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Proposed Draft SAP
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STATEMENT OF ADMINISTRATION POLICY
REGARDING H.R. 1788 - THE NAZI BENEFITS TERMINATION ACT OF 1999

The Administration has no objection to House passage of H.R. 1788.

The Justice Department's Office of Special Investigations (OSI) was created to fulfill Congress' mandate to the Department of Justice to investigate and take legal action to denaturalize and deport persons within the United States who participated in Axis-sponsored persecution during World War II. It is essential to the dignity of our citizenry and especially to respecting the sacrifice and contribution to this Nation of the Holocaust survivors among them that we deny Nazi persecutors the privilege of living in this country. While OSI's efforts to deny Federal public benefits to persons who participated in Nazi persecution have achieved significant successes and will be continued, OSI's paramount goal is to remove former Nazi persecutors from this country. OSI has been remarkably successful in meeting this goal. To date, 63 Nazi persecutors have been stripped of U.S. citizenship and 52 have been removed from the United States since OSI began operations in 1979. The Administration wants to ensure that continuing attainment of these national goals is not unintentionally made more difficult by legislation with the laudable objective of enhancing the Government's ability to revoke Federal public benefits of persons who participated in Nazi persecution.

The Administration remains concerned that H.R. 1788 poses some risk to OSI's program but also believes that the bill could enhance the effort to deport persons who participated in Nazi atrocities by providing such persons with an additional incentive (the government's assent to forbearance from suit under this Act) to expedite their departure from the United States. It is critical that OSI litigate these benefits revocation cases.

The Administration supports enactment of a number of technical amendments to H.R. 1788. These amendments would clarify certain measures in the legislation and tighten enforcement procedures. The Administration wants to see these matters -- such as the availability of judicial stays of the new benefits termination proceedings -- addressed before final passage of the bill.

HR 1788 IH

106th CONGRESS

1st Session

H. R. 1788

To deny Federal public benefits to individuals who participated in Nazi persecution.

IN THE HOUSE OF REPRESENTATIVES

May 13, 1999

Mr. FRANKS of New Jersey (for himself, Mr. FRELINGHUYSEN, and Mr. LANTOS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To deny Federal public benefits to individuals who participated in Nazi persecution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Nazi Benefits Termination Act of 1999'.

SEC. 2. DENIAL OF FEDERAL PUBLIC BENEFITS TO NAZI PERSECUTORS.

(a) IN GENERAL- Notwithstanding any other provision of law, an individual who is determined under this Act to have been a participant in Nazi persecution is not eligible for any Federal public benefit.

(b) DEFINITIONS- In this Act:

(1) FEDERAL PUBLIC BENEFIT- The term 'Federal public benefit' shall have the meaning given such term by section 401(c)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, but shall not include any benefit described in section 401(b)(1) of such Act (and, for purposes of applying such section 401(b)(1), the term 'alien' shall be considered to mean 'individual').

(2) PARTICIPANT IN NAZI PERSECUTION- The term 'participant in Nazi persecution' means an individual who--

(A) if an alien, is shown by a preponderance of the evidence to fall within the class of persons who (if present within the United States) would be deportable under section 237(a)(4)(D) of the Immigration and Nationality Act; or

(B) if a citizen, is shown by a preponderance of the evidence--

(i) to have procured citizenship illegally or by concealment of a material fact or

willful misrepresentation within the meaning of section 340(a) of the Immigration and Nationality Act; and

(ii) to have participated in Nazi persecution within the meaning of section 212(a)(3)(E) of the Immigration and Nationality Act.

SEC. 3. DETERMINATIONS.

(a) **HEARING BY IMMIGRATION JUDGE-** If the Attorney General has reason to believe that an individual who has applied for or is receiving a Federal public benefit may have been a participant in Nazi persecution (within the meaning of section 2 of this Act), the Attorney General may provide an opportunity for a hearing on the record with respect to the matter. The Attorney General may delegate the conduct of the hearing to an immigration judge appointed by the Attorney General under section 101(b)(4) of the Immigration and Nationality Act.

