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PRESERVATION**

Imm - General

IMMIGRATION TALKING POINTS

LATE AMNESTY

Background: The “late amnesty” cases involve claims by undocumented immigrants who did not successfully apply for legalization under the 1986 immigration law before the deadline of May 1988. They assert that they were discouraged or prevented from applying by regulations implementing the legalization program that the INS had promulgated during the Reagan Administration. The Congressional Hispanic Caucus and others have urged the Department of Justice (DOJ) to find an administrative solution to this problem. After many months of intensive review, the DOJ has concluded that there is no administrative remedy but that the Administration would support a legislative fix to help these immigrants to legalize. Administration officials have recently briefed the Hispanic Caucus on this and we are working with them on a legislative remedy.

- The courts, including the Supreme Court, have held that they cannot grant relief to anyone who did not actually apply within the deadline or anyone who was not front-desked within the time period – that is, an applicant who attempted to timely apply by tendering a completed INS form and fee which was then immediately returned to the applicant on the grounds ineligibility.
- For those immigrants who believed they were front-desked, regardless of whether they have been members of one of the late amnesty class actions, the INS had made it clear that they can submit their front-desking claims now and INS will review them. If INS determines an applicant was front-desked, then the applicant can apply for legalization, even though the May 1988 deadline has long since passed.
- For those immigrants who were not front-desked, the Department of Justice is sensitive to their position and has received several letters inquiring whether any relief could be available. However, the Department of Justice is unable to offer any further relief short of legislative change, which the Administration would support.
- We would recommend a legislative fix to help those who were not front-desked and will work with Congress to enact this legislation.

CENTRAL AMERICAN AND HAITIAN PARITY ACT OF 1999

Background: Under the *Nicaraguan Adjustment and Central American Act of 1997 (NACARA)* and the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), certain Nicaraguans and Cubans were allowed to become legal permanent residence but other Central Americans and Haitians did not receive the same treatment.

- During President's trip to Central American earlier this year, the President made a commitment to provide fair treatment of groups granted immigration benefits under NACARA.
- On May 20, 1999, the Administration published regulations that simplified the process allowing certain Salvadorans and Guatemalans to adjust their immigration status under the Nicaraguan Adjustment and Central American Act of 1997 (NACARA). However, current law does not permit the regulations to provide the same treatment for everyone as was given to Nicaraguans and Cubans.
- In August 1999, the President transmitted legislation to Congress, the **Central American and Haitian Parity Act of 1999** that would address the inequities that exist under NACARA and HRIFA. Representatives Luis Gutierrez, Chris Smith, Carrie Meek and others introduced this legislation in the House and Senators Durbin and Kennedy introduced this legislation in the Senate.
- The United States has a strong foreign policy interest in providing the same treatment to these similarly situated people.
- Like Nicaraguans and Cubans, many Salvadorans, Guatemalans, Hondurans, and Haitians fled human rights abuses or unstable political and economic conditions in the 1980s and 1990s.
- In addition, returning migrants to these countries would place significant demands on their fragile economic and political systems.
- The President is committed to even-handed treatment of nationals from these countries and to the strengthening of democracy and economic stability among important neighbors.

PUBLIC CHARGE

Background: Immigrant families were not enrolling in Medicaid and CHIP programs because they feared they would suffer immigration consequences.

- On May 25, 1999, the Vice President announced a new Department of Justice regulation to assure families that enrolling in Medicaid or the new Children's Health Insurance Program (CHIP) and receiving other critical benefits, such as school lunch and child care services will not affect their immigration status.
- The new policy, effective immediately, clarifies a widespread misconception that has deterred eligible populations from enrolling in these programs and undermined the nation's public health. In addition, the Vice President directed Federal agencies to send guidance to their field offices, program grantees and to work with community organizations to educate Americans about this new policy.
- This new regulation will improve the health of our families by addressing widespread confusion that prevents legal immigrants from signing up for health insurance, school lunch, child care and other essential programs.

INS RESTRUCTURING

Background: The Administration has a proposal to restructure the Immigration and Naturalization Service (INS) to improve the way the INS conducts its business and serves its clients. In addition, there is legislation pending in Congress to restructure INS. Representatives Harold Rogers (R-KY), Lamar Smith (R-TX) and Silvestre Reyes (D-TX) has introduced a bill. The Administration has serious concerns with this proposal because it separates the enforcement and services functions and does not include a single full time senior official who oversees both functions. However, we are under negotiations with the sponsors of this legislation and they have begun to move in our direction. The outstanding issue is role and staffing of the single official who will oversee immigration issues. Representative Sheila Jackson-Lee (D-TX) and Senators Spencer Abraham (R-MI) and Kennedy (D-MA) have introduced INS Restructuring legislation that is more consistent with the Administration's proposal.

