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Collection: Roberts, John G.: Files
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Collection: ROBERTS, JOHN G.: Files

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File Folder: Immigration & Naturalization [9] OA ~~12662~~ 12660

Date: 2/12/98

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Roberts toFred Fielding re: proposed letters to Congressmen Wright and de la Garza re: Emergency immigrant education program. 2p.	4/02/84	~~P5~~
2. memo	Roberts to Fielding re: administration position regarding immigration bill. 2p.	1/30/84	~~P5~~ 1/03 12/14/00

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]
- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]
- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of FOIA].
- F-3 Release would violate a Federal statue [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

THE WHITE HOUSE

WASHINGTON

August 1, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Draft Justice Report on S. 2402, the "Immigration Repatriation Study Act"

Counsel's Office has reviewed the above-referenced draft report, and finds no objection to it from a legal perspective.

ID # 249476 CU

JV

IN

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) / /

John direct

Name of Correspondent: James C. Murr

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Draft Justice report on S. 2402, the "Immigration Repatriation Study Act"

ROUTE TO: Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Code	Completion Date YY/MM/DD
C W Holland	ORIGINATOR	84/07/31 WS			/ /
	Referral Note:	reply to Branden Blum			
CWAT18	R	84/08/01		S	84/08/11 WS
	Referral Note:		WS		
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

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5/81

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

July 30, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: LEGISLATIVE LIAISON OFFICER

249476 cu

Department of State
Department of Health and Human Services
National Security Council
Department of Transportation

SUBJECT: Draft Justice report on S. 2402, the "Immigrant Repatriation Study Act"

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than

Monday, August 27, 1984.

Direct your questions to Branden Blum (395-3802), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: J. Kent
S. Gates
R. Veeder
F. Fielding
S. Malm
W. Austermann
J. Cooney
S. Galebach

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is in response to your request for the views of the Department of Justice on S. 2402, a bill to study the problems of indigent, elderly immigrants who wish to return to their home countries but cannot afford to pay the transportation cost to do so. The Department of Justice recommends against enactment of this legislation in its present form.

The bill directs the Attorney General to study the problems of indigent, elderly immigrants who wish to return to their home countries but cannot afford to pay the cost of travel. The Attorney General is directed to conduct a study to determine the number of such immigrants, the cost of such a program, the options for financing such a program, and the advantages or disadvantages of requiring this government to ensure that a repatriated immigrant's health and welfare will be protected upon return to his or her country. The bill further requires the Attorney General to determine whether and to what extent the State of Hawaii's repatriation program should be used as a model for a similar Federal program.

Section 250 of the Immigration and Nationality Act grants the Attorney General the authority to remove from the United States any alien who falls into distress or who needs public aid from causes arising subsequent to his entry into the United States, and is desirous of being removed, to the native country of such alien, or to the country from which he came, or to the country of which he is a citizen or subject, or to any other country to which he wishes to go and which will receive him, at the expense of the appropriation for the enforcement of this Act. We believe that this section of current law adequately provides for those indigent and elderly immigrants sought to be protected in the proposed legislation.

As we noted, section three of the proposed bill requires several studies to be conducted. Many of the studies are not within the purview of the Department of Justice, i.e., supplemental security income, food stamps; therefore, we cannot comment on these studies.

Finally, the Department opposes requiring the Federal Government to attempt to ensure that a repatriated immigrant's health and welfare will be protected upon return to his native country. Such an undertaking is not within the purview of the Department of Justice.

The Department of Justice recommends against enactment of this legislation.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative and
Intergovernmental Affairs

THE WHITE HOUSE

WASHINGTON

August 6, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Draft Justice Report on H.R. 5068, a Bill to Make Additional Immigrant Visas Available for Immigrants From Certain Foreign Countries

Counsel's Office has reviewed the above-referenced draft report, and finds no objection to it from a legal perspective.

ID # 240000 CU

IN

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

O - OUTGOING
H - INTERNAL
I - INCOMING
Date Correspondence Received (YY/MM/DD) / /

Name of Correspondent: James C. Murr

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Draft Justice report on H.R. 5068 & fact to make additional immigrant visas available to immigrants from certain foreign countries

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU Holland		ORIGINATOR DD	84/08/01			/ /
CU AT18		Referral Note: Reply to Brandon Blue				
		R DD	84/08/01		S	84/08/12
		Referral Note:				
			/ /			/ /
		Referral Note:				
			/ /			/ /
		Referral Note:				
			/ /			/ /
		Referral Note:				

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

July 31, 1984

249659

LEGISLATIVE REFERRAL MEMORANDUM

TO: LEGISLATIVE LIAISON OFFICER

Department of State
Department of Labor
National Security Council
Department of Health and Human Services

SUBJECT: Draft Justice report on H.R. 5068, a bill to make additional immigrant visas available for immigrants from certain foreign countries

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than

Friday, August 24, 1984.

Direct your questions to Branden Blum (395-3802), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: F. Fielding
J. Cooney
J. Kent
S. Malm
S. Galebach
S. Gates

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your request for the views of the Department of Justice on H.R. 5068, a bill to make additional immigrant visas available for immigrants from certain foreign countries. The Department of Justice recommends against enactment of this legislation.

The bill appears to be designed to correct a perceived situation caused by the change from the old national origins quota system to the current preference system. The preference system favors individuals with close relatives from the previous generation who are now in the United States (parents, sisters, brothers). It, therefore, does not favor those countries which had high levels of immigration at a time when the national origins system was in effect, but which have had reduced levels beginning with the preference system. The bill attempts to correct this situation by identifying countries which were affected, and by adding a number of visas to their quota over the next four years. Using calculations provided in the bill, the Immigration and Naturalization Service has determined that 42 countries had fewer preference immigrants in FY 1981 than 3/4 of the average available preference system allocations from the base period of FY 1955 to FY 1965. Under the terms of the bill, each of these countries would have been entitled to additional visas in FY 1982 if the bill had been in effect at that time. The bill automatically excludes all Western Hemisphere countries, because those countries did not have an individual country quota, but were grouped under the Western Hemisphere Quota.

The number of additional visas which would have been available under this bill has also been calculated. All but two of the 42 countries noted above (Ireland and Germany) would have received the maximum increase in visas (7,500). In total, an additional 299,822 visas would have been made available under this bill had it been in effect in 1982.

The bill does not indicate how countries which have recently become independent (and thus received a separate visa allocation) during the base period of 1955 - 1965 should be treated. If an equitable approach to this situation is taken, and their average visa availability is calculated only over the years during which they were independent, an additional 20 countries would be eligible to receive a maximum of 150,000 additional visas.

