nor do the different Congressional Appropriations Committees responsible for Treasury and Justice want to lose their jurisdiction.

Option C. Restructure worksite enforcement.

Among its provisions to address the problem of unauthorized immigration, the Immigration Reform and Control Act of 1986 [IRCA] made it unlawful for an employer to knowingly hire any alien who is not authorized to work in the U.S. IRCA requires all employers to check the identity and work eligibility documents of all workers hired. Upon hiring, the employee must sign an I-9 form certifying eligibility to work and that the documents presented to the employer to demonstrate the individual's identity and work eligibility are genuine. The employer signs the form, indicating which documents were examined, and attests that they appear to be genuine and that they appear to relate to the individual who was hired.

IRCA established penalties that can be imposed upon employers for failure to comply with this process as well as penalties that can be imposed for knowingly hiring unauthorized aliens.

Two principal agencies have responsibility for enforcement actions at the worksite: INS and the Department of Labor [DOL] Employment Standards Administration [ESA]. INS has the following responsibilities: employers sanctions enforcement, including investigations and prosecution of "knowing hires" of illegal aliens and paperwork violations; worksite raids that apprehend and remove illegal aliens; and development and maintenance of employee eligibility verification programs designed to help employers determine which individuals are authorized to work in the United States. ESA is responsible for a range of enforcement activities related to wage and hour and other labor standards violations, including review of employer compliance with the employer sanctions verification processes. In the course of all on-site visits to workplaces and as part of regular labor standards enforcement activities, ESA (Wage and Hour and Office of Federal Contract Compliance Programs [OFCCP]) personnel inspect the I-9 forms on file and notify INS of the results of such inspections. ESA also is authorized to issue warning notices to employers when deficiencies are found in an employer's verification process. In practice, however, ESA has rarely issued such a warning.

Although INS and DOL's ESA jointly enforce the employer sanctions provisions, INS has the primary responsibility, including assessing civil penalties and initiating legal action. A memorandum of understanding [MOU] between DOL and INS [copy attached] retains INS responsibility for promulgating employer sanctions program policy.

Over the past several years, the number of on-site investigations by Wage and Hour has decreased substantially as a result of a greatly expanded use of expedited investigations in the form of employer self-audits and conciliations in lieu of on-site investigations. For example, the number of on-site investigations and corresponding I-9 inspections conducted by Wage and Hour in FY 1990 numbered more than 42,000 and decreased to fewer than 23,000 in FY 1996. OFCCP conducts some 4,000 on-site inspections each year. Prior to this decrease in Wage and Hour on-site inspections, ESA was performing approximately five times the number of compliance inspections as INS. In FY 1996, approximately 70 percent of Wage and Hour investigations were complaint-driven and the remaining 30 percent were directed or targeted investigations. In terms of resources, Wage and Hour devotes the equivalent of twenty-one full-time employees to I-9 inspections, while OFCCP devotes the equivalent of eight full-time employees.

In FY 1996, INS reported completing 5,211 employer sanctions cases, of which 90 percent were lead-driven cases. In 1,024 of these cases the employers were fined, and warnings were issued in 669 cases. Fines of $4,853,288 were collected, and 13,848 undocumented workers were arrested. The number of employer sanctions cases completed by INS also has decreased sharply since 1990, going from 14,311 that year, to the 5,211 in FY 1996 cited above. The number of arrests, however, has increased by more than 50 percent.

There is a concern by some that DOL's role in employer sanctions constitutes a conflict with DOL's mission of protecting the wages and working conditions of workers. From the very beginning of DOL's assumption of a role in employer sanctions enforcement, DOL inspectors have been aware that any sanctions-related role could have a "chilling effect" on some workers who might—and should—come forward to report workplace abuses, but who may not be deterred by fears that such actions will result in apprehension and deportation. Although such fears may be unfounded, DOL has nevertheless been extremely wary of crossing the hard-to-distinguish line where sanctions-related activities might frustrate its ability to protect deserving workers. Some, however, point out that, as employers who hire illegal aliens are more likely to violate the minimum labor standards they are charged with enforcing, DOL has a vested interest in reducing illegal migration.

In the 1994 report on illegal immigration, CIR urged the Attorney General and the Secretary of Labor to review the current division of responsibilities in the enforcement of employer sanctions and labor standards. The Commission heard reports that INS investigators routinely ignore the referrals received from DOL. INS investigators asserted that DOL referrals made no distinction between major problems in verification that might indicate knowing hire of illegal aliens and minor paperwork violations. DOL inspectors indicated frustration with INS' inattention to their referrals, noting that, in cooperating with INS, they risked alienating informants who could help the inspectors make cases against employers committing serious labor standards violations. CIR concluded:

> The Commission is concerned that current coordination efforts between INS and DOL are insufficient. The Commission intends to closely monitor the implementation of the MOU over the next twelve months based upon criteria that will indicate the success or failure of the joint effort. Should the monitoring demonstrate that the joint efforts have not resulted in effective enforcement, it may be necessary to designate a single agency to enforce employer sanctions.

We understand that INS and DOL have been negotiating a new MOU for some time, but as yet, have not been able to agree upon revisions. The Commission has no information indicating that coordinating efforts between INS and DOL have improved. As a result, the following options for employer sanction enforcement are offered for consideration:

Option C 1. Maintain the existing division of responsibilities between INS and DOL.

Under this option, INS would continue to conduct its full range of worksite activities and DOL would continue to inspect I-9s and refer verification violations to INS for further action. This option could be combined with a renewed call for better coordination and cooperation.

Advantages. This option maintains a relatively high level of sanctions enforcement activity. DOL currently performs approximately four times as many worksite investigations as INS, although the level of DOL enforcement activity is the subject of discussion in the INS/DOL negotiations on a revised MOU. It also minimizes need for resource adjustments. A transfer of the enforcement function completely to one agency would likely necessitate the adjustment of resources between agencies to compensate for the gain/loss of the agency's responsibilities.

Disadvantages. This option maintains current mission conflict for DOL programs. There are concerns (perhaps primarily within DOL) that any involvement in immigration enforcement activities conflicts with DOL's primary mission of protecting workers. Some even view its current role of examining an employer's I-9 forms as detrimental to effective labor standards enforcement.

This option would continue the potential for communications and coordination problems between the two agencies involved in enforcement of some of the same requirements. DOL referrals may continue to be ignored by INS. It also continues potential for inconsistent or confusing enforcement messages. It is often difficult for an agency to send out consistent and uniform enforcement messages across each of its districts and regions. When two separate agencies are involved, the potential for inconsistency is compounded.

Option C2. Extend authority to DOL to assess penalties applicable to employment eligibility verification violations in cases in which DOL performs the worksite investigation.

Under this option, both INS and DOL would continue to conduct worksite investigations, but DOL would have authority to assess penalties when an employer violates the verification requirements of employer sanctions. Only INS would have authority to investigate and prosecute cases where an employer is believed to have knowingly hired illegal aliens.

Advantages. This option also maintains a relatively high level of sanctions enforcement, but reduces some of the redundancies in the immigration management system. Authorizing DOL to assess penalties in cases in which it has made the worksite inspection would preclude the need to refer cases to INS, which would, in turn, preclude the need for INS to make another worksite inspection to confirm violations and assess penalties. DOL has the expertise to investigate and resolve these violations. DOL's investigators are trained and experienced in examining records and determining compliance status. DOL has considerable experience in assessing civil money penalties for violations of labor standards laws.

