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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	H P Goldfield to Fred Fielding re: Status of Immigration Policy Legislative Proposals. 3p.	10/20/81	P5
2. memo	Mike Horowitz to Ed Harper, Glenn Schleede and Annelise Anderson re: Haitian refugees 3p.	9/16/81	~~P5~~ opm 10/24/00
3. memo	Bob Carlstorm to Annelise Anderson, Frank Hodsoll, Mike Uhlmann et al re: Immigration Policy Legislative Proposals-Remaining Issues. 8p.	10/15/81	P5 KAB

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 the 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].

[illegible] vessel. [illegible] el, the present pr[illegible] ensure clearance is in [illegible] coercive tool ensuring collection of the monetary penalty, it is fundamentally inadequate for that purpose in dealing with vessels not requiring clearance, such as non-commercial vessels and commercial vessels not bound for foreign ports. The Cuban flotilla in 1980 was comprised primarily of such vessels. In order to provide adequate flexibility to ensure fine collection, the proposed amendment thus also makes the penalty a lien on the vessel, in the manner presently provided for similar violations of the immigration laws under 8 U.S.C. 1287 and 1321(a).

The power to seize a vessel involved in a violation of 8 U.S.C. 1323 may already exist under 19 U.S.C. 1581(e). However, the proposed amendment eliminates any doubt on that issue by explicitly authorizing seizure. The existence of clear authority to summarily seize vessels is important for three reasons. First, seizure secures the vessel as an aid to fine collection. Second, seizure may be necessary to prevent multiple trips bringing undocumented aliens by vessel owners or masters who, because of a lack of assets reachable in judicial collection actions, or for other reasons, are undeterred by the monetary penalties provided by the statute. Third, this seizure power will exist regardless of the declaration of an immigration emergency.

It is intended that seizures made under this provision be based on probable cause to believe the vessel or aircraft has been, or is being, used in violation of the section, but such seizures are to be without a warrant unless a warrant is constitutionally required. See 8 U.S.C. 1324(c). This amendment does not, however, affect the government's due process obligation to provide prompt post-seizure hearings to the aggrieved owners. See Pollgreen v. Morris, 496 F. Supp. 1042 (S.D. Fla. 1980).

The sanctions against the vessel are not available under this amendment if a sufficient deposit or bond is provided to otherwise secure payment of any penalty. The current law is identical in this respect.

Miscellaneous

Finally, the legislation contains a conforming amendment to section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)), and an appropriations provision.

(b) are [illegible] and Naturalization [illegible] the Decr[illegible], opinion of the United States District Court [illegible] the Southern District of Florida in United States v. Anava, et al., No. 80-231-CR-EPS. In Anava the court held that section 1324 (a)(1) does not prohibit the mere bringing of undocumented aliens to this country's borders. In the court's view, this statute is aimed only at preventing surreptitious entries. An alien does not make an entry by arriving at a port so long as he is detained or paroled. The court held that "[t]o accomplish an entry an alien must be present in the United States and be free of official restraint." Slip op. p. 8. Since there were neither actual nor attempted surreptitious entries in the Cuban Flotilla cases, the court dismissed the indictments. Consequently, 1324(a) is redrafted in two new subsections, one a misdemeanor and the other a felony, to make it clear that it is the bringing to the United States of an alien who does not have prior authorization to come, as well as the transporting or harboring of an alien who has come here without prior authorization, that is proscribed.

Paragraph (a)(1) makes it a misdemeanor punishable by a mandatory fine of $2500 and imprisonment for up to one year, or both, for a person to bring to the United States an alien who does not have prior official authorization to come to this country, regardless of whether the alien does or does not make an entry, and regardless of any future action that might be taken with respect to the alien such as the granting of parole. The fine may, in the court's discretion, be increased by any amount up to $2500 per alien involved in the offense. It is of no consequence under this paragraph that the alien later presents himself to an Immigration and Naturalization Service officer or other authority. Persons who bring to the United States aliens who do not have visas or have not otherwise been previously given official permission to come to, enter, or reside in the United States would be in violation. Attempts to bring such aliens to the United States are also proscribed.

Paragraph (a)(2) provides that bringing an alien who does not have prior authorization to come to, enter, or reside in this country for purposes of financial gain or commercial advantage is a felony. It also provides that bringing such an alien without taking him directly to an INS official, bringing of such an alien by means of fraud, and any second offense under section 1324 are felonies. The punishment is imprisonment for up to five years and a fine of up to $10,000 for each alien involved in the offense.

Paragraph (b)(1) has no counterpart in present section 1324. It prohibits the bringing of an alien to the United States at a place other than a designated port of entry or other place designated by the INS. The provision is meant to preclude such a bringing of an alien

[illegible] the time [illegible] the subject [illegible] person is [illegible] alien. The alien's possession of a visa [illegible] entitlement to come to or reside in the United States is irrelevant under this paragraph.

Paragraph (b)(2) proscribes the transporting within the United States of an alien who has come to, entered, or remains illegally in the United States. It closely follows the existing subsection 1324 (a)(2), except there is no requirement that the subject know that the alien first came to the United States less than three years prior to the illegal transportation. The transportation must be in furtherance of the violation of law. Thus it would not be a violation of the paragraph to transport an alien who first came to the United States illegally but was subsequently granted asylum or parole. If, however, the subject knows or is in reckless disregard of the fact that the alien has come to or remains in the United States in violation of law and the transportation is for the purpose of furthering the violation, the subject's knowledge of the date of entry should be irrelevant.

Paragraph (b)(3) is simply a restatement of existing section 1324 (a)(3). It is rephrased to make clear that the harboring or concealing of an alien who has come to, entered, or remains in the United States in violation of law is prohibited.

Paragraph (b)(4) is simply a restatement of existing section 1324 (a)(4) with no substantive change intended.

All violations of subsection (b) are felonies and the punishment extends to a fine of up to $10,000 and imprisonement for up to five years, or both, for each alien in respect to whom any violation of the subsection occurs. The provision that it is a separate felony as to each alien involved, which also applies to violations of paragraph (a) (2), is carried forward from the present section 1324. The courts have specifically upheld indictments charging multiple counts of transportation of aliens and consecutive sentences even though all were transported at the same time and place. See Vega-Murrillo v. United States, 264 F.2d 240 (9th Cir. 1959); Jones v. United States 260 F.2d 89 (9th Cir. 1958).

Subsection (c) narrows the exceptions that exist in present section 1324(b), providing for forfeiture of vehicles, vessels, and aircraft used in the transportation of illegal aliens. The subsection closely follows the provisions of H.R. 8115 (96th Cong.) which was reported favorably by the Judiciary Committee. See Report No. 96-1395.

Present INS forfeiture authority, enacted in 1978, and codified in 8 U.S.C. 1324(b)(1)(A) is too restrictive. For example, this section precludes the forfeiture of any vessel unless the Government can show

the vessel. [illegible] such knowledge impossible to demonstrate. [illegible] burden of proving [illegible] law enforcement as the [illegible] and the Law Enforcement Administration [illegible] proving [illegible] consent is limited to seizures involving common carriers. [illegible] 881(a)(4)(A). Additionally, section 1324(b) presently requires INS to bear administrative and incidental expenses when it turns out that an innocent owner is involved even though the seizure was made in a good faith belief that it was warranted based on facts known to the INS at the time. No other enforcement agency with vehicle seizure authority is subjected to this type of liability. Compare Department of Justice Regulations for the Remission or Mitigation of Civil Forfeitures, 28 C.F.R. 9.7. Finally, present law provides that INS is required to satisfy any valid lien or third party interest in the conveyance "without expense to the interest holder." This creates little incentive for mortgage lenders to exercise caution in making loans for the purchase of conveyances that could be used to transport illegal aliens. Compare 28 C.F.R. 9.7, providing that a lienholder's interest in the vehicle should be satisfied only after the Government's costs associated with the seizure and forfeiture have been deducted. The new subsection (c) has the effect of leaving on the lienholder the normal burden of showing good faith, innocence, and lack of knowledge in order to obtain a remission or mitigation of the forfeiture. This is the procedure currently followed pursuant to the customs and drug laws. Compare 28 C.F.R. 9.5 (b) and (c).

Section 1324(c)(1) provides that any convenyance used in or intended to be used in a violation of subsection (a) or (b) shall be seized and subject to forfeiture. This is a slight expansion on the authority provided in present section 1324(b)(1) in that it allows for seizure of a conveyance clearly intended to be used in the substantive offense as well as where it is used in committing a substantive violation. Paragraph (c)(1)(A) exempts common carriers from forfeiture if the offense occurs while the conveyance is being used as a common carrier unless the owner, operator or other person in charge was a consenting party or privy to the illegal act. It is similar to a provision in the law providing for forfeiture of conveyances used to transport controlled substances, 21 U.S.C. 881(a)(4)(A), and to a provision in 49 U.S.C. 782 providing for seizure and forfeiture of conveyances used in transporting certain articles of contraband. Paragraph (c)(1)(B) carries forward existing 8 U.S.C. 1324(b)(1)(B) providing that it is a defense to a forfeiture if the offense occurred while the conveyance was unlawfully in the possession of a person other than the owner in violation of law.

Section 1324(c)(2) carries forward 8 U.S.C. 1324(b)(3) providing that a conveyance subject to seizure may be seized without a warrant in circumstances where a warrant is not constitutionally required. Together with section 1324(c)(3), which makes provisions of the customs laws applicable by reference to seizures and forfeitures under

This section, [illegible] to seize vessels other conveyances [illegible] probable cause to believe [illegible] vessel [illegible]. There is no determination [illegible] making the seizure. Once a vessel is seized it is normally held by the government pending the actual judicial proceeding to perfect the forfeiture.