The bill also specifies how the additional visas should be allocated. Thirty percent would go to non-preference immigrants. Because of excessive preference immigration, no one has been able to immigrate under the non-preference system since the summer of 1978. The allocation of these additional non-preference visas to individuals from those countries which are covered under the proposed legislation would be discriminatory to those who may have registered for non-preference visas, but who were not born in a country benefiting under the bill.

The bill also provides that the provisions of § 212(a)(14) of the Immigration and Nationality Act shall not apply in the determination of an immigrant's eligibility to receive any visa authorized to be issued under this Act. The basis for qualification under §§ 203(a)(3) and 203(a)(6) is the labor certification, which assures that the provisions of § 212(a)(14) are met. The filing of the labor certification sets the priority date of the visa petition. There is no explanation of how potential immigrants would qualify under §§ 203(a)(3) and 203(a)(6) with the labor certification provision being waived. The Department also opposes waiving the labor certification requirements in non-preference cases, as this would have a significant effect on the labor market in this country, and could also significantly increase the number of immigrants who, having no relatives in the United States, could be expected to turn to the various social service agencies for assistance.

Therefore, because the bill would be inequitable to Western Hemisphere nations, and to newer emerging nations, it would increase the ceilings on preference immigrants from 270,000 to approximately 570,000 (to a possible 720,000) and would provide for a waiving of financial support and ability to find employment requirements which are currently in effect, the Department opposes enactment of this legislation.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell
Assistant Attorney General

To John

Date 4/4 Time 1:00

WHILE YOU WERE OUT

M Charlie Kolb

of OMB Counsel's Off.

Phone 5600

Area Code Number Extension

TELEPHONED	✓	PLEASE CALL	✓
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		URGENT	
RETURNED YOUR CALL			

Message

Operator

AMPAD EFFICIENCY®

23-020

THE WHITE HOUSE

WASHINGTON

April 2, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS /S/

SUBJECT: Proposed Letters to Congressmen Wright and de la Garza re: Emergency Immigrant Education Program for Secretary Bell

Richard Darman has asked for comments by 4:00 p.m. today on proposed identical letters from Secretary Bell to Congressmen Jim Wright and E. de la Garza. The letters formally announce the Administration position that $30 million appropriated in the Second Continuing Resolution, P.L. 98-151, for the emergency immigrant education program, is not available for obligation. Congress appropriated $30 million for "carrying out emergency immigrant education assistance under title V of H.R. 3520 as passed the House of Representatives September 13, 1983." 97 Stat. 964, 973. Title V of H.R. 3520 never became law, however, since the Senate-passed version did not include title V and the Senate refused to add it in conference.

Congressmen Wright and de la Garza, perhaps sensing their shaky legal position, wrote Secretary Bell urging him to act promptly in distributing the $30 million. On January 5, 1984, Bell rose to the bait and responded that his Department was taking steps to implement the program. Shortly thereafter, Mike Horowitz advised David Stockman and Secretary Bell that there was no authority to spend the $30 million. Horowitz noted that appropriated funds cannot be obligated in the absence of authorizing legislation, and that the authorizing legislation in this case failed to pass. According to Horowitz the language in the appropriations bill cannot be considered to constitute authorization of the program. Although appropriations acts can authorize programs, clearer language is required than that the funds are appropriated for use "under" a specified program. In his memorandum to Stockman, Horowitz cited examples from the same continuing resolution of instances in which Congress specified that pending bills were "hereby enacted." Congress knew how to use such unambiguous language when it wanted to, Horowitz reasons, and accordingly the vague language employed in this instance cannot be considered adequate authorization to obligate the $30 million. The purpose of the letters presently under consideration is to correct the misimpression created by Secretary Bell's letters of January 5, which stated that Education was proceeding with plans to distribute the $30 million.

The Comptroller General disagrees with the OMB position and, pursuant to the Impoundment Control Act, 2 U.S.C. § 686, has formally advised Congress that the President is withholding the $30 million. The Comptroller General argues that the language in the Continuing Resolution was adequate to authorize the program. The fact that the Senate declined to pass the separate authorization bill, title V of H.R. 3520, is not inconsistent with this conclusion, since the Senate could have objected to the 3-year authorization in H.R. 3520 but still approved the 1-year funding in the Continuing Resolution.

Under the Impoundment Control Act, the report of the Comptroller General is treated as a rescission proposal. 2 U.S.C. § 686(a). Pursuant to 2 U.S.C. § 683(b) Congress has 45 days to rescind the authority. If it does so the case is resolved; if not, the statute specifies that the funds shall be obligated. If Congress does not rescind the putative budget authority and the Administration adheres to its position, the Comptroller General may file suit after "25 calendar days of continuous session of the Congress following the date on which an explanatory statement by the Comptroller General of the circumstances giving rise to the contemplated action has been filed with the Speaker of the House of Representatives and the President of the Senate." 2 U.S.C. § 687.

As a policy matter OMB would prefer not to spend this $30 million. Based on my cursory review of Horowitz's memorandum, on the one hand, and the Comptroller General opinion, on the other, I would have to conclude that the legal issue is close. Horowitz's arguments are certainly colorable, however, and I have no objection to putting the issue to the test. I also have no objection to sending the Bell letters. Bell's January 5 letters are misleading under the circumstances and should be corrected, although they hardly estop the Administration from arguing that the funds were never authorized. The only change I would suggest in the letter is changing "necessary" in the fifth paragraph to "appropriate." These letters are not "necessary" in any technical legal sense and we should avoid suggesting that they are.

Attachment

THE WHITE HOUSE

WASHINGTON

April 2, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT AND
DEPUTY TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Letters to Congressmen Wright and de la Garza re: Emergency Immigrant Education Program for Secretary Bell

Counsel's Office has reviewed the above-referenced proposed letters. We recommend changing "necessary" in the fifth paragraph to "appropriate." The letters are not "necessary" in any technical legal sense and we should avoid suggesting that they are.

FFF:JGR:ph 4/2/84
cc: FFFielding
JGRoberts
Subject
Chron.

THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Statement of Alan Nelson Concerning Consolidation of Primary Inspections and Land Patrol Functions for Immigration on March 22, 1984

We have been provided with a copy of testimony INS Commissioner Alan C. Nelson proposes to deliver on March 22 before the Subcommittee on Immigration, Refugees and International Law of the House Judiciary Committee. The testimony discusses the Administration proposal to reorganize and consolidate certain responsibilities of the INS and the Customs Service. At present INS handles immigration and visa matters and Customs handles inspection and smuggling matters at all border entry points. The Administration proposal would substitute a geographic for the current subject matter allocation of jurisdiction. INS would handle immigration and customs matters at all land border entry points and Customs would handle immigration and customs matters at all air and sea entry points. Nelson's testimony argues that this will make border processing easier and more efficient since one agency will handle all matters at any one point. Nelson contends that the transfer of responsibilities will be conducted with a minimum of personnel disruption, since INS and Customs officers are already extensively cross-trained. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Alan Nelson Concerning Consolidation of Primary Inspections and Land Patrol Functions for Immigration on March 22, 1984

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective.