- The Administration is committed to a fundamental change in the way the INS conducts its business and serves its clients. The Administration's commitment was reflected in the restructuring proposal submitted to Congress last year.
- To that end, INS has been working over the past year with a management-consulting firm and has consulted extensively with those in the public who have expertise on immigration issues to develop a detailed blueprint for a new organizational structure.
- The Administration's INS restructuring proposal is based on the principle that the Immigration enforcement and service functions must be separated, while being led by a single executive responsible for immigration within the Department of Justice (DOJ).
- Separation of enforcement and services will ensure clear lines of authority and leadership for each of these important missions, and improve management and accountability.
- A single full-time immigration official within the Executive Branch is essential to provide consistent and coordinated leadership on immigration policy, and in the provision of efficient immigration services and effective border enforcement.
- We are working with Congress to enact an INS Restructuring plan that incorporates the Administration's principles and that will ensure clear lines of authority, strengthen accountability, and improve efficiency.

WELFARE REFORM RESTORATIONS

Background: Upon signing the 1996 welfare law, the President vowed to reverse unnecessary cuts in benefits to legal immigrants that had nothing to do with the goal of moving people from welfare to work. Because of the Administration's leadership, the Balanced Budget Act and the Agricultural Research Act restored eligibility for Medicaid, SSI, and Food Stamps to hundred of thousands of legal immigrants. The Administration's new FY 2000 budget would build on this progress by restoring important disability, health, and nutrition benefits to additional categories of legal immigrants, at a cost of \$1.3 billion over five years. The Administration's proposal is included in the Fairness for Legal Immigrants Act of 1999 (S.792/H.R.1399) recently introduced by Senator Moynihan and Representative Levin.

- The President made a commitment to fix several provisions in the welfare reform law that had nothing to do with moving people from welfare to work.
- In 1997, the President fought for and ultimately was successful in ensuring that the Balanced Budget Act protects the most vulnerable. In 1998, the President continued his proposals to reverse unfair cuts in benefits to legal immigrants.
- The Administration's FY 2000 budget would build on this progress by restoring important disability, health, and nutrition benefits to additional categories of legal immigrants, at a cost of \$1.3 billion over five years.
- The Administration's proposal is included in the Fairness for Legal Immigrants Act of 1999 (S.792/H.R.1399) recently introduced by Senator Moynihan and Representative Levin. In addition, Senators Chafee, McCain, Mack, Jeffords, Graham, and Moynihan introduced S. 1227, a bipartisan bill similar to the Administration's proposal to restore health coverage to legal immigrant children and pregnant women.

ENGLISH LANGUAGE/CIVIC EDUCATION INITIATIVE: COMMON GROUND PARTNERSHIPS

Background: The President's FY 2000 budget contains an English language initiative to help states and communities provide expanded access to high quality English language proficiency instruction, linked to practical instruction in civics and life skills including how to navigate the workplace, public education system, and other key institutions in American life.

- These Common Ground Partnerships are designed both to help meet the extraordinary demand for English and civics instruction among individuals with limited English proficiency and to demonstrate our shared commitment to fully integrate new Americans into our social and civic life. States, community-based organizations, local education agencies, and other non-profits will compete for grants to support English proficiency and civics instruction.
- With \$70 million, the initiative will be able to provide English language and civics instruction to approximately 150,000 people in FY 2000. Overall, the President's FY 2000 budget contains a \$190 million increase for adult education and family literacy.
- The current Labor, Health and Human Services, and Education Appropriations bills do not contain funding for this program.

NATURALIZATION BACKLOG

Background: There has been a backlog on naturalization applications. Last year, the Administration was successful in securing \$171 million to reduce the backlog by 1.2 million by the end of FY 1999. The INS has worked hard to reduce this backlog and expects to announce very soon that they have reached their goal of reducing the backlog. However, the current backlog will remain at 1.5 million.

- Reducing the naturalization backlog is a top priority for this Administration.
- Last year, the Administration secured an \$171 million in additional funding to bolster INS efforts to improve the naturalization process.
- INS has committed to meet a goal of completing 1.2 million naturalization applications this fiscal year.
- Over the past year, the INS has worked diligently to redesign the naturalization process and increase the number of naturalization application completed while retaining the highest standards of process integrity.
- Despite initial shortfalls this year, INS has worked out system problems and we expect to be able to reach the goal of completing 1.2 million naturalization applications this fiscal year.

FARMWORKERS/H2A REFORMS

Background: The H-2A “guest worker” program admits foreign temporary agricultural workers to provide farmers with an adequate supply of laborers during the peak periods in the growing season, if there is an inadequate supply of domestic workers. The H-2A program has certain protections for U.S. legal workers and for the foreign workers who are admitted to the U.S. under this program. However, the H-2A program has been heavily criticized by the General Accounting Office, Department of Labor’s Inspector General, and by Congress primarily due to the administrative burdens placed on growers and its failure to adequately protect workers. As a result, Congress has proposed legislation in the past years to restructure the H-2A program. The Administration has opposed these efforts and is working to administratively (through administrative actions and the regulatory process) to reengineer and streamline the H-2A program to ease application burdens while maintaining strong worker protections. Senators Bob Graham, Wyden and others are planning to introduce to overhaul the existing H-2 program and to legalize the undocumented farmworkers living in the U.S. Last year, the Administration opposed similar legislation introduced by Senator Wyden.