Section 1324(c)(5) deals with the burden of proof in the forfeiture action and is similar to 19 U.S.C. 1615 relating to customs forfeitures. It provides that initially the government must show the probable cause that justified the seizure and the institution of the forfeiture action. In showing probable cause the government must produce evidence that the aliens involved with the conveyance did not have prior authorization to come to or remain in the United States. In order to forestall any possible claim that the government must detain all undocumented aliens involved in a particular incident, the proposed bill lists three types of evidence that are prima facie evidence that the aliens involved did not have such authorization. They are records of any administrative or judicial proceeding concerning the alien's status in which it was determined he had not received authorization to come to or enter this country, official records of the INS or State Department showing that the alien had not received such authorization, and testimony by an immigration officer having knowledge of the alien's status that the alien had not received such authorization. (An example of the last type of evidence might come from an INS officer who, by referring to notes or INS records, can testify that a certain boat landed on a particular day with a particular illegal alien on it). Once the government shows probable cause for the seizure and the initiation of the forfeiture action, the burden of proof shifts to the claimant to show either that the conveyance was not used in a violation of the section or that the common carrier exception or the exception for conveyances unlawfully in the hands of someone other than the owner applies.

Section 1324(c)(4) provides for disposition of the conveyance and the payment of costs and expenses. It is similar to provisions contained in the Controlled Substances Act, 21 U.S.C. 881(e).

Section 1324(d) concerns arrest authority for violations of sections 1324(a) and (b). It expands on the present provisions to allow not only INS officers but also other Federal and state law enforcement officers to make arrests. Occasionally, alien smugglers are first spotted in the act by state law enforcement officers and this provision allows them to make an arrest.

Section [illegible]

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.

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 203(d) provides that judicial review of an asylum claim or of asylum proceedings 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.

MEMORANDUM September 16, 1981

TO: Ed Harper
Glenn Schleede
Annelise Anderson

FROM: Mike Horowitz

RE: Haitian Refugees

The Immigration and Naturalization Service is facing a budget crisis over the arrival of 1000 to 1500 Haitian refugees every month. Administration policy is to warehouse them in detention facilities and then to exclude them after hearings, including determinations on asylum claims. Unfortunately, a small coterie of Haitian defense lawyers has contrived to tie the exclusion process up in knots, preventing their exclusion and transportation back to Haiti. The cost to the taxpayer in fiscal 1982 merely to operate three detention facilities for Haitians is conservatively estimated at $70 million — and the cost rises with every day and every boatload.

I believe that the present procedural tangle reflects a managerial problem similar to that faced in California during the President's term as Governor when California was faced with a sudden need to process 100,000 welfare appeals per year.

In 1970, the California Welfare Rights Organization adopted a calculated "spring offensive" to frustrate Governor Reagan's welfare reform by tying up the administrative hearing process — and temporarily succeeded. The state broke the offensive by using modern case management techniques, increasing hearing personnel, and providing full and speedy due process for all claimants.

I believe that many of the same techniques can be brought to bear to solve the Haitian problem. The individual exclusion cases are not complex; most involve the same issue — the political situation in Haiti. Only the volume of the cases and the difficulty of providing full procedural due process have stood in the way of rapid exclusion of illegal immigrants not entitled to asylum, and their transporation back to Haiti.

The Haitian Refugee Center, largely funded by the World Council of Churches, has adopted a political strategy (similar to that of the Welfare Rights Organization) of tying up the system with class action suits and procedural delays in order to generate

pressure on the Administration to resettle the Haitians in the United States with official immigration status.

The response of INS has been to attempt mass processing of Haitians, leading courts to enjoin deportations and exclusions on the ground that Haitians "were unable to adequately present their claims for asylum, and were deprived of full and fair consideration of that which they did present." Haitian Refugee Center v. Civiletti, 503 F. Supp. 442. I agree that the courts have overstepped their bounds in these cases, but INS will continue to face injunctions, restraining orders, and habeas writs until it adopts the opposite strategy: to smother claimants with due process.

My proposal is to concentrate our resources on the exclusion process, i.e., expanding the number of judges, court personnel, and interpreters. Most important, we should provide lawyers at government expense to represent the refugees. The lack of counsel for the Haitians has been the principal bottleneck in the process. Only five or six attorneys nationwide are prepared to represent the refugees at hearings, and they will handle only about three cases a week. Yet, only the presence of zealous counsel for the Haitians will persuade the courts that the Haitians' rights have been fully honored and their claims fully presented. Without counsel, the courts can be expected to continue discovering due process violations at every turn. By giving the refugees all the due process in the world — and fast — we can avoid our problems with the courts, and spare ourselves the budgetary and political problems involved in massive detention centers.

The decision to build a new detention facility in Glasgow, Montana may have been made (at an annual cost of over $36 million, and in the face of charges that exposure of tropical dwellers to the freezing temperatures of Montana is literally brutal), but it is a temporary solution at best. Without efficient exclusion procedures, our detention camps will be full again by spring. The present policy is the worst of all possible options. We create inhumane and politically unpopular quasi-concentration camps, and produce a new fugitive class of undocumented aliens. Unless we are to change our immigration policy and admit the Haitians as refugees, the only long-range solution is to get fair exclusion hearings underway, with enough due process to withstand court challenges.

At the meeting last Friday, INS officials showed real enthusiasm for this approach. The Deputy Commissioner, Al Nelson, who was a California welfare official when the similar problem arose and

was solved in the early 1970's, appears able and willing to cooperate.

I have talked informally with Ron Zumbrun, director of the Pacific Legal Foundation. Zumbrun headed up the California welfare reform effort, and agrees that the Reagan California model is applicable to this situation. Zumbrun is well known to the President and Ed Meese and could provide invaluable aid and expertise.

Estimates of lawyers, judges, and staff needed for this approach may vary, but one thing is clear: for the price of the Glasgow facility for one year, we could provide every Haitian man, woman, and child all the legal assistance they could use — and settle their cases once and for all.

There is one principal legal question affecting this approach: whether provision of government-paid attorneys for Haitian claimants would require INS to provide attorneys for every illegal entrant at Kennedy Airport or the Mexican border. I believe — and INS agrees — that the answer is "no." Establishment of the exclusion hearings program could be accompanied by INS findings that the Haitian case is unique, because of the crisis situation in terms of numbers, the extraordinary need for expedition, the inability of uncounselled Haitians to present their case, and the close questions of fact and law concerning the validity of Haitian asylum claims. In any event, INS referred this question to the Office of Legal Counsel of the Justice Department.

This process was well underway following our Friday meeting, when the Attorney General called INS on Tuesday to inform them that, as a policy matter, he had decided that the United States would not pay for lawyers for Haitian refugees, and that he would not permit the Office of Legal Counsel even to consider the legal question of INS' authority to do so. I have given my opinion of the policy implications of this decision, and feel strongly that this decision is not one for the Attorney General alone.

I will be meeting with Annelise Anderson with a view to referring this matter to ELH.

Haitian Refugee Dilemma

Lawyers Frustrate U.S. Illegal-Immigration Policy

By Mary Thornton
Washington Post Staff Writer

MIAMI — For more than a year now, a ragtag group of young lawyers has held the whole U.S. government at bay, managing in case after case to thwart the Department of Justice.

Their efforts have prompted a Justice Department spokesman to declare: "We have lost control of our borders and our beaches. We have to do something about it and do it fast!"

They have caused President Reagan to deploy U.S. military might in the form of the Hamilton, a fully armed, 378-foot Coast Guard cutter into the territorial waters of another country: Haiti.

At issue are the Haitians who by the thousands have been packing themselves into small boats, many of them homemade and only 20 or 30 feet long, and making their way over 800 miles of open water for the shores of Florida.

The Hamilton began patrolling the Windward Channel early last week, looking for boatloads of Haitians with the idea of turning them back. But by week's end it had not stopped a boat, and no one was sure what would happen if it did — or if the boat refused to stop.

The government says the Haitians are illegal aliens coming here to seek their fortunes and escape poverty in their island country. For the first time since Japanese-Americans were put into detention camps during World War II, the Immigration and Naturalization Service last July initiated a policy of putting the illegal aliens into prisons to await deportation hearings.

There are now about 2,700 Haitians in detention in the United States and Puerto Rico, and the government estimates that as many as

See HAITIANS, A10, Col. 1

U.S. Stymied On Refugees By Attorneys

HAITIANS, From A1

1,000 per month may be entering the country. The largest of the camps is the Krome Detention Center here on the edge of the Everglades, where 1,200 Haitians live in a concoction of barbed wire and concrete blocks on an old missile site about 45 minutes outside of downtown Miami.

The lawyers, generally working without pay, have insisted that at least some of the Haitians are political refugees fleeing the repressive regime of Jean Claude (Baby Doc) Duvalier and are entitled to full asylum hearings and full due process of law, complete with several layers of appeals.

So far the federal courts have agreed with them, often criticizing INS at length in the process.

"Fighting immigration is like shooting fish in a barrel. It's like the Selective Service in the '60s. They're portraying us as a group of smart lawyers that got together, but in fact the things they're doing are so blatantly illegal that they make it easy for us," said Ira Kurzban, who is leading the lawyers.

In fact, the government is faced with a near-impossible situation. At a time of limited resources and economic problems, it is clear that the United States can no longer welcome everyone who wants to come into the country. That question is complicated even further when the people pouring across the border are poor, often illiterate and don't speak English — people who would present a further drain on already stretched social services.