FFF:JGR:aea 3/21/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Alan Nelson Concerning Consolidation of Primary Inspections and Land Patrol Functions for Immigration on March 22, 1984

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective.

FFF:JGR:aea 3/21/84
cc: FFFielding/JGRoberts/Subj/Chron

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
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Date Correspondence Received (YY/MM/DD) / /

Name of Correspondent: Branden Blum

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Statement of Alan Nelson concerning Consolidation of Primary Inspections and Land patrol functions for Immigration on March 22, 1984

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU/HDL	ORIGINATOR	84 03 20			/ /
CU AT 18	D	84/03/20		S	84/03/21
	Referral Note:				C.O.B.
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U.S. Department of Justice
Office of Legislative Affairs

SPECIAL

Office of the
Assistant Attorney General

Washington, D.C. 20530

March 20, 1984

TO: Branden Blum
OMB

FR: Yolanda Branche
OLA (633-2111)

RE: Statement concerning Consolidation of Primary Inspections for March 22, 1984

Attached for your review is a statement concerning the Consolidation of Primary Inspections. The hearing is scheduled for March 22, 1984 before the House Subcommittee on Immigration, Refugees, and International Law.

cc: Fred F. Fielding
Kathy Collins

DRAFT

STATEMENT

OF

ALAN C. NELSON
COMMISSIONER
IMMIGRATION AND NATURALIZATION SERVICE

BEFORE

THE

COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW
U.S. HOUSE OF REPRESENTATIVES

CONCERNING

CONSOLIDATION OF PRIMARY INSPECTIONS

ON

MARCH 22, 1984

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to discuss with you the Administration's plan for consolidating the primary inspection and land patrol functions of the Immigration and Naturalization Service and the Customs Service. I will briefly describe the rationale for consolidation and the provisional planning to effect this management improvement, which we believe will provide greater efficiency and superior service to the public, while maintaining and improving vigilant law enforcement.

The issue of INS/Customs inspection consolidation has been discussed for over 40 years as a means of providing a more efficient single-agency approach to our Nation's inspection of the more than 300 million persons admitted annually. A variety of efforts to streamline the inspection process, cross train the inspectors of the several federal agencies, and facilitate the entry of foreign visitors without sacrificing the enforcement of the law have been presented to this subcommittee in previous years. Reports of the Appropriations Committees of the Senate and House of Representatives in 1983 expressed concern over the delays of travelers and cargo at ports of entry, and called for the development of a more efficient inspection system through the possible consolidation of primary inspection functions. Support for primary inspection consolidation was also expressed by industry as well as by the "Grace Commission," the President's Private Sector Survey on Cost Control.

Following thorough consideration by the Administration of alternative proposals for consolidation over a two year period, the Cabinet Council on Management and Administration in November 1983 endorsed a final proposal for border inspection consolidation. This proposal was subsequently reviewed and approved by the President on January 5, 1984. In general, the plan would accomplish the following:

- Transfer of responsibility for all land border passenger primary processing to the Immigration and Naturalization Service (INS).
- Transfer of responsibility for all airport and seaport passenger primary processing to the U.S. Customs Service (including inspections at all overseas preclearance airport locations).
- Maintain INS and Customs officers in secondary inspection at all ports of entry.
- Transfer of responsibility for all patrol functions between the land ports to INS.

The benefits of the plan to the public and industry are clear. The reorganization will:

- facilitate the flow of passengers through all ports of entry
- standardize the Federal inspection process
- establish accountability for the primary inspection function
- expand and improve the use of technology and systems in supporting the inspection process
- eliminate overlap and duplication of efforts
- reduce the paperwork burden on the traveling public
- reduce costs to facility operators
- establish more efficient single-agency management
- consolidate and improve all air, sea, and land border control functions
- improve coordination of drug enforcement efforts

Next, I want to address some of the specific concerns which Members of this Committee and other have expressed.

First, there will be no diminution of immigration control or narcotics enforcement as a result of the consolidation. Instead, these essential enforcement activities will be enhanced. Instead, of being "add-on" functions for either agency, they will be incorporated into their basic mission responsibilities. Furthermore, each agency will maintain its current secondary presence to handle complicated cases. We have already drafted a quality control plan to assure that enforcement standards are upheld or improved as a result of the consolidation.

Second, consolidation will not result in the loss of jobs through reductions in force. Although a transfer of employees between agencies will be required to implement the plan, each agency will undertake procedures to minimize adverse effects on personnel. Employees and unions are being advised as rapidly as possible of the specifics of the plan and are being consulted regarding the procedures and identification of affected employees. Both unions were briefed in January 1984 and consultations will continue throughout the process.

Additionally, every effort will be made to accommodate employees by placement in other positions within the agency, with no loss of grade or salary. In summary, each employee will be offered the opportunity to perform the same function at the same location.

The following positions will be involved in the transfer:

- 622 Customs Inspector positions will be transferred to INS
- 165 Customs Patrol Officer positions will be transferred to INS
- 505 Immigration Inspector positions will be transferred to the Customs Service.

While training of employees will be required, it should be noted that Customs and INS inspectors are currently cross-designated at most locations and often perform the same inspections function. New training will be geared to all appropriate inspectors and patrol officers and a more comprehensive program is being established for those already cross-trained.

Third, no ports or offices will be closed as a result of consolidation. There will be a minimal transfer of properties and equipment and no transfer of air support equipment or aircraft from the present Customs drug interdiction.

Fourth, the consolidation will result in a cost savings to the government as well as benefiting individuals and businesses entering or bringing goods into this country. Start-up costs will be minimal in view of the fact that most inspectors are already cross-trained and involuntary transfer of personnel to other locations, equipment transfers will be minimal and no additional equipment is required. Start-up costs for new uniforms, equipment, training, and security checks are likely.

This consolidation will streamline both organizations immediately to avoid increases in future costs associated with increased international travel and the negative trend in illegal drug traffic. While efficiencies will be gained in the short run, no employee reductions will be made in order to build a solid foundation to handle future growth of illegal alien and drug traffic.

