THE WHITE HOUSE

WASHINGTON

July 27, 1981

NOTE FOR EDWIN MEESE III
MARTIN ANDERSON
CRAIG L. FULLER

FROM: KENNETH CRIBB, JR. TKC/h

SUBJECT: Immigration Policy

Attached is the final draft of the Immigration Paper, supplied by Frank Hodsoll.

Ken —

→ Big favor —

→ I have one thought abt your N.J / Defense deal —

Could you pls give me a call?

Thx.

Kate Moss

f 6415

21 October 1981

Dear Congressman Napier:

I certainly appreciated your willingness to consult with me on the issue of funding port maintenance and improvements. The meeting here at the White House with Senator Thurmond, Jimmy Moore, and yourself was very helpful in defining the contours of the problem.

Although the Administration's review of this issue has not been completed, we are studying your recommendations with care.

Sincerely,

EDWIN MEESE III
Counsellor to the President

The Honorable John L. Napier
U. S. House of Representatives
Washington, D.C. 20003

EM;bdp

cc: Ed Meese Chron File
Craig Fuller
Central Files

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Sincerely,

U.S. Department of Justice

Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

Office of the Assistant Attorney General

Washington, D.C. 20530

NOT SENT TO CONGRESS

The Speaker
House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

There is transmitted herewith a bill, "To amend the Immigration and Nationality Act relating to the provisions for appeal, asylum and exclusion."

Under this proposal the United States could conduct expedited proceedings with respect to undocumented aliens encountered at our borders and ports of entry, and at points outside the territorial limits of the United States. Presently, an alien who enters the United States without inspection can submit his asylum request and remain in the United States while his asylum request winds its way through the labyrinth of administrative and judicial channels. Thus, there is an incentive for him to enter the United States without inspection.

Current exclusion proceedings are prescribed by section 236 of the Immigration and Nationality Act. That section provides for a hearing before an immigration judge and requires that a complete record of the testimony and evidence be kept. Section 292 of the Act provides right of counsel (at no expense to the Government) for any alien in an exclusion proceeding. Under 8 C.F.R. 236.2, the immigration judge must advise the alien of his right to counsel of his choice and of the availability of free legal services. A decision by the immigration judge that the alien is excludable is appealable to the Attorney General under section 236(b). The Board of Immigration Appeals was created by the Attorney General administratively to hear such appeals (8 C.F.R., Part 3). Under 8 C.F.R. 236.7, the alien has 13 days after a written decision of exclusion is mailed to file an appeal with the BIA. An appeal from an oral decision of exclusion must be taken immediately after the decision is rendered. On request, the BIA must schedule oral hearings on the appeal. BIA decisions must be issued in writing. Under section 106(b) of the Act, an alien under a final order of exclusion by the BIA may obtain judicial review only by habeas corpus proceedings.

This proposed legislation will streamline those proceedings when an alien cannot present any documentation to support a claim of admissibility. Under this proposal the initial questioning of a particular individual would be conducted by a trained Immigration and

Naturalization Service asylum officer. The examination would be oral and no transcript would be made of it. In most cases involving undocumented aliens, the examining officer would make an immediate decision to exclude the alien. There would be no right to an administrative appeal. The removal or return of the alien to his home country would be accomplished as soon as possible.

The Office of Management and Budget has advised that the enactment of this legislation is in accord with the program of the President.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

NOT SENT TO CONGRESS

To amend the Immigration and Nationality Act relating to the provisions for appeal, asylum, and exclusion.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section 106(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended to read as follows:

A petition for review may be filed not later than 30 days from the date of the final deportation order or from the effective date of this section, whichever is the later.

Sec. 2. Section 279 of the Immigration and Nationality Act (8 U.S.C. 1329) is designated as section 279A.

(1) Section 279 of the Act is hereby amended by adding after subsection (a) the following new subsection (b) to read as follows:

"(b) A petition for review of any administrative action arising under this Act, or regulations issued pursuant to this Act, other than a final order of deportation as provided in section 106(a) of the Act, may not be filed later than 30 days from the date of the final administrative action or from the effective date of this section, whichever is the later."

Sec. 3. Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) is amended to read as follows:

AUG 18 198

"Sec. 208(a)(1). An application for asylum may be made by any alien physically present in the United States or at a land border or port of entry (except for an alien in transit without visa). If an alien has entered the United States without inspection, he shall not be eligible for asylum unless, within 14 days of such entry, he presents himself to Immigration and Naturalization officers to apply for asylum, and shows good cause for his illegal entry. An alien may be granted asylum by an asylum officer under paragraph (2) of this subsection, if (A) the asylum officer determines that the alien is a refugee within the meaning of section 101(a)(42)(A); (B) the alien is not firmly resettled in any foreign country; (C) the alien is not inadmissible under the provisions of paragraphs (27), (29), or (33) of section 212(a), or so much of paragraph 23 of section 212(a) as relates to trafficking; (D) the alien has not been convicted by final judgment of a particularly serious crime and does not constitute a danger to the community; and (E) there are no serious reasons for considering that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States.

