Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Luttig, Michael: Files
Folder Title: [Haitian Refugees] (6)
Box: OA 10020

To see more digitized collections visit:
https://reaganlibrary.gov/archives/digital-library

To see all Ronald Reagan Presidential Library inventories visit:
https://reaganlibrary.gov/document-collection

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: https://reaganlibrary.gov/citing

National Archives Catalogue: https://catalog.archives.gov/

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 27, 1981

MEMORANDUM FOR MICHAEL LUTTIG

FROM: RICHARD A. HAUSER RAH

RE: NATIONAL SECURITY COUNCIL PROFILE

Please review the attached legislative package regarding the Haitian Interdiction issue and impact, if any, on the OLC opinion.

8·25·81

NATIONAL SECURITY COUNCIL

Dick Hauser:

Attached is the package we discussed.

Bob Kimmitt

NSC/S PROFILE UNCLASSIFIED ID 8104949

RECEIVED 20 AUG 81 13

TO ALLEN FROM CARLSTROM, R DOCDATE 19 AUG 81

KEYWORDS: EMIGRATION LEGAL ISSUES

LEGISLATIVE REFERRAL

SUBJECT: JUSTICE DRAFT PROPOSALS TO IMPLEMENT PRES DECISION ON IMMIGRATION & NATURALIZATION POLICY

ACTION: PREPARE MEMO LENZ TO CARLSTROM DUE: 24 AUG 81 STATUS S FILES

FOR ACTION	FOR CONCURRENCE	FOR INFO
GUHIN	KIMMITT	

COMMENTS

REF# LOG NSCIFID (H /)

ACTION OFFICER (S)	ASSIGNED	ACTION REQUIRED	DUE	COPIES TO

DISPATCH ______ W/ATTCH FILE ____ (C)

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

4949

SPECIAL

August 19, 1981

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of State
Department of Labor
Department of Health & Human Services
National Security Council
Department of Agriculture
Federal Emergency Management Agency
Department of Transportation
Department of Defense
Department of Education

SUBJECT: Justice's eight (8) draft legislative proposals to implement the Presidential decisions on Immigration and Naturalization Policy.

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

A response to this request for your views is needed no later than C.O.B., Tuesday, August 25, 1981.

Questions should be referred to Maurice White (395-3856), the legislative analyst in this office.

Robert E Carlstrom

Robert E. Carlstrom for
Assistant Director for
Legislative Reference

Enclosures

cc:

A. Anderson	N. Stoer
F. Seidl	J. Kelly
P. Hanna	M. Horowitz
D. Kleinberg	J. Ghougasian
J. Wong	M. Uhlmann
J. Barie/B. Sasser	N.R. Sweeney
D. Sitrin	J. Wienberg

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 18 1981

Honorable David A. Stockman
Director
Office of Management & Budget
Washington, D.C. 20503

Dear Mr. Stockman:

Enclosed are copies of proposed communications to be transmitted to the Congress relative to the following proposals:

1. "To amend the Immigration & Nationality Act to provide a temporary resident status for aliens here prior to January 1, 1980 and for other purposes";

2. "To provide penalties for certain persons who employ, or refer for employment, aliens who are in the United States illegally and for other purposes";

3. "To create Cuban/Haitian temporary resident status and for other purposes";

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

5. "To provide separate 40,000 immigrant visa limitations for Mexico and Canada";

6. "To establish an experimental temporary worker program for up to 50,000 Mexican nationals annually";

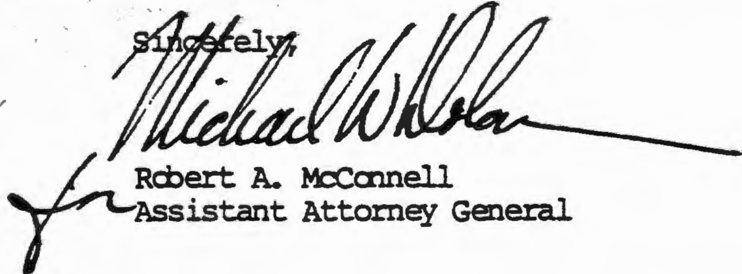
7. "To provide the President with special authority to declare an immigration emergency"; and,

8. "To strengthen the President's authority for the interdiction, seizure and forfeiture of vessels used in violation of our laws."

It is our understanding that there will be an additional proposal to streamline labor certification.

Since these proposals are Presidential items, please advise this Office no later than August 28 on the relationship of the proposed communications to the program of the President.

Sincerely,



Robert A. McConnell
Assistant Attorney General

Enclosures

**To coordinate clearance, contact Yolanda M. Branche at 633-2112.

U.S. Department of Justice

Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

NOT SENT TO CONGRESS

Office of the Assistant Attorney General

Washington, D.C. 20530

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

Dear Mr. Speaker:

There is transmitted herewith a legislative proposal, "To amend the Immigration and Nationality Act to provide a temporary resident status for aliens here prior to January 1, 1980, and for other purposes."

There are between 3.5 million to 6 million illegal aliens now residing in the United States. We have neither the resources, the capability, nor the motivation to uproot and deport millions of illegal aliens, many of whom have become, in effect, members of the community. By granting limited legal status to the productive and lawabiding members of these communities, we will acknowledge the reality of the situation.

This proposal 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 "renewable term temporary resident." This status would be renewal 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 Office of Management and Budget has advised that the enactment of this legislation is in accord with the program of the President.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

To amend the Immigration and Nationality Act to provide a temporary resident status for aliens here prior to January 1, 1980, and for other purposes.

NOT SENT TO CONGRESS

<u>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled</u>, that

(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), (23) as it relates to conviction for possession of marijuana, without intent to distribute, (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, is not maintaining lawful nonimmigrant status on January 1, 1980; and

AUG 17 198

(5) if the alien was 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 granted 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) 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.

(d) An alien who is granted temporary resident status under this section shall not be eligible for any benefits under the Immigration and Nationality Act, except as specifically set forth in sections 1, 2, and 3 of this Act.

(e) 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) aid to families with dependent children under Title IV, Part A, of the Social Security Act (42 U.S.C. 601 et seq.);

(2) supplemental security income for the aged, blind, and disabled under Title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) unless such disability was incurred directly from employment after registration under the provisions of the Act; and,

(3) Food Stamp Act of 1964, as amended (7 U.S.C. 2011 et seq).

(f) An alien granted temporary resident status under this section shall be issued such documentation as the Attorney General may by regulation prescribe.

(g) The Attorney General shall authorize the employment of any alien who is granted conditional resident alien status under this section.

Section 2.

(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 1 of this Act 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 1 of this Act.

Section 3. For the purposes of this Act, the requirement of continuous residence shall be broken by an absence from the United States of (1) more than 30 consecutive days in any 12-month period, or (2) an aggregate of more than 30 days in any 12-month period.

Section 4. The numerical limitations of section 201 of the Immigration and Nationality Act shall be inapplicable to grants of lawful permanent residence under sections 2 of this Act.

LEGALIZATION

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 1 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, and food stamps programs, but may be authorized to work by the Attorney General.

Section 2 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 3 defines "continuous residence" for purposes of this Act as being broken by an absence from the U.S. of more than 30 consecutive days or an aggregate of more than 30 days in any 12-month period.

Section 4 makes the numerical provisions of the INA inapplicable to adjustments under this Act.

U.S. Department of Justice
Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

Office of the Assistant Attorney General

Washington, D.C. 20530

NOT SENT TO CONGRESS

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

Dear Mr. Speaker:

There is herewith transmitted a legislative proposal "To provide penalties for certain persons who employ, or who refer for employment, aliens who are in the United States illegally, and for other purposes."

One of the primary reasons for illegal migration to the United States is the availability of employment without regard to legal status. We cannot seal the border, and efforts to apprehend and deport illegal aliens who are in our country is costly and, at best, a partial solution.

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

Sincerely,

Robert A. McConnell
Assistant Attorney General

TO BUDGET FOR CLEARANCE

NOT SENT TO CONGRESS

A BILL

To amend the Immigration and Nationality Act to provide penalties for certain persons who employ, or who refer for employment, aliens who are in the United States illegally, and for other purposes.

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

(a) Section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) is amended by adding at the end thereof new subsection (d) to read as follows:

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

AUG 18 198

establishes that he has not employed four or more persons on a permanent, seasonal, or part-time basis.

(2) If it appears to the satisfaction of the Attorney General that any alien has been employed in violation of this section, the employer shall pay to the district director of the Immigration and Naturalization Service in the district where the violation occurred the sum of not less than $500 nor more than $1,000 for each alien with respect to whom a violation occurs who is in the employ of the employer on the effective date of this section or who is thereafter so employed. 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 precedure for implementing this subsection.

(3) Upon determination that cause exists to believe that an employer has violated this subsection, the Attorney General may bring actions for both civil penalties or injunctive relief in the United States district court in any district in which the employer is alleged to have violated this subsection, or in any district in which the employer is found or transacts business. For purposes of this subsection, the term "district court" shall include the United States magistrate.