Disadvantages. From DOL's point of view, this option maintains, and perhaps increases, current level of mission conflict for DOL programs. For those who argue that any DOL responsibilities in the area of employer sanctions conflicts with DOL's primary mission, this would present an increase in the level of conflict or an increase in the perception of conflict resulting from DOL's direct involvement in assessing penalties. It also poses resource problems for DOL unless additional resources are provided. The process of determining if violations have occurred (as opposed to DOL's current role of referring potential violations to INS) and assessing civil penalties require resources not currently available at DOL without reallocation from other functions.

With both INS and DOL making compliance determinations and assessing penalties, the potential for inconsistent determinations and assessment is increased.

Option C3. Consolidate all employer sanctions-related enforcement in DOL and all responsibility for apprehending undocumented aliens with INS.

Under this option, DOL would undertake all employer sanctions investigations (both knowing hire and verification) and INS would retain responsibility for worksite apprehensions of illegal aliens.

Advantages. As DOL currently performs approximately four times the number of worksites inspections as INS, given adequate resources, the level of enforcement would be high. This option would eliminate redundancies as it would consolidate responsibilities for all regulation of employers in one location—DOL—and all responsibilities for removal of illegal aliens in another location—INS. It reduces potential for inconsistent or confusing enforcement messages.

Disadvantages. This option maintains and aggravates mission conflict for DOL programs. On a practical level, DOL has no expertise in identifying undocumented workers and would, therefore, have difficulty making the case for "knowing hires of illegal aliens." In addition to a lack of expertise in this area, there are questions as to the access to the required databases to obtain the information needed to determine a worker's status.

This option compartmentalizes responsibility for employer sanctions compliance from enforcement issues relating to other immigration issues. It has potential for communications problems between the two enforcement agencies regarding those enforcement matters where violations of both types may be involved.

It poses a significant resource problem for DOL unless there is a transfer of resources from INS. Without such a transfer, it would effectively repeal employer sanctions and undermine labor standards.

Option C4. Consolidate sanctions enforcement in INS.

Under this option, INS would have sole responsibility for all immigration-related worksite enforcement activities.

Advantages. This option reduces "mission conflict" for DOL programs, especially Wage and Hour, where involvement in sanctions enforcement may serve to chill workers' willingness to bring forward complaints or cooperate in labor standards compliance efforts. The elimination of DOL's role in employer sanctions enforcement would reduce the existence or perception of a conflict with DOL's mission of protecting the wages and working conditions of workers.

It also reduces potential for inconsistent or confusing messages from two agencies. Division of responsibilities between two agencies always creates the possibility for inconsistent administration; consolidation would substantially reduce this possibility. If not accompanied by a commensurate reduction in resources, the option may expand DOL labor standards enforcement by freeing up resources otherwise devoted to employer sanctions enforcement. These resources could be devoted to enforcement of labor standards in low-wage industries in which workers, including undocumented ones, are employed. This would constitute a disincentive to employers who would employ illegal workers in order to exploit them.

Disadvantages. This option significantly reduces the scope of I-9 investigations, as DOL programs (Wage and Hour and OFCCP) have done considerably more compliance inspections than INS, unless Congress provides more resources to INS for this function. DOL has performed four to five times the number of worksite inspections performed by INS in the past several years. Although the number of such inspections by DOL has decreased substantially, the number done by INS also has fallen.

It assigns INS responsibility for enforcing what effectively constitutes a workplace or employment standard. Many observers have indicated that the hiring of illegal workers is essentially a labor standard and enforcement should be seen in this way by DOL, which is responsible for virtually all other worksite standards enforcement.

Option C5. Restructure Removals

The Commission has long noted serious flaws in the removal system. In its 1994 report, the Commission recommended that the top priority of enforcement strategies should be the removal of criminal aliens. Since then, the focus of the Commission's removal study has been on understanding a system that investigates, apprehends, puts through immigration court proceedings, and issues final orders of removal to more than one hundred thousand aliens each year, only to remove tens of thousands of mostly criminal aliens at the end of the process. The current system has thus resulted in hundreds of thousands of unexecuted final orders of deportation. While the number of criminal alien removals has increased recently, each year tens final orders of thousands of aliens are added to the unexecuted pile.

In 1995 and 1996, the Commission advised Congress that the weakness in the system appeared to be a management one—the system was focused on the front end and neglected the importance of the actual removal of those not entitled to remain in the U.S. In 1996, Congress expanded the categories of aliens to be removed, but did not provide any guidance on prioritizing among all of the categories.

The system is currently structured as follows. INS investigates potential violations of the immigration laws, apprehends individuals, places them in proceedings, and prosecutes cases. EOIR adjudicates the cases and issues final orders of deportation. INS detains aliens with final orders of deportation and removes them, sometimes with Department of State assistance in obtaining travel documents.

The Commission analysis to present has been that the weaknesses in the system are due not to any interagency structural problem, but rather involve management of the function at INS and policies recently adopted by Congress that expand categories of removable aliens without any prioritization. The separation of the immigration court system from INS that occurred in the 1980s generally has been viewed as a significant improvement over the housing of both the enforcement and due process functions within the same agency.

Option C5a. Maintain the current federal structure, pointing out that the real weaknesses are in management and policy.

Under this option, the Commission would reinforce the need for fundamental change in the management of the removal system and the need for prioritization of who should be removed. This option may be combined with options C5b and C5c.

Advantages. This recommendation is consistent with the Commission's findings to date.

Disadvantages. The staff see no disadvantages.

Option C5b. Recommend establishing an interagency taskforce to facilitate removals

The Commission has heard about several removal issues that may be best examined by an interagency taskforce. First, certain countries either do not accept back certain nationals or make it almost impossible to execute their removal. Second, various problems have arisen for countries willing to accept their nationals, such as lack of notice and coordination regarding actual removals. Third, the Commission has already recommended the use of bilateral treaties encouraging the transfer of criminal aliens to serve sentences in their own countries and has recently heard of the need for such treaties where states are contemplating the operation of criminal detention facilities in another country.

These issues involve or affect the operations of the various agencies that play a role in the removal function: INS, EOIR, and DOS. In order to establish a more coordinated approach, the National Security Council [NSC] may need to organize an interagency task force to work through these and other related removal issues.

> **Advantages.** Addressing these issues requires a coordinated analysis and problemsolving approach that cannot be performed by any one agency alone.
>
> **Disadvantages.** These problems may not be a high priority.

Option C5c. Restructure the removal function at the INS.

At several consultations in Washington and in meetings in the field, the Commission has raised with the INS the need to conceive of the removal system as a whole. Structurally, the various removal sub-functions are housed in separate offices: Investigations; Detention and Deportation; and General Counsel (Trial Attorneys). The Associate

Commissioner for Enforcement oversees the first two offices, as well as other enforcement offices. No functional office oversees all three subfunctions. In any case, INS has not yet approached the removal function as a continuum and considered how to staff and manage the subfunctions in order to operate an effective system that removes most of the aliens issued final orders of deportation.

One way to encourage this approach is to link the decisionmaking between the front and back ends of the system. Decisions as to investigation priorities can then be matched or coordinated with deportation priorities. Prosecutorial discretion also can be used as a management and quality assurance tool, ensuring that resources are prioritized and used effectively both before individuals are placed in proceedings and during proceedings.

Advantages. Conceiving of the removal system as a whole and coordinating priorities throughout is the best way to get INS to focus on the failings of the current system. Linking the key subfunctions structurally may help bring that change about.

Disadvantages. The structural linking of the Detention and Deportation Office with the Investigations Office may not result in a fundamentally new conception of the removal function.

Option D. Restructure long-term detention.