(2) Eligibility for asylum shall be determined by an asylum officer, who shall serve at the direction of the Commissioner, and who shall perform such other duties as the Commissioner may prescribe, except for the investigation or prosecution of any case under sections 235 or 242 of this Act. An alien seeking asylum shall appear before the asylum officer in an informal, nonadversary interview, and may be accompanied by counsel at no expense and no delay to the government. Counsel may advise the alien during the interview but shall not otherwise participate in the interview. The asylum officer may administer oaths and call witnesses, and request information on an application from any government agency, including information classified under Executive Order No. 12065 (50 U.S.C. nt. 401). A record of the proceedings shall be made in accordance with this section, and under such regu-

lations as the Attorney General shall prescribe. The procedures set forth in this section shall be the sole and exclusive procedures for determining asylum. The determination of the asylum officer shall be final and shall not be subject to further administrative appeal or review, except that either the Commissioner or the Attorney General may require that the decision of an asylum officer be certified to him for review.

(3) The burden of proof shall be on the alien to establish that he qualifies for asylum under this section.

(4) No alien who meets the refugee definition set forth in section 101(a)(42)(A), and who meets the requirements of subsections (1)(C), (D), and (E) of this section shall be returned to the country or place where he would face persecution, as determined by the asylum officer.

(5) An alien against whom proceedings are instituted under section 236 or 242 of this Act, who has not previously made a claim for asylum, must make any application for asylum to the asylum officer under this section within 10 days of the service of the notice instituting such proceedings. An alien who does not make such a timely claim shall not be allowed to initiate an asylum claim absent a clear showing of changed circumstances in the country of the aliens's nationality, or in the case of an alien having no nationality, the country of the alien's last habitual residence.

(6) An asylum officer may not reopen a proceeding under this section except upon a clear showing of changed circumstances in the country of the alien's nationality, or in the case of an alien having no nationality, the country of the alien's last habitual residence.

(b) Asylum granted under subsection (a) may be terminated if the Attorney General, pursuant to such regulations as the Attorney General may prescribe, determines that the alien is (A) no longer a refugee within the meaning of section 101(a)(42)(A) owing to a change in circumstances in the alien's country of nationality or in the case of an alien having no nationality, in the country in which the alien last habitually resided; or (B) the alien was not a refugee within the meaning of section 101(a)(42)(A) at the time he was granted asylum; or (C) the alien is no longer eligible for asylum on any of the grounds set forth in (a)(1) above.

(c) A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E)) of an alien who is granted asylum under subsection (a) may, if not otherwise eligible for asylum under such subsection, be granted the same status as the alien if accompanying, or following to join, such alien.

(d) Notwithstanding any other provision of law, a denial of an application for asylum and the procedures established to adjudicate asylum claims under this section shall to subject to judicial review only in a proceeding challenging the validity of an exclusion or deportation order as provided for in section 106(a) of the Immigration and Nationality Act, 8 U.S.C. 1105a, and shall not be subject to review under 5 U.S.C. 702. The denial of an application for asylum may be set aside, or the cause remanded for further proceedings, only upon a showing that such denial was arbitrary and capricious, or was otherwise not in accordance with law."

Sec. 4. Section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) is amended to read as follows:

"Sec. 235(b) An immigration officer shall inspect each alien seeking entry to the United States and shall make a determination on each alien's admissibility. (1) The

decision of the immigration officer on admissibility of a an alien shall be final, and not subject to further agency review or to judicial review, if the immigration officer determines an alien to be an alien crewman, a stowaway under section 273(d) of this Act, or an alien who does not present documentary evidence of U.S. citizenship, or lawful admission for permanent residence, or a visa or other entry document, or a certificate of identity issued under section 360(b) to support a claim of admissibility. (2) Any alien not excluded under paragraph one of this subsection who does not appear to the examining immigration officer to be clearly and beyond a doubt entitled to admission shall be detained for further inquiry by a special inquiry officer under section 236."

Sec. 5. Section 237 of the Immigration and Nationality Act (8 U.S.C. 1227(a)) is amended to read as follows:

"Sec. 237(a)(1) Any alien (other than an alien crewman) arriving in the United States who is excluded under this Act, shall be immediately deported, in accommodations of the same class in which he arrived, unless the Attorney General, in an individual case in his discretion, concludes that immediate deportation is not practicable or proper. Deportation shall be to the country in which the alien boarded the vessel or aircraft in foreign territory. If such boarding occurred in territory contiguous to the United States or in any island adjacent thereto or adjacent to the United States and the alien is not a native, citizen, or subject or national of, or does not have residence in, such foreign contiguous territory or adjacent island, the deportation shall instead be to the country in which is located the port at which the alien embarked for such foreign contiguous territory or adjacent island. The cost of the maintenance, including detention expenses incident to detention of any such alien while he is being detained, shall be borne by the owner or owners of the vessel or aircrat on which he arrived, except that the cost of maintenance (including detention expenses

and expenses incident to detention while the alien is being detained prior to the time he is offered for deportation to the transportation line which brought him to the United States) shall not be assessed against the owner or owners of such vessel or aircraft if (A) the alien was in possession of a valid, unexpired immigrant visa, or (B) the alien (other than an alien crewman) was in possession of a valid, unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States, or an unexpired reentry permit issued to him, and (i) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, examined and admitted by the Service, or (ii) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if the owner or owners of such vessels or aircraft establishes to the satisfaction of the Attorney General that the ground of exclusion could not have been ascertained by the exercise of due diligence prior to the alien's embarkation, or (C) the person claimed United States nationality or citizenship and was in possession of an unexpired United States passport issued to him by competent authority.