(4) For the purposes of this section, an employer shall be deemed to have knowingly employed an alien who is not authorized

employment in the United States if the employer has reason to believe that the individual is an alien and the employer does not request and obtain evidence that the individual is authorized employment. Provided, that the foregoing shall not prevent the Government for establishing knowing employment by any other means.

(5) The Attorney General shall establish by regulation a form by which every employer as defined in subsection (c)(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 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 residence status, or employment authorization. Such forms as prescribed shall be retained by the employer and shall be available for inspection by officers of the Immigration and Naturalization Service."

"(D) The provisions of this section are intended to pre-empt any state or local laws imposing civil or criminal sanctions upon those who employ, or facilitate the employment, of aliens not authorized to work in the United States."

(b) The title preceding section 274 of such Act is amended to read as follows:

"BRINGING IN AND HARBORING CERTAIN ALIENS: RESTRICTION OF EMPLOYMENT OF ALIENS."

(c) The designation of section 274 in the table of contents (Title II - Immigration, Chapter 8) of such Act is amended to read as follows:

"Sec. 274. Bringing in and harboring certain aliens: restriction of employment of aliens."

Sec. 2. Section 275 of the Immigration and Nationality Act, (8 U.S.C. 1325) is designated as section 275A.

(a) The title preceding section 275 of the Act is amended to read as follows:

"ENTRY OF ALIEN AT IMPROPER TIME OR PLACE: MISREPRESENTATION AND CONCEALMENT OF FACT: MISREPRESENTATION OF EMPLOYMENT STATUS"

(b) Section 275 of the Act is hereby amended by adding after subsection (a) a new subsection (b) to read as follows:

"(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(c)(5) of the Act or regulations issued thereunder; or any person who with unlawful intent presents

such documents, shall upon conviction be fined not to exceed $5,000 or be imprisoned not more than five years, or both."

(c) 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 improper time or place; misrepresentation and concealment of facts; misrepresentation of employment status."

<u>Sec. 3</u>. The provisions of this Act shall become effective upon the date of enactment.

SECTION-BY-SECTION ANALYSIS

I. Subsection (d)(1) of Section 274 of the Act.

This subsection includes a provision exempting certain employers from coverage by this bill. An employer who can establish (a) that he did not employ four or more persons, on a permanent, seasonal, or part-time basis 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. Subsection (d)(2).

This subsection provides for a $500 - $1,000 fine per violation for each alien employed in violation of this section. The fine is to be paid to the district director of the Immigration and Naturalization Service in whose district the violation occurs. This procedure would allow a system of notice of intent to fine similar to the procedure used presently in fine cases under section 273. The procedures are set forth in 8 C.F.R. 280 et seq. Payment would be enforced by civil suit in a district court.

III. Subsection (d)(3).

This provision is aimed at an employer who shows a disregard for the law, as it establishes a means for the government to go into district court to sue for civil penalties and injunctive relief. An action may be brought in any district where the violation occurs, the employer transacts business, or the employer is found.

IV. Subsection (d)(4).

This provision attempts to define the term "knowingly". It combines the standard used in section 287 of the Act, 8 U.S.C. 1357, which is the basis for interrogating an alien or any person who is believed to be an alien, as to his right to be in the United States, with an affirmative duty on the part of the

employer to make an inquiry into the individual's employment status, once the employer has reason to believe that the individual is an alien. This is in essence a standard of "reasonable diligence". This approach will allow the use of a standard with which the Immigration and Naturalization Service and the Board of Immigration Appeals have a certain amount of experience, and would allow reference to the body of administrative and judicial interpretations which exists in regard to fine cases.

V. Subsection (d)(5).

This subsection provides for a procedure by which the Attorney General shall by regulation prescribe an employment form establishing the employment status of a prospective employee. The Attorney General will by regulation prescribe the type of documents that a job applicant must provide to establish his United States citizenship, lawful permanent resident status or employment authorization granted by the Attorney General. The forms prescribed would be retained by the employer for inspection by Immigration and Naturalization Service officers.

VI. Subsection (f).

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

VII. Section 275 (b) of the Act.

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 established citizenship, permanent resident status or employment authorization granted by the Attorney General. Persons who present such fraudulent documents are subject to the same penalties, which consist of a fine up to $5,000 or five years imprisonment or both.

U.S. Department of Justice
Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

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

NOT SENT TO CONGRESS

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

Dear Mr. Speaker:

There is herewith transmitted a legislative proposal, "To create Cuban/Haitian temporary resident status and for other purposes."

As a result of the 1980 "Mariel boatlift," 125,000 undocumented Cubans entered the United States claiming asylum. During that same year approximately 35,000 Haitians arrived in Florida seeking relief from deportation or exclusion.

This proposal repeals 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 renewable term "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 Office of Management and Budget has advised that the enactment of this legislation is in accord with the program of the President.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

To create Cuban/Haitian temporary resident status and for other purposes.

NOT SENT TO CONGRESS

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 "Cuban/Haitian Temporary Resident Status Act of 1981."

Sec. 2. (a) Except as provided in subsection (c) of this section, the following aliens shall be granted Cuban/Haitian temporary resident status 30 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 were paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act after April 20, 1980, and before January 1, 1981;

(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;

AUG 17 1981

(4) Nationals of Haiti who were paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act 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 that the alien is excludable under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(d)) (except paragraph (14), (15, (20), (21), (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;

(2) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(3) there are serious reasons for considering that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(4) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

(5) the alien is in detention at the time this Act is enacted; or

(6) if the alien has been certified under section 234 as afflicted with a disease specified in section 212(a)(6), or with any mental disease, defect, or disability which would bring such alien within any of the classes excluded from admission to the United States under paragraphs (1), (2), (3), (4), or (5) of section 212(a).

(d) An alien granted Cuban/Haitian temporary resident status under this section shall register with the Immigration and Naturalization Service every three years, under such regulations as the Attorney General may prescribe, for so long as the alien remains in temporary resident status.

(e) An alien granted Cuban/Haitian temporary resident status shall be eligible for benefits under section 501 of the Refugee Education Assistance Act of 1980 (P.L. 96-122). Upon termination of eligibility for benefits under the Refugee Education Assistance Act of 1980, an alien granted Cuban/Haitian temporary resident status shall not be eligible for any benefits under any of the following provisions of law:

(1) Aid to families with dependent children under Title IV, Part A, of the Social Security Act (42 U.S.C. 601 et seq.);

(2) supplemental security income for the aged, blind, and disabled under Title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) unless such disability was incurred directly from employment after registration under the unemployment provisions of the Act; and

(3) Food Stamp Act of 1964, as amended (7 U.S.C. 2011 et seq.).

(f) Nothing in this section shall waive the civil or criminal penalties of sections 273 and 274 of the Immigration and Nationality Act.

Sec. 3. (a) Any alien (except an alien specified in section 2(a)(3), or an alien specified in section 2(a)(5) who has entered the United States) who is denied Cuban/Haitian temporary resident status for any of the reasons set forth in section 2(c), or whose status is terminated pursuant to the provisions of section 2 shall be detained pending a final detemination of admissibility, or pending release on parole, or pending deportation if the alien is found excludable, unless an examining officer finds that the alien is clearly and beyond a doubt entitled to be admitted to the United States. Such detention shall be in any prison or other detention facility or elsewhere, whether maintained by the Federal Government or otherwise, as the Attorney General may direct. The Attorney General may at any time transfer an alien from one place of detention to another. No alien shall be released from detention pending a final determination of admissibility, or pending exclusion or deportation if the alien is found excludable, except in the discretion of the Attorney General, and under such conditions as the Attorney General may prescribe, including release on bond. No court shall review any decision of the Attorney General made pursuant to this paragraph to detain, to transfer or to release an alien, except that any person so detained may obtain review, in habeas corpus proceedings, on the question of whether that person falls within the category of aliens subject to detention.

(b) An alien specified in section 2(a)(3), or an alien specified in section 2(a)(5) who has entered the United States, who is denied Cuban/Haitian temporary resident status for any of the reasons set forth in section 2(c), or whose status is terminated pursuant to the provisions of section 2 shall be dealt with in accordance

Sec. 4. (a) Notwithstanding any numerical limitations in the Immigration and Nationality Act, the Attorney General, in his discretion and under such regulations as he may prescribe, may adjust the status of a Cuban/Haitian temporary resident to that of an alien lawfully admitted for permanent residence if the alien:

(1) applies for such adjustment;

(2) is not firmly resettled in any foreign country;

(3) has been physically present in the United States for at least five years after the earliest date upon which he came within any category specified in section 2(a)(1)-(5);

(4) can demonstate an understanding of the English language, including an ability to read, write, and speak words in ordinary usuage 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

(5) is admissible (except as otherwise provided in subsection (b)) as an immigrant under the Immigration and Nationality Act at the time of examination for adjustment of such alien.

(b) The provisions of paragraphs (14), (20), (21), and (32) of section 212(a) of the Immigration and Nationality Act shall not be applicable to an alien seeking adjustment of status under this section, and the Attorney General may waive any

other provision of such section (other than paragraph (27), (29), or (33) and other than so much of paragraph (23) as relates to trafficking in narcotics) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

Sec. 5. (a) An alien granted Cuban/Haitian temporary resident status may not apply for asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and any application for asylum under section 208 or under any other provision of law filed by the alien but not approved before the alien was granted Cuban/Haitian temporary resident status shall be denied.

