

From: Ingrid M. Schroeder on 08/24/98 11:42:38 AM

Record Type: Record

To: Jose Cerda III/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP, Julie A. Fernandes/OPD/EOP

cc: Steven M. Mertens/OMB/EOP, Ronald E. Jones/OMB/EOP

Subject: Justice draft bill re: Mandatory Detention

Last week Ron Jones forwarded to you a copy of a Justice draft bill which would delay a requirement included in Antiterrorism and Effective Death Penalty Act (amending the INA) that would require the mandatory detention of certain criminal aliens.



Justice needs to get the bill enacted before October 9th, otherwise the provision will take effect.
Justice states that they are incapable of implenting this requirement due to lack of detention staff and bedspace.

We plan to clear this draft bill today. **Please let me know by 2pm today if you have any questions or concerns. If I do not hear from you by 2pm I will assume that you have no objection to our clearance of the draft bill.** We are also checking with Chuck Allan at the NSC.

Thanks

 Ronald E. Jones08/12/98 03:27:40 PM

Record Type: Record

To: Steven M. Mertens/OMB/EOP, Julie A. Fernandes/OPD/EOP, Steven D. Aitken/OMB/EOP,
BUSBY_S@A1@CD@VAXGTWY

cc: Ingrid M. Schroeder/OMB/EOP

Subject: DOJ Draft Bill on Extension of the Temporary Period Custody Rule

DOJ has sent a transmittal letter for the draft bill. I'm faxing it around right now. They've asked that we clear it today. Seems unnecessary. Today would be fine but tomorrow morning seems ok too.

August 12, 1998

URGENT

Urgent for Ron Jones, OMB

From: Greg Jones, DOJ

Ingrid told me the other day she was ready to clear this but wanted to know if we planned a Speaker letter or an informal submission. The answer is the former -- see attached. Since the statute cited expires on Oct. 1, we need to get moving. Can you clear it today by any chance?

Thanks.

The Honorable Newt Gingrich
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

Dear Speaker Gingrich:

Enclosed herewith is a draft bill which will provide the Attorney General with additional discretion over detention and release of criminal aliens by extending the Temporary Period Custody Rule (TPCR).

The TPCR is set to expire on October 8, 1998, and without legislative action, section 440(c) of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and section 236(c) of the Immigration and Nationality Act will become effective, mandating detention of broad categories of criminals, including long-time permanent residents, without case-by-case bond or parole consideration, and regardless of individual circumstances. This will result in potentially serious consequences for immigration enforcement. The Immigration and Naturalization Service will be best situated to continue to achieve dramatic increases in removals, including criminal removals, if it is given the discretion it needs to pursue Congress's enforcement priorities effectively.

This legislation seeks to provide for two additional one-year extensions in the Illegal Immigrant Reform and Immigration Responsibility Act of 1996 (IIRIRA) transition custody rules for aliens. This legislation will provide an interim measure, while the Department considers whether to pursue a more permanent solution.

The Office of Management and Budget has advised that there is no objection to the presentation of this proposal to the Congress from the standpoint of the Administration.

08/12/98

13:17

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The Honorable Newt Gingrich
Page 2

We look forward to working with you and other Members of Congress to implement this legislation and to ensure successful, long-term improvements in our Nation's immigration system.

Sincerely,

L. Anthony Sutin
Acting Assistant Attorney General

Attachments

cc: Honorable Richard A Gephardt
Minority Leader



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 15, 1998

The Honorable Jacob J. Lew
Acting Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lew:

Enclosed are copies of a proposed communication to be transmitted to the Congress relative to: a draft legislative proposal for extension of Temporary Period Custody Rule.

Please advise this office as to the relationship of the proposed communication to the program of the President.