(2) If the government of the country designated in subsection (a)(1) will not accept the alien into its territory, the alien's deportation shall be directed by the Attorney General, in his discretion and without necessarily giving any priority or preference because of their order as herein set forth, to --

(A) the country of which the alien is a subject, citizen, or national;

(B) the country in which he was born;

(C) the country in which he has a residence; or

(D) any country which is willing to accept the alien into its territory, if deportation to any of the foregoing countries is impracticable, inadvisable or impossible.

(b) It shall be unlawful for any master, commanding officer, purser, person in charge, agent, owner, or consignee of any vessel or aircraft (1) to refuse to receive any alien (other than an alien crewman) ordered deported under this section back on board such vessel or aircraft or another vessel or aircraft owned or operated by the same interests; (2) to fail to detain any alien (other than an alien crewman) on board any such vessel or at the airport of arrival of the aircraft when required by this Act or if so ordered by an immigration officer, or to fail or refuse to deliver him for medical or other inspection, or for further medical or other inspection, as and when so ordered by such officer; (3) to refuse or fail to remove him from the United States to the country to which his exclusion and deportation has been directed; (4) to fail to pay the cost of his maintenance while being detained as required by this section or section 233 of this title; (5) to take any fee, deposit, or consideration on a contingent basis to be kept or returned in case the alien is landed or excluded; or (6) knowingly to bring to the United States any alien (other than an alien crewman) excluded or arrested and deported under any provision of law until such alien may be lawfully entitled to reapply for admission to the United States. If it shall appear to the satisfaction of the Attorney General that any such master, commanding officer, purser, person in charge, agent, owner, or consignee of any vessel or aircraft has violated any of the provisions of this section or of section 233 of this title, such master, commanding officer, purser, person in charge, agent, owner, or consignee shall pay to the district director of customs of the district in which the port of arrival is situated or in which any vessel or aircraft of the line may be found, the sum of $300 for each violation. No such vessel or aircraft shall have clearance from any port of the United States while any such fine is unpaid or while the question

of liability to pay any such fine is being determined, nor shall any such fine be remitted or refunded; except that clearance may be granted prior to the determination of such question upon the deposit with the district director of customs of a bond or undertaking approved by the Attorney General or a sum sufficient to cover such fine.

(c) An alien shall be deported on a vessel or an aircraft owned by the same person who owns the vessel or aircraft on which such alien arrived in the United States, unless it is impracticable to so deport the alien within a reasonable time. The transporation expenses of the alien's deportation shall be borne by the owner or owners of the vessel or aircraft on which the alien arrived. If the deportation is effected on a vessel or aircraft not owned by such owner or owners, the transportation expenses of the alien's deportation may be paid from the appropriation for the enforcement of this Act and recovered by civil suit from any owner agent, or consignee of the vessel or aircraft on which the alien arrived.

(d) The Attorney General, under such conditions as are by regulations prescribed, may stay the deportation of any alien deportable under this section, if in his judgment the testimony of such alien is necessary on behalf of the United States in the prosecution of offenders against any provision of this Act or other laws of the United States. The cost of maintenance of any person so detained resulting from a stay of deportation under this subsection and a witness fee in the sum of $1 per day for each day such person is so detained may be paid from the appropriation for the enforcement of this title. Such alien may be released under bond in the penalty of not less than $500 with security approved by the Attorney General on condition that such alien shall be produced when required as a witness and for deportation, and on such other conditions as the Attorney General may prescribe.

(e) Upon the certificate of an examining medical officer to the effect that an alien ordered to be excluded and deported under this section is helpless from sickness or mental and physical disability, or infancy, if such alien is accompanied by another alien whose protection or guardianship is required by the alien ordered excluded and deported, such accompanying alien may also be excluded and deported, and the master, commanding officer, agent owner, or consignee of the vessel or aircraft in which such alien and accompanying alien arrived in the United States shall be required to return the accompanying alien in the same manner as other aliens denied admission and ordered deported under this section."

Sec. 6. Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)) is hereby repealed.

Section-by-Section Analysis and Background

Section 106(a) of the Immigration and Nationality Act is amended to shorten the time period within which a deportation order may be appealed from six months to 30 days.

Section 2 amends section 279 of the Act to specifically designate a 30 day appeal period to a district court in cases where an administrative action is contested. This amendment will provide for consistency with section 106. Under the current provision, aliens often wait to petition for review of administrative actions until after the deportation process is completed.

Section 3 amends section 208. Subsection 208(a)(1) is amended to incorporate the present provision that any alien physically present in the United States may apply for asylum, except that the proposal makes aliens in transit without visas ineligible for asylum, and aliens who entered without inspection ineligible except under certain circumstances.

Subsection 208(a)(2) provides for the creation of an "asylum officer" to adjudicate asylum claims and makes his decision non-reviewable, except that the Commissioner or the Attorney General may require a decision to be certified for review by them. The asylum proceedings are described as informal and nonadversary in nature. Counsel may be present, but only to advise the alien; he may not participate in the proceedings.

Court? Denial of D.P.?

Subsection 208(a)(3) statutorily places the burden of proof on the alien applicant. This codifies the administrative interpretations of the Board of Immigration Appeals.