(b) Subsection (c) of section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) and subsection (b) of section 209 (8 U.S.C. 1159) of that Act shall not be applicable to an alien granted Cuban/Haitian temporary resident status or to the spouse or child of such alien.

Sec. 6. Public Law 89-732 is repealed.

Sec. 7. (a) Section 501 of the Refugee Education Assistance Act of 1980 is amended by striking out "Cuban and Haitian entrants" and inserting instead "designated Cuban and Haitian arrivals"

(1) in subsection (a)(1);

(2) in subsection (b);

(3) in subsection (c)(1)(A); and

(4) in subsection (e).

(b) Subsection (d) of such section is amended by striking out "Cuban or Haitian entrant" and inserting instead "designated Cuban or Haitian arrival".

Sec. 8. There are hereby authorized to be appropriated such sums as may be necessary for the purpose of carrying out the provisions of this Act.

CUBAN/HAITIAN TEMPORARY RESIDENT LEGISLATION

Section-by-Section Analysis

Section 2 of the bill grants "Cuban/Haitian temporary Resident" status to Cubans who were paroled into the United States between April 20, 1980, and January 1, 1981, or who had applications for asylum pending with the Immigration and Naturalization Service on December 31, 1980, and to Haitians who were (1) subjects of exclusion or deportation proceedings on December 31, 1980, or (2) were paroled into the United States before December 31, 1980, or (3) who had applications for asylum pending on December 31, 1980. Cuban/Haitian temporary resident status would be granted 30 days after enactment of this Act. The Attorney General would be authorized to deny Cuban/Haitian temporary resident status to, or terminate the status of, any alien who is excludable under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182), with certain exceptions. It makes temporary resident status inapplicable to detainees and to aliens certified as inadmissible by the Public Health Service. This section would also permit the Attorney General to authorize Cuban/Haitian temporary residents to engage in employment in the United States. Subsection (d) provides that, notwithstanding that this section gives legal status to these aliens, the penalty provisions of section 273 and section 274 of the Immigration and Nationality Act would still apply to the boat captains who brought them in.

The section provides that aliens granted Cuban/Haitian temporary resident status must register with the Attorney General every three years and makes them ineligible for any government benefits once benefits under the Refugee Assistance Act of 1980 expire.

Section 3 provides for detention of aliens denied Cuban/Haitian temporary resident status until a final determination of admissibility is made, or pending determination, so that an alien may be detained for an indeterminate period. The section limits judicial review of such detention to habeas corpus proceedings on the question of whether that person falls within the category of aliens subject to exclusion. Persons eligible for deportation proceedings would be processed under section 242, as presently.

Section 4 authorizes the Attorney General to adjust the status of a Cuban/Haitian temporary resident to that of an alien lawfully admitted for permanent residence after the alien has maintained temporary resident status for five years. The Cuban/Haitian temporary resident may be denied adjustment if he is firmly resettled in another country or inadmissible under the Immigration and Nationality Act (8 U.S.C. 1182). The Attorney General is authorized to waive grounds for exclusion (with the exception of the provisions regarding national security, association with the Nazi government or trafficking in narcotics) for humanitarian purposes, to assure family unity, or when it otherwise would be in the public interest. These adjustments would not count against the numerical limitations of the Immigration and Nationality Act.

Section 5 terminates asylum proceedings for all temporary residents who have not been granted asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) as of the date they are granted Cuban/Haitian temporary resident status. Those aliens granted asylum prior to the enactment of this Act will retain their status and will also be granted Cuban/Haitian temporary resident status if

eligible under this Act. For purposes of adjustment of status and family reunification, such aliens will be treated as Cuban/Haitian temporary residents.

Section 6 repeals the Cuban Refugee Adjustment Act, P.L. 89-732. Under P.L. 89-732, the Cubans would otherwise be eligible for adjustment once they complete a year of physical presence.

Section 7 adopts a new term to describe the class of individuals to whom section 501 of the Refugee Education Assistance Act of 1980 may be applicable. Persons granted Cuban/Haitian Entrant status by this Act represent only part of the class of whom section 501 applies. However, the term used in section 501, "Cuban and Haitian entrant", is so close to the term describing the status created by this Act as to make highly desirable the use of some other term for the broader category. Persons granted Cuban/Haitian status under this Act would meet the definition of the class to whom section 501 of the Refugee Education Assistance Act applies under subsection 501(e)(1) of that Act.

Section 8 authorizes appropriations to carry out the provisions of this Act.

U.S. Department of Justice

Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

Office of the Assistant Attorney General

Washington, D.C. 20530

NOT SENT TO CONGRESS

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

Dear Mr. Speaker:

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

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

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

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

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

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

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

U. S. Department of Justice

Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

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

NOT SENT TO CONGRESS

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

Dear Mr. Speaker:

There is transmitted herewith a legislative proposal "To provide separate 40,000 immigrant visa limitations for Mexico and Canada."

Under this proposal Mexico and Canada would each receive 40,000 immigrant visas annually. Any unused visas in one country 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 Office of Management & Budget has advised that the enactment of this legislation is in accord with the program of the President.

Sincerely,

Robert A. McConnell
Assistant Attorney General

TO BUDGET FOR CLEARANCE

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

NOT SENT TO CONGRESS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) the country in which he was born;

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

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

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

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

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

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

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

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

Section-by-Section Analysis and Background

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

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

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

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

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

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

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

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

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

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

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

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

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

U.S. Department of Justice
Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

Office of the Assistant Attorney General

Washington, D.C. 20530

NOT SENT TO CONGRESS

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

Dear Mr. Speaker

There is herewith transmitted a legislative proposal, "To amend the Immigration and Nationality Act, and for other purposes."

This proposal 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.

In states where it was certified that there was an adequate supply of American workers, certain job categories would be excluded from this program. The existing H-2 temporary worker program would continue to operate.

During the trial period, the 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.

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

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

NOT SENT TO CONGRESS

A BILL

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

(a) During each of two consecutive twelve month periods beginning on the first day of the seventh month following enactment of this section, there are authorized to be admitted to the United States as nonimmigrants not more than fifty thousand aliens who --

(1) are nationals of Mexico;

(2) have a residence in Mexico which they have no intention of abandoning;

(3) are seeking to enter the United States temporarily to perform services or labor as specified in subsection (b) of this section;

(4) are in possession of a nonimmigrant visa issued by a consular officer as provided in subsection (c) of this section; and

AUG 1 7 1981

(5) are otherwise admissible under the Immigration and Nationality Act, as amended, to the United States as nonimmigrants.

(b)(1) Prior to the beginning of each twelve-month period specified in subsection (a) of this section, the Governor of each of the states of the United States wishing to participate in the program established in this section, shall, (A) using a format which may be prescribed by the Secretary of Labor, establish a list of industries, following the Standard Industrial Classification Code, and/or a list of occupations, following the Dictionary of Occupational Titles, containing the industries and/or occupations having an adequate supply of qualified workers within such State; and (B) estimate how many aliens described in subsection (a) of this section might be admitted to the United States for employment in other occupations in such state without adversely affecting labor conditions therein.

(2) Upon receipt of the determinations made by the several states pursuant to subsection (b)(1)(B) of this section, the Secretary of Labor shall calculate the national total of such estimates. If such total exceeds fifty thousand, the Secretary shall assign to each state a total which shall bear to 50,000 the same relationship as that state's estimates bears to the national total of such estimates. The Secretary shall thereupon promptly inform the Secretary of State and the Commissioner of Immigration and Naturalization of such estimates or of the total assigned to each state.

(3) Any person in the United States intending to employ an alien described in subsection (a) of this section may apply to the Governor of the state in which the alien will be employed, in such form as the Secretary of Labor may prescribe, and submit a statement identifying the occupation in which employment is to be offered to the alien, using the Dictionary of Occupational Titles, and certifying that the employer will comply with all Federal, State and local laws regarding such employment. Upon receipt of such application, the Governor shall approve such application and endorse it appropriately, if (1) the occupation in which the alien is to be employed is not included on the list prepared pursuant to subsection (b)(1)(A) for such state; and (2) if the number of such applications approved for such state in the same twelve-month period has not reached the number established for such state pursuant to subsection (b)(2). Nothing in this section shall be construed to authorize or require the Secretary of Labor to participate in the recruitment of workers under this section.

(4) Upon approval and endorsement of an application, the Governor shall transmit the endorsed application to the consular office at which the alien will apply for a visa.

(c) After receipt of the application as provided in subsection (b)(4) of this section, the consular officer may, upon application therefor by an alien designated by the employer, issue a nonimmigrant visa to the alien, provided the alien is otherwise eligible therefor as provided in subsection (a) of this section. Such visa shall be in the form prescribed by the Secretary of State for nonimmigrant visas generally, shall bear the visa symbol "M" and shall be valid for no more than one year from the date of issuance of such visa.