Fifth, the consolidation will result in improved border enforcement between the land ports of entry. INS will be the agency with primary responsibility for the interdiction of persons, contraband and drugs along the land borders between ports of entry. The U.S. Customs Patrol will relinquish its Patrol functions between the land ports, while remaining the agency with primary responsibility for interdiction of all contraband, including drugs, at the sea and air borders of the United States. Thus, there will be a single agency patrolling between the land ports, removing duplicative presence and achieving greater efficiency with the existing Patrol personnel. Clear guidelines have been established for coordination between INS and the U.S. Customs Service regarding intelligence, developing cases, and pending interdictions along the land border.

Consultations have already begun with this and other Congressional committees. The detailed plan for consolidation will be coordinated with Congress. If the Administration obtained appropriate reorganization authority, a reorganization plan will be submitted. If not, the Administration will seek legislation to implement such consolidation. I promise to work closely with this Committee and ask for your support for this important management improvement program.

This plan is the only viable plan for consolidation of the primary inspection and land patrol functions. It provides the benefits which I have noted above. It is a satisfactory compromise supported by the President, the Attorney General, the Secretary of Treasury, the Director of the Office of Management and Budget, the Commissioner of the Immigration and Naturalization Service, and the Commissioner of the U.S. Customs Service.

This consolidation is also supported by the Airport Operators Council International, Air Transport Association of America, American Electronics Association, American Retail Federation, Chamber of Commerce of the United States, Cigar Association of America, Council of American-Flag Ship Operators, Electronic Industries Association, Foreign Trade Association of Southern California, International Bridge, Tunnel & Turnpike Association, International Hardwood Products Association, Motor Vehicle Manufacturers Association, National Association of Photo Manufacturers, National Committee on International Trade Documentation, National Customs Brokers & Forwarders Association of America, National Foreign Trade Council,

Scientific Apparatus Makers Association, Travel Industry Association and The U.S. Council for International Business.

This consolidation plan meets the frequent mandate of Congress to accomplish a consolidation of the inspections function. The time for resolution is now. We are confident that Congress will review the issue and promptly give its support.

This completes my prepared statement. I would be glad to respond to any questions you may have.

THE WHITE HOUSE

WASHINGTON

March 23, 1984

MEMORANDUM FOR KATHERINE E. COLLINS
BUDGET EXAMINER
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Richard K. Willard on the Office of Immigration Litigation of the Civil Division, March 28, 1984

Counsel's Office has reviewed the above-referenced proposed testimony. On page 6, we recommend deleting specific mention of the denial of visas to the widow of Chilean president Allende and Nicaragua Interior Minister Borge. Those denials were, and continue to be, particularly controversial, and there is no need to mention them in this testimony. Such gratuitous mention could divert attention from the purpose of the hearing, which is to explain in a general way the work of the Office of Immigration Litigation.

I recommend deleting the second and third sentences in the second full paragraph on page 6, and revising the first sentence to read: "A fourth area of responsibility is the defense of immigration-related actions of the Department of State, such as defending challenges to the denial of visas by the Department." This makes the point without risking unnecessary controversy.

ID # 218442 CU

JV

DM

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Name of Correspondent: ~~Kathy Holland~~ Yolanda Branche

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Subject: Statement of Richard K. Willard on the Office of Immigration Litigation of the Civil Division, Mar 28 84

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
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DRAFT

STATEMENT

OF

RICHARD K. WILLARD
ACTING ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION
DEPARTMENT OF JUSTICE

BEFORE

THE

SUBCOMMITTEE ON IMMIGRATION, REFUGEES
AND INTERNATIONAL LAW

OF THE

HOUSE JUDICIARY COMMITTEE

CONCERNING

THE OFFICE OF IMMIGRATION LITIGATION
OF THE CIVIL DIVISION

ON

MARCH 28, 1984

It is a pleasure to be here today to discuss the Civil Division's Office of Immigration Litigation, a recent addition to our Division which is responsible for most civil litigation brought by or against the Immigration and Naturalization Service (INS). The President and the Attorney General have strongly emphasized stricter enforcement of immigration laws in order to regain control of our borders. Significant administrative reforms and legislative proposals have been put forward to achieve that goal.

However, many of our efforts to improve enforcement of the immigration laws have been challenged, and in many cases seriously delayed, by litigation. Because of the recognized need to provide more resources and centralized responsibility for immigration litigation, the Attorney General, on February 7, 1983, directed that civil immigration matters be transferred from the Criminal Division to the Civil Division. The ensuing reprogramming of funds and positions was implemented pursuant to congressional authorization. By concentrating civil immigration litigation in one office and beefing up that office with enhanced resources, we believe that the Department is in a much stronger position to represent the INS and other client agencies.

The Criminal Division of the Department of Justice retains substantial responsibility in the area of immigration

litigation. This includes responsibility for all criminal prosecutions for violations of the immigration laws as well as civil forfeiture actions and civil injunctive relief relating to national security or criminal justice activity. In addition, the Criminal Division remains responsible for denaturalization proceedings instituted against persons believed to have been involved in Nazi war crimes. Finally, this reorganization did not affect the Lands and Natural Resources Division's representation of the INS in environmental and other land use cases.

The Office of Immigration Litigation consists of 22 attorneys and a support staff of 12. It is headed by Mr. Robert L. Bombaugh, a senior Justice Department litigator with over 20 years of experience in government and private practice. It is supervised by Deputy Assistant Attorney General Robert N. Ford.

When established in 1983, the resources of the Office were secured from various components of the Department involved in the handling of immigration issues.

INS agreed to provide four additional attorneys to the Office on revolving details. These details will not only assist the Office in litigating its cases but will provide the detailed attorneys valuable litigation experience which should be beneficial to them when they complete their details and return to INS.

The Office's base budget for 1984 is $915,000. The Department has asked for a supplemental appropriation for the Office of $1,607,000, which will permit the funding of certain positions which were previously carried under other parts of the budget. We anticipate, then, a 1984 appropriation of $2,522,000.

Representing the government on immigration issues is a unique litigative task in several respects. The workload has grown rapidly in recent years, along with the growth in illegal immigration, and many of INS's proposed administrative changes have been challenged. There is often a need to work under exceptionally short deadlines. Since it is often in the interest of illegal aliens to delay the resolution of litigation for as long as possible (during which time they remain in the country), the government must push for prompt action and take every opportunity to bring a matter to trial. This crisis atmosphere and heavy workload is further complicated by the substantial travel demands which immigration litigation, by its very nature, entails.