Subsection 208(a)(4) bars the deportation of an alien to a country or place where he will suffer persecution, thus incorporating the major provision of the present section 243(h). This section satisfies the standards of Article 33 of the United Nations Convention, by preventing qualifying aliens from being sent to places where they would be persecuted, even if such aliens are ineligible for asylum.

Subsection 208(a)(5) provides that an alien brought for exclusion or deportation who has not previously made a claim for asylum must raise such claims within 14 days, otherwise he can raise such claims only upon a clear showing of changed circumstances.

Subsection 208(a)(6) prohibits reopening of proceedings before the asylum officer except upon a clear showing of changed circumstances.

Subsection 208(b) provides for termination of asylum status if circumstances change in the country of persecution. It also adds a provision allowing termination if the alien was not a refugee at the time he was granted asylum. This is a parallel provision to section 207. Additionally, it allows for termination if it is determined that the alien is no longer eligible for any of the reasons which initially bar a grant of asylum. These grounds are presently incorporated in the asylum regulations, but have no statutory basis, except by analogy to section 243(h).

Subsection 208(d) provides that judicial review of an asylum claim or of asylum proccedings is available only upon review of an order of exclusion or deportation.

Section 4 amends section 235(b) to provide that any alien who presents himself for inspection by an immigration officer may be summarily excluded from admission by that immigration officer if the alien does not present any documentation to support a claim that he is admissible to the United States.

Section 5 amends section 237 to eliminate the problems caused by the current law which specifies that an alien ordered excluded from the United States may be returned only to the "country whence he came." Decisional law has defined "the country whence he came" as the country where the alien last had a place of abode. When, however, that country does not recognize the alien's right to return, the United States Government has no discretion under the Immigration and Nationality Act to apply to a second country which may be willing to accept the alien as a deportee. In contrast, when an alien illegally in the United States is ordered arrested and deported following an expulsion hearing, section 243(a) of the Act (8 U.S.C. 1253(a)) provides that if the country first designated will not accept the alien, application may be made to other countries. This amemdment would provide similar options with respect to aliens who have been ordered excluded and deported. It will also eliminate the confusing term "whence he came" and make it clear to which country deportation initially would be sought.

Section 6 repeals section 243(h) in its entirety. As long as this withholding provision exists, each alien will have two means of applying for asylum in the United States. With the incorporation of the new subsection 208(a)(4), which bars deportation to a country or place of persecution, there is no need for withholding of deportation. In practice, the existence of both applications has led to confusion, as immigration judges apparently have the option of granting either asylum or withholding. The reality of the situation is that few if any aliens granted withholding ever leave the United States. It is also incongruous to have a mandatory withholding provision and a discretionary asylum provision.

THE WHITE HOUSE
WASHINGTON

10/20/81

TO: CRAIG FULLER

FROM: FRED FIELDING

For your information.

DRAFT

OCT 19 1981

Statement of William French Smith
before the Senate Judiciary Committee
Subcommittee on Criminal Law

Mr. Chairman, I appreciate the opportunity to appear before this Subcommittee to discuss this Administration's legislative program for providing effective protection against the menace of crime in our society.

In our view, crime, and particularly violent crime, is one of the most serious social problem we face today. I will not burden you with the statistics; they were set forth by the President in his recent address to the International Association of Chiefs of Police, a copy of which I have attached to this statement. What they amount to is this: last year, about one out of every three households in the country was victimized by some form of serious crime. If this trend continues, within a few years every family in America will personally experience the outrage of violent crime. The question will not be whether, but, when, each of us will become a victim.

Of course, no sensible person supposes that we can eradicate crime; it is as old as mankind. But while we cannot expect a crime-free society, we should be able to reduce the amount of crime far below its current level, and reduce its burden as well. That is what the criminal justice system has been trying to do, but it has failed miserably.

To put it bluntly, our methods of protecting ourselves and our society from criminal attacks are simply ineffective. It is elementary that one certain way to help ensure our safety is to prevent crime, and that the most effective way to deter criminal activity is by swift and certain punishment. Yet only a fraction of lawbreakers is being apprehended today; the number that the system is able to prosecute is even smaller; and, of those, relatively few are sent to prison. The sorry fact is that our system is sorely strained even to achieve such minimal results. That strain is a product of the legal inefficiencies that over the years have been absorbed into the system.

But inefficiency is not the only problem. We have also become timid and reluctant to assert vigorously our rights as a society. Some rights of law-abiding Americans are so fundamental that they cry out for protection. They include the right to be free from personal violence in our homes, on our streets, in our schools, and at our jobs. They include the right to have effective measures taken to prevent our being robbed, beaten, raped, or murdered. They include the right to expect prompt and certain punishment of those who violate the law. And they include the right to civilized and compassionate treatment when we have fallen victim to a law-breaker.

The legislative initiatives we are supporting and proposing are designed to remove the inefficiences that plague the criminal justice system and to protect our common rights as a society while preserving the fundamental rights of individuals. Given the scope of the problem, our program is necessarily far-reaching; it calls for vigorous action directed to the entire spectrum of the criminal justice process. But our program is not hastily conceived; to the contrary, it is the product of careful study and deliberation, and it takes into account the four basic considerations essential to effective actions. These are:

First, the need to adopt a new approach -- a systematic, coordinated national strategy that enables us to do more than simply react to crises of the moment, and that recognizes that changes in one area of the system will be felt in other areas. For example, it will do us no good in the long run to apprehend more offenders if our laws do not provide appropriate penalties or if our prisons cannot accomodate those who deserve to be locked up.