Detention or detaining is the act of keeping in custody persons subject to exclusion or deportation from the United States. Aliens subject to detention include removable aliens with special provisions defined for criminal aliens and juvenile aliens. In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act [IIRIRA] made changes to the removal system that replaced the separate exclusion and deportation process with a single removal proceeding for deciding admissibility and deportability. While awaiting their hearing, aliens may be detained, released on bond, or released on their own recognizance. IIRIRA also made possible removal without hearings for certain inadmissible aliens and mandatory detention for others.

Detaining aliens is the responsibility of the Immigration and Naturalization Service [INS]. Detained aliens are held in a variety of places. INS operates nine Service Processing Centers [SPCs], with a combined detention capacity of 2,711 detention beds. These facilities are located at: Aguadilla, PR; Boston, MA; El Centro, CA; El Paso, TX; Florence, AZ; Krome, FL; Port Isabel, TX; San Pedro, CA; and New York, NY. In addition, there are four contract detention facilities at Denver, Houston, Laredo and Seattle with another 795 beds. Further, state and local jails throughout the country are utilized for detention on a reimbursable basis. As of October 1996, more than 4,269 of these beds were being utilized; and in all of FY 1996, more than 1.1 million detention bed days were used. Expansion is underway by INS at the SPCs at Krome and El Paso, and a new facility being constructed in Buffalo, NY should be completed in January of 1998.

Oakdale, LA and Eloy, AZ both have joint facilities with the Bureau of Prisons [BOP]. The first is a federal facility used for the detention of federal criminal aliens prior to their final deportation. The second is for the incarceration of state criminal aliens who have completed their sentence and are in INS custody.

Maintaining detention space has become a major part of the INS annual budget. In FY 97 about $465 million out of approximately $3 billion or 15.5 percent of the INS total budget will be spent on detention. Detention and deportation is second only to Border Patrol in total resources.

Legislation in 1996 will have two major impacts on detention: (1) Congress has mandated detention for additional categories of aliens; (2) Congress enlarged the categories of aliens subject to removal. The IIRIRA expanded the definition of aggravated felony, which means that many more aliens are subject to deportation.

In the past INS has had management problems with its detention system; questions have been raised about standards and conditions of many of the facilities. In 1995, the ESMOR Contract Facility in Elizabeth, NJ was closed following an incident in which detainees voiced complaints, including about incidents of physical abuse, stealing, and harassment by guards. However, an INS investigation of the facility also uncovered other management concerns. It was reported that the ESMOR often changed policy without notifying INS and withheld important information regarding the daily operations and problems at the facility. Also, in many instances there was no evidence of contract compliance. Many guards did not meet the qualifications or did not receive full training before they started to work. Noncompliance with issuance of materials to the detainees was also found. INS oversight and control of the ESMOR employees and of their own contract was severely questioned following this incident.

INS has taken steps to improve its monitoring and oversight of private contractors, and some improvements have been seen already. INS currently uses three contractor owned and operated facilities, two by Corrections Corporation of America [CCA] and one by Wackenhut Corrections Corporation. Their contract with these institutions are on a per-bed, per-day basis and most of the beds in these facilities are used at all times. When the Commission visited the facility in Houston, they were told that CCA would like to do more with INS. The costs of using private contractors and using state or local jails do not differ that much.

Conditions at INS facilities also have been an issue. Most of the criticisms deal with the local jails that INS has difficulty monitoring. Human rights abuses, deplorable living conditions, poor nourishment, and lack of access to education and recreation are some of the serious complaints INS hears. Often women and juveniles are not housed in separate facilities. Many of the criticisms relate to incarceration of asylum seekers with criminals. Serious monitoring of these facilities is required if INS is to continue to use them.

The Commission held consultations on detention issues in April 1996 and December 1994. Questions about who in the federal government should be responsible for the detention of aliens were raised at both consultations in April 1997. In response to the Commission's 1994 Report recommendation that detention and removal of criminal aliens should be a top INS priority, greater resources were allocated and total removals increased from 45,385 in 1994 to 50,260 in 1995 and to 67,094 in 1996.

The Commission also heard testimony in April 1997, as well as at earlier hearings, that INS is not set up for detaining aliens for period of more than thirty days.

Currently, a Federal Detention Planning Committee, which includes members from INS, BOP, and the U.S. Marshals, are discussing and planning future detention policy. They estimate that INS detention needs will reach more than 23,000 by 2001, up from the 1996 figure of 8,592. Using these projections and similar ones from BOP and the U.S. Marshals, the Committee is developing strategies to meet these needs. [See attached draft of Federal Detention Plan 1997-2001.]

Option D1. Maintain the current system, making recommendations for improved INS management of the long-term detention process and conditions.

This option retains INS direct control over detention facilities housing aliens. Within this current system, additional resources could allow for more detention space.

If the Commission chooses to recommend maintaining the current structure for detention, it may wish to recommend that INS institute urgently needed improvements in its use of detention and the conditions under which it holds detainees.

Advantages. The current structure in which INS has direct control over detention gives it optimal flexibility to respond to changes in its own enforcement efforts. If INS plans to shift enforcement operations from one geographic location to another, it can also shift its contracts for detention space or move detainees to where it has space. Under the current system, INS need not negotiate detention arrangements with other federal agencies.

Disadvantages. Some of the problems in long-term detention may not be solvable by INS operation of the detention responsibility: detention space is not adequate; detention conditions in some areas are substandard; INS is not able to monitor the conditions of its contract detention facilities effectively. Most importantly, INS does not want to, and is not set up to, detain aliens for long periods.

Option D2. Transfer responsibility to DOJ agencies responsible for incarceration of other populations.

Other federal agencies that arrest persons do not house them either pre- or postconviction. The FBI, for example, transfers prisoners to the U.S. Marshals for pretrial incarceration. After conviction, criminals tried in federal court are turned over to the Bureau of Prisons.

Advantages. INS would have responsibility only for transporting the aliens and would not have to use its resources for their detention. INS would no longer have to staff and run the Service Processing Centers (which today represent 2,700 of the total 8,592 detention beds) or be present at other detention facilities except in a supervisory role.

Disadvantages. INS would have less control over detention and, therefore, less flexibility to respond to changing needs and circumstances. It would need to rely on another agency's willingness to cooperate in finding solutions.

Option D2a. Give detention responsibilities to the Bureau of Prisons.

The BOP presently operates two facilities for INS at Oakdale and Eloy for the incarceration of criminal aliens. In addition to the two facilities it operates with INS, BOP has 85 other institutions with a capacity of 109,000 prisoners. The Commission could recommend that BOP take responsibility for all detained aliens from the INS. The INS would then have to only transport them to these facilities and ensure that the aliens' removal proceedings were progressing while they were in the BOP facility. Expansion is already underway to increase BOP detention space by 4,000 beds by the year 2000; 390 of these beds have been allocated for INS use, the rest for BOP and U.S. Marshals Service.

Advantages. BOP has substantial expertise running detention facilities for criminals and already operates two facilities for INS. As a growing share of the detained INS population are criminal aliens, BOP expertise could be useful.

Disadvantages. INS detains aliens other than criminals, and the Commission may not with to have BOP detain removable aliens who are not criminals in BOP institutions.

Option D2b. Give detention responsibilities to the U.S. Marshals Service.

The U.S. Marshals Service is responsible for maintaining the custody of all federal detainees in the federal judicial system from the point at which a prisoner is brought into federal custody throughout the entire trial process and until the prisoner is acquitted or arrives at a Bureau of Prisons facility to serve their sentence.