The Office is divided into four litigation teams, each comprised of five or six lawyers and headed by an experienced trial attorney. Each team is assigned a mixture of appellate

and trial matters, with the senior litigator responsible for matching the workload to the individual skills of team members. The team leader personally handles important trials and argues significant appeals, in addition to supervisory duties. The standardized procedures and cooperative working environment made possible by the litigation team approach permits the Office to respond effectively to crisis situations without the disruption of routine matters.

Each of our litigation teams is personally responsible for approximately 12 district court actions each year, as well as supervising another 50 cases handled by INS or the local United States Attorneys, and for briefing and arguing approximately 100 cases before the courts of appeals. We believe that this productivity level, made possible by economies of scale and better coordination, fully justifies the decision to establish a centralized office to handle civil immigration litigation.

The Office of Immigration Litigation is responsible for a substantial variety of matters, representing not only the INS, but also the Department of State and the Department of Labor. I would now like to discuss six major categories of litigation and some important pending cases.

The first area is defense against challenges to the exclusion or expulsion of aliens. These cases arise either as habeas corpus proceedings or appellate court reviews of decisions of the Board of Immigration Appeals. Two very significant such challenges are currently pending before the Supreme Court. Sandoval-Sanchez v. INS and Lopez-Mendoza v. INS are consolidated petitions for review of Ninth Circuit decisions holding that the exclusionary rule must be applied in deportation proceedings to suppress evidence obtained by the INS as a result of an illegal arrest. We have argued that criminal law safeguards do not apply to civil deportation proceedings.

INS v. Stevic, also in the Supreme Court, involves the standard of proof of persecution that an alien must meet in order to be eligible for either asylum or the withholding of deportation under the Immigration and Naturalization Act. The Second Circuit rejected the Board of Immigration Appeals' conclusion that an alien must show a "clear probability of persecution," holding that a more lenient standard was appropriate.

A second area of immigration litigation is the supervision of cases challenging the INS's denial of immigration benefits. These cases involve such issues as changes in visa status (such as from tourist to student or student to worker), denials of labor certifications by the Department of Labor and other

matters. Over a million such transactions occur annually, very few of which give rise to litigation.

A third area of responsibility is the defense of matters relating to citizenship status, including denaturalization proceedings brought against United States citizens and appeals from the denial of naturalization applications. This area, too, is relatively routine and does not generate significant litigation.

A fourth area of responsibility is the defense of immigration-related actions of the Department of State. For instance, we currently are defending several cases challenging the denial of visas to the widow of former Chilean president Allende, Nicaraguan Interior Minister Borge, and others. These cases involve the interpretations of 8 U.S.C. 1182(a)(27), authorizing the government to deny a visa when entry would be contrary to the "public interest...welfare, safety or security of the United States".

Perhaps our most important litigation responsibility is the defense of collateral attacks on INS enforcement actions. The most important such cases are brought as class actions which, if successful, would require major changes in INS procedures, impose added delays and have a substantial budgetary impact. An

increasing number of these cases challenge the State Department's role in commenting on asylum requests or making recommendations as to other relief for groups of alleged refugees. Typical in this respect is Hotel and Restaurant Employees Union v. Smith, pending in the District of Columbia, an action brought by the union on behalf of its Salvadoran members who are fearful of a forced return to their country. At issue is the validity of the State Department's recommendations concerning asylum and the decision of the Attorney General not to temporarily suspend deportation proceedings.

Another major case is Jean v. Nelson, a class action brought by Haitian aliens challenging the INS's right to detain excludable, undocumented aliens during the period of the exclusion and asylum determination process. Last month, the en banc Eleventh Circuit decided this case almost entirely in the favor of the government, holding that our detention policy was not discriminatory, but that the Attorney General may discriminate against would-be immigrants on the basis of national origin. This case had seriously delayed exclusion hearings for seventeen hundred Haitians for over a year.

Class actions have also been brought challenging the conditions in detention facilities, limitations on access to counsel and other INS procedures. For instance, in Nunez v.

Boldin and Orantes-Hernandez v. Smith, plaintiffs are asking that the INS be required to give a class of Salvadorans and Guatemalans routine notice of the opportunity to apply for political asylum. With over 1,000,000 arrests a year, even a small percentage increase in asylum applications could overwhelm the process, delaying legitimate asylum petitions behind frivolous requests.

Our sixth area of responsibility encompasses two miscellaneous areas of litigation: civil penalty enforcement and the defense of Bivens actions. As an example of the former, the government is still pursuing collection actions against boat owners involved in the so-called "Cuban Freedom Flotilla". In many cases, boat owners have challenged the administrative assessment of fines and the seizure of vessels. We are making efforts to settle these cases because of the burden they place on our litigation resources and the small likelihood of ever collecting more than a fraction of the fines assessed.

So-called Bivens suits are actions brought against individual federal employees, in their individual capacity, for conduct which allegedly violated an alien's constitutional rights. The government may represent such individuals or, where it would have a conflict of interest, will retain private counsel. One such case arose out of the 1980 grant of asylum to

then 12-year-old Walter Polovchak, who wished to remain in this country when his parents sought to return to the Soviet Union. Walter's parents have since brought suit against the Attorney General and an INS employee for damages arising from the alleged deprivation of their parental rights in violation of the fifth amendment and the Law of Nations. We are representing the Attorney General and have retained private counsel for the INS official.

Overall, the Office of Immigration Litigation has maintained a remarkable rate of success, winning 89% of its personally handled cases. Given the difficult constitutional and statutory issues present in immigration litigation and the staggering volume of cases, we believe that this is an excellent record.

The relationship of the Office of Immigration Litigation with the INS is similar to the ordinary relationship of Department of Justice litigating components with client agencies. As the advocate for the INS, we endeavor to present all reasonable arguments to help the agency maintain maximum discretion in implementing policy. We do not intrude in INS policy formation, except where absolutely necessary because of the pressure of litigation.

The INS provides us with excellent litigation support, including the services of approximately 12 INS attorneys

assigned as Special Assistant U.S. Attorneys in major cities, where they handle the bulk of local immigration litigation. In addition to the four INS attorneys on rotating detail to our office, we are also able to draw on INS attorneys on an ad hoc basis when the need arises.

Periodic meetings between the supervisors of our Office and lawyers in the INS Office of General Counsel permit the agency to provide its views on critical litigation decisions. The INS is consulted in decisions on case selection for appeal as well as decisions on which issues to appeal. There is generally little disagreement with the INS on these matters and when we have resolved the issue, our office presents a recommendation to the Office of the Solicitor General, who must approve all government appeals.

The most routine immigration matters are handled by U.S. Attorneys' Offices. Only the most significant and potentially precedent-setting cases are retained for handling by our Office of Immigration Litigation attorneys. We also rely heavily on support from the local U.S. Attorneys' Offices in lengthy and complex trials which require the presence of several attorneys.