Second, the need to preserve sound principles of federalism. We must bear in mind that under our federal system of government, the states have primary authority for dealing with most crimes committed within their borders, and that includes the vast majority of violent crimes. The federal government's law enforcement authority is limited to

violations of federal law. The federal government should not and cannot usurp the primary criminal justice authority of the states. But that does not mean each must go its separate way, paying no heed to how it might assist the other in such a matter of common concern. Rather, for our mutual benefit, we must be flexible, and must organize, operate, and coordinate our law enforcement efforts as efficiently as possible.

Third, the need to use available criminal justice resources to maximum advantage. This is particularly critical given existing budgetary constraints. Until such time as economic conditions permit a higher level of funding for federal law enforcement efforts, we will simply have to do a better job with what we have. Whether we succeed will depend in great measure on the availability of the law enforcement improvements contained in our legislative program.

And the fourth need is the need to take action immediately. Every day produces yet more victims. Many of the most fundamental reforms called for have been in the process of development and refinement for years. There is widespread support for their adoption, and many of them were recently endorsed by the Task Force I appointed earlier this year to study, and make recommendation concerning, the federal government's role in combatting violent crime. That group, under the distinguished and able leadership of Judge Griffin Bell and Governor James Thompson, also recommended additional

measures that appear promising. A copy of the Task Force report is attached to this statement. Our job now is to translate these various proposals into action.

1. Federal Criminal Law Reform

There is no better place to begin than by reforming the federal criminal laws. As they now stand, they constitute one of the greatest obstacles to effective crime control at the federal level.

Federal criminal laws are supposed to provide a solid foundation for the criminal justice system. Today, they do not. They are simply a disorderly array of statutes that have been enacted haphazardly over the past two hundred years. Many are confusing, out-of-date, or unenforceable. Beyond that, they leave unwarranted gaps in our ability to prosecute such serious criminal offenses as murder, arson, and crimes against federal officials.

To remedy this situation, soon after taking office I directed the Department to work closely with the Congress to enact a new Federal Criminal Code. S. 1630, the initial product of that cooperative effort was introduced in the Senate with broad bipartisan support last month. I have already expressed the Administration's strong support for its prompt enactment; a copy of my statement to that effect before the full Committee on the Judiciary is attached.

The new Code will clarify and simplify the federal criminal laws, and make their application far more efficient, thereby permitting the processing of a greater number of criminal cases without an increase in resources. More than that, though, it will facilitate, in a single stroke, many of the most important and most basic reforms we so urgently need. In my earlier testimony, I outlined the major law enforcement improvements contained in the bill, emphasizing improvements that would help the federal government meet the problems of violent crime. For now I would like to concentrate on those provisions directed at the pervasive menace of organized crime.

The last major legislative initiative against organized crime occurred more than a decade ago with the passage of the Organized Crime Control Act of 1970. Yet, despite the improved law enforcement tools provided by that legislation, organized crime has continued to flourish. Stronger measures are plainly needed to contain this blight, and they are provided in the Code.

Under the Code, substantive federal law would be broadened to permit for the first time federal prosecution of such typical organized crime offenses as large-scale arson for profit, murder for hire, trafficking in pirated videotapes and sound recordings, forgery and counterfeiting of state

securities, and retaliating against victims and witnesses in federal proceedings. The brokers and promoters of organized crime offenses would be subject to prosecution under the Code's facilitation and solicitation provisions, and organized crime leaders could be prosecuted for the new offense of operating a racketeering syndicate.

The Code's potential utility against organized crime offenders is also reflected in its penalty provisions. For example, the penalty for conspiracy would be the same as the penalty for the most serious offense that was an object of the conspiracy; the penalties for trafficking in smuggled or stolen goods would be equivalent to those for smuggling or stealing the goods; penalties for trafficking in heroin, cocaine, or PCP would be increased; and true mandatory minimum prison terms would be provided for heroin dealers and persons who use a firearm in the commission of a crime. In addition, maximum fine levels would be increased dramatically, and the existing forfeiture provisions applicable to racketeering offenses would be broadened to reach any traceable proceeds derived from a racketeering enterprise, as well as property of equivalent value if the defendant concealed or commingled the proceeds or placed them beyond the court's jurisdiction.

Finally with respect to organized crime offenses, the Code would require that the sentencing guidelines promulgated by the Sentencing Commission provide a substantial term of imprisonment for recidivists, career criminals, drug traffickers,

and organized crime leaders, and would permit the government to appeal sentences that are unreasonably low.

Of course the Code's law enforcement advances are not limited to the organized crime areas. They also include fundamental reform of federal bail laws, and more effective provisions for dealing with juvenile crime, as well as added protection from violent attacks for a wide variety of federal officials and for innocent bystanders endangered during the course of attacks on federal officials. All in all, S. 1630 contains the most significant series of justice system improvements ever considered by the Congress. Like the President, I cannot stress too strongly the absolute necessity for enacting this bill promptly. It will provide -- at no cost -- the basic foundation for an effective federal effort against crime.