Alan C. Nelson, [illegible] say the Haitians who are [illegible] lure [illegible]

[illegible]

[illegible]

To force the government to provide due process for the Haitians, the lawyers have raised not only the merits of the individual cases, but also virtually every possible legal issue to trap the government in its own bureaucratic tangle.

For example:

- At the Ft. Allen detention camp in Puerto Rico, a group of the lawyers forced the government to go through an environmental impact statement procedure because of the sewage that would be produced by the camp.
- Each time the government has made any policy change regarding the Haitians, the lawyers have sued to force the government to comply with its own rule-making procedures, complete with publication in the Federal Register with the required 30 days for public comment.
- The lawyers have presented evidence — and convinced a federal judge — that the government translators have been so bad that instead of asking the Haitians if they were seeking political asylum, they were asking them if they wanted to go to the insane asylum.
- The lawyers repeatedly have been able to stop deportations, often at the last minute, by persuading a federal judge that the INS has violated the Haitians' rights.
- Even the state of Florida has gotten in on the act by filing a suit against the government alleging not only overcrowding but also "neglect and indifference" by federal officials. Florida is asking that Krome be shut down and that no new camps be opened in the state.

Besieged by all the lawsuits, the government has engaged in a kind of guerrilla warfare, going as far as rushing groups of Haitians up back stairways into locked courtrooms to avoid lawyers lurking in the hallways.

The latest INS tactic is to schedule hearings for the Haitians at Miami's Krome Detention Center simultaneously in three courtrooms even though they're all represented by the same lawyer from the Haitian Refugee Center. That forces the lawyer, Steve Forester, to race wildly from courtroom [illegible] courtroom, begging for continuances that the government has no intention of granting for h[illegible]

[illegible]

[illegible]

Haitian Refugees' Lawyers Frustrate U.S. Immigration Policy

They've come in and said they have a case on the Haitians, but then they hold up the show. It's really an antitrust situation. . . . They should either fish or cut bait," said Nelson, who believes the lawyers are deliberately dragging their feet. Haitians, he said, "don't have the right to free counsel. In most other countries in the world, they would have been herded back into the boats and put out to sea."

Nelson charged that there are a number of Haitians who would rather return home than stay in detention, but the issue is so tied up in litigation that it is impossible for anyone to be moved.

Forester retorts that the INS deliberately created the problem when it moved the hearings from downtown Miami to the detention center. Most lawyers don't want to drive that far, he said, though there are 25 lawyers who would provide free services for the Haitians downtown.

Brian McDonald, the first assistant U.S. attorney in Miami, also contends that the lawyers have resources unavailable to the INS. "Some of them are professors at a law school, and they can get assistance from their students," he said, while the INS is "understaffed, they've gotten conflicting policy guidance, and they're confronted with difficult problems."

The lawyers' efforts have been two-pronged. On one side Kurzban, aided by two University of Miami law professors, their students and an assortment of other lawyers around the country who donate their time, have worked on their own time on a series of class-action cases to help thousands of Haitians who are here illegally.

The other side of the effort is being carried on by Steve Forester and Vera Weisz, working out of a ramshackle storefront office in Miami's Little Haiti area. They receive nominal salaries from the

See HAITIANS, A11, Col. 1

HAITIANS, From A10

Haitian Refugee Center, which operates from year to year on a grant from the National Council of Churches.

Among the questions the lawyers are raising in their lawsuits are some that have sticky policy implications for the government.

For instance, Kurzban asks whether the United States should routinely grant asylum to Soviet ballet dancers, who lead privileged lives in their own country, while it turns away refugees who happen to be poor and uneducated.

He questions whether the country should have an immigration policy that welcomes people fleeing from communist governments while it turns away those fleeing right-wing dictatorships that happen to be friendly to the United States. In this case the government also has to deal with the uncomfortable fact that it has recently allowed entrance to large numbers of Indochinese and Cuban refugees, many of them coming for economic reasons, and now is in the process of turning away the first large group of refugees who happen to be black.

Finally, even if the Haitians are eventual returned to their home country, Kurzba asks, "Shouldn't they be entitled to a fa hearing on their asylum claims?"

Behind high chain-link fences topped wit barbed wire, the 1,200 Haitians being d tained at Krome spend their days sprawle on bunks and makeshift cots so close that is difficult to walk between them. The me are kept on one side of the camp and th women and children on the other, separate by another metal fence.

The camp's single, conventional-size washer and dryer have been shut off — th area is so swampy that it was impossible t use them. The Haitians use portable toilet lined up against one of the fences. The show ers are open for two hours in the mornin and two in the afternoon.

Laundry is set out to dry on the scraggl patches of grass and on the metal fences What possessions the Haitians have ar stored in clear plastic bags, one stacked neat ly on each bunk.

Virtually none of the Haitians speak English, and there are only 10 translators a the camp to decipher their Creole dialect.

Early last month, there were riots a

Krome as the Haitians chanted "liberty or death" and "Miami is my country." But the instigators have been shipped off to more secure facilities and most of the Haitians spend their days now doing no more than staring vacantly into space.

To help ease crowding in Florida, INS recently moved the majority of the Haitians to facilities in out-of-the-way places like Lake Placid, N.Y.; Big Springs, Tex., and Ft. Allen, Puerto Rico, far away from any Creole translators and any sort of free legal representation.

At a recent Senate hearing, Doris Meissner, the acting INS commissioner, said that the Haitians are generally considered economic refugees who can be returned safely to their country of origin. As such, she said, they are not eligible for asylum.

In response to pointed questioning from Sen. Charles Grassley (R-Iowa), Meissner said there is "no concrete evidence" that the Haitians would be persecuted if they were returned, and a State Department representative said the Haitian government has promised that there will be no reprisals against those who return.

U.S. District Court Judge James L. [illegible] rence King, in a decision last year in Miami, found major problems of political persecution in Haiti, including persecution of those who have fled and then returned to the country.

"This case involves thousands of black nationals, the brutality of their government, and the prejudice of ours," said, King, a Republican appointed by Richard Nixon, noting that the Haitians are "fleeing the most repressive government in the Americas."

King listened to weeks of evidence of beatings, torture and deaths in Haitian prisons and he concluded that "the manner in which INS treated the more than 4,000 Haitian plaintiffs violated the Constitution, the immigration statutes, international agreements, INS regulations and INS operating procedures. It must stop."

It was the first major victory for the small group of lawyers who have taken on the Haitians' cause.

Early last month, the lawyers won another victory when federal Judge Alcee Hastings in Miami issued a temporary restraining order barring deportation hearings for Haitians who are not represented by lawyers.

But that victory [illegible] Hastings later became the target of an FBI bribery investigation, stepped down from the bench temporarily and asked to have his cases reassigned. No one is sure what will happen to the Haitian case that was still pending before him.

Meanwhile, both sides are waiting to see what's going to happen with the Hamilton as it patrols the Haitian waters, and the lawyers are trying to decide whether to file yet another lawsuit to stop what they call "the kangaroo court on the high seas."

No one knows for sure what the Hamilton would do if one of the Haitian boats refused to stop and decided to make a run for it. Would the 378-foot vessel ram it? Open fire with the cannons? Sink it?

There also are questions about what will happen to those Haitians who are educated enough to know they have a right to ask the Coast Guard for political asylum. The United States is bound by a United Nations treaty not to return persons to a country where they will be persecuted. But although there will be translators and immigration officers aboard the Hamilton, no one is sure yet how the Haitians can prove they would be per[illegible]

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

October 15, 1981

SPECIAL

MEMORANDUM TO: Annelise Anderson
Frank Hodsoll
Mike Uhlmann
Mike Horowitz
Jim Frey

FROM: Bob Carlstrom

Subject: Immigration Policy Legislative Proposals - Remaining Issues

The attached summarize the remaining issues that require your decision. To ensure a uniform and prompt resolution of these issues, a meeting at the earliest possible time -- preferably, Friday, October 16 -- is requested.

The issues discussed in the attached regard:

-- Employer sanctions enforcement;

-- Presidential authority in an immigration emergency; and

-- DOD military assistance.

Concerns were raised by staff in a number of other areas, but on review in conjunction with the announced policy we believe these areas should no longer be at issue:

(1) Legal counsel for asylum proceedings. The policy provides for discretionary review by the Attorney General of asylum determinations. To provide or otherwise expressly authorize counsel or representation would (a) make adversarial the asylum determination process, which is not the intent of the policy and (b) create arguments for the government paying for legal representation services contrary to the policy underlying termination of the Legal Services Corporation. Any amendment to create legal rights to counsel should be resisted on these grounds.

Horowitz = concerned that OLC withhold

(2) Interdiction of foreign flag ships for which no prior arrangement with the flag country exists. While the policy decision clearly states that the interdiction authority should only apply to those countries with which we have prior arrangements, a concern was raised that situations may well arise for interdiction of such ships carrying aliens (e.g., Cuban vessels), notwithstanding the normal U.S. policy and international law. Conversely, proposing such authority would invite criticism from other nations as inconsistent with international law and protocol.

(3) Territorial Limits. "Territorial waters" are presently defined as extending 3-miles offshore; INS jurisdiction and consequent responsibility to provide exclusion and deportation hearings cover only those aliens stopped within the 3-mile limit. The proposed interdiction legislation would allow the Attorney General to establish by regulation procedures to determine the admissibility of those aliens detained outside the "three-mile territorial limit." According to DOT/Coast Guard, "territorial waters" may be redefined in other legislation to include waters up to 12 miles offshore. In the event this change occurs, exclusion hearings might be required for aliens stopped within the twelve mile zone, unless made clear in the text that for aliens interdicted beyond three-miles (regardless of the territorial limit) the Attorney General has discretion to set procedures determining admissibility and that the exclusion and deportation hearing requirements do not apply. Accordingly, the draft bill specifies a 3-mile offshore jurisdiction for INS.