(b) **PROCEDURE-**

(1) **RIGHT OF RESPONDENTS TO APPEAR-**

(A) **CITIZENS, PERMANENT RESIDENT ALIENS, AND PERSONS PRESENT IN THE UNITED STATES-** At a hearing under this section, each respondent may appear in person if the respondent is a United States citizen, a permanent resident alien, or present within the United States when the proceeding under this section is initiated.

(B) **OTHERS-** A respondent who is not a citizen, a permanent resident alien, or present within the United States when the proceeding under this section is initiated may appear by video conference.

(C) **RULE OF INTERPRETATION-** This Act shall not be construed to permit the return to the United States of an individual who is inadmissible under section 212(a)(3)(E) of the Immigration and Nationality Act.

(2) **OTHER RIGHTS OF RESPONDENTS-** At a hearing under this section, each respondent may be represented by counsel at no expense to the Federal Government, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas for the attendance of witnesses and presentation of evidence.

(3) **RULES OF EVIDENCE-** Unless otherwise provided in this Act, rules regarding the presentation of evidence in the hearing shall apply in the same manner in which such rules would apply in a removal proceeding before a United States immigration judge under section 240 of the Immigration and Nationality Act.

(c) **HEARINGS, FINDINGS AND CONCLUSIONS, AND ORDER-**

(1) **FINDINGS AND CONCLUSIONS-** Within 60 days after the end of a hearing conducted under this section, the immigration judge shall make findings of fact and conclusions of law with respect to whether the respondent has been a participant in Nazi persecution (within the meaning of section 2 of this Act).

(2) **ORDER-**

(A) **FINDING THAT RESPONDENT HAS BEEN A PARTICIPANT IN NAZI PERSECUTION-** If the immigration judge finds, by a preponderance of the evidence, that the respondent has been a participant in Nazi persecution (within the meaning of section 2 of this Act), the immigration judge shall promptly issue an order declaring the respondent to be ineligible for any Federal public benefit, and prohibiting any

person from providing such a benefit, directly or indirectly, to the respondent, and shall transmit a copy of the order to any governmental entity or person known to be so providing such a benefit.

(B) FINDING THAT RESPONDENT HAS NOT BEEN A PARTICIPANT IN NAZI PERSECUTION- If the immigration judge finds that there is insufficient evidence for a finding under subparagraph (A) that a respondent has been a participant in Nazi persecution (within the meaning of section 2 of this Act), the immigration judge shall issue an order dismissing the proceeding.

(C) EFFECTIVE DATE; LIMITATION OF LIABILITY-

(i) EFFECTIVE DATE- An order issued pursuant to subparagraph (A) shall be effective on the date of issuance.

(ii) LIMITATION OF LIABILITY- Notwithstanding clause (i), a person or entity shall not be found to have provided a benefit to an individual in violation of this Act until the person or entity has received actual notice of the issuance of an order under subparagraph (A) with respect to the individual and has had a reasonable opportunity to comply with the order.

(d) REVIEW BY ATTORNEY GENERAL; SERVICE OF FINAL ORDER-

(1) REVIEW BY ATTORNEY GENERAL- The Attorney General may, in her discretion, review any finding or conclusion made, or order issued, under subsection (c), and shall complete the review not later than 30 days after the finding or conclusion is so made, or order is so issued. Otherwise, the finding, conclusion, or order shall be final.

(2) SERVICE OF FINAL ORDER- The Attorney General shall cause the findings of fact and conclusions of law made with respect to any final order issued under this section, together with a copy of the order, to be served on the respondent involved.

(e) JUDICIAL REVIEW- Any party aggrieved by a final order issued under this section may obtain a review of the order by the United States Court of Appeals for the Federal Circuit, by filing a petition for such review not later than 30 days after the final order is issued.

(f) ISSUE AND CLAIM PRECLUSION- In any administrative or judicial proceeding under this Act, the ordinary rules of issue preclusion and claim preclusion shall apply.

SEC. 4. JURISDICTION OF UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT OVER APPEALS UNDER THIS ACT.