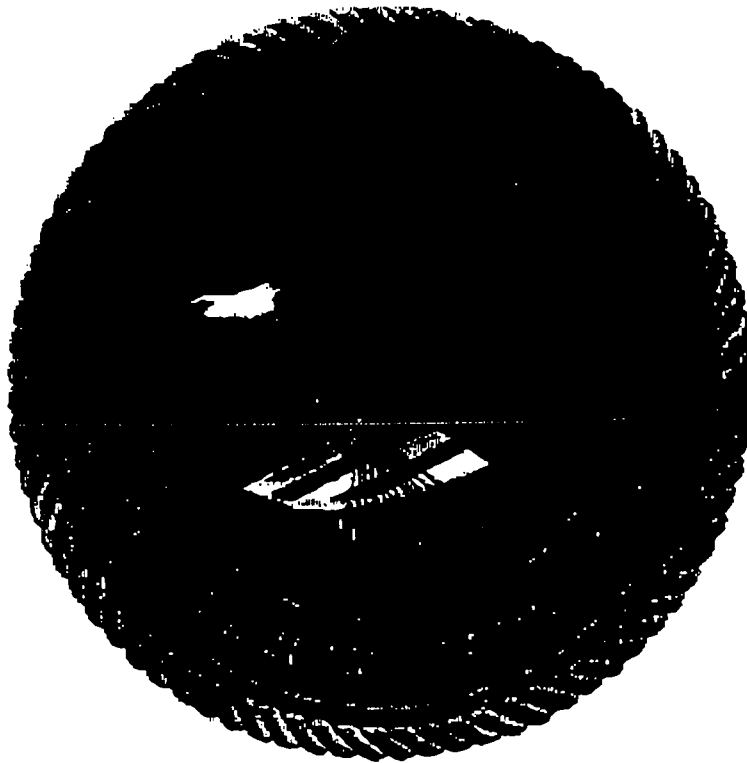
Sincerely,

L. Anthony Sutin
Acting Assistant Attorney General

Enclosure

*To coordinate clearance, please contact: Greg Jones, 514-2113.

**Legislative Proposal for Extension of Temporary Period
Custody Rule**



This legislation would amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) to provide for two additional one-year extensions of the Transition Period Custody Rules (TPCR) now in effect pursuant to IIRIRA section 303(b). The TPCR provide the Attorney General with additional discretion over the detention and release of criminal aliens. The TPCR are set to expire on October 8, 1998, with potentially serious adverse consequences for immigration enforcement.

On October 9, 1996, the Commissioner of the Immigration and Naturalization Service (INS) notified Congress that the INS lacked the detention space and personnel necessary to comply with the mandatory detention provisions of section 440(c) of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and section 236(c) of the Immigration and Nationality Act (INA), as amended by IIRIRA. By operation of law, the notification resulted in the temporary replacement of these mandatory detention provisions with the TPCR. A second notification on September 29, 1997, continued the TPCR in effect for an additional year.

Without legislative action, section 440(c) of AEDPA and section 236(c) of the Act will become effective on October 8, 1998, mandating detention of broad categories of criminals, including long-time permanent residents, without case-by-case bond or parole consideration, and regardless of individual circumstances. It is nearly certain that detaining all aliens subject to mandatory detention under these provisions would overwhelm existing detention resources. In a recent report to Congress required by section 386(b) of IIRIRA ("386 Report"), the INS estimated that it would require 5,000-10,000 detention beds over the fiscal year 1998 levels to detain all persons subject to the mandates, assuming that sufficient resources were available for identification and apprehension of those individuals. The INS currently has approximately 15,000 beds in use, based on recent weekly counts.

If fully implemented these detention mandates will overburden INS's detention resources to the extent of compromising these critical enforcement operations.¹ Detention resources support mandatory detention for expedited removal proceedings, mandatory detention pursuant to final orders of removal, and discretionary detention necessary to support border enforcement, worksite enforcement, execution of deportation and exclusion orders, marriage fraud and

1/ Assuming a base of 16-18,000 beds in use at the end of FY 1998, if INS increased its detention of criminal aliens by 5,000 to 10,000 more beds as estimated in the 386 Report, the additional detention and deportation costs would be a projected \$150 - 300 million for beds, \$19 - 38 million for personnel, and \$40 - 80 million for other non-medical removal-related expenses.

other investigations, antismuggling initiatives, fugitive recovery, and special enforcement operations along the southwest border. Border enforcement, expedited removal, and worksite enforcement in particular require substantial bedspace, resources, and detention personnel. Effective border enforcement in particular depends on a credible threat of detention for removal proceedings; undocumented border crossers may decline an offer of voluntary return if they know the INS will be forced to release them on recognizance for lack of detention space.