(4) Legalization (Cuban/Haitian and Temporary Resident Status). The draft bill requires that an alien under Cuban/Haitian or temporary status must register with INS every three years thereafter, under such regulations as the Attorney General may prescribe, to determine continued eligibility for temporary resident status. This registration requirement reflects the policy decision that legalization should not be a "blank check" for 5 years (for Cuban/Haitians) or 10 years (temporary residents) until the alien adjusts to permanent residence. Concern was raised that the provision will create a significant INS processing workload at sizable cost with marginal enforcement benefits. Given the current backlog in application processing and the anticipated volume of 3 to 6 million aliens applying for status, INS is likely to carry out the renewal process as a ministerial function with little or no review or, alternatively, to devote attention to individual cases thereby creating a cumbersome process. Given the policy decision allowing people to stay and recognizing the difficulty of deportation, staff agree a

formal re[illegible] process would have [illegible] of the work not be an optimal use of resources. Staff believe, however, that the text of the draft bill allows substantial discretion on the manner of implementation and that INS can and should simply update the aliens file as a matter of record; the failure of an alien to comply will be only a factor in determining eligibility for later adjustment of status. Consequently, the burden for INS will be minimal and retention of the re-registration requirement will not place INS in the position of not having any information on the whereabouts of the alien.

Attachment

cc:
Don Moran
Kate Moore
J. Mullinix/K. Collins
D. Kleinberg/J. Wong
Mike Guhin, NSC
P. Hanna/R. Rideout

Issue: Whether the Department of Labor should be authorized to assist INS in enforcing an employer sanctions law.

Background

The policy fact sheet states that Justice will seek injunctions against employers who follow a pattern or practice of hiring illegal aliens, but does not specify whether Justice (INS) would be given sole authority to enforce employer sanctions. The draft bill authorizes both Justice and Labor to carry out this enforcement. Labor strongly advocates joint enforcement power, arguing that greater coverage would result because its wage and hour enforcement program is in place. OMB staff and Justice object to both the need for and desirability of joint enforcement authority because (1) Labor has never given high priority to enforcement programs against hiring undocumented aliens, (2) joint enforcement authority dilutes accountability and inherently breeds management and operational coordination problems, such as in apprehending aliens, and (3) Labor does not have the staff, experience or facilities for apprehending and detaining aliens. OMB staff also believe Labor may be seeking this authority to gain protection from future budget cuts.

Option (1) Authorize joint Justice and Labor enforcement of employer sanctions. (Labor)

Option (2) Authorize only Justice enforcement (Justice and OMB staff) ✓

Immigration [illegible]

Issue: The draft bill gives the [illegible] power to declare an immigration emergency for [illegible] days renewable for periods of 120 days. Because this is an extraordinary grant of power, should the President's authority be limited to an initial period of 120 days with any extension to be approved by an Act of Congress?

Background

The proposed emergency authority gives the President the power (1) to close ports and airports -- to any degree -- and thereby restrict travel and commerce in these areas, and (2) to direct emergency actions by agencies such as imposing transportation restrictions in certain areas and providing temporary housing for aliens. Heavy penalties, including forfeiture and seizure of vehicles and vessels, as well as civil fines of up to $10,0000, would result for violations of the emergency order. Under the bill, the President must only inform Senate and House leadership of the reasons for his actions within 48 hours of the declaration. The question has been raised by staff on the appropriate duration for lodging such power in the President without any explicit opportunity for congressional review. The current proposal gives the President broad powers to manage indefinitely an emergency without any congressional approval. While this authority as proposed substantially strengthens and clarifies Presidential power to act quickly to respond to another "Mariel boatlift" situation, the ability to extend this authority every 120 days for as long as needed warrants consideration of whether the Congress should have a more affirmative role.

Factors to be considered include:

-- Giving Congress the ability to determine whether an emergency should be extended is a substantial limitation on the President's power to deal expeditiously with extraordinary emergency situations.

-- The ability to sustain use of emergency powers for long periods without any express mechanism by which Congress can assent to extended use of these powers leaves the proposed authority susceptible to the addition of an unconstitutional legislative veto (one or two-House) device to be applied at the outset, at the end of the first 120 days, or at some point in between.

-- The likely duration of such an emergency, which is dependent on the originating country's action, the success of U.S. interdiction efforts, and the number of people for whom asylum determinations must be made are somewhat uncontrollable variables.

Option (1) Authorize renewals of an "emergency" at the sole discretion of the President. (Justice draft bill)

Option (2) Authorize a single extension by the President but require congressional approval by joint resolution in order to continue the emergency beyond 240 days.

Option (3) Limit the discretion for a Presidentially-declared emergency to 120 days unless Congress extends the period by "emergency legislation" using a joint resolution.

Annalie – this is much too broad –

1) what already exists?

2) what really needs to be added. –

→ full-blown legal analysis - beyond p. 2

→ the only thing that can be accepted = Changes to current statute –

Amend IEEPA – when used for immigration purposes, then ———.

→ No further than policy direction of Cabinet –

→ decision memorandum –

DOD Military Assistance

Issue: [illegible] should [illegible] legislation [illegible] additional Federal resources [illegible] upon by the President to provide interdiction, law enforcement, or other assistance.

Background

The draft bill authorizing the President to declare an immigration emergency would empower him to:

> "...direct that any component of the Department of Defense, including the Army, Navy, and Air Force, provide assistance, any statute rule or regulation to the contrary notwithstanding. Any such agency or military component may assist in the actual detention, removal and transportation of an alien to the country to which he is being deported. ...(d) Notwithstanding any other provision of law, any agency, any agency or military component requested or directed to render assistance or services during an emergency is authorized to stop, board, inspect and seize any vessel, vehicle, or aircraft which is subject to the provisions of section 240B through 240D."

Sections 240B-D includes those emergency powers to (1) stop and redirect vessels, vehicles, and aircraft; (2) detain aliens entering the United States without proper documentation; (3) close or seal harbors, ports, airports, roads, or any point of departure; and (4) restrict travel.

According to DOD's General Counsel's Office, Secretary Weinberger opposes these provisions as an "inappropriate use of DOD resources" and has discussed this view with the President. As a fallback, however, the Secretary believes that if the Administration, at the President's behest, is to go forward with this part of the proposal, then the President's authority to direct the use of military resources in an immigration emergency should not be delegable to any subordinate Administration official; any such directive "must come directly and only from the President" according to the DOD General Counsel's Office. In this connection, the current text of the bill does not specify that the President's authority is non-delegable. Justice and OMB staff believe that the President should be authorized to direct deployment in an immigration emergency, because of the military's substantial capability to augment civilian and Cost Guard enforcement capabilities to respond to such massive influxes of aliens as in the Mariel boatlift.

Option (1) Retain the proposed authority for DOD military assistance which does not specify that the President's authority is non-delegable.

Option (2) Retain the proposed authority for DOD military assistance but specify in the text that the President's authority is not delegable.

Option (3) Delete the proposed authority for DOD military assistance.

PUBLIC LAW 95–223 [H.R. 7738]; Dec. 28, 1977

WAR OR NATIONAL EMERGENCY— PRESIDENTIAL POWERS

For Legislative History of Act, see p. 4540

An Act with respect to the powers of the President in time of war or national emergency.

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

Wartime or national emergencies. Presidential powers.

TITLE I—AMENDMENTS TO THE TRADING WITH THE ENEMY ACT

REMOVAL OF NATIONAL EMERGENCY POWERS UNDER THE TRADING WITH THE ENEMY ACT

SEC. 101. (a) Section 5(b)(1) of the Trading With the Enemy Act is amended by striking out "or during any other period of national emergency declared by the President" in the text preceding subparagraph (A). 50 USC app. 5.

(b) Notwithstanding the amendment made by subsection (a), the authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act, which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, may continue to be exercised with respect to such country, except that, unless extended, the exercise of such authorities shall terminate (subject to the savings provisions of the second sentence of section 101(a) of the National Emergencies Act) at the end of the two-year period beginning on the date of enactment of the National Emergencies Act. The President may extend the exercise of such authorities for one-year periods upon a determination for each such extension that the exercise of such authorities with respect to such country for another year is in the national interest of the United States. Termination or extension, effective date. 50 USC app. 5 note. 50 USC 1601. 50 USC 1601 note.

(c) The termination and extension provisions of subsection (b) of this section supersede the provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions of subsection (b) of this section are inconsistent with those provisions. 50 USC 1621.

(d) Paragraph (1) of section 502(a) of the National Emergencies Act is repealed. Repeal. 50 USC 1651.

WARTIME AUTHORITIES

SEC. 102. Section 5(b)(1) of the Trading With the Enemy Act is amended— *Supra.*

(1) in the text preceding subparagraph (A), by striking out "or otherwise," the first time it appears; and

(2) by striking out "; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision".

50 USC app. [illegible]

SEC. 105. (a) Section 16 of the Trading with the Enemy Act is amended by striking out "$10,000" and inserting in lieu thereof "$50,000".

50 USC app. 5.

(b) Section 5(b)(3) of such Act is amended by striking out the second sentence.

International Emergency Economic Powers Act.

TITLE II—INTERNATIONAL EMERGENCY ECONOMIC POWERS

SHORT TITLE

50 USC 1701 note.

SEC. 201. This title may be cited as the "International Emergency Economic Powers Act".