(d) When an alien in possession of a visa issued pursuant to subsection (c) applies for admission to the United States, the Attorney General shall, if he finds that the alien is admissible to the United States, admit the alien for a period of no more than 365 days.

(e) An alien admitted pursuant to subsection (d) of this section may be granted permission to change employment, upon application by the employer for whom the alien desires to work, provided that (1) such employment is in a state participating in the program established by this section; and (2) such employment is not in an occupation listed pursuant to subsection (b)(1)(A) for such state. An employer desiring and intending to employ such an alien may apply to the Governor of the State on the form prescribed pursuant to subsection (b)(1) of this section. If the Governor determines that such employment is not in an occupation listed pursuant to subsection (b)(1)(A) of this section for the State, he shall approve such application and return it to the employer. The employer shall thereupon furnish the approved application to the alien and instruct him to apply to the District Office of the Immigration and Naturalization Service having jurisdiction over the place of proposed employment, for annotation of the alien's entry record to reflect the change of employment and for extension of his authorized period of admission, if necessary. Actual employment of the alien by the new employer prior to the procedure prescribed in this subsection shall constitute employment in violation of the provisions of this section within the meaning of subsection (f) of this section.

(f) An alien admitted pursuant to the provisions of this section who thereafter is employed in violation of the provisions of this section, remains longer than authorized under this section, or otherwise violates the terms and conditions of his admission shall not thereafter be eligible for admission pursuant to this section.

(g) an alien who is the spouse or child of an alien admitted pursuant to this section shall not be admissible to the United States on the basis of such relationship.

(h) No alien admitted pursuant to this section shall be eligible to receive any of the following benefits --

(1) aid to families with dependent children under Title IV, Part A, of the Social Security Act (42 U.S.C. 601 et seq.);

(2) supplemental security income for the aged, blind and disabled under Title XVI of the Social Security Act (42 U.S.C. 1381, et seq.) unless such disability was incurred directly from employment in the United States pursuant to this section;

(3) food stamps under the Food Stamp Act of 1964, as amended (7 U.S.C. 2011, et seq.); or

(4) benefits under any State or Federal unemployment compensation program based on any services performed or any wages earned while present in the United States after such admission; Provided, however, That no employer of such an alien shall be exempt from taxation on the wages paid to such alien under any state unemployment compensation law or under

chapter 23 of the Internal Revenue Code of 1954 because of such alien's status as an alien, the admission of such alien pursuant to this section, or the temporary nature of such admission.

(i)(1) Notwithstanding the provisions of the Immigration and Nationality Act, as amended, no alien admitted as a nonimmigrant pursuant to the provisions of this section shall be granted adjustment of status pursuant to section 245 thereof to that of an alien lawfully admitted for permanent residence, change of nonimmigrant classification pursuant to section 248 thereof, or suspension of deportation pursuant to section 244 thereof.

(2) Except as otherwise provided in this section, the provisions of the Immigration and Nationality Act, as amended, shall apply in the administration and enforcement of the provisions of this section.

(j) Not later than ninety days following the end of each twelve-month period specified in subsection (a) of this section, the Governor of each State which has participated in the program established by this section during such twelve-month period shall submit to the Secretary of Labor a detailed report of the operation of the program in such State. The report shall contain such information as the Secretary of Labor may prescribe, including, but not limited to, the number of workers employed under this program in the state, the occupations and industries in which such workers were employed, the locations within the state at which such workers were employed, and the wages and working conditions of such employment.

U.S. Department of Justice

Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

Office of the Assistant Attorney General

Washington, D.C. 20530

NOT SENT TO CONGRESS

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

Dear Mr. Speaker:

There is herewith transmitted a legislative proposal "To amend the Immigration and Nationality Act, and for other purposes."

This legislation would permit the President to declare an "immigration emergency" in order 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 USC 1230A through 8 USC 1230E).

The need for this legislation became apparent as a result of the 1980 Cuban flotilla, during which the United States was unable to restrain the mass migration of thousands of Cubans. This legislation should 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 Cuban flotilla demonstrated that persons living in the United States could become prime participants in a mass migration by providing the means of transportation for the aliens seeking to enter the United States. The Cuban flotilla also demonstrated that in certain circumstances United States residents may be willing to lend this assistance even though the aliens may not be entitled to admission.

Several of the provisions in this bill 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 as 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 from a

designated agency 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 to 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.

First, 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 calling of an immigration emergency, would also meet the criteria of IEEPA. However, there are other situations which would justify the calling 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.

Second, 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.

Third, 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 should 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 Office of Management and Budget has advised that the enactment of this Legislation is in accord with the program of the President.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

AN ACT

NOT SENT TO CONGRESS

To amend 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 Chapter 4 of Title II of the Immigration and Nationality Act is amended by inserting at the end thereof the following new sections (8 USC 1230A through 1230E):

"Sec. 240A. Declaration of Immigration Emergency

(a) The President may declare an immigration emergency with respect to any specifically designated foreign country or countries or geographical area or areas, if the President, in his judgment, determines that:

(1) a substantial number of aliens who lack documents authorizing entry to the United States appear to be ready to embark or have already embarked for the United States, and the aliens will travel from, or are likely to travel in transit through, the foreign country or countries or the geographical area or areas; and

(2) the normal procedures of the Immigration and Nationality Act or the current resources of the Immigration and Naturalization Service would be inadequate to respond effectively to the influx of these aliens.

(b) Within 48 hours of the declaration of any immigration emergency, the President shall inform the Speaker of the House and the President pro-tempore of the Senate of the reasons prompting

AUG 17 1981

the declaration. The President shall cause the declaration to be published in the Federal Register as soon as practicable. The declaration shall expire automatically 120 days after its proclamation, unless ended sooner by the President. The President may extend the declaration for additional periods of 120 days by following the procedures set forth in this subsection, if, in his judgment, the conditions listed in subsection (a) continue to exist.

"Sec. 240B. Emergency Powers and Procedures

(a) Upon the declaration of an immigration emergency under Section 240A, the President may invoke the following emergency powers and procedures:

(1) All United States vessels, vehicles and aircraft, and any other vessel, vehicle or aircraft which is owned or operated by, chartered to, or otherwise controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any political subdivision thereof, bound directly or indirectly for a designated foreign country or geographical area may be precluded from departing from the United States or may be intercepted while en route and required to return to the United States if feasible, or to any other reasonable location until such time as it is feasible to return to the United States, or, if appropriate, allowed to proceed to any other reasonable location.

(2) The arrival in the United States of any aliens or class of aliens who lack documents authorizing entry

to the United States or who are otherwise inadmissible and who are traveling directly or indirectly from or in transit through a designated foreign country or geographical area may be prevented by returning or requiring the return to any such alien or any vessel, vehicle, or aircraft carrying any such alien to the designated country or area, or to any other suitable country or area.

(3)(i) The exclusion or admission to the United States of any alien, regardless of nationality, who is traveling to the United States directly or indirectly from or through the designated foreign country or geographical area and who is not in possession of a visa or other entry document required for admission to the United States by statute or regulation may be determined under procedures established by the Attorney General (whether by regulation or otherwise), and no such alien shall be presented for inquiry before a special inquiry officer unless such presentation is authorized by the Attorney General pursuant to regulation.

(ii) Notwithstanding section 208, or any other provision of law, the Attorney General may establish by regulation or otherwise a separate procedure to consider an asylum claim advanced by an alien whose admissibility is to be determined in accordance with this paragraph.

(iii) Any alien found inadmissible to the United States pursuant to the procedures established by the Attorney General under this paragraph shall be deported to the country from whence he came. If the Attorney General determines that the alien should not or cannot practicably be removed to the country from whence the alien came, the Attorney General may deport the alien to any country described in section 243(a), without regard to the designation of the alien or the order of countries set forth in section 243(a).

(iv) Any alien admitted to the United States under this paragraph shall be admitted for such time and under such conditions as may be prescribed by the Attorney General, including the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe to insure compliance with the terms and conditions of the alien's admission.

(v) No court shall have jurisdiction to review the determination of admissibility or nonadmissibility, or the determination of any asylum claim with respect to any alien who is subject to this paragraph.

(4) Every alien who is subject to the provisions of this section shall be detained pending a final determination of admissibility, or pending release on parole,

or pending deportation if the alien is found excludable, unless an examining officer finds that the alien is clearly and beyond a doubt entitled to be admitted to the United States. Such detention shall be in any prison or other detention facility or elsewhere, whether maintained by the Federal Government or otherwise, as the Attorney General may direct. The Attorney General may at any time transfer an alien from one place of detention to another. No alien shall be released from detention pending a final determination of admissibility, or pending deportation if the alien is found excludable, except in the discretion of the Attorney General, and under such conditions as the Attorney General may prescribe, including release on bond. Any alien applying for admission from foreign contiguous territory may, in the discretion of the Attorney General, be required to remain outside of the United States pending a final determination of admissibility. No court shall review any decision of the Attorney General made pursuant to this paragraph to detain, to transfer or to release an alien, except that any person so detained may obtain review, in habeas corpus proceedings, on the question of whether that person falls within the category of aliens subject to detention. Nothing in this paragraph shall relieve a carrier

or any other person of any liability, duty or consequence pertaining to the detention of aliens which may arise under any other provision of the Act or other law.