That concludes my prepared remarks, and I would be happy to answer any questions.

THE WHITE HOUSE

WASHINGTON

January 30, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Administration Position Regarding Immigration Bill (Prepared by OMB)

Richard Darman has asked for our comments by noon today on a proposed Administration position on H.R. 1510, the House version of the Simpson-Mazzoli bill, the Immigration Reform and Control Act of 1983. The draft was prepared by OMB and reflects that agency's fiscal reservations about the bill. As discussed at the recent Cabinet Council on Legal Policy meeting on immigration reform, the House version of the bill differs from the Senate version in several significant particulars, each of which markedly increases the anticipated costs of the measure.

The proposed position paper notes that the Administration supports the Senate bill and "strongly opposes the massive budget add-ons and the weakened enforcement provisions" of the House bill. The paper then states that the Administration will seek amendments to (1) eliminate the 100 percent Federal reimbursement provision in the House bill, in favor of the block grant approach in the Senate bill (capped at $1.4 billion for 1984-1988), (2) move back the entry date for legalization, as provided in the Senate bill, (3) eliminate the House bill provision allowing employers "one free bite" at hiring illegal aliens, and (4) delete the House bill's requirement of a search warrant before INS officers can investigate "open fields."

I have no objection to the proposed Administration position. The Senate bill is vastly superior to the House bill, and Administration lobbyists should work diligently to correct the excesses of the House bill. What I do object to is language implying that the President will veto the immigration bill if our suggested changes are not adopted. The course of the immigration reform controversy requires the greatest degree of sensitivity in presenting our concerns with respect to the House bill.

OMB's position on Simpson-Mazzoli calls to mind what has been said of the Roman legions: they lost many battles but they never lost a war, because they never let a war end until they had won it. We were concerned prior to the

Cabinet Council meeting that Stockman's memorandum strongly voicing his objections to the House bill would become public and rekindle controversy over the Administration's sincerity concerning immigration reform. That is precisely what occurred. It is perfectly correct to raise concerns and seek revisions in the legislation as it works its way to the President's desk; it is disloyal to seek to undermine the effort to obtain any legislation at all by constantly raising fiscal risks previously acknowledged and accepted by the President and his Cabinet.

This is less a question of precise wording in memoranda than of the manner in which Administration concerns are presented on the Hill. The attached draft memorandum for Darman simply notes the need for sensitivity in presenting the Administration position on the objectionable features of the House bill, although it does suggest changing "strongly opposes" in the memorandum to "objects."

Attachment

THE WHITE HOUSE

WASHINGTON

January 30, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Administration Position Regarding Immigration Bill (Prepared by OMB)

Counsel's Office has reviewed the above-referenced proposed Administration position paper. We have no legal objections to the proposed positions themselves. It is imperative, however, that Administration spokesmen promoting these positions be sensitive to the background of the controversy over immigration reform, and not inadvertently or otherwise permit the voicing of budgetary concerns to prevent the legislation from reaching the conference stage.

FFF:JGR:kkk 1/30/84

FFFielding/JGRoberts/Subject/Chron

THE WHITE HOUSE

WASHINGTON

January 30, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Administration Position Regarding Immigration Bill (Prepared by OMB)

Counsel's Office has reviewed the above-referenced proposed Administration position paper. We have no legal objections to the proposed positions themselves. It is imperative, however, that Administration spokesmen promoting these positions be sensitive to the background of the controversy over immigration reform, and not inadvertently or otherwise permit the voicing of budgetary concerns to prevent the legislation from reaching the conference stage. In this regard, we recommend changing "strongly opposes" on line 4 of the first page of the draft position to "objects."

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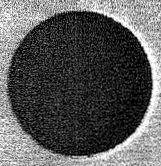

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Name of Correspondent: Richard G. DARMAN

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Subject: Administration Position re: Immigration Bill (prepared by OMB)

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WHITE HOUSE STAFFING MEMORANDUM

DATE: 1/26/84 ACTION/CONCURRENCE/COMMENT DUE BY: NOON MONDAY, 1/30

SUBJECT: ADMINISTRATION POSITION RE IMMIGRATION BILL
(Prepared by OMB)

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	McFARLANE	☐	☐
MEESE	☑	☐	McMANUS	☐	☐
BAKER	☐	☑	MURPHY	☐	☐
DEAVER	☐	☑	OGLESBY	☑	☐
STOCKMAN	☐	☐	ROGERS	☐	☐
DARMAN	☐P	☑SS	SPEAKES	☐	☐
FELDSTEIN	☐	☐	SVAHN	☑	☐
FIELDING	☑	☐	VERSTANDIG	☐	☐
FULLER	☑	☐	WHITTLESEY	☐	☐
HERRINGTON	☐	☐	_____	☐	☐
HICKEY	☐	☐	_____	☐	☐
JENKINS	☐	☐	_____	☐	☐

REMARKS:

Please provide any comments by noon Monday, January 30th.

Thank you.

RESPONSE:

1984 JAN 26 AM 10: 25

Richard G. Darman
Assistant to the President
Ext. 2702

DRAFT

January 1984

H.R. 1510 - Immigration Reform and Control Act of 1983
(Mazzoli (D) Kentucky and 21 others)

The Administration supports immigration reform legislation along the lines of the Senate bill (S. 529) and urges House action to provide for the essentials of the Administration/Senate plan. However, the Administration strongly opposes the massive budget add-ons and the weakened enforcement provisions reflected in H.R. 1510. Therefore, the Administration seeks amendments to:

(1) delete authorization for (a) 100% Federal reimbursement of State and local welfare and education costs for legalized aliens, which is estimated to cost $2.3 billion and $3.3 billion, respectively, between 1984 and 1988, and (b) open-ended entitlement eligibility for legalized aliens who are determined to require assistance because of old age, blindness, and disability, or in the case of public health interests, serious illness, or injury, which is estimated to cost $3.5 bilion between 1984 and 1988;

(2) authorize a block grant to cover State and local costs for providing public assistance to legalized aliens, as is authorized in the Senate version of this legislation, S. 529. Authorization should be limited to $1.4 billion for the period 1984 through 1988;

(3) restore the two-tier legalization system which would grant permanent resident status to aliens who entered the United States illegally as of January 1, 1977 and would grant temporary resident status to aliens who entered the United States illegally as of January 1, 1980;

(4) delete the provision which negates employer sanctions by (a) making compliance with employer sanctions and worker identification voluntary until an employer has been found to have illegal aliens in his employ; and

(5) delete the search warrant requirement for open field investigations.