2. Narcotics Enforcement

Of all crimes committed today, narcotics trafficking is witout doubt the most harmful to our society. Drugs make victims not only of those who are addicted to them, but also of the countless persons who are assaulted, robbed and burglarized by addicts in order to obtain the enormous sums of money necessary to feed the addict's habit. Narcotics trafficking frequently involves violence; it invariably breeds violence; it unquestionably causes acute misery and, in many

instances, death. It also generates huge profits that can be used to avoid detection and prosecution. Finally, since narcotics primarily come from countries other than the United States, they present a menace that cannot be controlled by state and local efforts, or even by federal efforts within this country. While there clearly is no simple answer to our enormous crime problem, control of narcotics trafficking is certainly one of the single most important step that we can take to reduce crime.

What is called for to support the Administration's strategy to cripple the international and domestic drug traffic is legislative action in two areas.

a. Posse Comitatus Amendments.

Under existing law, 18 U.S.C. 1385, the Army and Air Force are severely limited in the support which they can provide to civilian law enforcement authorities. Analogous restraints have been imposed by regulation upon the Navy and Marine Corps. These limitations are salutary to the extent that they prohibit military authorities from actively engaging in civilian law enforcement duties that would place heavily armed military forces in direct confrontational contact with civilians. But the limitations of the Posse Comitatus Act in some instances go to nonsensical extremes and restrict appropriate forms of military assistance to civilian law enforcement. For example, military radar and related

communications equipment is constantly in operation monitoring the air space and seas surrounding the United States to detect hostile aircraft and ships. Yet the Posse Comitatus Act has been interpreted as creating artificial barriers to the exchange of information which would assist civilian agencies in detecting and interdicting aircraft and vessels smuggling illicit drugs, other contraband and illegal aliens into the United States.

The Department of Justice has endorsed Section 915 of S. 815 to clarify that military authorities may assist civilian law enforcement authorities in indirect ways such as furnishing of information, loans of equipment, and training. We also support those provisions of the similar House bill (subsections 375(a) and (b) of Sec. 908, H.R. 3519) which would go beyond the Senate bill by authorizing military personnel assistance in the maintenance of equipment loaned to civilian law enforcement, in the operation of radar and related communications equipment, and in the operation of other military equipment outside the land areas of the United States. These bills have been approved by the Senate and House of Representatives respectively and are presently pending before a Conference Committee.

Enactment of this legislation would enhance appropriate military support for civilian law enforcement, particularly

in the national effort to stem the tide of illegal drugs flooding the United States, while at the same time preserving the historic separation of civilian and military functions. The Task Force on Violent Crime endorsed amendments to the Posse Comitatus Act.

b. Use of Herbicides to Eradicate Foreign and Domestic Marijuana Crops

The most efficient and effective way to control narcotics is by eradicating them at their source. With respect to marijuana, source eradication is possible through use of herbicides such as paraquat, a product used widely to suppress weeds in connection with the production of agricultural crops. Although thoroughly tested and approved as safe for use as a herbicide, considerable controversy has developed regarding the potential health impact should marijuana which has been treated with herbicides be harvested and sold to consumers.

Although we appreciate the health concerns surrounding herbicide use, we believe them to be speculative for two reasons. First, there is no clear evidence that herbicide-treated marijuana poses any significantly greater health hazard that non-treated marijuana. Second, herbicides destroy marijuana crops within a matter of days with the result that it is unlikely that any significant volume of treated marijuana will find its way to consumers. Moreover, we believe that

the long-term health effects of marijuana use, particularly use by young people, many of whom are pre-teenage children, are such a serious health threat as to justify herbicide use as a means of curbing the national marijuana problem.

In furtherance of our goal to eradicate marijuana at its source, the Department of Justice will submit two separate bills to the Congress for consideration. The first bill would repeal the existing restriction upon assistance to foreign governments for herbicide spraying programs. The second would expressly authorize federal officials to conduct, and to assist States in conducting, marijuana eradication programs through herbicide use. With respect to domestic use of herbicides, we would expect such programs to be quite limited for the simple reason that most domestic marijuana production involves such small numbers of plants that mechanical destruction is normally more economical than use of herbicides. To the extent that some large fields of marijuana exist in the United States, however, the herbicide option should be available to federal and state authorities. Furthermore, we believe that authorization of domestic herbicide use is crucial if we expect foreign governments to agree to undertake herbicide programs.

The Task Force on Violent Crime recommended legislation such as that we will be proposing, and I hope that the Congress

will carefully and dispassionately consider our proposals when they are submitted.

3. Bail Reform

Despite the fact that violent crime has reached alarming proportions, and we know that much of this crime is committed by habitual offenders, federal bail laws fail to give our courts the authority to make responsible release determinations with respect to dangerous offenders. Under present law, the only issue a judge may consider in setting pretrial release conditions is whether the defendant will appear for trial.

While the Bail Reform Act of 1966 did much to improve the fairness and rationality of release decisions, fifteen years of experience with the Act have demonstrated that, in some important respects, it does not give the courts the authority to make appropriate bail determinations. This Administration, like many in the Congress, the judiciary, the law enforcement community, and the public at large, believes that there is an urgent need for legislation to improve federal bail laws.

