THE WHITE HOUSE

WASHINGTON

July 20, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS, JR.

SUBJECT: Draft Labor Report on H.R. 4509, the Immigration Exclusion and Deportation Amendments

OMB has asked for our views by close of business today on a draft Department of Labor report on H.R. 4509, the "Immigration Exclusion and Deportation Amendments of 1983." Our office has previously reviewed Justice and State testimony and reports on this bill. The Administration generally opposes the bill, which would eliminate most of the qualitative grounds for excluding aliens (such as the likelihood that they will become public charges, mental illness, etc.).

Current law permits exclusion of aliens seeking work unless the Secretary of Labor certifies that there are not enough American workers able, willing, and qualified to perform the labor in question. H.R. 4509 would, inter alia, change "qualified" to "equally qualified" in the case of teachers and researchers, in effect expanding the admissability of aliens in those professions. Labor's draft report opposes this expansion, at least through case-by-case determinations, and suggests as an alternative a more generic certification process, based on labor market information rather than specific determinations of whether an individual alien is "more qualified" than American applicants for a particular job. I have reviewed the draft report and have no objections. It is consistent with the previously reviewed Justice and State reports.

THE WHITE HOUSE

WASHINGTON

July 20, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

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

SUBJECT: Draft Labor Report on H.R. 4509, the Immigration Exclusion and Deportation Amendments

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

FFF/JGR:nb

cc: FFFielding
JGRoberts, Jr.
Subj.
Chron.

THE WHITE HOUSE

WASHINGTON

July 20, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Labor Report on H.R. 4509, the Immigration Exclusion and Deportation Amendments

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

ID # 241952 CU

JV

WHITE HOUSE
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Name of Correspondent: Branden Blum

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Subject: Draft Labor report on H.R. 4509, the "Immigration Exclusion and Deportation Amendments

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

SPECIAL

July 13, 1984

24952a

LEGISLATIVE REFERRAL MEMORANDUM

TO: LEGISLATIVE LIAISON OFFICER

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

SUBJECT: Draft Labor report on H.R. 4509, the "Immigration Exclusion and Deportation Amendments

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

Please provide us with your views no later than

COB Friday, July 20, 1984.

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

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

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

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DRAFT

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

Dear Mr. Chairman:

This is in response to your request for our views on H.R. 4509, a bill cited as the "Immigration Exclusion and Deportation Amendments of 1983". The Department of Labor defers to the Justice and State Departments with respect to most of the bill's provisions, except for the provision concerning labor certification as a ground for exclusion of an immigrant alien.

Section 212(a)(14) of the Immigration and Nationality Act (INA) provides for an alien labor certification for an alien seeking admission to the United States as a third (exceptional ability) preference, sixth (skilled or unskilled labor) preference, or nonpreference immigrant. The labor certification provision has two basic functions: first, to protect the U.S. labor force from competition from alien labor; and second, to allow for entry of needed workers in the United States.

Section 2 of the bill would amend section 212(a) of the INA ~~by deleting the current paragraph (14) and adding an exclusion provision under a new paragraph (4) entitled "Economic Grounds for Certain Aliens".~~ and revise the grounds for excluding aliens from admission into the United States. Of concern to the Department of Labor is the new subparagraph (A) which is substituted for the current provision of section 212(a)(14), (4) ~~The new subparagraph (A) states~~ and would exclude:

> "Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that (i) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien (I) who is a member of the teaching profession, (II) who has exceptional ability in the sciences or arts, or (III) who has a doctoral degree and is seeking to enter the United States to be employed as a researcher at a college, university, or other nonprofit educational or research

institution), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (ii) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed." (emphasis added)

The Department is opposed to H.R. 4509's proposed application of the special standard, "equally qualified," to members of the teaching profession and researchers who are not of exceptional merit and ability. This special standard of availability, extended to employers of college or university teachers in 1976, would enable nonprofit educational institutions to petition for the admission of "more qualified" aliens, even if qualified U.S. teachers or researchers are available.

In our view, American workers should be hired whenever possible, and qualified American workers in professional occupations merit the same kind of labor market protections that workers in all other occupations are accorded. It is important to note, for example, that Ph.D. researchers in the United States are in many cases increasing at a rate greater than are employment opportunities in their areas of expertise. The job market in the humanities and the social sciences has been particularly tight in recent years. Thus, while this Department supports, and currently applies, a special standard for aliens of exceptional ability in the sciences or arts, we do not support the application of such a standard to aliens on the basis of their occupation alone.