Section 1295(a) of title 28, United States Code, is amended--

(1) by striking 'and' at the end of paragraph (13);

(2) by striking the period at the end of paragraph (14) and inserting `; and'; and

(3) by adding at the end the following:

`(15) of an appeal from a final order issued under the Nazi Benefits Termination Act of 1999.'.

END

October 5, 1998

NOTE TO KAREN COLOGNE:

As I mentioned in my voice mail message to you, this is a description of the technical changes the Department of Health and Human Services (HHS) suggests to the draft legislation of the "Nazi Benefits Termination Act of 1998" that we received.

(1) Replace the definition of "Federal public benefit" with a reference to the applicable provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). This ensures that there remains a single authoritative source for the definition of "Federal public benefit" and obviates the need for a legislative change to this Act in the event PRWORA is amended. (See proposed amendments to markup pages 1-4).

(2) Clarify that (A) individuals who are found to have participated in Nazi persecution are ineligible for the applicable benefits as of the date the judge's order is issued; and (B) that persons or entities providing Federal public benefits to such individuals will not be found to be in violation of the Act until they have received actual notice of the issuance of the order and have had a reasonable amount of time to terminate benefits. This change ensures that providers of benefits who have no way of knowing that they are providing benefits to a respondent are not unfairly penalized, but also would allow benefit programs to recover for any benefits provided to an individual between the date the order is issued and the date of discovery. (See proposed amendments to markup page 7).

(3) Make conforming changes that are necessitated by the amendments proposed by DOJ and HHS. (See starred language throughout).

Please contact me if you have any questions. Thank you.

Irene B. Bueno
Deputy Assistant Secretary for Legislation/
Congressional Liaison
202-690-6786

(Original signature of Member)

105TH CONGRESS
2D SESSION**H. R.** _____**IN THE HOUSE OF REPRESENTATIVES**Mr. FRANKS of New Jersey introduced the following bill: which was referred
to the Committee on _____**A BILL**To deny Federal public benefits to ^{individuals who} ~~Nazi persecutors~~
participated in Nazi persecution1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,3 **SECTION 1. SHORT TITLE.**4 This Act may be cited as the "Nazi Benefits Termi-
5 nation Act of 1998".6 **SEC. 2. DENIAL OF FEDERAL PUBLIC BENEFITS TO NAZI**7 ⁽¹⁾ **PERSECUTORS.**8 (a) IN GENERAL.—Notwithstanding any other provi-
9 sion of law, and except as provided in ^{paragraph (2)} ~~subsection (b)~~, an
10 individual who is determined under this Act to have been

participant in

2

1 a Nazi persecutor is not eligible for any Federal public
2 benefit.

INSERT

(b) DEFINITIONS.—In this ~~Act~~ Act,

(1) FEDERAL PUBLIC BENEFIT.

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "Federal public benefit" means—

(i) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(ii) any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

(B) EXCEPTIONS.—The term "Federal public benefit" does not include the following:

(i) Medical assistance under title XIX of the Social Security Act (or any succes-

as
defined in
section
401(c)(1)

the Personal
Responsibility
and Work

opportunity

Reconciliation

Act of

1996 (PRWORA)

✱
INSERT page 2, between lines 2 and 3

(2) EXCEPTION.—The provisions of paragraph (1) shall not affect the eligibility of an individual described in such paragraph for any Federal public benefit described in subparagraphs (A) through (D) of section 401(b)(1) of PRWORA (and for purposes of applying such subparagraphs, the term "alien" shall be read as "individual")

for program to such title) for care and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(8) of such Act) and are not related to an organ transplant procedure, if the recipient otherwise meets the eligibility requirements for medical assistance under the State plan approved under such title (other than the requirement of the receipt of aid or assistance under title IV of such Act, supplemental security income benefits under title XVI of such Act, or a State supplementary payment).

(ii) Short-term, non-cash, in-kind emergency disaster relief.