The INS has expanded detention and deportation over the past several years at the fastest possible rate consistent with responsible growth of the program. The budget for detention and deportation has grown from \$260 million in FY 1995 to a requested \$771 million in FY 1999. As part of the growth in detention and deportation resources, INS has increased the number of detention beds it funds from an average daily population of 8,592 in FY 1996 to a projected average daily population of approximately 16,000 in FY 1999, an 87% increase. The INS requested authorization for 3,748 permanent detention and deportation personnel for FY 1999, a 94% increase over the 1,934 personnel authorized for FY 1995.

With this infusion of resources, removals have increased dramatically, from approximately 50,000 in FY 1995 (itself a record year) to 114,000 in FY 1997 (and approximately 78,000 in the first six months of FY 1998).² Criminal removals have increased from approximately 33,000 in 1995 to approximately 51,000 in FY 1997 (and approximately 27,000 in the first six months of FY 1998). The INS is now removing more than 1,000 criminals from the United States each week, and the rate continues to increase.

The Department is considering legislation to establish a permanent custody regime incorporating wider discretion over the detention and release of criminal aliens. Some courts have held mandatory detention unconstitutional, particularly as applied to lawful permanent residents, and although the Department disagrees with these courts as to constitutionality, it continues to believe that broad mandatory detention of this kind is both unnecessary and counterproductive as a matter of enforcement policy. The INS will be best situated to continue to achieve dramatic increases in removals, including criminal removals, if it is given the discretion it needs to pursue Congress's enforcement priorities effectively on

2/ Much of the increase in non-criminal removals is attributable to expedited removal. Thus far, bedspace has been available to support the new program, and the INS has replaced the practice of paroling undocumented aliens arriving at ports with the credible threat of detention and prompt removal. Expedited removal imposes its own detention mandates, but the INS would have to choose between these and other mandates in the absence of sufficient resources to comply with them all.

the ground. (The Department has recently promulgated a regulation exercising the Attorney General's discretion to impose strict procedural and substantive requirements on the release of criminal aliens. 63 Fed. Reg. 27,441 (1998)(to be codified at 8 C.F.R. § 236.1).

While a permanent solution will require further consideration, the present legislation provides a stop-gap measure to forestall imposition of the AEDPA/IIRIRA detention mandates with the impending expiration of the TPCR. Even if the Congress were not to pass permanent legislation, multi-year extensions would be necessary to allow INS sufficient time to receive the appropriated resources necessary to fulfill the mandates. Furthermore, in its attempts to comply with the mandates, INS would severely limit its ability to respond to detention requirements that can change suddenly based on factors beyond the control of the Department of Justice or the INS, as is the case of a large-scale alien influx. This legislation is necessary to avoid a potentially serious adverse impact on critical INS operations, and the Department strongly urges its expeditious enactment.

Purpose

The amendment will provide for three one year extensions in the IIRIRA transition custody rules for aliens (note: the first of these three is already being used so the amendment will provide two additional years).

1 SEC. ____ EXTENSION OF TRANSITION RULES REGARDING CUSTODY

2
3 (a) Section 303(b)(2) of the Illegal Immigration and Immigration
4 Responsibility Act of 1996, Public Law 104-208, Division C, 110 Stat. 3009-546, is
5 amended by striking—

6
7 "The Attorney General may extend such 1-year period for an additional year if the
8 Attorney General provides the same notice not later than 10 days before the end
9 of the first 1-year period. After the end of such 1-year or 2-year periods, the
10 provisions of such section 236(c) shall apply to individuals released after such
11 periods."