The U.S. Marshal Service uses Intergovernmental Agreements [IGAs] with state, county, and local jails for incarceration of two-thirds of their detainees. They pay for the facilities via contract on a per-use basis. The rest of their detainees are housed in BOP facilities or by private contractors. The Marshals do not have facilities that they run themselves, except for Federal Court Houses where they detain prisoners only briefly. The conditions and standards that the U.S. Marshals use to determine whether a site is fit for their use are the same as INS standards, which are American Correctional Association-accredited institutions.

In 1996, the Marshals detention population was 23,374, in comparison to the INS 8,592 detained aliens.

Advantages. The Marshals Service has significant experience overseeing detention. Its experience is in pretrial detention, which means it detains those who have not yet been convicted of a crime. The overall population with which the Marshals Service has experience may be closer to the INS detained population than is the BOP population (all of whom are convicted criminals).

Disadvantages. INS would lose some of its control over detention. The Marshals Service relies on state and local jails for its detention space; INS already has been criticized for conditions in these facilities, particularly their inappropriateness for detaining asylum seekers.

Option E. Restructure the review function

Not all immigration-related decisions are reviewable at a higher level. To the extent that administrative review is authorized, however, this function is performed by several Boards and units located in different Departments. Within the

Department of Justice, the Executive Office for Immigration Review [EOIR], which was established in 1983, oversees Board of Immigration Appeals [BIA], the system of immigration courts, and the Office of the Chief Administrative Hearing Officer [OCAHO]. Each of these subcomponents performs the review function in different subject areas.

Board of Immigration Appeals. The BIA has jurisdiction [see 8 C.F.R. 3.1(b) (1996)] over a wide range of cases including:

- Decisions of Immigration Judges in exclusion cases (and the corresponding forms of relief available in these proceedings, such as requests to withdraw an application for admission, asylum, withholding of deportation, retroactive permission to reapply for entry, and various waivers of inadmissibility);

- Decisions of Immigration Judges in deportation cases (and the corresponding forms of relief available in these proceedings, such as adjustment of status, suspension of deportation, voluntary departure, asylum, withholding of deportation, and certain waivers of inadmissibility);

- Decisions of Immigration Judges in removal proceedings (including the forms of relief permitting cancellation of removal);

- Decisions relating to administrative fines and penalties (typically involving airlines, boats, and other carriers);

- Decisions of District Directors and Service Center Directors on family-based visa petitions and revocation of approval of such petitions;

- Decisions by District Directors on applications for nonimmigrant waivers under section 212(d)(3) of the Immigration and Nationality Act (INA);

- Decisions of Immigration Judges involving rescission of adjustment of lawful permanent resident status;

- Decisions of Immigration Judges relating to temporary protected status;

- Decisions of Asylum Officers on applications for asylum or withholding of deportation filed by crewmen or stowaways; and,

- Determinations regarding the recognition and accreditations of organizations and individuals appearing in immigration proceedings.

Immigration Judges. Effective April 1, 1997, and pursuant to the provisions of IIRIRA, Immigration Judges now perform the final review of the "credible fear" determinations made in the admission/inspection process [see section 235(b)(1)(B)(iii)(III) of INA, as amended by IIRIRA].

Office of the Chief Administrative Hearing Officer. As part of its responsibilities, OCAHO may review decisions of Administrative Law Judges in cases arising under sections 274A (unlawful employment of unauthorized aliens, i.e, employer sanctions) and 274C (document fraud) of the INA. OCAHO also reviews the final decisions of Administrative Law Judges in unlawful immigration-related employment practice cases arising under section 274B of the INA.

Administrative Appeals Unit. Within the INS, the Associate Commissioner for Examinations, acting through the Administrative Appeals Unit [AAU], has appellate jurisdiction over decisions on petitions and applications in no fewer than thirty-nine subject areas. [see 8 C.F.R. 103.1(f)(3)(iii) (1996)]. The cases falling within AAU authority are not directly related to reviewing deportation orders, but favorable disposition of a petition or application by AAU can collaterally resolve deportation issues. Among the categories of cases within the appellate purview of the AAU are decisions relating to:

- Breaching of bonds;

- Employment-based visa petitions;

- Adjustment of status for Indochinese refugees;

- Petitions for Amerasian children;

- Petitions for orphans;
- Permission to reapply for admission after deportation or exclusion;
- Waivers for certain grounds of excludability;
- Waiver of the two-year foreign residency requirement for exchange visitors;
- Certification of schools for acceptance of foreign students;
- Petitions for temporary workers;
- Petitions for fiances or fiancees;
- Applications for reentry permits;
- Applications for refugee travel documents;
- Claims to acquisition of citizenship abroad;
- Applications to preserve residence abroad for naturalization purposes;
- Various applications for certain certificates of naturalization; and,
- Applications for temporary or permanent resident status under the regular legalization, Special Agricultural Worker [SAW], or the Replenishment Agricultural Worker [RAW] programs, and corresponding waivers of inadmissibility. (These appeals are adjudicated within a special Legalization Appeals Unit [LAU] established by AAU).

Board of Alien Labor Certification Appeals. In the Department of Labor, the Board of Alien Labor Certification Appeals [BALCA] was created by regulation in 1987. Its mission is to adjudicate appeals of denials of applications for labor certification. Previously, appeals were adjudicated by individual Administrative Law Judges within the Department of Labor [see 20 C.F.R. 656.26 (1996)].

Board of Appellate Review. In the Department of State, there is a Board of Appellate Review [BAR] vested with the jurisdiction [see 22 C.F.R. 7.3 (1996)] to hear appeals from decisions in the following categories of cases:

- Determinations of loss of nationality or expatriation;
- Denials, revocations, restrictions, or invalidations of passports;
- Final decisions of contracting officers arising under contracts or grants of the Department of State [DOS] (those not otherwise provided for in the DOS contract appeal regulations);
- Denials of U.S. government assistance to U.S. nationals who do not comply with certain labor standards; and,
- Administrative decisions of the DOS "in such other cases and under such terms of reference as the Secretary of State may authorize."

When considering the appellate review function in its totality, it is apparent that the major immigration functions, i.e., benefits adjudication, border management, interior enforcement (worksite and removals), and detention are reviewed by a number of different entities. Review of benefits adjudication is performed by AAU, BIA, BALCA, and (for a more limited set of immigration-related matters) BAR. Review of border management-related decisions is performed by AAU and BIA. Regarding interior enforcement, removal decisions are reviewed by the BIA; enforcement worksite and employment-based unfair labor practice cases are reviewed by OCAHO. To the extent that administrative appellate review exists on matters relating to detention, it is performed predominantly by the BIA and to a lesser extent the AAU (i.e., matters relating to the breaching of bonds).

In an effort to strengthen the impartiality of decisionmaking, the review function over the years has been separated out either within each Department as a separate agency or a separate division within an agency. In the eyes of most observers, this approach has worked well and should not be disturbed. The Commission may, however, wish to look further at the respective jurisdictions of the reviewing agencies, particularly in the benefits adjudications area, to determine if the current division of authority is the best approach.

[If the Commission wishes to pursue further the structural issues related to the review function, staff will provide options.]

Appendix A

The Commission recommends that all responsibility for adjudicating applications for immigration and citizenship should be consolidated in ______________. At present, three separate agencies play broad roles in determining who will be admitted as legal immigrants, nonimmigrants, and/or citizens—INS, Department of State, and Department of Labor. In addition, the Department of Health and Human Services plays an ancillary role in setting requirements regarding health standards for new arrivals. The Commission believes a more streamlined and accountable adjudication process (as per our 1995 recommendations on legal immigrant admissions), involving fewer agencies but greater safeguards, will result in faster and better determinations.