(5) (i) The President may exempt any source of any department, agency, or instrumentality in the executive branch from applicable environmental requirements pursuant to section 1323(a) of title 33 and sections 300j-6(b), 4903, 6961, and 7418(b) of title 42 of the United States Code.

(ii) Upon a Presidential finding, transmitted to Congress, that an exemption is necessary to respond to an immigration emergency, the President may exempt any source or action of any department, agency, or instrumentality in the executive branch which is directly and substantially related to an immigration emergency from applicable requirements of the National Environmental Policy Act, 42 U.S.C. 4331 et seq., the Coastal Zone Management Act, 46 U.S.C. 1451 et seq., the Endangered Species Act, 16 U.S.C. 1531 et seq., The Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq., the Historic Preservation Act, 16 U.S.C. 470 et seq., and from the applicable requirements of any other Federal, state or local law which is intended principally to protect or preserve the environment, wildlife, or aspects of the history or heritage of the United States.

(iii) Except with respect to matters concerning the detention of aliens, an exemption under this paragraph shall lapse upon termination of an immigration emergency. In no event shall any exemption under this paragraph last more than one year. An exemption with respect to matters concerning the detention of aliens shall last until terminated by the President, or the expiration of one year, whichever occurs first. During the time period in which an exemption applies the President may, in his discretion, require that a source nonetheless meet certain environmental standards without thereby creating a private right of action to enforce that requirement.

(b)(1) During the existence of the immigration emergency, the President may order the closing or sealing of any harbor, port, airport, road or any other place, structure or location which may be used as a point of departure from the United States to a designated foreign country or geographical area, if, in the President's judgment, such action is necessary to prevent the arrival in the United States of aliens who are inadmissible and who are traveling from or in transit through a designated country or area.

(2) No person shall cause any vessel, vehicle or aircraft to depart from or beyond a closed or sealed harbor, port, airport, road, place, structure or location during an immigration emergency, unless written permission has been obtained for

such departure prior to the actual departure of the vessel, vehicle or aircraft.

(3) Permission for departure from or beyond a closed or sealed harbor, port, airport, road, or any other place, structure or location shall be given only for those vessels, vehicles, and aircraft which are clearly shown not to be destined for a designated foreign country or geographical area. The agency designated by the President under subsection (c) of this section shall prescribe the procedures to be followed in requesting departure permission. In the absence of such procedures, permission may be sought from any agency directly involved in the closing or sealing of the harbor, port, airport, road, or other place, structure or location. A final decision shall be made on any request for departure permission within 72 hours of the request, unless the person seeking such permission consents to a longer period. If no action is taken on the request within the requisite period, the request for departure permission shall be deemed denied.

(4) The district courts of the United States shall have jurisdiction to review any final decision denying permission to depart under paragraph (3) of this subsection, except that review may be obtained prior to a final administrative decision with respect to any vessel, vehicle or aircraft if

irreparable injury would occur before a
final administrative decision could be
obtained.

(c) Although the President may not delegate the authority to initiate those emergency powers of this section which expressly require Presidential invocation, the President may designate one or more agencies of the Federal Government to administer the provisions of sections 240B through 240D. In the course of enforcement of these provisions, the designated agency may promulgate regulations and may request assistance from any state or local agency or from any civilian Federal agency. The President may 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 or military component requested or directed to render assistance or services during an immigration emergency is authorized to stop, board, inspect and seize any vessel, vehicle or aircraft which is subject to the provisions of sections 240B through 240D.

(e) In providing assistance under sections 240B through 240D, agencies shall have the same authority as for disaster relief under 42 U.S.C. 5149.

(f) The provisions of paragraphs (3) and (4) of subsection (a) of this section shall continue to govern any aliens subject to those provisions, regardless of the termination of the immigration emergency.

(g) The President may direct the enforcement of subsection (a) of this section beyond the territorial limits of the United States including on the high seas.

(h) Nothing in this section shall relieve any carrier or any other person of any civil or criminal liability, duty, or consequence that may arise from the transportation or the bringing of any alien to the United States.

"Sec. 240C. Travel Restrictions and Licensing

(a) Upon the declaration of an immigration emergency under section 240A, it shall be unlawful for any person to cause any United States vessel, vehicle, or aircraft, or any other vessel, vehicle or aircraft which is owned by, chartered to or otherwise controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any political subdivision thereof, to travel or be transported to a designated foreign country or geographical area or to within such distance therefrom as the President may specify, unless prior approval has been obtained from an agency designated by the President.

(b) The designated agency may, for authorized purposes, grant prior approval for travel to or around a designated foreign country or geographical area by regulation for certain classes or categories of vessels, vehicles and aircraft. The owner or operator of any vessel, vehicle, or aircraft not authorized by regulation to travel to or around a designated country or area may apply to the designated agency for a license granting permission for one or more trips to that country or area. The designated agency shall establish by regulation the procedures governing the application for and the approval and revocation of such licenses.

The designated agency may authorize officials of any other United States agency to accept and transmit applications for licenses to the designated agency or to grant or deny such licenses under standards established by the designated ageny.

(c) No travel to or within such distance as the President may specify from a designated foreign country or area shall be approved if it appears that such travel may result in or contribute to a violation of any statute or regulation relating to the immigration of aliens to the United States.

(d) Nothing in this section shall be construed to require the agency designated by the President to approve the travel of any vessel, vehicle or aircraft to a designated country or area or within the specified distance therefrom.

"Sec. 240D Penalties

(a)(1) Any vessel, vehicle or aircraft involved in a violation of section 240B(b)(2) or section 240C(a) shall be forfeited and the owner, operator, and any person causing such vessel, vehicle or aircraft to be involved in the violation shall be subject to a civil fine of $10,000 for each separate act in violation of those sections. This subsection shall become effective on the day following the day of publication of the declaration of the immigration emergency in the Federal Register, except that this subsection shall be immediately effective as to any person who has learned or been informed of the existence of the declaration.

(2) All provisions of the customs laws relating to the seizure, summary and judicial forfeiture, and condemnation of property; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeiture;

and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred, under the provisions of this section insofar as applicable and not inconsistent with the provisions hereof, except that duties imposed on customs officers or other persons regarding the seizure and forfeiture of property under the customs laws may be performed with respect to seizure and forfeitures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General.

(3) Whenever a conveyance is forfeited under this section the Attorney General may:

(i) retain the conveyance for official use;

(ii) sell the conveyance, in which case proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs, with the remaining proceeds, if any, turned over to the United States Treasury;

(iii) require that the General Services Administration take custody of the conveyance and remove it for disposition in accordance with law; or

(iv) dispose of the conveyance in accordance with the terms and conditions of any petition of remission or mitigation of forfeiture granted by the Attorney General.

(4) In all suits or actions brought for the forfeiture of any conveyance seized under this section, where the conveyance is

claimed by any person, the burden of proof shall lie upon such claimant: Provided, that probable cause shall be first shown for the institution of such suit or action, to be judged of by the court.

(b) Any person who knowingly engages or attempts to engage in any conduct prohibited by the terms of section 240B(b)(2) or section 240C(a) shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $50,000 or by imprisonment for a term not exceeding five years, or both, for each separate prohibited act. This subsection shall become effective on the day following the day of publication of the declaration of the immigration emergency in the Federal Register, except that this subsection shall be immediately effective as to any person who has learned or been informed of the existence of the declaration.

(c) Any alien who willfully violates a condition of his admission under section 240B shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(d) The requirements and sanctions imposed by this section shall be in addition to those set forth by other provisions of law.

(e) Violations of any provisions of the Immigration and Nationality Act committed during the immigration emergency may be investigated by the Federal Bureau of Investigation, the Immigration and Naturalization Service, the Coast Guard, or any component of the Department of Treasury or the Department of Commerce. Assistance in investigating or enforcing this section may be provided by any Federal, state, or local agency, including the Army,

Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

"Sec. 240E. Definitions

As used in sections 240A through 240D:

(1) The term "vessel" means any ship, boat, barge submarine, raft, or other craft or structure capable of being used as a means of transportation on, under or immediately above the water.

(2) The term "vehicle" means any automobile, motorcycle, bus, truck, cart, train, or other device or structure capable of being used as a means of transportation on land.

(3) The term "aircraft" means any airplane, helicopter, glider, balloon, blimp, or other craft or structure capable of being used as a means of transportation in the air.

(4) The terms "United States vessel, vehicle or aircraft" include any vessel, vehicle, or aircraft documented, registered, licensed, or numbered under the laws of the United States or any political subdivision thereof.

(5) The term "agency" includes any executive department and components thereof, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency."

Sec. 2.

Subsection (b) of Section 273 of the Immigration and Nationality Act (8 USC 1323(b)) is amended by substituting the

figure "$3,000" for the figure of $1,000 in the first sentence thereof, by deleting the last sentence of that subsection, and by adding the following at the end thereof:

"Such sums shall be a lien upon the vessel or aircraft involved in a violation of the provisions of subsection (a) of this section, and such vessel or aircraft may be libeled therefore in the appropriate United States Court. In addition, pending the determination of liability to the payment of such sums or while such sums remain unpaid, said vessel or aircraft may be denied clearance, or summarily seized, or both, unless a deposit is made of an amount sufficient to cover such sums or of a bond with sufficient surety to secure the payment thereof satisfactory to the Attorney General."