* * * * * * * *

(Not to be Distributed Outisde Executive Office of the President)

H.R. 1510, as reported by the House Judiciary Committee would amend the Immigration and Nationality Act to control illegal immigration by prohibiting recruitment, referral, and employment of illegal aliens; to require employers and state employment agencies to verify employment eligibility; to legalize as permanent residents illegal aliens who entered the U.S. as of January 1, 1982; to authorize Federal reimbursement of State and local public assistance and education costs associated with legalized aliens; to ease application requirements for employers of H-2 workers and to require provision of housing and workers' compensation for H-2 workers; to create a separate transition program for agriculture and to establish a U.S. Immigration Board and administrative law judge system. A discussion of the Administration's position on the major objectionable features of H.R. 1510 and proposed Committee amendments follows.

Benefits for Legalized Aliens. H.R. 1510 offers permanent resident status to illegal aliens residing continuously in the U.S. as of January 1, 1982. Welfare eligibility in programs with Federal financial participation (i.e., AFDC, Food Stamps and Medicaid) is denied for 5 years. However, SSI and medical assistance is authorized in cases of serious illness or in the interest of public health and also in cases of age, blindness and disability. Full Federal reimbursement, contingent upon the availability of appropriations, is authorized, however, for State and local costs associated with providing public assistance and educational services to legalized aliens.

The annual Federal costs under the bill are estimated as follows:

ESTIMATED COSTS OVER PRESIDENT'S BUDGET
($ in millions)

	FY 85	FY 86	FY 87	FY 88	FY 89	85-89
Welfare	690	1,489	1,879	2,139	871	7,068
Operating Costs	333	266	256	247	259	1,361
Education	602	820	875	925	225	3,447
Total	1,625	2,575	3,010	3,311	1,355	11,876

The Administration believes that public assistance funding should be provided by a capped block grant (at $1.4 billion for 85-89) rather than 100% reimbursement of non-Federal costs. Full reimbursement provides no incentive for local governments to control welfare costs or to discourage welfare dependency. The Administration also believes that legalization should be a two-tiered system of permanent and temporary status, based on entry into the U.S. by 1/1/80, as the Sentae bill proposes. The more generous terms of the House bill unduly reward illegal entry and increase the Federal budget exposure. The Administration also favors the Senate bill with regard to ineligibility for all benefits and opposes the eligibility, granted by H.R. 1510, for Medicaid and SSI. Finally, the Administration opposes, as unnecessary, the provision of education assistance because existing education programs already cover alien children.

Employer Sanctions. The Kindness amendment deleted the requirement that employers check identification of employment eligibility and allowed those verification procedures to be optional until the Attorney General has notified an employer that an illegal alien has been found in his employ. This approach would require extensive INS resources and years of employer audits before the program would take effect.

Search Warrant. H.R. 1510 mandates that immigration officers obtain serach warrants before conducting open field investigations. Justice believes that this requirement is unwarranted because the courts have held that Fourth Amendment protection does not extend to open fields. Justice also believes that search warrant requirements would severely restrain enforcement efforts to apprehend illegal aliens.

The Washington Post

DATE: 1-26-84

PAGE: A22

The Costs of No Immigration Bill

A LEAKED memo from Budget Director David Stockman warns that the costs of compromise immigration legislation may be "unacceptable" in the light of huge future budget deficits. It's Mr. Stockman's job, of course, to compute the direct costs of impending legislation as best he can and to call the attention of policy-makers to his findings. But direct costs are only part of the equation. Administration officials and congressmen need to balance Mr. Stockman's estimates against numbers that, we dare say, are much larger. These are the costs to the nation of not passing immigration reforms.

It's easy enough to quibble with the estimates themselves. Most of the cost of immigration reform is assumed to come from giving legal status to illegal aliens who have resided in the country for some time. Since no one really knows how many persons would qualify under either the Senate-passed bill or the more generous House committee version, any estimate is bound to be squooshy. The administration assumes a larger number of qualifying aliens and a higher subsequent welfare participation rate than does the Congressional Budget Office, and comes out with estimates that are several billion dollars higher over a five-year period.

Honest people can disagree over which is the better estimate. But it's worth noting that neither estimate takes explicit account of the welfare costs already incurred by illegal immigrants. No one has a good national measure of those costs either, but some recent studies suggest that many families of illegal aliens already receive welfare, food stamps, unemployment insurance and the like either because their native-born children are qualified for benefits or because it is currently very difficult for administrators to establish illegal status. Moreover, these costs will grow as more children are born to families illegally in the United States.

A full accounting would also measure the cost of unemployment and other benefits received by legal residents whose jobs are taken by illegal aliens. A Rice University economist recently estimated that cost at $18 billion annually. Perhaps some of those jobs would be scorned by legal residents, but there are simply too many U.S. workers employed at minimum wages to support the idea that no job displacement is occurring. Then there are all the still harder-to-measure costs of general community services that, of necessity, flow to all residents legal or not. These alternative costs—which grow with every year that immigration reform is delayed—dwarf the $2 billion or $3 billion a year that OMB estimates the immigration bill would cost.

This is not to say that direct cost estimates should be ignored. Congress has typically underestimated the costs of its generosity, and the OMB estimates make a good case for the stricter limits on amnesty for illegal aliens proposed by the Senate. But the estimates should not be used as an excuse for congressional failure to act promptly to forestall the far larger costs of uncontrolled immigration.

THE WHITE HOUSE

WASHINGTON

August 4, 1983

MEMORANDUM FOR BRANDEN BLUM
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Justice Draft Bill --
Immigration Emergency Act

Counsel's Office has reviewed the above-referenced proposed bill and the accompanying transmittal letter and section-by-section analysis. We have no objection to the first two items. There is, however, a serious omission in the discussion of search and seizure law at pages 12-13 of the section-by-section analysis. In discussing the constitutionality of stopping and boarding vessels without a warrant and in the absence of suspicion of criminal activity, no mention is made of United States v. Villamonte-Marquez, No. 81-1350 (U.S. Supreme Court, June 17, 1983).

Villamonte-Marquez sustained such activity under 19 U.S.C. § 1581(a), resolving a conflict among the circuit courts of appeals. As the first definitive Supreme Court decision on the question discussed in the section-by-section analysis, and a highly favorable one at that, Villamonte-Marquez should at least be cited in the analysis, and probably merits more extended discussion. We assume it was omitted because the analysis was originally prepared prior to announcement of the decision.