12
13 and inserting in lieu thereof—

14
15 "The Attorney General may extend such one-year period for three additional one-
16 year periods if the Attorney General provides the same notice not later than ten
17 days before the end of the first, second, or third one-year period. After the end of
18 such extensions, the provisions of such section 236(c) shall apply to individuals
19 released after such periods."

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2 more
years.

20
21 (b) This amendment shall be effective as if included in section 303(b) of
22 Public Law 104-208, Division C, when it was enacted.



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Lgt. msg for IS 8/26 4:54

FAX COVER SHEETDATE: 8/26/98

TO:

Julie FernandezIngrid Schroder

PHONE NO.

FAX NO.

456-5581 / 395-3109

FROM:

PATTY FIRST

PHONE NO.

202/514-4810

FAX NO.

202/514-9149

NO. OF PAGES:

2 (EXCLUDING COVER)

COMMENTS:

New TPCR transmittal letter.
I think this addresses your
concerns, Julie.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Newt Gingrich
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

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This legislation seeks to provide for two additional one-year extensions in the Illegal Immigrant Reform and Immigration Responsibility Act of 1996 (IIRIRA) transition custody rules for aliens. This legislation will provide an interim measure, while the Department ~~considers~~ ^{continues} the feasibility of implementing these sections. ^{to evaluate & consider}

The Office of Management and Budget has advised that there is no objection to the presentation of this proposal to the Congress from the standpoint of the Administration.

The Honorable Newt Gingrich
Page 2

We look forward to working with you and other Members of Congress to implement this legislation and to ensure successful, long-term improvements in our Nation's immigration system.

Sincerely,

L. Anthony Sutin
Acting Assistant Attorney General

Attachments

cc: Honorable Richard A. Gephardt
Minority Leader



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

LEGISLATIVE REFERENCE DIVISION
ECONOMICS, SCIENCE, AND GENERAL GOVERNMENT BRANCH

TO:

Julie Fernandes

FROM: INGRID SCHROEDER
phone: (202) 395-3883
FAX: (202) 395-3109

DATE: 8/24/98

NUMBER OF PAGES (including this cover sheet):

8

COMMENTS:

Please call (202) 395-3454 to report any difficulties with transmission of this fax.

08/12/98 13:18

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BUCIR

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Speaker of the House
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Washington, D.C. 20515

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08/12/98 WED 13:51 FAX 202 395 3109

08/12/88

13:17

27025145231

REC-18

The Honorable Newt Gingrich
Page 2

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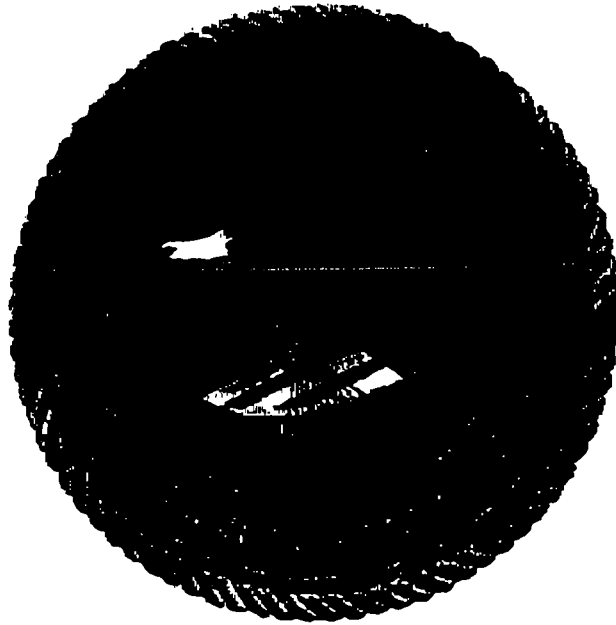
L. Anthony Sutin
Acting Assistant Attorney General

Attachments

cc: Honorable Richard A. Gephardt
Minority Leader

08/12/88 WED 14:54 FAX 202 514 3485

Legislative Proposal for Extension of Temporary Period Custody Rule



END PAGE

08/13/98 WED 14:55 FAX 202 395 3109

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