Sec. 3.

Subsection (b) of Section 235 of the Immigration and Nationality Act (8 USC 1225(b)) is amended by inserting after the word "in" the first time it appears "Section 240B,".

Sec. 4.

There are authorized to be appropriated to the President specifically to fund expenses incurred in carrying out the purposes of Sections 240A through 240E of the Immigration and Nationality Act an amount not to exceed ____________. Amounts appropriated under this section are authorized to remain available until expended.

SECTION-BY-SECTION ANALYSIS OF LEGISLATION AUTHORIZING THE PRESIDENT TO DECLARE AN "IMMIGRATION EMERGENCY" TO RESPOND TO THE MASS MIGRATION OF VISALESS ALIENS

Declaration of the Emergency

Section 240A(a) allows the President to declare an immigration emergency if, in his judgment, a substantial number of undocumented aliens are about to embark or have embarked for the United States, and the procedures of the Immigration and Nationality Act or the resources of the Immigration and Naturalization Service would be inadequate to respond to the expected influx. The triggering criteria have been broadly worded to allow the President reasonable flexibility. Clearly, the Secretary of State and the Attorney General would play key roles in advising the President concerning the need for and the consequences of declaring an emergency.

The language pertaining to a "substantial number" of aliens is necessarily inexact. The President could not have expected to have precise estimates of the number of undocumented aliens who may be about to travel to the United States. The phrase "substantial number" would clearly permit the declaration of an immigration emergency in response to a situation such as existed before the 1980 Cuban flotilla, in which well over 100,000 aliens came to the United States. It is not, however, intended that declarations of emergencies be limited to situations involving the exceptionally large numbers associated with the 1980 Cuban flotilla. Rather, it is anticipated that an immigration emergency could be declared even if only a few thousand aliens were expected to arrive over the course of several weeks. Consequently, a key factor in assessing the need for invoking these emergency powers is the adequacy of the response that would be made using the normal exclusion and asylum procedures of the Immigration and Nationality Act and the available resources of the Immigration and Naturalization Service. On the other hand, while serious problems exist with respect to daily illegal border crossings, it is not expected that such activity would lead to the declaration of an emergency absent other exceptional circumstances.

Subsection (b) of section 240A provides that within forty-eight hours of the declaration of an immigration emergency the President must inform the President pro-tempore of the Senate and the Speaker of the House of his reasons for invoking the emergency provisions. The emergency would end automatically after 120 days, or earlier if ordered by the President, unless extended for an additional 120-day period or periods by the President.

Emergency Powers

Section 240B of the bill sets forth the emergency powers and procedures which could be invoked pursuant to a declaration of an emergency. Under subsection (a)(1), the President could restrict

or ban the travel of vessels, vehicles, and aircraft to a designated country or area. This would deter such vessels, vehicles, and aircraft from picking up undocumented aliens seeking to enter the United States. This subsection would also authorize the interception of vessels, vehicles, and aircraft travelling to the prohibited country or area and force them to return to the United States, or to other reasonable locations. Intercepted conveyances not likely to violate the travel restrictions could be allowed to proceed freely to other places.

Subsection (a)(I) would have a clear impact on the constitutionally protected right to international travel. In the recent decision of Haig v. Agee, ____ U.S. ____ (June 29, 1981), the Supreme Court noted, however, that "the freedom to travel outside the United States must be distinguished from the right to travel within the United States." Slip op. p. 25. Quoting from Califano v. Aznovorian, 439 U.S. 170, 176 (1978), the Court stated:

> Aznovorian urges that the freedom of international travel is basically equivalent to the constitutional right to interstate travel, recognized by this Court for over 100 years. But this Court has often pointed out the crucial difference between the freedom to travel internationally and the right of interstate travel.
>
> The constitutional right of interstate travel is virtually unqualified. By contrast the "right" of international travel has been considered to be no more than an aspect of the "liberty" protected by the Due Process Clause of the Fifth Amendment. As such this "right" the Court has held, can be regulated within the bounds of due process. [Citations omitted.] Slip op. pp. 25-26.

It is clear from the Agee decision, that the right to travel outside the United States can be restricted subject to due process limitations.

This emergency legislation provides the requisite due process by establishing a licensing process in section 240C which would allow the Governemnt to approve such travel where adequate safeguards exist to insure that the Government's interests are protected. The provision is tailored to address the perceived harm, namely, the influx into the United States of a large number of visaless aliens. Furthermore, the restriction does not unnecessarily infringe on the right of travel, because individuals are free to travel to a designated foreign country or geographical area, by foreign common carriers for example, as long as no United States owned or controlled conveyances are transported to the designated country or area. Compare Zemel v. Rusk, 381 U.S. 1 (1969), with Kent v. Dulles, 357 U.S. 116 (1958).

Subsection (a)(2) of section 240B is intended to permit the interception of vessels on the high seas and to permit the return of any aliens or vessels, vehicles, or aircraft carrying such aliens to the designated country or to any other suitable country or area. The power to return aliens to the designated country or to any other suitable country or area should be administered with due regard for this nation's international obligations related to refugees and the granting of asylum.

Subsection (a)(3)(i) and (ii) would permit the utilization of procedures designed to expedite the adjudication of exclusion and asylum proceedings. It would not, however, absolve the Government from the responsibility to make admission and asylum determinations, and thus should not amount to an abrogation of our treaty obligations in this area. One of the primary means of expediting exclusion procedures is the elimination of the requirement that an immigration judge conduct hearings.

Since the Attorney General is authorized to set up procedures for making exclusion and asylum determinations, he can set up different procedures for different types of cases. Thus, those undocumented aliens who claim to be United States citizens or to be lawfully admitted aliens may receive different review than that afforded aliens who have no colorable claims for admission into the United States.

Subsection (a)(3)(iii) would authorize returning an alien to a country, other than the country from whence he came, if the Attorney General determines that it would not be practicable or appropriate to return the alien to the country from which he came. Under section 237 of the Act (8 U.S.C. 1227), an excluded alien must be returned to the country from "whence he came." This limitation of the current law does not provide the flexibility needed in times of crisis. Subsection (a)(3)(iii) will provide flexibility by permitting the Attorney General to deport the alien to his native land, even if that is not the country "from whence he came," or to any country which is willing to accept the excluded alien. As stated above, in the discussion of section 240B(a)(2), the deportation of aliens should be administered with due regard for this nation's international obligations related to refugees and the granting of asylum.

Subsection (a)(3)(iv) authorizes the Attorney General to prescribe the terms and conditions under which an alien would be admitted to the United States. The posting of a bond with sufficient surety to ensure compliance with the conditions of admission is specifically authorized.

Subsection (a)(3)(v) would eliminate judicial review of exclusion and asylum determinations. For years, aliens who are clearly not entitled to enter the United States have come here and been able to remain indefinitely while their cases proceed through the labyrinth of administrative and judicial proceedings.

The aliens have been able to take advantage of court ordered or automatic stays of deportation. It is obviously in the interest of such aliens to take advantage of every procedural and judicial avenue available to them regardless of the merits of their cases. By expediting the administrative procedure and eliminating judicial review of the administrative decision, it will be possible to dispose of these cases much more quickly than is possible under current law.

The elimination of judicial review is a significant step and has been taken only after serious consideration. The law is clear, however, that those aliens seeking admission to the United States have only the due process rights which Congress decides to give them. Knauff v. Shaughnessy, 338 U.S. 537 (1950). Moreover, our treaty obligations with respect to refugee claimants do not mandate any particular procedures which must be followed in resolving claims of persecution.

Subsection (a)(4) of section 240B provides for the detention of every alien, except those who are beyond a doubt entitled to be admitted to the United States, pending a final determination of admissibility, or pending release on parole, or pending deportation if the alien is found excludable. This paragraph makes clear that the Attorney General has complete discretion as to where such aliens will be detained, including in federal prisons where appropriate. This paragraph is not intended to grant the Attorney General power to direct other governmental agencies to house detained aliens. The power of the Attorney General to request assistance from such agencies is addressed in subsection (c) of section 240B.

If an alien is found excludable he can be detained until such time as he can be deported. The language of this paragraph is also intended to permit the indefinite detention of the alien if no country is willing to accept him, such as occurred in the Cuban flotilla situation. The Attorney General's decision as to where an alien should be detained is not subject to judicial review; however, an alien can obtain habeas corpus review on the issue of whether he falls within the category of aliens subject to detention.

Subsection (a)(5) of section 240B would exempt actions taken during an immigration emergency from the restraints of the nation's environmental laws. The first paragraph merely references existing Presidential exemption authority under the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Resource Conservation and Recovery Act and the Noise Control Act. The second paragraph provides the President with additional exemption authority with respect to other major Federal environmental requirements, as well as state and local requirements, but limits that authority in that it must be closely tied to the demands of an immigration emergency. The third paragraph places limits on the time the exemptions can remain in effect but in no event can they last longer than one year.