SITUATIONS IN WHICH AUTHORITIES MAY BE EXERCISED

Unusual and extraordinary threat, Presidential declaration of national emergency.

SEC. 202. (a) Any authority granted to the President by section 203 may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

50 USC 1701.

(b) The authorities granted to the President by section 203 may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this title and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

GRANT OF AUTHORITIES

50 USC 1702.

SEC. 203. (a)(1) At the times and to the extent specified in section 202, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit—

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities; and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest;

by any person, or with respect to any property, subject to the jurisdiction of the United States.

Act or transaction, records, maintenance and availability.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative

to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this title shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this title, or any regulation, instruction, or direction issued under this title. Liability.

(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly—

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value; or

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 202 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances.

CONSULTATION AND REPORTS

SEC. 204. (a) The President, in every possible instance, shall consult with the Congress before exercising any of the authorities granted by this title and shall consult regularly with the Congress so long as such authorities are exercised. 50 USC 1703.

(b) Whenever the President exercises any of the authorities granted by this title, he shall immediately transmit to the Congress a report specifying—

(1) the circumstances which necessitate such exercise of authority;

(2) why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;

(3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;

(4) why the President believes such actions are necessary to deal with those circumstances; and

(5) any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries.

(c) At least once during each succeeding six-month period after transmitting a report pursuant to subsection (b) with respect to an exercise of authorities under this title, the President shall report to the

Congress with respect to actions taken, since the previous report, in the exercise of such authorities, and with respect to any changes which have occurred concerning any information previously furnished pursuant to paragraphs (1) through (5) of subsection (b).

(d) The requirements of this section are supplemental to those contained in title IV of the National Emergencies Act.

50 USC 1641.

AUTHORITY TO ISSUE REGULATIONS

50 USC 1704.

SEC. 205. The President may issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise of the authorities granted by this title.

PENALTIES

50 USC 1705.

SEC. 206. (a) A civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this title.

(b) Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

SAVINGS PROVISION

50 USC 1706.
50 USC 1601 note.

SEC. 207. (a)(1) Except as provided in subsection (b), notwithstanding the termination pursuant to the National Emergencies Act of a national emergency declared for purposes of this title, any authorities granted by this title, which are exercised on the date of such termination on the basis of such national emergency to prohibit transactions involving property in which a foreign country or national thereof has any interest, may continue to be so exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(2) Notwithstanding the termination of the authorities described in section 101(b) of this Act, any such authorities, which are exercised with respect to a country on the date of such termination to prohibit transactions involving any property in which such country or any national thereof has any interest, may continue to be exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(b) The authorities described in subsection (a)(1) may not continue to be exercised under this section if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act and if the Congress specifies in such concurrent resolution that such authorities may not continue to be exercised under this section.

50 USC 1622.

(c)(1) The provisions of this section are supplemental to the savings provisions of paragraphs (1), (2), and (3) of section 101(a) and of paragraphs (A), (B), and (C) of section 202(a) of the National Emergencies Act.

50 USC 1601.

(2) The provisions of this section supersede the termination provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions of this section are inconsistent with these provisions. 50 USC 1601, 1621.

(d) If the President uses the authority of this section to continue prohibitions on transactions involving foreign property interests, he shall report to the Congress every six months on the use of such authority. Report to Congress.

SEC. 208. If any provision of this Act is held invalid, the remainder of the Act shall not be affected thereby. Severability. 50 USC 1701 note.

TITLE III—AMENDMENTS TO THE EXPORT ADMINISTRATION ACT OF 1969

AUTHORITY TO REGULATE EXTRATERRITORIAL EXPORTS

SEC. 301. (a) The first sentence of section 4(b)(1) of the Export Administration Act of 1969 is amended to read as follows: "To effectuate the policies set forth in section 3 of this Act, the President may prohibit or curtail the exportation, except under such rules and regulations as he shall prescribe, of any articles, materials, or supplies, including technical data or any other information, subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States.". 50 USC app. 2403. 50 USC app. 2402.

(b)(1) Section 4(b)(2)(B) of such Act is amended—

(A) in the first sentence, by striking out "from the United States, its territories and possessions,"; and

(B) in the second sentence—

(i) by striking out "from the United States"; and

(ii) by striking out "produced in the United States" and inserting in lieu thereof "which would be subject to such controls".

(2) Section 6(c)(2)(A) of such Act is amended by striking out "from the United States, its territories or possessions,". 50 USC app. 2405.

Approved December 28, 1977.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-459 (Comm. on International Relations).
SENATE REPORT No. 95-466 (Comm. on Banking, Housing, and Urban Affairs).
CONGRESSIONAL RECORD, Vol. 123 (1977):
July 12, considered and passed House.
Oct. 11, considered and passed Senate, amended.
Nov. 30, House concurred in certain Senate amendments, in others with amendments.
Dec. 7, Senate concurred in House amendments.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 13, No. 53:
Dec. 28, Presidential statement.

IDENTICAL SUBMISSION TO
THE VICE PRESIDENT

Office of the Attorney General
Washington, D. C. 20530

October 20, 1981

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

Dear Mr. Speaker:

There is transmitted herewith the proposed Omnibus Immigration Control Act. This omnibus legislation includes the following titles:

TITLE I: Temporary Resident Status for Illegal Aliens

TITLE II: The Unlawful Employment of Aliens Act of 1981

TITLE III: Cuban/Haitian Temporary Resident Status Act of 1981

TITLE IV: The Fair and Expeditious Appeal, Asylum and Exclusion Act of 1981

TITLE V: The Immigrant Visas for Canada and Mexico Act

TITLE VI: The Temporary Mexican Workers Act

TITLE VII: The Immigration Emergency Act

TITLE VIII: The Unauthorized Entry and Transportation Act

TITLE IX: The Labor Certification Act

TITLE X: The Emergency Interdiction Act

The history of America has been in large part the history of immigrants. Our nation has been overwhelmingly enriched by the fifty million immigrants who have come here since the first colonists. For nearly our first century and one-half as a nation, the Congress recognized our need for new arrivals by imposing no quantitative restrictions on immigration. Since 1921, however, the government and our people have recognized the need to control the numbers of immigrants and the process by which they enter our country.

In recent years our policies, intended to effect that necessary control of our borders, have failed. Last year, the number of immigrants legally and illegally entering the United States reached a total greater than any year in our history, including the era of unrestricted immigration.

This bill represents a comprehensive and integrated approach to immigration. This legislation is premised upon the fact that there are between three and six million illegal aliens in this country and their numbers are continuing to grow from one-quarter to one-half million each year. Something must be done.

The following titles of this bill are designed to curtail illegal immigration:

TITLE I: Temporary Resident Status for Illegal Aliens

TITLE II: Unlawful Employment of Aliens Act of 1981

TITLE VI: The Temporary Mexican Workers Act

TITLE IX: The Labor Certification Act.

Together, these four proposals should substantially reduce illegal immigration by expanding opportunities to work lawfully in the United States and by prohibiting the employment of illegal aliens outside of these programs.

The "Temporary Resident Status for Illegal Aliens" bill would permit illegal aliens, who were present in the United States prior to January 1, 1980, and who are not otherwise excludable, to apply for the new status of "temporary resident." This status would be renewable every three years, and after a total of ten years of continuous residence, those residents would be eligible to apply for permanent resident status if there were not other reasons to exclude them and they could demonstrate English language ability.

The United States has neither the resources, the capability, nor the motivation to uproot and deport millions of illegal aliens, many of whom have become integral members of the community. By granting limited legal status to the productive and lawabiding members of these communities, this nation will acknowledge the reality of the situation.

"The Unlawful Employment of Aliens Act" would prohibit employers of four or more employees from knowingly hiring illegal aliens. Civil fines would be assessed for each illegal alien hired and injunctions would be authorized against employers who follow a pattern or practice of hiring illegal aliens.

"The Temporary Mexican Workers Act" establishes a two-year program for the admission of nationals of Mexico for employment in jobs for which there is a shortage of domestic workers. The jobs could be in any field, skilled or unskilled, provided that there is a lack of available labor. Since the program is a pilot project and is intended as a test, it would be limited in time to a two-year period, and limited in size to 50,000 workers per year.

Under the provisions of "The Labor Certification Act", the temporary Mexican workers who will come to the United States, would be excluded from jobs in states where it was certified that there was an adequate supply of American workers. The existing H-2 temporary worker program would continue to operate.

During the trial period, this experimental program would be evaluated for its impact on American workers, the feasibility of enforcing the program's restrictions, and the overall benefit to the United States.

Mass migrations of undocumented aliens to the United States are a recent phenomenon. They are also a phenomenon for which the nation is woefully ill-prepared, and the consequences of our unreadiness have been disasterous.

The 1980 Mariel boatlift brought a wave of 125,000 Cubans to the beaches of south Florida. Among those persons were criminals and mentally ill, some of whom were forcibly expelled by Fidel Castro. Notwithstanding its obligations to do so under international law, the Cuban Government has refused to allow these individuals to return to Cuba. Most of the Cubans have been resettled through the efforts of private and public agencies.

There is also a continuing migration to Florida of undocumented aliens from Haiti and elsewhere. Although the government of Haiti is willing to accept the return of Haitians deported by the United States, exclusion proceedings have been blocked by time-consuming judicial challenges to Immigration and Naturalization Service proceedings. While the foreign policy character of the Cuban and Haitian migrations differs, the domestic impact on our local communities and on the administration of our immigration laws is the same.

We must prevent another Mariel. In addition, we must act to curtail the ongoing arrivals of undocumented aliens to our shores in violation of our laws. Finally, we must deal with the recent legacy of those Cubans and Haitians who are already here.