In determining which department should be responsible for adjudication of applications for immigration and citizenship, the Commission considered each agency's current role and overall mission. No one location stood out as the obvious choice. Immigration has been a stepchild in each of the major departments with current responsibilities. In the Department of State, assignment to a consular position is not regarded as an opportunity for career advancement. The Department of Justice tends to view immigration as an enforcement matter, and it is not well suited to oversee an agency that adjudicates applications for benefits. The Department of Labor tends to take a slanted view of immigration, seeing new immigrants solely as competitors to U.S. workers, not as potential contributors to our economy and society. The Department of Health and Human Services has played an important role in setting and implementing domestic refugee policy, but it has had a very narrow, largely health-related involvement in overall immigration policy.

Recognizing the drawbacks inherent in choosing any of these locations, the Commission nevertheless reached the conclusion that the [Blank Department — See Options A-C] has the greatest capacity to undertake the additional work entailed in a consolidated system.

OR

Recognizing the drawbacks inherent in choosing any of these locations, the Commission recommends [See Option D].

[Please Note: All of the options assume that the DOL current role in skill-based admission applications would be transferred to the new Bureau. As previously discussed in the enforcement section, DOL would assume post-admission enforcement of employer's responsibilities with respect to attestations furnished in requesting the admission of temporary and foreign workers. All options also assume that DHHS would retain responsibility for all health-related activities.]

Option A. Department of State. *The Commission recommends the establishment of a new Bureau for Immigration and Citizenship Services to better facilitate legal immigration, nonimmigrant admissions, and citizenship decisions while also deterring fraud and abuse.* This new entity would be responsible for adjudication of immigrant and nonimmigrant petitions, work authorizations and other permits, adjustments of status, naturalization, refugee status determination, and asylum. It also would have responsibility for the overseas citizenship services currently offered by consular officers. Policy planning and program development activities would be incorporated into the new entity, which would also have the capacity to detect, deter, and combat fraud and abuse among those applying for benefits.

The Department of State already plays a major role in determining who will be permitted to enter the United States as an immigrant or nonimmigrant. DOS also provides a range of citizenship services both domestically (for example, issuance of passports) and abroad (for example, registration of births of U.S. citizens overseas). Indeed, the DOS has devoted a major share of its personnel and its capital and operating resources to these adjudicatory functions at embassies and consulates in more than 200 countries abroad. Domestically, the fifteen passport offices located around the country process and issue more than five million passports annually, and the National Visa Center in New Hampshire processes and forwards to overseas posts three-quarters of a million immigrant cases. Experienced administrative staff and systems and personnel support offices are also in place in Washington.

DOS would have sole responsibility for processing immigrants, from the filing of the petition in the U.S. and subsequent visa issuance abroad, to the production of the green card and work authorization in the United States, to naturalization. The issuance of a passport to the newly-naturalized citizen would complete this almost seamless garment of immigration adjudications. Consolidation of these adjudicative steps in the immigration process would permit greater operational efficiencies (e.g., one-stop adjudication of petitions and forwarding to posts abroad, streamlined processing for work-related visas), greater flexibility in use of personnel (e.g., the examination function could span visa petitions and passports), and, as discussed below, greatly enhanced antifraud capabilities.

The consolidation of the adjudicative functions into DOS would, of course, be a major undertaking for a relatively small Department that already is attempting to absorb the United States Information Agency and the Arms Control and Disarmament Agency. DOS must be given the resources to fulfill its new responsibilities. The approximately 4,000 INS and DOL staff currently involved in immigration applications adjudication would likely transfer to DOS. Most would, of course, remain in their present locations at offices throughout the United States, and their functions would not appreciably change.

This recommendation also would give a new and substantial domestic component to a Department that has an almost exclusive foreign orientation (apart from its passport issuance and domestic refugee contract functions). The transfer of domestic responsibilities may raise concerns about DOS loss of its historic and necessary focus on foreign affairs and about the historic difficulties in solving immigration issues (at least domestically). Some observers may be concerned that DOS might not give sufficient consideration to the domestic impact of immigration. To counter this perception (and some reality that underlies it), DOS would need to develop mechanisms for consultation with domestic groups representing a broad range of views and interests regarding immigration.

DOS also will need to prepare its own bureaucracy to take on these new functions. Some Foreign Service Officers [FSOs] already resist consular assignments abroad, perceiving them as unwanted digressions from the classical diplomatic career path.

This recommendation envisions that DOS would reorganize the immigration and citizenship functions into two principal operating divisions, with "quality assurance" offices to support them. The Office of Immigration Affairs [IA] would focus on the immigration process, as noted above, as well as all nonimmigrant processing. IA's expanded responsibilities would be based upon its existing Visa

Office and the National Visa Center. IA would absorb into its operation all of the INS domestic adjudication/examination functions, including the four large Regional Service Centers, corresponding adjudications and information offices within the current District Office system, and related Headquarters functions (in particular, the legal and regulatory staffs in Washington). Thus, Immigration Affairs also would be responsible for domestic adjudication of applications for work authorization, change of nonimmigrant classification, and change of status. In short, it would assess—in the U.S. and overseas—written applications for all immigration-related benefits (now performed by INS, DOL, USIA and DOS, depending on the type of application), interview applicants as necessary, and issue appropriate documentation (e.g., visas, green cards, employment authorization documents). An important part of its domestic presence would be the staffing of immigration information offices in various locations of immigrant concentrations.

The current Passport Office structure would become part of a broader division that encompasses all domestic activities regarding citizens and citizenship, including the naturalization process. Some citizen functions, such as travel information, passport, and naturalization applications and interviews, could be located at the new or expanded immigration information offices described below.

Overseas citizen services would continue to be handled by the new Bureau, utilizing the substantial DOS overseas staff. These services include responding to inquiries as to the welfare and whereabouts of U.S. citizens; assisting when U.S. citizens die, are arrested, and experience other emergencies; providing notary services; issuing passports; and making citizenship determinations. An increasingly important activity in some countries (for example, the Congo [former Zaire]) is organizing Americans who live or work in the consular district into networks for efficient communication of information and warnings.

The supporting quality assurance offices would include records management, monitoring of procedures, fraud investigations, and an internal appeals unit.

The accrued personal records of each immigrant must be accurate, up-to-date, and retrievable at each adjudicative stage: (1) Petition/immigrant visa; (2) alien resident/green card; and (3) naturalization. The creation and maintenance of the alien filing system ("A" files) should be reviewed to assure its maximum utility in the adjudicative flow noted above. All "normal" immigrant files would be collated at the appropriate Service Centers, while other "A" files (e.g., deportation cases, investigative case) would be held at the appropriate Immigration Enforcement office. As is the case now, files could be forwarded to interviewing benefits offices as needed, then returned to the permanent repositories at the centers.

Standardized and flexible records management and the consolidation of domestic and overseas adjudication functions will greatly enhance antifraud capabilities. At present, fraud often is not discovered until after a government agency has given the case one or more approvals and the alien appears for his or her visa. The resources are not now in place for INS or DOL to review questionable petitions and the communication between overseas posts and domestic agencies are not adequate. Even when they receive information from overseas posts about likely fraud, the domestic agencies generally do not follow up with further investigation. Consolidation within DOS would overcome the present poor coordination and communication and permit more antifraud efforts at the beginning of the process.