The Federal Government should be able to comply after a year with environmental requirements such as sewage discharge from a detention facility. If this will not be possible, legislation granting further exemptions can be obtained from Congress.

These environmental exemptions will allow the Government to deal quickly with an emergency without litigants impeding those efforts though court stays and injunctions such as occurred during the 1980 Cuban flotilla when efforts to transfer aliens to Fort Allen, Puerto Rico were blocked by a court injunction. See Commonwealth of Puerto Rico v. Muskie, 507 F. Supp. 1035 (D.P.R. 1981).

Subsection 240B (b) creates special emergency powers which would allow the President to order the sealing or closing of roads or harbors if necessary to prevent the arrival of the aliens in the United States. The purpose of this provision is to permit authorities to close a harbor or airport before ships or planes can depart for the purpose of picking up aliens and bringing them to the United States. In addition, roads leading to harbors, for example, may be closed in order to prevent people from launching their boats. It is obviously easier for authorities to quarantine harbors and airports and to prevent boats and planes or other conveyances from leaving, than it is to try and intercept such conveyances once they have dispersed or have entered foreign territory.

During the time a harbor, port or road is sealed, it will be left to the designated agency or the agency which is closing the harbor, port or road to determine whether a vessel, vehicle or aircraft will be allowed to depart or to travel on such road. If the facts indicate that the vessel, or aircraft is not bound for the designated foreign country, then permission will be given to proceed. The burden, however, will be on the party seeking permission to depart to show that he in fact is not intending to go to the designated foreign country. A party who is denied permission to depart may seek judicial review of the agency's decision in a United States District Court. Judicial review prior to the exhaustion of administrative remedies can be obtained if a party can show he would suffer irreparable injury should his departure be delayed. Thus, a captain of a ship with perishable cargo will be able to seek immediate judicial review if it appears that awaiting a final administrative decision would be itself result in loss or spoilage of the cargo.

Subsection (b)(3) provides that the agency designated by the President shall set up procedures to be followed in requesting departure permission. The provision recognizes, however, that there may be no procedures established for granting permission to depart. In this situation, the agency which is responsible for the closing of the harbor, airport, or road will make such determinations. However, once the designated agency establishes procedures for obtaining departure permission, these procedures will have to be followed.

The sealing of harbors, ports or roads, will interfere with the right to travel. As discussed previously, however, the right to travel outside the United States is not absolute and can be restricted where the limitation is tailored to a perceived harm and does not unnecessarily infringe on the right to travel, and where the necessary due process safeguards are provided. Haig v. Agee, ____ U.S. ____ (June 29, 1981), Slip op. pp. 25-26.

Some constraints on domestic travel may also result from the sealing of harbors or airports or the closing of roads. Individuals would, of course, remain free to travel within the United States. However, it is recognized that restricting the movement of conveyances may also at least temporarily restrict the movement of the persons owning or using those conveyances.

The requirement that an administrative decision on departure permission be made within 72 hours recognizes the need not to unduly restrain domestic travel, as well as legitimate international travel. Compelling justifications for some limitations on domestic travel, moreover, exist because of the practical enforcement problems associated with the interdiction of widely dispersed vessels, aircraft in flight, and vehicles that have entered foreign territory, and because of the injury to the United States which would occur if a mass migration of undocumented aliens were to take place.

Subsection (c) of section 240B authorizes the President to designate an agency or agencies which are to be responsible for carrying out the emergency provisions once they have been invoked by the President. In addition, state or local agencies or any civilian Federal agency may be called on for assistance. The President may direct that any component of the Department of Defense provide assistance. By specifically permitting the Army, Navy, and Air Force to enforce these provisions, any problems with the Posse Comitatus Act are eliminated. State and local agencies would be called upon to render aid within the limits of their general competence and would not be asked to make asylum and admissibility determinations.

Subsection (d) grants search and seizure powers to agencies enforcing the provisons of this emergency legislation. The body of law governing the search and seizure powers of the INS and Coast Guard has seen some changes in recent years, and no attempt has been made to define the permissible limits of law enforcement in this respect. The actual exercise of these search and seizure powers would, however, be consistent with prevailing interpretations of the Fourth Amendment.

Under current law, the Coast Guard has broad authority to stop and inspect ships for possible violations of various laws. See 19 U.S.C. 1581(a); 14 U.S.C. 89(a). The courts have upheld against Fourth Amendment challenges the right of the Coast Guard under

14 U.S.C. 89(a) to stop and board United States vessels for administrative documentation and safety checks without a warrant and in the absence of suspicion of criminal activity. United States v. Arra, 630 F.2d 836 (1st Cir. 1980); United States v. Demanett, 629 F.2d 862 (3d Cir. 1980) (approving documentation checks); United States v. Hilton, 619 F.2d 127 (1st Cir. 1980); United States v. Harper, 617 F.2d 35 (4th Cir. 1980); United States v. Warren, 578 F.2d 1058, 1064-1065 (5th Cir. 1978)(en banc).

The intrusion justified by such an administrative inspection is limited. The scope of permissible Coast Guard inspection is restricted to those matters reasonably relating to checking documentation and safety. United States v. Arra, supra, at 841 n. 6; United States v. Demanett, supra; United States v. Robbins, 623 F.2d 418, 420 (5th Cir. 1980). However, where probable cause or reasonable suspicion of criminal activity arises during such an inspection, the inquiry and search may be appropriately expanded. See United States v. Demanett, supra; United States v. Ricardo, 619 F.2d 1124, 1129 (5th Cir. 1980); United States v. Hilton, supra, 619 F.2d at 131; United States v. Warren, supra, 578 F.2d at 1065. Aside from administrative inspections, brief investigatory interceptions of vessels may be permissible if there is a reasonable suspicion of a criminal violation. See United States v. Williams, 617 F.2d 1063 at 1078 (5th Cir. 1980).

In United States v. Martinez-Fuerte, 428 U.S. 543 (1976), the Court upheld the INS procedure of setting up fixed checkpoints away from the border at which cars could be stopped and the occupants questioned as to their citizenship and immigration status. The court held that such stops could occur even if there was no reason to believe the particular automobile contained illegal aliens. While Martinez-Fuerte concerned a different type of problem, it indicates that interior vehicle checkpoints could lawfully be established to aid in identifying persons who intend to transport a conveyance from the United States to a designated foreign country or geographical area.

Subsection (e) of 240B provides that agencies will have the same authority as they now have for disaster relief under 42 U.S.C. 5149. Under 42 U.S.C. 5149, a Federal agency in a disaster type situation can, with the consent of a state or local government, utilize the services or facilities of such government. In addition, 42 U.S.C. 5149 authorizes a Federal agency to hire temporary personnel and to purchase, rent, or hire equipment, materials and supplies for such things as shipping, travel and communications and for the administration and supervision of such activities.

Subsection (f) of 240B provides that paragraphs 3 and 4 of subsection (a), which authorize expedited exclusion and asylum proceedings and the detention of aliens, will remain in effect for those aliens who were subject to those provisions, even after the immigration emergency has ended. It is important to note that during an immigration emergency, not every alien attempting to enter the United States will be subjected to expedited proceedings and detention, only those undocumented aliens who are travelling directly or indirectly from the

designated foreign country or area will be subject to such proceedings.

Subsection (g) would permit the President to direct enforcement of subsection (a) beyond the territorial limits of the United States. As in the initial decision to declare an immigration emergency, the Attorney General and Secretary of State would have major roles in advising the President concerning the need for and appropriate procedures for handling such enforcement.

There are customary international law limitations which restrict the ability of the United States to interdict foreign flag vessels absent the consent of the foreign flag state. Despite these limitations, the Fifth Circuit has held that 14 U.S.C. 89(a) authorizes the Coast Guard to board foreign flag vessels in international waters when there is reasonable suspicion that the vessel's occupants are engaged in conduct which violates a United States statute having extraterritorial application. United States v. Williams, 617 F.2d 1063 (5th Cir. 1980). As a matter of our domestic law, this emergency legislation would thus permit the halting of a foreign flag vessel, in the absence of foreign state approval, if there was reasonable suspicion that the vessel was transporting visaless aliens to the United States in violation of our civil or criminal immigration laws. Such action would, however, be inconsistent with international law, and it is not anticipated that the United States would violate those customary rules of international law which restrict the boarding of foreign flag vessels, except in the most compelling of circumstances. The statute, though, is broadly worded to permit the necessary lawful actions to be taken in response to a situation such as the 1980 Cuban flotilla.

Subsection (g) also authorizes, inter alia, the making of admissibility and asylum determinations outside the territorial limits of the United States, including on the high seas. Aliens intercepted at sea could be given their hearings on ships and if they are found excludable, they would never set foot in the United States.

Subsection (h) makes clear that the fact that an immigration emergency has been declared does not relieve any carrier or other person from any of the other civil or criminal liabilities, duties or consequences which arise elsewhere from the transportation or the bringing of any alien to the United States.