The following titles of this bill were developed to provide adequate legal authority to deal with future migrations of undocumented aliens:

TITLE III: Cuban/Haitian Temporary Resident Act of 1981

TITLE IV: The Fair and Expeditious Appeal, Asylum and Exclusion Act of 1981

TITLE VII: The Immigration Emergency Act

TITLE VIII: Unauthorized Entry and Transportation Act

TITLE X: The Emergency Interdiction Act

"The Cuban/Haitian Temporary Resident Act of 1981" would repeal the Cuban Refugee Adjustment Act of 1966 so that undocumented Cubans will not be eligible for adjustment of status upon completion of one year of physical presence in the United States.

This proposal would allow most of the undocumented Cuban and Haitian entrants to regularize their status by applying for a new "temporary resident" status. After five years of continuous residence in this country, such Cubans and Haitians could apply for permanent residence, providing they were self sufficient, had minimal English language ability, and they were not otherwise excludable.

"The Fair and Expeditious Appeal, Asylum and Exclusion Act of 1981" grants the United States the authority to 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 (INA). 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 (BIA) 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.

"The Fair and Expeditious Appeal, Asylum and Exclusion Act" 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 Unauthorized Entry and Transportation Act" is based on the December 19, 1980 decision of the United States District Court for the Southern District of Florida. In the case of United States v. Anaya, et al., No. 80-231-CR-EPS, the court dismissed the indictment of persons who were charged with unlawfully bringing undocumented Cuban aliens into the United States in violation of section 274 of INA. The court held that section 274 does not apply to instances in which persons immediately present undocumented aliens to Immigration and Naturalization Service officials. This decision has prevented any criminal prosecutions of persons involved in bringing in undocumented aliens during the Mariel boatlift.

The result of the holding is that the United States does not have an effective criminal sanction against such conduct.

The Anaya case is in the process of appeal. Nevertheless, there is a threat of immediate harm that might arise from the lack of an effective criminal penalty for bringing undocumented aliens to our country and taking them directly to the Immigration and Naturalization Service. Therefore, this proposal would amend the seizure and forfeiture provisions for conveyances involved in violations of section 274.

"The Immigration Emergency Act" would permit the President to declare an "immigration emergency" to enable the United States to respond to the actual or threatened mass migration of visaless aliens to the United States. This proposal would amend the Immigration and Nationality Act by adding new sections 240a through 240e (8 U.S.C. 1230a through 8 U.S.C. 1230e). This legislation would enable the federal government to respond more effectively to future mass migrations. One of the ways the legislation seeks to do this is by prohibiting residents of the United States from aiding aliens in their efforts to enter the United States. The Mariel boatlift also demonstrated that in certain circumstances United States residents may be willing to lend their assistance even though the aliens may not be entitled to admission to the United States.

Several of the provisions in this Act are designed to give law enforcement authorities the power to prevent United States residents from transporting visaless aliens to the United States. Section 240B(a) authorizes the President to impose travel restrictions to a designated foreign country or area. Any conveyance under the care, custody or control of a United States resident would be prohibited from going within a specified distance of the designated foreign country or area unless prior permission has been obtained. Furthermore, section 240B(b)(1) authorizes the President to close harbors, airports, or roads which may be used by persons seeking to bring aliens to the United States. The purpose of this provision is to enable law enforcement authorities to prevent, for example, the departure of vessels from a harbor. It is obviously easier to restrict boats in a harbor than it is to try and intercept them once they are on the high seas. Effective enforcement may thus require that vessels be prevented from reaching open waters where they would be able to scatter and avoid detection. Persons removing vessels from the harbor without permission would be subject to arrest and criminal penalties.

There are also important reasons for not attempting to rely on existing emergency legislation. While the International Emergency Economic Powers Act, (IEEPA), 50 U.S.C. 1701 et seq., gives the President broad powers and could conceivably be invoked in a situation where there is an actual or threatened mass migration of visaless aliens to the United States, to exclusively rely on IEEPA would be unsatisfactory.

Under IEEPA, an emergency can be declared only when there is "any unusual and extraordinary threat. . .to the national security, foreign policy, or economy of the United States." It is conceivable that some situations which would merit the declaration of an immigration emergency, would also meet the criteria of IEEPA. However, there are other situations which would justify the declaration of an immigration emergency but which would not clearly be a threat to the national

security, foreign policy or economy of the United States, and thus the provisions of IEEPA could not be invoked.

While IEEPA would authorize some of the actions which could be pursued under this immigration emergency legislation, such as the travel restrictions, it probably would not authorize such procedures as those designed to expedite exclusion and asylum claims, the detention of aliens pending deportation proceedings, and the interdiction of aliens coming to the United States. IEEPA was primarily designed to regulate international economic transactions and not to control noneconomic aspects of international intercourse.

IEEPA gives the President greater powers than would be needed to take care of an immigration emergency. IEEPA was drafted broadly so as to encompass a wide range of situations which would threaten the national security, foreign policy or economy of the United States. An immigration emergency, on the other hand, is a limited type of emergency for which specific powers can be delineated to respond to the situation. The public and the judiciary would more readily understand and uphold actions taken in the course of an immigration emergency if there is a specific statute authorizing such actions, rather than if supports for those actions must be sought from the statutory provisions of legislation such as IEEPA, which is not tailored to the precise problems that would arise during an immigration emergency.

The "Emergency Interdiction Act" states that the President can enter into agreements with foreign countries for the purpose of preventing illegal migration to the United States. Under such an agreement, the Coast Guard could stop a foreign flag vessel on the high seas if there is reason to believe that the vessel is destined for the United States and carrying undocumented aliens who are not entitled to enter the United States.

The basic legal framework governing immigrant admissions to the United States was established by the 1965 amendments to the Immigration and Nationality Act. These amendments retained the policy of numerically restricting certain preference categories of immigration. For the first time in our history, immigration from Western Hemisphere countries was limited, to 120,000 annually. Annual per country ceilings of 20,000 were extended to the Western Hemisphere in 1976.

With regard to refugee admissions, the Congress first dealt comprehensively with the question only recently. In the Refugee Act of 1980, Congress prescribed a uniform definition of "refugee" without geographic or ideological limitation, and established a process for the annual determination of refugee admissions by the President, after consultations with Congress.

Imposition of country ceilings of 20,000 annually, in conjunction with the new preference system and labor certification requirements added by the 1965 amendments, resulted in a drastic reduction in immigration from Canada and Mexico. The ceiling on immigration from the United States' closest neighbors should be increased. "The Immigrant Visas for Canada and Mexico Act" would create separate annual ceilings for numerically restricted immigration from Mexico and Canada raising the totals from the present 20,000 to 40,000 for each country. The unused portion of either country's allotment would be available to citizens of the

other nation. The numerically restricted immigration from other countries of the world would be adjusted so as not to be affected by this change.

Under "The Immigrant Visas for Canada and Mexico Act", any unused visas in Mexico or Canada in a fiscal year would be allotted to the other country during the next fiscal year. The overall limitation on immigration from the rest of the world would be reduced from 270,000 to 230,000. Historically, the demand for immigrant visas by nationals of Mexico has exceeded the demand by nationals of Canada. For example, in fiscal year 1978 there were 17,000 immigrants from Canada as opposed to 92,000 from Mexico. These figures include both numerically and non-numerically limited immigrants. Based on this, we would assume that Mexico would use all of their 40,000 visas in the first year and Canada would use no more than 15,000 to 20,000 visas. In subsequent years the unused visas for Canada would be allocated to Mexico and would probably result in 60,000 to 65,000 visas being available each year to Mexico. Essentially there would be no increase in immigration from Canada and there would be a substantial increase in immigration from Mexico.

"The Omnibus Immigration Control Act" will allow the United States to continue as a nation that is open to immigration and that does its share to assist and resettle the refugee. This bill is necessary if this nation is to continue to provide for our people, while welcoming others who desire to contribute to this nation's continuing experiment in liberty.

I look forward to the prompt attention of Congress to this legislation.

The Office of Management and Budget has advised that the enactment of these legislative proposals is in accord with the program of the President.

Sincerely,

/s/William French Smith
Attorney General

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A BILL

To revise and reform the Immigration and Nationality Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Omnibus Immigration Control Act."

TITLE I - TEMPORARY RESIDENT STATUS FOR ILLEGAL ALIENS

Section 101(a) Notwithstanding any other provision of law, the Attorney General in his discretion and under such regulations as he may prescribe, may accord temporary resident status to any alien who:

(1) entered the United States prior to January 1, 1980, and has continuously resided in the United States since that time;

(2) is admissible to the United States except for the grounds of exclusion specified in paragraphs (14), (20), (21), and (23). If excludability thereunder is based solely on a single conviction for possesion without intent to distribute narcotic drugs or marihuana, (25), and (32) of section 212(a) of the Immigration and Nationality Act;

(3) has not assisted in the persecution of any person or persons on account of race religion, nationality, membership in a particular social group, or political opinion;

(4) if the alien, entered the United States as a non-immigrant, has not maintained a lawful nonimmigrant status since January 1, 1980; and

(5) if the alien was at any time a nonimmigrant exchange alien as defined in section 101(a)(15)(J) of the Immigration and Nationality Act, was not subject to the two-year foreign residence requirement of section 212(e) of the Act, or has fulfilled that requirement, or has received a waiver thereof.

(b)(1) To be eligible for benefits under subsection (a) of this section, an alien must register with the Immigration and Naturalization Service within 12 months of the date established by the Attorney General as the beginning of registration under this section.