(iii) Public health assistance (not including any assistance under title XIX of the Social Security Act) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(iv) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion ~~after consultation with appropriate Federal agencies and departments, which~~

(i) deliver in-kind services at the community level, including through public or private nonprofit agencies;

(ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(iii) are necessary for the protection of life or safety

PARTICIPANT
IN

Participant in
Nazi

(2) NAZI PERSECUTOR. The term "Nazi persecutor" means an individual who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with

(A) the Nazi government of Germany;

(A) if an alien is shown by a preponderance of the evidence to fall within the class of persons who (if present within the United States) would be deportable under INA § 237(a)(4)(D), or

(B) if a citizen is shown by a preponderance of the evidence

(1) to have procured citizenship illegally or by

~~willful misrepresentation of a material fact or~~

~~omission within the meaning of INA § 340(a), and~~

(2) to have participated in Nazi persecution within the meaning of INA § 212(a)(3)(E).

~~ordered, incited, assisted, or otherwise participated~~

~~in the persecution of any person because of race, re-~~

~~ligion, national origin, or political opinion.~~

SEC. 3. DETERMINATIONS.

(a) HEARING BY ADMINISTRATIVE LAW JUDGE — IF

the Attorney General has reason to believe that an individ-

ual who has applied for or is receiving a Federal public

benefit may have been a Nazi persecutor, the Attorney

General ^{may} ~~shall~~ provide an opportunity for a hearing on the

record with respect to the matter within 60 days. The At-

torney General ^{may} ~~shall~~ delegate the conduct of the hearing

to an ~~administrative law judge~~ ^{by the Attorney General} appointed under section

~~2081~~ ⁵⁴² of title 5, United States Code.

RESPONDENTS

(b) RIGHTS OF ~~Parties~~ ^{Respondents} — At a hearing under this

section, each ~~party~~ ^{party} may appear in person, be represented

by counsel at no expense to the Federal Government,

present evidence, cross-examine witnesses, and obtain the

If he is a United States citizen, a permanent resident alien or present within the United States when a proceeding under this section is initiated. A respondent who is not a citizen, a permanent resident alien or present within the United States when a proceeding under this section is initiated may appear by videoconference. Nothing in this Act shall be construed to permit the return to the United States of an individual who is inadmissible under INA § 212(a)(3)(E). At a hearing under this section, each respondent may

been a participant
in Nazi
persecution
within the
meaning of Sec.
2 of this Act

1101(b)(4)

1 administrative law judge shall make findings of fact and
2 conclusions of law with respect to whether the re-

3 spondent has been a ~~Nazi persecutor~~ participant in Nazi
4 (S) ORDER persecution within the meaning
of Section 2 of the Act.

5 (A) FINDING THAT RESPONDENT HAS
6 PARTICIPANT IN

7 BEEN A NAZI PERSECUTOR. If the administra-
8 tive law judge finds, by a preponderance of the

9 evidence, that the respondent has been a ~~Nazi~~
10 persecutor, the administrative law judge shall *

11 promptly issue an order declaring the respond-

12 ent to be ineligible for any Federal public bene-

13 fit, and prohibiting any person from providing

14 ~~any Federal public benefit~~ directly or indi-

15 rectly, to the respondent, and shall transmit a

16 copy of the order to any governmental entity or

17 person known to be so providing such a benefit.

18 (B) FINDING THAT RESPONDENT HAS ~~NOT~~ SK

19 PARTICIPANT IN

20 BEEN A NAZI PERSECUTOR. If the administra- *

21 tive law judge finds that there is insufficient

22 evidence for a finding under subparagraph (A)

23 that a respondent has been a ~~Nazi~~ persecutor,

24 the administrative law judge shall issue an

25 order dismissing the proceeding. The Attorney

General shall make public disclosure of any

such dismissal.

* Such
a
benefit

(Other
than
a Federal
public
benefit
described
in Section
2(a)(2))

★ INSERT

4 INSERT page 7 after line 25

(C) EFFECTIVE DATE; LIMITATION OF LIABILITY.—

(i) EFFECTIVE DATE.—An order issued pursuant to subparagraph (A) shall be effective on the date of issuance.

(ii) LIMITATION OF LIABILITY.—Notwithstanding clause (i), no person or entity shall be found to be in violation of the provisions of this Act for providing a benefit described in subparagraph (A) to a respondent until such time as such person or entity has received actual notice of the issuance of such order and has had a reasonable opportunity to comply with such order.