At present, monitoring of the quality of decisions made on applications for immigration and citizenship benefits receives insufficient attention. INS enforcement officials now have the responsibility to investigate allegations of fraud in immigration and naturalization benefits programs, but monitoring the adjudications processes is of low priority in an office also responsible for identifying and removing criminal aliens, breaking up smuggling and counterfeiting rings, and performing similar police work. A dedicated staff, responsible for nothing other than ensuring the quality of decisions taken on applications for immigration and citizenship should address some of the weaknesses recently identified in naturalization processing.

This recommendation also would standardize the right of applicants to have decisions on their applications reviewed internally. [See later recommendation regarding outside appeals.] Some adjudications decisions are now reviewed by a separate administrative unit within the agency conferring benefits; others are not. The Commission believes that quality decisions require some form of internal review for applicants who believe their cases have been wrongly decided. This type of review helps an agency monitor consistency and identify problems in adjudication and offers a means of correcting errors. Since consular determinations on visa eligibility abroad are not reviewable, DOS would have to develop an internal review process for use in its new domestic functions.

The field structure for implementing these programs follows. The Regional Service Centers [RSCs] and National Visa Center [NVC] would continue to be the locus of most adjudication. The physical plants are excellent and the locally-hired staffs are trained and in place. Initially, information could be passed from the RSCs to the NVC when the applicant for admission is overseas. Eventually, however, the functions of the Service Centers and the Visa Center might be consolidated.

Overseas interviews would continue to take place at embassies and consulates. A range of other interviews would take place domestically. DOS already operates fifteen passport offices throughout the United States, many in areas of high immigrant settlement. These offices, however, are not set up for high volume interviewing. New offices, designed specifically with immigrant services in mind, would be needed. Ideally, to avoid long lines and waits for service, these new offices would be smaller and located in more locations than current INS district offices. The Commission recommends against locating these offices with the enforcement offices discussed above. Asking individuals who are requesting a legitimate service to go to what is in essence a police station sends the wrong message about the U.S. view of legal immigration.

[If the Commission chooses this option, it may wish to make recommendations regarding the structure within DOS in which the new organization would operate.] At present, the Bureau for Consular Affairs [CA] now reports to the Undersecretary for Management. The Bureau for Population, Refugees and Migration [PRM] reports to the Undersecretary for Global Affairs. Many observers note that the CA reporting line makes little substantive sense although administratively it reflects the large proportion of staff and resources, if not prestige, attached to consular activities. The Commission could recommend creation of a new Undersecretary responsible for coordinating all migration-related activities, including the Bureau and offices described and PRM. Alternately, both the new Bureau and PRM could report to the Undersecretary for Global Affairs. Under either scenario, it would make sense to place the refugee admissions activities now in PRM into the new organization. PRM would be left with overseas refugee assistance. [Consideration should be given to moving responsibility for population issues to another bureau within DOS. With the Agency for International Development [AID] now reporting to the Secretary of State, it may also make sense to recommend combining the AID Bureau for Humanitarian Response with the overseas refugee assistance office.]

Option B. Justice Department. [Please Note: This option can include a recommendation that DOS continue to do the overseas visa interviews. Text reflecting this suboption are indicated below in brackets and italicized text.] ***The Commission recommends the establishment of a new Bureau for Immigration and Citizenship Services within the Justice Department, separate from the Bureau for Immi-***

gration Enforcement, to better facilitate legal immigration, nonimmigrant admissions and citizenship decisions while also deterring fraud and abuse. This new entity would be responsible for adjudication of immigrant and nonimmigrant petitions, work authorizations and other permits, adjustments of status, naturalization, refugee status determination, and asylum. Policy planning and program development activities would be incorporated into the new entity, which would also have the capacity to detect, deter, and combat fraud and abuse among those applying for benefits. [*The Commission does not recommend that the new Bureau assume responsibility for overseas visa issuance, however. The Department of State already has the expertise and staffing to conduct interviews in U.S. consulates and embassies, and we believe consular officers should continue to exercise this responsibility.*]

This recommendation ensures that a senior Justice Department official, who is at least at the level of the current Commissioner of INS, would be responsible for the development and implementation of programs pertaining to immigration and citizenship services. At present, the principal responsibility for these functions is vested in an Associate Commissioner for Examinations who is three levels down from the Commissioner. The Commissioner's time is divided between the three-quarters of the staff and resources devoted to enforcement and the one-quarter devoted to adjudication of applications for benefits.

This recommendation envisions that the DOJ Bureau for Immigration and Citizenship Services would have several offices, with a quality assurance office to support these operations. One office would focus on applications for admission of legal permanent residents. The second would be responsible for those admitted temporarily: nonimmigrants and parolees; and it would make determinations about employment authorization. A third office would focus on naturalization. The quality assurance office would include records management, monitoring of procedures, fraud investigations, and an internal appeals unit.

The accrued personal records of each immigrant must be accurate, up-to-date, and retrievable at each adjudicative stage; (1) Petition/immigrant visa; (2) alien resident/green card; and (3) naturalization. The creation and maintenance of the alien filing system ("A" files) should be reviewed to assure its maximum utility in the adjudicative flow noted above. All "normal" immigrant files would be collated at the appropriate Service Centers, while other "A" files (e.g., deportation cases, investigative case) would be held at the appropriate Immigration Enforcement office. As is the case now, files could be forwarded to interviewing benefits offices as needed, then returned to the permanent repositories at the centers.

At present, monitoring of the quality of decisions made on applications for immigration and citizenship benefits receives insufficient attention. INS enforcement officials now have the responsibility to investigate allegations of fraud in immigration and naturalization benefits programs, but monitoring the adjudications processes is of low priority in an office also responsible for identifying and removing criminal aliens, breaking up smuggling and counterfeiting rings, and performing similar police work. A dedicated staff, responsible for nothing other than ensuring the quality of decisions taken on applications for immigration and citizenship should address some of the weaknesses recently identified in naturalization processing.

This recommendation also would standardize the right of applicants to have decisions on their applications reviewed internally. [See later recommendation regarding outside appeals.] Some adjudications decisions now are reviewed by a separate administrative unit within the agency conferring benefits; others are not. The Commission believes that quality decisions require some form of internal review for applicants who believe their cases have been wrongly decided. This type of review helps an agency monitor consistency and identify problems in adjudication and offers a means of correcting errors.

Staffing for the new entity could be drawn initially from the Examinations Office within INS Headquarters and the field. Most immigration petitions and permits are filed at one of four INS Service Centers. These Centers enter the incoming application into the appropriate database, send an acknowledgment of receipt to the applicant, and review the application for completeness and for content. In many cases, increasingly so under the INS Direct Mail Program, final adjudications are made by INS officers stationed at the Service Centers.

When an application necessitates a personal interview or when fraud is suspected, the Service Center sends the application to an appropriate field office to conduct the interview and render the final decision. Interviews could be conducted at numerous satellite offices and centers that would not necessarily require a large administrative support structure. Prospective and current applicants solicit information from field offices on procedures, adjudications standards and criteria, and timeframes and may go to field offices for forms and for assistance and/or clarifications in filling them out. [See below for recommendations to improve the management of this process.]

The new Bureau would likely have some staff assigned to overseas duty [*but visa issuance would continue to be done by DOS Consular Officers*]. Overseas INS offices currently adjudicate requests for humanitarian and public interest parole as well as requests for waivers from individuals that DOS has determined to be inadmissible to the United States. Thus, small offices in U.S. embassies, as in the current system, could accommodate the service needs of the new immigration and citizenship entity proposed by the Commission.