(2) An alien under temporary resident status under this section must register with the Immigration and Naturalization Service every three years thereafter, under such regulations as the Attorney General may prescribe, as long as the alien remains under temporary resident status.

(c) If at any time after the alien is granted temporary resident status under this section, it shall appear to the Attorney General that the alien was in fact not eligible for that status, or that the alien is deportable under section 241 of the Immigrantion and Nationality Act (8 U.S.C. 1251), the Attorney General may rescind such temporary resident status, under such regulations as he may prescribe, and the person shall be subject to all provisions of this Act to the same extent as if the status had not been granted.

(d) The spouse and children of an alien granted temporary resident status under this section shall not receive any status or preferred treatment under the Immigration and Nationality Act by reason of the family relationship with the temporary resident alien. However, this subsection shall not prevent a spouse or child who independently meets the qualifications of subsections (a) and (b) of this section from obtaining temporary resident status.

(e) An alien who is granted temporary resident status under this section shall not be eligible for refugee assistance under the Immigration and Nationality Act, except as specifically set forth in subsection (f) of this Title.

(f) An alien who is granted temporary resident status under this section shall not be eligible for any benefits under any of the following provisions of law:

(1) Food Stamp Act of 1964, as amend (7 U.S.C. 2011 et seq);

(2) Financial assistance made available pursuant to the United States Housing Act of 1937, Section 235 or 236 or National Housing Act or Section 101 of the Housing and Urban Development Act;

(3) Aid or assistance under a state plan approved under title I, X, XIV, or XVI of the Social Security Act (other than on the basis of a disability described in paragraph (5) of this subsection);

(4) Medical assistance under title XIX or the Social Security Act (other than in the case of an individual receiving aid under a State plan approved under title XIV or XVI of the Social Security Act, or supplemental security income benefits under title XVI of that Act, on the basis of a disability described in paragraph (5) of this subsection; and

(5)(1) Section 402(a)(33) of the Social Security Act is amended by striking out the period at the end thereof and inserting instead "other than an alien granted temporary resident status."

(2) Section 1614(a)(1)(B) of such Act is amended by striking out the period at the end thereof and inserting instead "other than an alien granted temporary resident status.

(3) Section (2)(a) of such Act is amended --

(A) by striking out "and" at the end of paragraph (12),

(B) by striking out the period at the end of paragraph (13) and inserting instead "; and", and

(C) by adding at the end of such subsection the following new paragraph:

(14) provided that, in order for any individual to be a recipient of old-age assistance, or an individual whose needs are taken into account in making the determination under paragraph (10)(A), such individual must be either (A) a citizen, or (B) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 207(c) of the Immigration and Nationality Act (or of section 203(a)(7) of such Act prior to April 1, 1980), or as a result of the application of the provisions of section 208 or 212(d)(5) of such Act), other than an alien granted temporary resident status.

(4) Section 1002(a) of such Act is amended--

(A) by striking out "and" at the end of paragraph (13),

(B) by striking out the period at the end of paragraph (14) and inserting instead "; and", and

(C) by adding at the end of such subsection the following new paragraph:

(14) provided that, in order for any individual to be a recipient of aid to the blind, or an individual whose needs are taken into account in making the determination under paragraph (8), such individual must be either (A) a citizen, or (B) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United

States as a result of the application of the provisions of section 207(c) of the Immigration and Nationality Act (or of section 203(a)(7) of such Act prior to April 1, 1980), or as a result of the application of the provisions of section 208 or 212(d)(5) of such Act), other than an alien granted temporary resident status.

(5) Section 1402(a) of such Act is amended --

(A) by striking out "and" at the end of paragraph (11),

(B) by striking out the period at the end of paragraph (12) and inserting instead "; and", and

(C) by adding at the end of that subsection the following new paragraph:

(13) provided that, in order for any individual to be a recipient of aid to the permanently and totally disabled, or an individual whose needs are taken into account in making the determination under paragraph (8), such individual must be either (A) a citizen, or (B) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 207(c) of the Immigration and Nationality Act (or of section 203(a)(7) of such Act prior to April 1, 1980), or as a result of the application of the provisions of section 208 or 212(d)(5) of such Act), other than an alien granted temporary resident status.

(6) Section 1602(a) of such Act (as in effect in Puerto Rico, Guam, and the Virgin Islands) is amended --

(A) by striking out "and" at the end of paragraph (16),

(B) by striking out the period at the end of paragraph (17) and inserting instead "; and", and

(C) by adding at the end of such subsection the following new paragraph:

(18) provided that, in order for any individual to be a recipient of aid to the aged, blind, or disabled, or an individual whose needs are taken into account in making the determination under paragraph (14), such individual must be either (A) a citizen, or (B) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 207(c) of the Immigration and Nationality Act (or of section 203(a)(7) of such Act prior to April 1, 1980), or as a result of the application of the provisions of section 208 or 212(d)(5) of such Act), other than an alien granted temporary resident status.

(7) Section 1902(a) of such Act is amended --

(A) by striking out the period at the end of paragraph (43) and inserting "; and", and

(B) by adding at the end thereof the following new paragraph:

(44) provided that in order for any individual to be eligible for medical assistance, such individual must be either (A) a citizen, or (B) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 207(c) of

the Immigration and Nationality Act (or of section 203(a)(7) of such Act prior to April 1, 1980), or as a result of the application of the provisions of section 208 or 212(d)(5) of such Act), other than an alien granted temporary resident status.

Section 102.

(a) Notwithstanding any other provision of law, the Attorney General in his discretion and under such regulations as he may prescribe, may adjust the status of any alien accorded temporary resident status under section (a) of this Title to that of an alien lawfully admitted for permanent residence, if the alien:

(1) has completed 10 years of continuous residence in the United States from time of entry;

(2) can demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language: Provided, that this requirement shall not apply to any person physically unable to comply therewith, if otherwise eligible for adjustment; Provided further, that the requirements of this section relating to ability to read and write shall be met if the applicant can read or write simple words and phrases and that no extraordinary or unreasonable conditions shall be imposed upon the applicant; and

(3) remains eligible to receive an immigrant visa and otherwise admissible as specified in section (a) of this Title.

Section 103. The requirement of continuous residence shall be defined by regulations to be issued by the Attorney General.

Section 104. The numerical limitations of section 201 of the Immigration and Nationality Act shall be inapplicable to grants of lawful permanent residence under section 102 of this Title.

TEMPORARY RESIDENT STATUS FOR ILLEGAL ALIENS

This proposal permits immediate legalization of illegal aliens who entered the United States prior to January 1, 1980, and have had a continuous residence in the United States since that time, by providing a "temporary resident status" for such aliens. The proposal provides for adjustment to status to that of a lawful permanent resident for these aliens after they have completed ten years of continuous residence.

Section 101 of the proposal authorizes the Attorney General, in his discretion, to grant "temporary resident status" to any alien who entered the U.S. prior to January 1, 1980, and has continuously resided in the U.S. since that time, if the alien is otherwise admissible to the U.S., with certain exclusion provisions waived. To be eligible for adjustment under this section, the alien must register with the INS within 12 months after the Attorney General announces that registration has begun. An alien granted temporary resident status must register with the Immigration and Naturalization Service every three years. The Attorney General is authorized to set additional registration requirements in his discretion. An alien granted temporary resident status may not bring his spouse or children to the U.S. and is ineligible for benefits under Aid to Families with Dependent Children, Supplemental Security Income, the National Housing Act, Medicaid, and food stamps programs, but may be authorized to work by the Attorney General.

Section 102 provides that an alien who is granted temporary resident status may have his status adjusted to that of lawful permanent resident, once he completes 10 years of continuous residence in the U.S., if he remains otherwise admissible and has a minimal English language ability.

Section 103 The Attorney General shall define the requirement of continuous residence.

Section 104 makes the numerical provisions of the INA inapplicable to adjustments under this title.

TITLE II - THE UNLAWFUL EMPLOYMENT OF ALIENS ACT OF 1981

Section 201. Section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) is amended to read as follows:

(d)(1) It shall be unlawful for an employer knowingly to hire an alien for employment in the United States, unless at the time of employment the alien has been lawfully admitted for permanent residence or is an alien who has been authorized to be employed by the Attorney General. Provided, that this provision shall not apply to an employer who establishes that he or she did not employ four or more persons, at the time of violation.

(2) If an alien has been employed in violation of this subsection, the employer shall be subject to a civil penalty of $500 per alien employed without authorization upon determination of a first violation. Upon determination of a subsequent violation, the employer shall pay the sum of $1000 per alien employed without authorization. Payment shall be made to the district director of the Immigration and Naturalization Service in the district where the violation occurred. In the discretion of the Attorney General, payment may be recovered by civil suit in a United States district court in the name of the United States from any employer made liable under this subsection. The Attorney General shall establish by regulation a procedure for implementing this subsection.

(3) Whenever the Attorney General has reasonable cause to believe that an employer has engaged in a pattern or practice of employment in violation of this subsection, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint setting forth facts pertaining to such pattern or practice and requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order

against the employer as the Attorney General deems necessary. For purposes of this paragraph the term "district court" shall include a United States magistrate."

(4) For the purposes of this section, an employer shall be presumed to have knowingly employed an alien who is not authorized for employment in the United States if the employer does not request and obtain evidence that the individual is authorized for employment as set forth in (d)(5) below; Provided, that the foregoing shall not prevent the Government from establishing knowing employment by any other means.