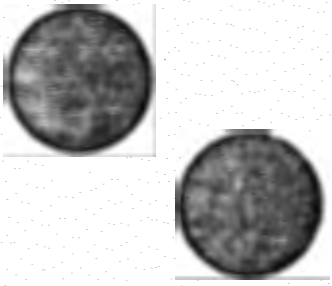
FFF:JGR:aw 8/4/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

August 4, 1983



MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Justice Draft Bill -- Immigration Emergency Act

OMB has asked for our views by noon today on the above-referenced proposed bill and an accompanying section-by-section analysis and transmittal letter. The bill was prepared in response to the inadequacies in executive power made apparent during the Mariel boatlift crisis. The bill would authorize the President to declare an immigration emergency if certain criteria were met. Once such an emergency was declared, and for its duration, the President would be empowered to prohibit vessels from traveling to designated areas and carrying specified groups of aliens, as boats from Florida shuttled Marielitoes from Cuba to Key West. The President could also bar certain vessels from U.S. waters, flexibly detain illegal aliens and transport them between detention facilities, and issue exemptions from environmental restrictions for certain facilities used in responding to the emergency. The last power is a response to the decision in Puerto Rico v. Muskie, 507 F. Supp. 1035 (D.P.R. 1981), in which efforts to transfer Marielitoes were blocked by the requirement of an environmental impact statement.

Federal agencies would also be authorized to stop, board, and inspect vessels believed to be subject to the foregoing provisions, without a warrant. The discussion of the constitutionality of this provision at pages 12-13 of the section-by-section analysis omits the leading case, United States v. Villamonte-Marquez, No. 81-1350, decided by the Supreme Court on June 17, 1983. I assume the case is not cited or discussed because the analysis, which accompanied the previous submission of this bill to the 97th Congress, was prepared before the decision was announced. In Villamonte-Marquez the Supreme Court upheld the constitutionality of 19 U.S.C. § 1581(a), cited in the analysis, and ruled that Customs officials could stop, board, and inspect a vessel without any suspicion of criminal activity.

The bill is a broad grant of emergency powers to the executive, but I cannot conclude that it is too broad in light of the Mariel experience. As noted, the bill was previously cleared and submitted to Congress. I have prepared a memorandum to OMB, recommending that discussion or at least citation of Villamonte-Marquez be added to the section-by-section analysis, but noting no other legal objections.

Attachment

ID # 159547 CU

DM

JY

COPY

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Branden Blum

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Justice Draft Bill - Immigration Emergency Act

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU011	ORIGINATOR	83 10 8 10 4		C	83 10 8 10 4
	Referral Note:				
CUSTIB	D	83108104		C	83108104
	Referral Note:				NOON
CUFIEL	S	83108104	FF	A	83108104
	Referral Note:				
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	Referral Note:				
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	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: See ID 158317 CU

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
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5/81

THE WHITE HOUSE

WASHINGTON

August 4, 1983

MEMORANDUM FOR BRANDEN BLUM
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Justice Draft Bill --
Immigration Emergency Act

Counsel's Office has reviewed the above-referenced proposed bill and the accompanying transmittal letter and section-by-section analysis. We have no objection to the first two items. There is, however, a serious omission in the discussion of search and seizure law at pages 12-13 of the section-by-section analysis. In discussing the constitutionality of stopping and boarding vessels without a warrant and in the absence of suspicion of criminal activity, no mention is made of United States v. Villamonte-Marquez, No. 81-1350 (U.S. Supreme Court, June 17, 1983).

Villamonte-Marquez sustained such activity under 19 U.S.C. § 1581(a), resolving a conflict among the circuit courts of appeals. As the first definitive Supreme Court decision on the question discussed in the section-by-section analysis, and a highly favorable one at that, Villamonte-Marquez should at least be cited in the analysis, and probably merits more extended discussion. We assume it was omitted because the analysis was originally prepared prior to announcement of the decision.

FFF:JGR:aw 8/4/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

February 22, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Justice Draft Bill -- Immigration Emergency Act

OMB has asked for comments by close of business February 23 on the Justice Department's proposed Immigration Emergency Act and accompanying section-by-section analysis and Speaker letter. You may recall that we signed off on the original version of these materials last August, suggesting only that the section-by-section analysis of the constitutionality of stopping and boarding vessels in the absence of any suspicion of criminal activity be updated to include a recently decided and largely dispositive Supreme Court decision, United States v. Villamonte-Marquez.

The bill, drafted in response to the lessons of the Mariel boatlift, would authorize the President to declare an immigration emergency if certain criteria were met. For the duration of such a declared emergency the President could prohibit American vessels from traveling to designated areas (to prevent occurrences such as thousands of Florida pleasure craft operating a "shuttle service" between Mariel Harbor and Key West), authorize interdiction of vessels, flexibly detain illegal aliens and freely transport them between detention facilities, and issue exemptions from various restrictions in environmental laws for facilities used in response to an immigration crisis.

The major provisions of the bill are unchanged from the version we approved last August. Our suggestion to include Villamonte-Marquez in the search and seizure section has been accepted. I have no objections. As I noted in my previous memorandum on this bill, it is a broad grant of emergency powers to the President, but I cannot conclude that it is too broad in light of the Mariel experience.

Attachment

THE WHITE HOUSE

WASHINGTON

February 22, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Justice Draft Bill --
Immigration Emergency Act

Counsel's Office has reviewed the above-referenced draft bill, and accompanying materials, and finds no objection to them from a legal perspective.

FFF:JGR:aea 2/22/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 22, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Justice Draft Bill --
Immigration Emergency Act

Counsel's Office has reviewed the above-referenced draft bill, and accompanying materials, and finds no objection to them from a legal perspective.

FFF:JGR:aea 2/22/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 4, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Justice Draft Bill -- Immigration Emergency Act

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Federal agencies would also be authorized to stop, board, and inspect vessels believed to be subject to the foregoing provisions, without a warrant. The discussion of the constitutionality of this provision at pages 12-13 of the section-by-section analysis omits the leading case, United States v. Villamonte-Marquez, No. 81-1350, decided by the Supreme Court on June 17, 1983. I assume the case is not cited or discussed because the analysis, which accompanied the previous submission of this bill to the 97th Congress, was prepared before the decision was announced. In Villamonte-Marquez the Supreme Court upheld the constitutionality of 19 U.S.C. § 1581(a), cited in the analysis, and ruled that Customs officials could stop, board, and inspect a vessel without any suspicion of criminal activity.

The bill is a broad grant of emergency powers to the executive, but I cannot conclude that it is too broad in light of the Mariel experience. As noted, the bill was previously cleared and submitted to Congress. I have prepared a memorandum to OMB, recommending that discussion or at least citation of Villamonte-Marquez be added to the section-by-section analysis, but noting no other legal objections.

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