Consolidating responsibility for adjudicating applications for admission and citizenship within DOJ should cause little disruption and could be quickly implemented. DOJ already is charged with immigration services and processing. INS staff are DOJ employees and, as the likely core staff of the new Bureau, already are familiar with DOJ administrative requirements and managerial procedures.

The staffing, training, and support requirements for the new Bureau arguably are different and distinct from those of a more enforcement-oriented agency. Splitting the existing INS into two separate agencies within DOJ may facilitate and improve currently inadequate and sometimes ineffective administrative systems.

Consolidation in the Department of Justice has drawbacks as well. With only one-quarter of the staff and resources of the current INS, the new Bureau would not have prominence or visibility with those responsible for its budgeting and oversight. A benefits-only Bureau might be significantly out of place and disadvantaged in a department whose primary focus is law enforcement, not customer services. In a separate, benefits-only entity, the staff of the new Bureau likely would have very little chance to transfer to positions within the probably better-paid and higher-grade enforcement entity.

[If the Commission designates responsibility for both enforcement and benefits adjudication in the Justice Department, one of the following recommendations would be appropriate]

Option B1: ***The Commission recommends that the office of the Deputy Attorney General continue to oversee DOJ-related immigration policy and programs, with sufficient staff resources to undertake these responsibilities.*** Prior to 199_, the Commissioner of INS and the Director of the Executive Office for Immigration Review reported to the Associate Attorney General rather than the Deputy Attorney General [DAG]. The reporting relationship underscored the lesser status accorded to immigration matters, relative to the work of the Federal Bureau of Investigation or the Drug Enforcement Agency. The Commission commends the elevation of the reporting relationship and urges future administrations to follow this path. Immigration issues are likely to continue to present important and controversial policy challenges to the country and they will continue to require the highest level of attention within DOJ.

The Commission urges allocation of sufficient resources within the Deputy Attorney General's office to permit it to oversee immigration-related policy and program development throughout the Department. Recognizing the limited number of personnel slots assigned to the office of the DAG, consideration should be given to staffing the immigration oversight function with persons detailed for at least one year each from the newly recommended Bureau for Immigration Enforcement, Bureau for Immigration and Citizenship Services, and the Executive Office for Immigration Review [EOIR].

Option B2: ***The Commission recommends statutory establishment of an Associate Attorney General for Immigration at the Department of Justice to oversee DOJ-wide immigration policy and programs, with sufficient staff resources to undertake these responsibilities.*** The new Associate Attorney General would be the direct supervisor and coordinator for the policymaking and strategic planning activities of the DOJ immigration agencies. Reporting to the Associate Attorney General for Immigration would be the Director of the Bureau for Immigration Enforcement, the Director of the Bureau for Immigration and Citizenship Services, and the Director of the Executive Office for Immigration Review.

Option C. Department of Health and Human Services. [This option can include a recommendation that DOS continue to do the overseas visa interviews. Text reflecting this suboption are indicated in brackets and italicized text.] ***The Commission recommends the establishment of a new Administration for Refugees, Immigration, and Citizenship Services within the Department of Health and Human Services.*** This new entity would be responsible for adjudication of immigrant and nonimmigrant petitions, work authorizations and other permits, adjustments of status, naturalization, refugee status determination, and asylum. It also would have responsibility for setting and implementing the Americanization policies recommended above by the Commission. Policy planning and program development activities would be incorporated into the new entity, which also would have the capacity to detect, deter and combat fraud and abuse among those applying for benefits. [*The Commission does not recommend that the new Administration assume responsibility for overseas visa issuance, however. The Department of State already has the expertise and staffing to conduct interviews in U.S. consulates and embassies, and we believe consular officers should continue to exercise this responsibility.*]

While the Department of Health and Human Services [DHHS] has played only a small role regarding the admission of immigrants to the United States, it has had a major role in the integration of newcomers (specifically refugees and, to some extent, asylees) after they settle in U.S. communities. Giving DHHS principal responsibility for adjudicating applications for admission would link these two important elements of immigration policy—admission of immigrants and services for their integration.

At present, DHHS has responsibility for several health aspects of immigration. The Centers for Disease Control [CDC] have responsibility for health conditions relating to admission of immigrants and refugees. CDC establishes guidelines on health conditions that should be considered grounds for exclusion and on vaccinations to be required prior to admission. CDC also certifies the physicians used at overseas posts for immigrant and refugee health screenings and vaccinations. The Office of International Health also participates in responses to international health emergencies that includes migration emergencies. The Health Resources and Services Administration provides care to applicants detained in U.S. detention centers.

The Office of Refugee Resettlement [ORR] has the principal responsibility within DHHS for services for integration of newcomers. ORR's primary role is to assist refugees entering through the resettlement system or admitted as asylees. However, it was given responsibility for the State Legalization Impact Assistance Grants [SLIAG] under which states received funding to cover the costs of assistance and designated services for legalized aliens.

Moving functions currently performed by INS to DHHS requires consideration of which functions would fit and where the best location in the DHHS structure would be. DHHS is dominated by its health agenda and programs, but it does have two existing administrative/programmatic units for human services: The Administration on Aging and the Administration for Children and Families [ACF].

The Commission believes that establishing a separate "administration," the Administration for Immigration, Refugee, and Citizenship Services with its own Assistant Secretary would be needed for DHHS to absorb immigration-related services and functions. Anything less would be administratively impractical and would undermine the program politically. ORR is currently part of Administration for Children and Families [ACF]; its functions would be merged into the new Administration.

A new Assistant Secretary for Refugee, Immigration and Citizenship Services within DHHS would put these services in a structure that would provide easy collaboration with other human services programs from which many legal immigrants and refugees benefit or may benefit—provisions of welfare and immigration reform notwithstanding. DHHS, through the ORR administration of the domestic refugee assistance program, already has an extensive national network of state agencies, national resettlement agencies, and local service agencies, many of which play a role in both refugee and immigrant adjustment and services. DHHS also has an existing connection to the asylum program as a result of the Cuban and Haitian entrant program and the Kurdish asylee program. Some of the services needed, such as naturalization training and preparation, as well as English language training, would naturally be accomplished through this same network.

This recommendation envisions that the Administration for Refugee, Immigration and Citizenship Services would have two principal divisions, with a quality assurance office to support both operations. One division would focus on immigration applications, including nonimmigrant admissions, immigrant admissions, employment authorization, asylum adjudication, refugee determination, and naturalization. This division would assess written applications for all immigration-related benefits (now performed by INS, DOL, and/or DOS, depending on the type of application), interview applicants when an in-person interview is required, and issue appropriate documentation (e.g., visas, green cards, employment authorization documents).

The second division would focus on integration services. This division would adjudicate applications for naturalization, including interviews with applicants when required. It would incorporate the ORR services and assistance to refugees functions. This division also would be responsible for the narrower range of immigrant integration services described earlier in this report.

The quality assurance office would include records management, monitoring of procedures, fraud investigations, and an internal appeals unit. At present, monitoring of the quality of decisions made on applications for immigration and citizenship benefits receives insufficient attention. INS enforcement officials now have the responsibility to investigate allegations of fraud in immigration and naturalization benefits programs, but monitoring the adjudications processes is of low priority in an office also responsible for identifying and removing criminal aliens, breaking up smuggling and counterfeiting rings, and performing similar police work. A dedicated staff, responsible for nothing other than ensuring the quality of decisions taken on applications for immigration and citizenship, should address some of the weaknesses recently identified in naturalization processing.