- The Administration does not believe that legislation is necessary or appropriate at this time.
- The Administration has acknowledged problems with the H2A program and is working administratively (through administrative actions and the regulatory process) to reengineer and streamline the H-2A program to ease application burdens while maintaining strong worker protections.
- The Administration is committed to improving the H-2A program to assure growers of an adequate, predictable labor supply while protecting U.S. farm workers who are among the poorest and most vulnerable in our society. Farm workers are among the poorest and most vulnerable in our society. Average annual earnings of farm worker families are only about \$6,500 and farm workers are employed on average only about 26 weeks per year.
- The President’s FY 2000 budget requests \$10 million to fund America’s Agricultural Labor Network (“AgNet”) that would benefit growers and workers by having an efficient alternative mechanism to match workers with employment opportunities. AgNet would serve as an information broker through an electronic system that allows both growers to find workers and workers to find employment opportunities that meet their needs (e.g., location, duration, type of crop, etc.).
- The Administration’s guiding principles in reforming the H-2A program are to create a system:
 - with procedures that are simple and the least burdensome for growers;
 - which assures an adequate labor supply for growers in a predictable and timely manner;
 - that provides a clear and meaningful first preference for U.S. farm workers and that diminishes reliance on foreign workers;

- which avoids the transfer of costs and risks from businesses to low wage workers;
- that encourages longer periods of employment for legal U.S. workers; and,
- which assures decent wages and working conditions for domestic and foreign farm workers, and that normal market forces work to improve wages, benefits, and working conditions.

TREATMENT OF CUBAN NATIONALS

Background: On June 29, 1999, the Coast Guard interdicted six Cubans off Miami Beach. The Cubans refused to comply with Coast Guard orders and Coast Guard responded by using fire hoses against the Cubans' vessel and pepper spray against some of the Cuban migrants when they were in the water. Once the Coast Guard arrested the Cubans, they were brought ashore and turned over to the Border Patrol. The Border Patrol allegedly verbally abused some of the migrants and obliged them to have their picture taken while holding a picture of Fidel Castro. These events provoked sharp reaction in the Cuban-American community. Some have used it to raise questions about our Cuban migration policy.

The Coast Guard has completed its investigation of the incident and as a result, has changed its policy such that force will no longer be used against migrants in the water unless a Coast Guard officer's safety is threatened. The Department of Justice and INS have not yet completed their investigation of the incident.

- You may be concerned about the treatment of Cuban nationals who were apprehended by the Coast Guard off a beach in Miami and then detained by the Border Patrol.
- The Coast Guard has completed its investigation into this incident. Although it has determined that its use of force in this incident was consistent with existing policy, it has decided to change its guidelines on the use of pepper spray. Pepper spray will now only be used if a Coast Guard officer's personal safety is in jeopardy.
- The Immigration and Naturalization Service INS (INS) and the Department of Justice (DOJ) are investigating the allegations that six Cuban nationals were verbally abused and subjected to inappropriate behavior by Border Patrol agents while being processed.
- The INS officer has been temporarily assigned to duties that do not involve contact with INS detainees while the investigation is being carried out.
- The Department of Justice will take appropriate action against any of its employees that may have engaged in inappropriate behavior.
- We intend to continue with our current immigration policy for Cubans, which is aimed at ensuring safe and orderly migration from Cuba to the United States. At the same time, we will do so in a way that respects the rights of these migrants to the extent possible.

ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996 (IIRIRA)

Background: The **Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)** requires the mandatory detention and deportation of legal immigrants who have committed certain crimes. While the Administration supports the detention and deportation of these individuals, the current law does not provide any discretion to Immigration judges in cases that have extenuating circumstances. Immigration advocates have started a campaign "Fix 96" to repeal the most egregious provisions of this law.

- Under the **Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)**, the INS has detained and removed thousands of the detention and removal of serious criminals.
- However, we also are seeing an increasing number of legal permanent residents convicted of non-violent offenses, some of which occurred decades ago, that must be detained and removed from the country under IIRIRA.
- In these respects, the new law went too far.
- The Administration would like to work with Congress to alleviate some of the effects of IIRIRA while still allowing the INS to continue its enforcement mission.
- In June 1999, the Administration proposed legislation to permit the discretionary release from detention of certain individuals who are not a danger to the community or a flight risk. This would include legal permanent residents convicted of minor crimes and other individuals who are cooperating with an ongoing investigation.
- In July 1999, the INS issued updated legal interpretation of the mandatory detention requirements of IIRIRA that allows certain individuals to be considered for release from detention pending their removal hearing. This will affect roughly 5 percent of the INS' total detainee population of about 17,400.
- Recently, all INS district offices were instructed to perform mandatory reviews of individuals who have final orders of removal but whose immediate repatriation is not possible (Cuba, Vietnam, Laos, Cambodia). These reviews will determine eligibility for release of these individuals under authorization provided in the 1996 immigration law. These mandatory reviews will occur before the expiration of the 90-day review will have their cases reviewed every six months thereafter.
- However, the Administration is not currently considering modifying the application of summary exclusion (currently know as expedited removal) to asylum seekers. We believe we have put into place sufficient safeguards to ensure that bona fide refugees are treated fairly in the context of expedited proceedings.