In our view, the most significant defect of the Bail Reform Act is its failure to permit dangerousness to be considered in pretrial release decisions. That present law requires judges to ignore the clear threat certain defendants

pose to the safety of other persons and to return such persons to the streets to continue their victimization of the innocent is intolerable. The state of current law not only leads to the commission of additional crimes by released persons, it also contributes to the deterioration of public confidence in the ablity of our criminal justice system to protect our citizens' safety and well being.

Federal judges and magistrates must be given the tools to make bail determinations that not only assure the integrity of the judicial process but the safety of the community as well. To accomplish this goal, we recommend the following changes in current law.

- The courts must be given the authority to deny bail to those persons who are found by facts established by clear and convincing evidence to present a danger to particular persons or the community. We believe that the courts can identify those defendants who will pose grave risks to community safety, and that the only responsible decision with respect to such persons is an order of detention. Furthermore, it is our view that bail should automatically be denied to persons accused of a serious crime who have previously been convicted of another serious crime committed while on pre-

trial release. Such persons have, by their own conduct, clearly demonstrated their dangerousness and their inability to abide by the law while on bail.

- Existing case law defining the authority of the courts to detain defendants as to whom no conditions of release will assure their appearance at trial should be codified.
- We should reverse the current standard presumptively favoring release of convicted persons awaiting imposition or execution of sentence or appealing their convictions. Present law is not only at odds with the fact that a conviction is presumptively valid at law -- a principle borne out by the extremely low reversal rate of federal criminal convictions -- but it also undermines the deterrent effect of a conviction e.g., when a convicted narcotics trafficker, following the return of a guilty verdict or the imposition of a substantial prison sentence, is freed to return to the community.
- The government should be given statutory authority to appeal release decisions analogous to that now given defendants. The government should be given

the opportunity to correct often hastily made release decisions that permit defendants to flee the jurisdiction of the courts or to commit further crimes while on release.

- The law should require defendants to refrain from criminal activity as a mandatory condition of obtaining release. In light of the problem of bail crime, we must stress as to released defendants society's legimitate expectation that all its citizens be law abiding.
- In addition, we must also provide adequate deterrents to flight to avoid prosecution by making the present penalties for bail jumping more closely proportionate to the penalties for the offense with which the defendant was charged when released.

Several bills have been introduced in the Congress this year that address some of the problems I have discussed. In the Senate, S. 1554 and S. 1630, whose sponsors include Senator Thurmond and several other members of the Judiciary Committee, come the closest to accomplishing the kind of comprehensive reform of our bail laws that we believe is necessary. Congressman Sawyer has introduced a similar bill, H.R. 4362, in the House. In many respects, these bills would achieve the improvements that I have discussed above.

I do note however, that S. 1554 (like the release provisions of the Criminal Code Reform bill for which it served as a model) would abolish the use of money bond, a novel approach about which we have serious reservations. Many believe that the money bond condition has been misused by some judges who have imposed high money bond as a means of achieving the detention of defendants who are poor bail risks, and it is our understanding that the proposal to do away with money bond stems from the concern that as long as it remains an option, this misuse may continue. Although the money bond condition may be occasionally abused, it seems an excessive reaction to abolish it altogether in light of both experience and logic indicating that it can, in some cases, be an effective tool for assuring appearance. Moreover, the extent of abuse may well decline once federal judges are presented with a lawful alternative -- preventive detention -- for considering dangerousness.

Thus I strongly recommend that S. 1554 and S. 1630 be amended to retain the availability of money bond. With this change, and some other amendments addressed by Deputy Associate Attorney General to better implement the principles I adverted to earlier, ~~as set forth in the Department's testimony on S. 1554 just two days ago before the Subcommittee~~ on the Constitution, we would fully support S.

Subcommittee on the Constitution on [illegible]

1554 and S. 1630 as appropriate vehicles for much needed reform of our federal bail laws.

4. Corrections

The more effective our fight against crime is, the more violent criminals will be off the streets and behind bars, as long as there is sufficient space to house them. The truth is, however, that criminals are already straining the resources of states, where prisons, often old and decrepit, are bursting at the seams. Many lack decent, humane facilities, virtually all are dangerously overcrowded. Nearly 40 states and many localities are involved in litigation relating to conditions of confinement. We simply cannot accept situations where judges do not send criminals to prison out of fear that there is no space for them, or where dangerous prisoners are released prematurely back into society in order to make room for new ones.

a. Federal Property and Administrative Services Act Amendments

In recognition of the need to assist state and localities, the Task Force on Violent Crime recommended that I support or propose legislation to amend the Federal Property and Administrative Services Act of 1949 to permit the conveyance or lease at no cost of appropriate surplus federal property

to state and local governments for correctional purposes. ~~and to ensure such conveyances or leases be given priority over requests for the same property for other purposes.~~ We support this recommendation. S. 1422 would provide for the acquisition of surplus federal property by the states at no cost for criminal justice facilities.