(5) The Attorney General shall establish by regulation a form by which every employer as described in subsection (d)(1) above, and every prospective employee of such employer, shall attest that the prospective employee is a United States citizen, a national of the United States, or has the status of an alien lawfully admitted for permanent residence, or has been authorized for employment by the Attorney General, and that the employer has examined such documents as may, by regulation, be prescribed by the Attorney General relating to such citizenship, permanent resident status, or employment authorization. Such forms shall be retained by the employer and shall be available for inspection by officers of the Immigration and Naturalization Service, for the duration of the employee's employment, and for one year following the termination of the employment.

(6)(1) Section 6(f) of the Farm Labor Contractor Registration Act of 1963, as amended, is hereby repealed.

(2) Section 5(b)(6) of the Farm Labor Contractor Registration Act of 1963, as amended, is revised to read as follows:

(6) has been found to have knowingly employed an alien not lawfully admitted for permanent residence or not authorized for permanent residence or not authorized by the Attorney General to accept employ-

ment in violation of section 274 of the Immigration and Nationality Act.

(2) by inserting after new subsection (d) the following new subsection:

(e) The provisions of this section are intended to preempt any state or local laws imposing civil or criminal sanctions upon those who employ aliens not authorized to work in the United States.

(3) the title of section 274 of such Act is amended to read as follows: "BRINGING IN, HARBORING, AND EMPLOYING CERTAIN ALIENS."

(4) the designation of section 274 in the table of contents (Title II -Immigration, Chapter 8) of such Act is amended to read as follows:
"Section 274. Bringing in, harboring, and employing certain aliens."

Sec. 202. Section 275 of the Immigration and Nationality Act, (8 U.S.C. 1325) is amended to read as follows:

"275 ENTRY OF ALIEN AT IMPROPER TIME OR PLACE: MISREPRESENTATION AND CONCEALMENT OF FACTS: MISREPRESENTATION OF EMPLOYMENT STATUS."

(a) Any alien who (1) enters the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offenses, be guilty of a misdemeanor and upon conviction thereof be punished by imprisonment for not more than six months, or by a fine of not more than $500, or both, and for a subsequent commission of any

such offenses shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than two years, or by a fine of not more than $1000, or both.

(b) Any person who with unlawful intent photographs, prints, or in any other manner makes, or executes, any engraving, photograph, print, or impression in the likeness of any document presented to establish United States citizenship, lawful permanent resident status or employment authorization granted by the Attorney General, as required by subsection 274(d)(5) of the Act or regulations issued thereunder; or any person who with unlawful intent presents or uses such documents, shall upon conviction be fined not to exceed $5,000 or be imprisoned not more than five years, or both.

(c) Any alien who does not have the status of an alien lawfully admitted for permanent residence, or who has not been authorized to be employed by the Attorney General, who willfully and knowingly possesses and presents any document relating to another person for the purpose of obtaining employemnt in the United States, shall upon conviction be fined not to exceed $5,000 or be imprisoned not more than five years, or both.

(b) the designation of section 275 in the table of contents (Title II -Immigration, Chapter 8) of such Act is amended to read as follows:

Sec. 275. Entry of alien at improper time or place; misrepresentation and concealment of facts; misrepresentation of employment status.

Sec. 203. The provisions of this Title shall become effective upon the date of enactment.

Sec. 204. This Title shall be known as the Unlawful Employment of Aliens Act of 1981.

UNLAWFUL EMPLOYMENT OF ALIENS ACT OF 1981

General purpose. The purpose of this bill is to restrict employment opportunities for aliens not entitled to employment in the United States, thereby significantly reducing the major cause of illegal immigration into the United States. The bill would impose penalties on employers who hire aliens who are not lawful permanent residents, or who are not authorized employment by the Attorney General. An employer who hires an alien in violation of this bill would be subject to a $500 fine for each alien so hired, for the first violation, and a $1000 fine per violation for each subsequent violation. If an employer engages in a pattern or practice of violation, an injunction may be obtained. Coverage of this bill is limited to employers employing four or more persons. The bill additionally provides substantial penalties for persons who counterfeit documents used to establish employment authorization, and for persons who use documents relating to another person.

I. Section 201(1)

This subsection includes a provision exempting certain employers from coverage by this bill. An employer who can establish that he did not employ four or more persons, at the time the unauthorized alien was hired is not subject to the penalties and fines incorporated in this bill. This procedure requires an employer to come forward with evidence that he is not a "four-or-more-person employer" once it is established by the government that he has employed an alien who does not have employment authorization, or who is not a lawful permanent resident. This approach is considered necessary to establish that the employer meets the numerical limitations of the bill's coverage. Employers should be easily able to establish the employment history of their business from business records such as tax returns, FICA statements, and other means, which will show the employment level at the time of and prior to the violation. The evidence will be provided from ordinary business records, which will not impose additional record-keeping burdens on employers.

II. Section 201(2)

This subsection provides for a $500 fine for the first violation, and a $1,000 fine for each subsequent violation, for each alien employed in violation of this section. It is anticipated that a district director of the Service would issue a notice of intent to fine, similar to that issued presently in fine cases under section 273 of the Act. The employer would be allowed to

respond in writing if the fine was not contested, or to request a hearing before an immigration judge if the fine was contested. In the latter case, an evidentiary hearing would be conducted as prescribed by regulations issued by the Attorney General, with the employer represented by counsel if he so chooses. Any fine levied would be payable to the district director of the Service district where the violation occurred. Payment could be enforced by civil suit brought in a United States district court. While the employment of illegal aliens is not a crime, the fine that will be imposed upon employers who violate this provision is designed to defray the cost to the Government of detecting violators.

III. Section 201(3)

This provision is aimed at the employer who is a persistent employer of illegal aliens, who engages in a "pattern or practice" of such employment. The term "pattern or practice" has been used in other federal statutes such as the Civil Rights Act of 1964 (42 U.S.C. 2000e-6) and the Fair Housing Act of 1968 (42 U.S.C. 3613). Hiring practices prior to the effective date will be considered in establishing whether a "pattern or practice" exists. The Government will be required to show more than accidental, isolated or sporadic hirings of aliens not authorized employment. Upon determination by the district court that a "pattern or practice" exists, the employer may be enjoined from this activity.

IV. Section 201(4)

This provision establishes a presumption of "knowing" employment where the employer doe not request and obtain documentation that the alien is authorized employment in the United States. This provision will place on an employer a duty to inquire into the employment status of all persons who apply for employment.

V. Section 201(5)

This subsection directs the Attorney General to establish regulations implementing a standard employment form used to determine a job applicant's employment status. This form will list the documents to be presented to establish the applicant's status, such as an alien registration receipt card, birth certificates or passports. The employer and the applicant will sign the form. An employer would be obligated to retain the forms for inspection by an immigration officer for the duration of the person's employment, and for one year following the termination of employment.

VI. Section 201(6)

Under section 5(b)(6) of the Farm Labor Contractor Registration Act (FLCRA), the Secretary of Labor could refuse to issue a certificate of registration to any farm labor contractor who has employed an illegal alien. Section 6F of FLCRA provides that a farm labor contractor is subject to civil and criminal penalties if the contractor employs an illegal alien.

VII. Section 201(2)e

This provision preempts any state or local laws which may be enacted to penalize employers who employ aliens without employment authorization.

VIII. Section 202

A new section 275(b) of the Act is added to provide for criminal penalties for persons who fraudulently duplicate or copy documents used to establish citizenship, permanent resident status or employment authorization granted by the Attorney General. Persons who present or use such fraudulent documents are subject to the same penalties, which consist of a fine up to $5,000 or five years imprisonment, or both.

IX. Section 202(c)

This new subsection penalizes aliens who are not authorized employment in the United States who present documents of another person who is authorized employment or who is a citizen of the United States. This penalty should deter the fraudulent use of valid documents. A $5,000 fine or five years imprisonment, or both, may be imposed upon conviction.

X. Section 203 Date of enactment of this Title.

XI. Section 204 The title of this Title will be the Unlawful Employment of Aliens Act of 1981.

TITLE III - CUBAN/HAITIAN TEMPORARY RESIDENT STATUS ACT OF 1981

Section 301. (a) Except as provided in subsection (c) of this section, the following aliens shall be granted Cuban/Haitian temporary resident status beginning 60 days after enactment of this Act and may remain in the United States under such conditions as the Attorney General may deem appropriate:

(1) Nationals of Cuba who arrived in the United States and presented themselves for inspection after April 20, 1980, and before January 1, 1981; and who are still physically present in the United States;

(2) Nationals of Haiti who on December 31, 1980, were the subjects of exclusion proceedings under section 236 of the Immigration and Nationality Act, including those who on that date were under orders of exclusion and deportation which had not yet been executed;

(3) Nationals of Haiti who on December 31, 1980, were the subjects of deportation proceedings under section 242 of the Immigration and Nationality Act, including those who on that date were under orders of deportation which had not yet been executed;

(4) Nationals of Haiti who were paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act for were granted voluntary departure before December 31, 1980, and were physically present in the United States on that date; and

(5) Nationals of Cuba or Haiti who on December 31, 1980, had applications for asylum pending with the Immigration and Naturalization Service.

(b) The Attorney General may in his discretion grant an alien described in subsection (a) of this section authorization to engage in employment in the United States and provide to that alien an "employment authorized" endorsement or other appropriate work permit.

(c) Cuban/Haitian temporary resident status for any alien may be denied or terminated by the Attorney General, in his discretion, pursuant to such regulations as the Attorney General may prescribe, if the Attorney General determines, with or without a hearing, that the alien is inadmissible under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(d)) (except paragraph (14), (15), (20), (21), (23), if the alien's inclusion in paragraph (23) is the result of only one conviction for possession without intent to distribute narcotic drugs or marihuana, (25) or (32) of subsection (a)), or if the Attorney General determines that:

(1) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;