This recommendation also would standardize the right of applicants to have decisions on their applications reviewed internally. [See later recommendation regarding outside appeals.] Some adjudications decisions now are reviewed by a separate administrative unit within the agency conferring benefits; others are not. The Commission believes that quality decisions require some form of internal review for applicants who believe their cases have been wrongly decided. This type of review helps an agency monitor consistency and identify problems in adjudication and offers a means of correcting errors.

Interviews would be conducted on site. Overseas interviews would continue to take place at embassies and consulates. A range of other interviews would take place domestically. New offices, designed specifically with immigrant services in mind, will be needed. Ideally, these new offices would be smaller and in more locations than current INS district offices to avoid long lines and waits for service. The Commission recommends against locating these offices with the enforcement offices discussed above. Asking individuals who are requesting a legitimate service to go to what is in essence a police station sends the wrong message about the U.S. view of legal immigration.

The field structure for implementing these programs follows. The Regional Service Centers now operated by INS would continue to be the locus of most adjudication. The physical plants are excellent and the locally-hired staffs are trained and in place. Information could be passed from the RSCs to the DOS National Visa Center in Vermont when the applicant for admission is overseas.

Consolidating responsibility for immigration and immigrant programs within DHHS will require significant adjustments for the agency.

The mission of the new Administration would be secondary to the principal business of the department, which is health. Also, the department would be taking on new functions. The existing capacity and experience of DHHS is in regulations, grantmaking, and monitoring. Opening new offices to determine eligibility and to administer a program of public benefits would be a major change. Since the establishment of the Social Security Administration as an independent agency, there are no existing DHHS suboffices or staff capacity in the regions in these functions.

Option D. A New Independent Agency for Immigration and Citizenship Services. ***The Commission recommends the establishment of a new Independent Agency for Immigration and Citizenship Services to better facilitate legal immigration, nonimmigrant admissions, and citizenship decisions while also deterring fraud and abuse.*** This new entity would be responsible for adjudication of immigrant and nonimmigrant petitions, work authorizations and other permits, adjustments of status, naturalization, refugee status determination, and asylum. Policy planning and program development activities would be incorporated into the new entity, which would also have the capacity to detect, deter, and combat fraud and abuse among those applying for benefits.

The Commission for the Study of International Migration and Cooperative Economic Development [Asencio Commission] recommended this in 1990. Immigration and citizenship policy and its implementation would be the sole function of this agency, distinguishing this approach from those that would place this function in an existing department.

As the sole function of the agency, these activities would receive greater priority and focus than they do currently in departments that consider that their primary mission is in other areas. Policy development on legal immigration and citizenship issues also would receive greater attention. Operationally, the process would be highly streamlined; one department would handle what now is done in four. This one agency would process everything from the initial filing of the immigrant or nonimmigrant petition, to the issuance of a visa, to naturalization, and to the issuance of a passport. Further, one governmental entity would manage all data relating to immigration and citizenship. This would ensure more accurate information more easily accessible to all officers dealing with adjudications.

This recommendation envisions that the Agency for Immigration and Citizenship Services would have two principal divisions, with a quality assurance office to support both operations. One division would focus on immigration applications, including nonimmigrant admissions, immigrant admissions, and employment authorization, as well as refugee status and asylum determinations. This division would assess written applications for all immigration-related benefits (now performed by INS, DOL, and/or DOS, depending on the type of application), interview applicants when an in-person interview is required, and issue appropriate documentation (e.g., visas, green cards, employment authorization documents).

The second division would focus on citizenship services, including naturalization, passport issuance, and overseas citizens services. This division would adjudicate applications for naturalization and passports, including interviews with applicants when required. It also would oversee overseas citizens services currently performed by Consular officers. These services include: monitoring the welfare and whereabouts of U.S. citizens; assisting when U.S. citizens die, are arrested, and experience other emergencies; providing notary services; issuing passports; and making citizenship determinations. An increasingly important activity in some countries (most recently Congo [former Zaire], for example) is organizing expatriate Americans living or working in the consular district into networks for efficient communication of information and warnings.

The quality assurance office would include records management, monitoring of procedures, fraud investigations, and an internal appeals unit. At present, monitoring the quality of decisions made on applications for immigration and citizenship benefits receives insufficient attention. INS enforcement officials now have the responsibility to investigate allegations of fraud in immigration and naturalization benefits programs, but monitoring the adjudications processes is of low priority in an office also responsible for identifying and removing criminal aliens, breaking up smuggling and counterfeiting rings, and performing similar police work. A dedicated staff, responsible for nothing other than ensuring the quality of decisions taken on applications for immigration and citizenship should address some of the weaknesses recently identified in naturalization processing.

This recommendation also would standardize the right of applicants to have decisions on their applications reviewed internally. [See later recommendation regarding outside appeals.] Some adjudications decisions now are reviewed by a separate administrative unit within the agency conferring benefits; others are not. The Commission believes that quality decisions require some form of internal review when applicants believe their cases have been wrongly decided. This type of review helps an agency monitor consistency and identify problems in adjudication and offers a means of correcting errors. The independent agency could incorporate some of the review units from other agencies and will need to standardize them and possibly further develop the review function.

The field structure for implementing these programs follows. The Regional Service Centers and National Visa Center would continue to be the locus of most adjudication. The physical plants are excellent and the locally-hired staffs are trained and in place. Initially, information could be passed from the RSCs to the NVC when the applicant for admission is overseas. Eventually, however, the functions of the Service Centers and the Visa Center could be consolidated.

Interviews would be conducted on site. Overseas interviews would continue to take place at embassies and consulates. A range of other interviews would take place domestically. Consular Affairs [DOS] already operates fifteen passport offices, many located in areas of high immigrant settlement. These offices, however, are not always set up for high volume interviewing. New offices, designed specifically with immigrant services in mind, will be needed. Ideally, these new offices would be smaller and in more locations than current INS district offices to avoid long lines and waits for service. The Commission recommends against locating these offices with the enforcement offices discussed above. Asking individuals who are requesting a legitimate service to go to what is in essence a police station sends the wrong message about the U.S. view of legal immigration.

When an application necessitates a personal interview, or when fraud is suspected, the Service Center, as occurs now, would send the application to an appropriate field office to conduct the interview and render the final decision. Prospective and current applicants would be able to solicit information from field offices on procedures, adjudication standards and criteria, and timeframes and go to field offices for forms and for assistance in completing them.

Staffing for the new entity could be drawn initially from among Consular Officers, INS Adjudicators and Asylum Officers, and DOL adjudicators. The Consular Officers would continue at first as the exclusive personnel making visa determinations abroad. Ultimately, the new agency's officers might rotate through both overseas and domestic assignments. Asylum Officers would continue to specialize as they do now and would also serve overseas in connection with refugee determinations, as they have begun to do recently. Currently, some 4,000 INS and ___ DOS staff (not counting Consular Officers) are involved in immigration and citizenship benefits adjudications. Many of these people would remain in their present locations at offices throughout the United States, and their functions would not appreciably change.

While personnel from the various agencies currently performing these tasks would likely be transferred to the new agency, the challenge will be to create a more service-oriented, professional corps of officers. This is precisely what the Asencio Commission envisioned and would require a management strategy that addresses the merging of adjudicators with very different experience, training, and customer-service attitudes.

The Commission is cognizant that the creation of a new agency would go against current attitudes about government. However, such attitudes must be weighed against the serious disadvantages of establishing a consolidated benefits adjudication function within agencies whose priorities are likely to continue to overshadow this function. This results in inadequate attention to professionalism and accountability in carrying out this function and consequent insufficient Executive Branch interest in providing information and analysis that could inform immigration and citizenship policy discussions.

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