~~Although~~ the Department of Justice supports the general intent of S. 1422, however we do have some amendments to propose. ~~reservations concerning the language of the legislation.~~ We are currently working with the General Services Administration on suggested revisions, which we will be transmitting to the Senate Committee on Governmental Affairs.

b. Vocational Education Act Amendments

As our Chief Justice has noted, criminals must one day return to society and it is a wise investment to make our prisons habitable places where prisoners can receive vocational training to enable them to be responsible citizens. A wide variety of efforts have been made in recent years to explore ways to strengthen vocational training programs in correctional institutions. A recent effort, sponsored by the National Advisory Council on Vocational Education, involved a series of regional hearings. Over 100 witnesses, representing a wide variety of interests, contributed oral as well as written testimony. There was overwhelming consensus that vocational

and educational programs can promote positive life styles in individual prisoners and can contribute substantially toward their chances of employment on release. The Advisory Council recommended, and we concur in this recommendation, that incarcerated offenders be identified as a primary group to receive federal support in vocational education programs.

There is at present no pending legislation to amend the Vocational Education Act. However, proposed legislative amendments are in the process of being developed. The Department strongly recommends passage of amendments which provide support for vocational education in state and local correctional facilities and further that the money clearly be identified as a "set-aside" for that specific purpose.

Competition for state funds for correctional purposes is such that priority is generally given to security, housing, food and other living expenses. Within this framework it is highly unlikely that vocational training funds will be sufficient. It is particularly important therefore, that special federal funding be identified for these purposes. The machinery for support to vocational education is already in place in most states through the Vocational Educational Act. For this reason amendments to the Act to insure set-aside support funds for correctional vocational education is most appropriate.

We concur further that other relevant statutes, e.g., The Elementary and Secondary Education Act and the Adult Education Act, be amended to specifically designate correctional agencies as qualifying recipients of funds for educating inmates. In this connection, appropriate guidelines should be developed to require that a prison education system meet minimum qualifying criteria in order to encourage the best quality of training and education available.

5. Housing Federal Detainees in Local Jails and State Prisons

A major problem faced by the United States Marshals Service is the burdensome contractual processes required by the Federal Procurement Regulations. The United States Marshals Service must rely to a large degree on local jail facilities for the housing of Federal detainees. Unfortunately, jails in a number of jurisdictions throughout the nation are seriously overcrowded. As a result of this overcrowding, over 100 local detention facilities have placed ceilings on the number of Federal detainees they will accept.

Compounding the problem, is the fact local jail administrators must contend with complicated and cumbersome federal contracts in order to house federal detainees. Many local jail operations are not in a condition physically, economically, or administratively to comply with contract stipulations.

To overcome these obstacles the Task Force on Violent Crime recommended that I seek a waiver of the requirements of the Federal Procurement Regulations for contracts entered into for temporary housing of federal prisoners in local detention facilities and/or should seek legislation to amend the Grant and Cooperative Agreement Act of 1977 (Public Law 95-224) to establish and authorize the use of intergovernmental agreements with local governments for detention space and services for federal prisoners.

The Office of Management and Budget (OMB) has proposed legislation, S. 892, to amend the Grant and Cooperative Agreement Act of 1977 (Public Law 95-224), so as to permit the use of intergovernmental agreements with local governments for detention space and services for federal detainees. We support this legislation.

We also will submit legislation to amend 18 U.S.C. 5003 to permit a quid pro quo arrangement whereby the federal government could house state prisoners and the states house a similar number of federal inmates without requiring an exchange of funds.

6. Exclusionary Rule

The Fourth Amendment exclusionary rule is a judicially created remedy under which any evidence and the fruits of

such evidence are automatically barred from introduction at a defendant's trial if the evidence is determined by the court to have been obtained as a result of an unconstitutional search or seizure. While the rule is designed to deter unlawful searches and promote respect for the law by police officers, the effect of its application is often to engender disrespect for the law in the mind of the police and the public alike. When the rule is applied in the case of a trivial violation by the police or a reasonable good faith mistake as to whether the requirements of the law have been complied with, and results in the acquittal of a criminal guilty of a serious crime, the lack of proportionality of the sanction applied -- exclusion of reliable and frequently powerfully incriminating evidence of guilt -- is so great that the confidence of the public in our system of justice cannot help but be eroded. The rule has a distorting effect on our system of justice where the central purpose is to insure that the guilty are convicted and the innocent are acquitted. Rather than facilitate resolution of this question, when the rule is applied it signifies that a court has diverted its attention from the question of guilt or innocence of the defendant and has turned instead to a consideration of the conduct of law enforcement officers in obtaining the very evidence that can often answer that question.

Assistant Attorney General Jensen testified recently before this Subcommittee in support of the recommendation by the Violent Crime Task Force that called for a legislative modification of the rule so that evidence obtained in violation of the Fourth Amendment would not be excluded from a criminal proceeding if it was obtained by an officer acting in the reasonable, good faith belief that his actions were lawful. In that testimony we noted that the reasonable, good faith approach recommended by the Task Force has been adopted by the Fifth Circuit en banc in United States v. Williams, 622 F.2d 830 (1980), following an exhaustive analysis of relevant Supreme Court cases.

The Department has concluded that the Congress can, and indeed should, act to limit the exclusionary rule in the context of the Fourth Amendment. This conclusion is based, as was Williams, on modern Supreme Court cases that hold that the sole or primary purpose of the rule today is to deter unlawful police conduct. Permit me to briefly outline this position. Some early cases dealing with the rule indicated that "judiciary integrity" required the courts to exclude evidence improperly seized. This rationale has, however, been largely abandoned because it proves too much. Logically extended, it would require that improperly seized evidence be