Travel Restrictions and Licensing

Section 240C provides for travel restrictions on vessels, vehicles, and aircraft and for licensing procedures. The travel restrictions would apply to all United States vessels, vehicles and aircraft and such other vessels, vehicles, and aircraft which are owned by, leased by or controlled by United States citizens or residents or by United States corporations. This latter phrase prevents a United States citizen from hiring a foreign registered vessel and using that vessel to bring undocumented aliens to the United States. As a result,

if an emergency were declared with respect to Cuba, the statute would also require prior approval for a Mexican tour ship to go to Cuba if that ship was owned by a United States corporation, even if the ship could never reasonably be expected to travel to the United States. It is expected, however, that regulations promulgated by the designated agency would provide almost blanket approval for foreign registered vessels and aircraft to travel to designated countries or areas as long as they are not also involved in any travel to the United States. Such blanket approval could help eliminate some of the problems associated with the purported regulation of foreign flag vessels, a problem which occurs repeatedly in the statute. Broad language, however, has been consistently employed in order to reach conduct that must be regulated in order to deal effectively with a flotilla-like situation.

Penalties

Section 240D provides for both civil and criminal penalties for violations of either section 240B(b)(2) or section 240C, and a misdemeanor penalty for aliens violating the terms of admission under section 240B. Subsection (a) provides for a civil fine of up to $10,000 and the forfeiture of any vessel, vehicle or aircraft which is used to violate the travel restrictions imposed in section 240C, or the limitations on departing from a sealed harbor or closed road under section 240B (b). The same forfeiture procedures that are used under the customs laws are adopted for purposes of this provision. A person who knowingly engages in conduct prohibited with respect to travel restrictions or the sealing and closing of harbors and roads is guilty of a criminal offense and is subject to a fine of up to $50,000 and imprisonment for up to five years.

Subsection (e) of section 240D provides that violations of the immigration laws committed during an immigration emergency may be investigated by various Federal agencies. Once one of these agencies commences an investigation of a violation, it may conclude the investigation even though the immigration emergency has ended. This provision also specifies that assistance in investigating or enforcing section 240D may be provided by other Federal agencies including the Army, Navy and Air Force and also from state and local agencies. By specifically including the Army, Navy and Air Force, any problems with the Posse Comitatus Act are eliminated.

Definitions

Section 240E contains definitions which apply to the terms used in sections 240A through 240D.

The Section 273(b) Amendment

While not an emergency provision, an amendment to section 273(b) of the Act, 8 U.S.C. 1323(b), has been included. It is intended to increase the deterrent effect of that statute by increasing the monetary penalty for unlawfully bringing to the United States aliens without visas, and to provide greater authority for imposing sanctions

directly on the vessel. With regard to sanctions on the vessel, the statute at present provides only for denial of clearance. Although denial of clearance is in some circumstances a valuable coercive tool inobtaining 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.

U.S. Department of Justice
Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

Office of the Assistant Attorney General

Washington, D.C. 20530

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

NOT SENT TO CONGRESS

Dear Mr. Speaker:

There is transmitted herewith a legislative proposal, "To prohibit the bringing of unauthorized aliens to the United States."

On December 19, 1980, 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, dismissed the indictment of persons who were charged with unlawfully bringing undocumented Cuban aliens into the United States in violation of 8 U.S.C. 1324. The court held that section 1324 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 in the "Cuban Flotilla" that lasted for several months in 1980.

The result of the holding is that the United States does not have an effective criminal sanction against such conduct. As the "Cuban Flotilla" demonstrated, the United States needs strong and effective laws to deter the bringing to this country of aliens who have not received prior authorization to come or remain here.

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 we are submitting a bill to amend 8 U.S.C. 1324 which would cure the alleged defect in the statute as well as strengthen it in general, primarily by amending the seizure and forfeiture provisions for conveyances involved in violations of section 1324. The forfeiture amendments closely follow those in H.R. 8115, reported favorably by the House Judiciary Committee in the 96th Congress, and in section 12 of H.R. 7273, a bill which contained a number of amendments to the INA and which was also reported favorably.

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

Sincerely,

Robert A. McConnell
Assistant Attorney General

TO BUDGET FOR CLEARANCE

A BILL

To prohibit the bringing of unauthorized aliens to the United States.

NOT SENT TO CONGRESS

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 274 of the Immigration and Nationality Act is amended to read as follows:

BRINGING IN AND HARBORING CERTAIN ALIENS

Sec. 274. (a) Any person who—

knowing or in reckless disregard of the fact that the alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, any alien, regardless of any official action which may later be taken with respect to such alien,

(1) shall, for each transaction constituting a violation of this subsection, regardless of the number of aliens involved, be guilty of a misdemeanor and upon conviction shall be punished by a mandatory fine of $2500, the imposition of which shall not be suspended by the court, and, in the court's discretion, may be punished by an additional fine of not more than an amount equal to $2500 for each such alien in respect to whom any violation of this paragraph occurs, or by imprisonment for a term not exceeding one year, or both; or

AUG 17 1981

(2)(A) for a second offense under this section;

(B) for an offense done for the purpose of commercial advantage or private financial gain;

(C) for an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration official; or

(D) for an offense during which either the offender or the alien with the knowledge of the offender, makes any false or misleading statement, or engages in any act or conduct intended to mislead any officer, agent, or employee of the United States, shall be guilty of a felony and upon conviction shall be punished by a fine not exceeding $10,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this paragraph occurs.

(b) Any person who—

(1) knowing or having reason to know that the person is an alien, brings to or attempts to bring to the United States in any manner whatsoever, any such person at a place other than a designated port of entry or place other than as designated by the Commissioner of the Immigration and Naturalization Service regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(2) knowing or in reckless disregard of the fact that the alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move any such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(3) knowing or in reckless disregard of the fact that the alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, any such alien in any place, including any building or any means of transportation; or

(4) knowing or having reason to know that a person is an alien, willfully encourages or induces or attempts to encourage or induce, either directly or indirectly, the entry without prior official authorization, into the United States of any such alien—

shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $10,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: Provided, however, that for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.

(c)(1) any conveyance, including any vessel, vehicle, or aircraft, which has been, is being, or is intended to be used, in the commission of a violation of subsections (a) or (b) shall be seized and subject to forfeiture except that—

(A) no conveyance used by any person as a common carrier shall be forfeited under the provisions of this section if the offense occurs when the conveyance is being used in the business as a common carrier unless the owner, operator, or other person in charge of the conveyance at the time of the offense was a consenting party or privy to the illegal act; and

(B) no conveyance shall be forfeited under the provisions of this section if the offense occurred while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State.

(2) Any conveyance subject to seizure under this section may be seized without a warrant if there is probably cause to believe the conveyance has been, is being, or is intended to be used in a violation of subsection (a) or (b) and circumstances exist where a warrant is not constitutionally required.

(3) All provisions of the customs laws relating to the seizure, summary and judicial forfeiture, and condemnation of property; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeiture; and the compromise of claims and the award of compensation to informers in respect of

such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred, under the provisions of this section insofar as applicable and not inconsistent with the provisions hereof, except that duties imposed on customs officers or other persons regarding the seizure and forfeiture of property under the customs laws may be performed with respect to seizure and forfeitures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General.

(4) Whenever a conveyance is forfeited under this section the Attorney General may—

(A) retain the conveyance for official use;

(B) sell the conveyance, in which case the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs;

(C) require that the General Services Administration take custody of the conveyance and remove it for disposition in accordance with law; or

(D) dispose of the conveyance in accordance with the terms and conditions of any petition of remission or mitigation of forfeiture granted by the Attorney General.

(5) In all suits or actions brought for the forfeiture of any conveyance seized under this section, where the conveyance is claimed by any person, the burden of proof shall lie upon such

claimant: Provided, that probable cause shall be first shown for the institution of such suit or action, to be judged of by the court. In determining whether probable cause exists, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law;

(B) Official records of the Immigration and Naturalization Service or State Department showing that the alien had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States in violation of law; and

(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that the alien had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States in violation of law.

(D) Any officer or employee of the Service designated by the Attorney General, either individually or as a member of a class, and all other Federal officers and officers of a state or political subdivision thereof whose duty it is to enforce criminal laws shall have authority to make any arrest for a violation of any provision of this section.

SECTION BY SECTION ANALYSIS

Subsections (a) and (b) are designed to fill the gap in Section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) caused by the December 19, 1980, opinion of the United States District Court for the Southern District of Florida in United States v. Anaya, et al., No. 80-231-CR-EPS. In Anaya 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

to the United States in any manner whatsoever. The intent requirement is that at the time of the bringing or attempted bringing to the United States, the subject know or have reason to believe the person is an alien. The alien's possession of a visa or other 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

that the owner, master or person in charge consented to or knew of the illegal use of the vessel. In many situations such knowledge or consent is impossible to demonstrate and is a burden of proof not borne by other Federal law enforcement agencies such as the Customs Service and the Drug Enforcement Administration where proving such knowledge or consent is limited to seizures involving common carriers. 21 U.S.C. 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, section (c)(2) will allow the INS to seize vessels or other conveyances if an INS officer has probable cause to believe the vessel is being used in violation of section 1324. There is no need to determine whether the owner was involved before 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.