As an alternative, we propose a change similar to the provisions of section 203 of S. 529, the Immigration Reform and Control Act of 1983. Specifically our new labor certification proposal would state:

Sec: 212. (a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:---

"(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that: (A) there are not sufficient workers available in the United States in the occupations in which the aliens will be employed; and (B) the employment of aliens in such

occupations will not adversely affect the wages and working conditions of workers in the United States who are similarly employed. In making such determinations, the Secretary of Labor may use labor market information without reference to the specific job opportunity for which certification is requested. An alien on behalf of who a certification is sought must have an offer of employment from an employer in the United States, except that the Secretary of Labor may waive this requirement in the case of an alien with exceptional ability."

Our proposal is intended to streamline the current cumbersone, costly, and time-consuming labor certification procedures for immigrants. As S. 529, our bill would permit the Secretary of Labor to make such determinations on the basis of labor-market information. While provision for individual case determination would remain, the Department of Labor would no longer be required to recruit, nor to require employers to recruit, workers for a specific job opportunity in order to test the availability of qualified workers in the United States. We also recommend language which provides the Secretary of Labor with discretion to waive a job offer for aliens of exceptional ability, for example, artists, who are typically self-employed.

H.R. 4509, through its adherence to the present recruitment standard ("not sufficient workers who are able, willing, qualified ... and available") would perpetuate this mandatory recruitment system for testing U.S. worker availability. The Department and most employers agree that the current system is cumbersome and time-consuming. We therefore believe the adoption of the provision in H.R. 4509 would have no beneficial results.

~~The Department of Labor is opposed to the changes for labor~~ certification in H.R. 4509. ~~The provisions~~ of H.R. 4509 do not improve upon the ~~current~~ time-consuming labor certification ~~procedures and~~ would discriminate against qualified U.S. work-
~~ers.~~

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

Sincerely,

Raymond J. Donovan

THE WHITE HOUSE

WASHINGTON

June 20, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Revised Statement on H.R. 4509, the Immigration and Nationality Act

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

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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Name of Correspondent: Brandeis Blum

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Subject: Revised Statement on H.R. 4509, the Immigration and Nationality Act

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U.S. Department of Justice
Office of Legislative and
Intergovernmental Affairs

SPECIAL

Office of the
Assistant Attorney General

Washington, D.C. 20530

June 19, 1984

TO: Branden Blum
OMB

FR: John Logan
OLIGA (633-2078)

RE: Revised Statement on H.R. 4509

Here is the Department's revised statement on H.R. 4509 for June 28, 1984 for your review.

cc: Fred F. Fielding

DRAFT

STATEMENT

OF

DORIS M. MEISSNER
EXECUTIVE ASSOCIATE COMMISSIONER

BEFORE

THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW

HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 4509

ON

JUNE 28, 1984

Chairman Mazzoli and members of the Subcommittee:

I am pleased to have the opportunity to appear before you today to discuss this bill which revises the Immigration and Nationality Act with respect to the grounds for exclusion and deportation of aliens.

This bill attempts to address some of the more vexing and controversial aspects of the laws relating to exclusion and deportation of aliens. Of particular significance are the provisions dealing with inadmissibility and deportability based on political activity and opinion.

This Administration has strongly supported the free exchange of ideas. We have gone on record on numerous occasions in defense of those persons who have been persecuted as a result of their attempts to peacefully speak out against tyranny and oppression. These efforts will continue.

The bill you are presently considering clearly recognizes the importance of freedom of peaceful expression of ideas. This is not an easy issue to deal with. The recent Select Commission on Immigration and Refugee Policy considered extensive revision in the exclusion and deportation provisions of the present Immigration and Nationality Act, including those provisions dealing with political grounds for exclusion. After careful deliberation, the Commission decided in the end that changes,

while desirable, were extremely difficult to formulate in specific language. As a result, the final report did not propose changes in these grounds for exclusion and deportation.

While I would be happy to be able to say that the problems and concerns that the Select Commission perceived have since disappeared, this is unfortunately not the case. Consequently, while the bill attempts the laudable goal of simplifying the immigration law, the specific language used does not address some basic issues and legitimate concerns. This is particularly the case with the political exclusion and deportation grounds, and I would look to touch on some of our concerns in the course of this testimony.

First, however, I would like to also briefly present a summary of our reaction to the other provisions of the bill, some of which strike us as helpful and necessary changes to the existing law.

I support the revision to Section 212(a)(23) of the Act, which deals with exclusion based on narcotics violations. The bill would add a provision barring the admission of aliens who violate laws relating to psychotropic substances. This is a necessary addition to the law, as these substances have proven to be every bit as dangerous as narcotics.

The attempt to deal with the mental health provisions is also to be commended. Present provisions are in need of revision, as they do not take into account advances in medical treatment and

theory. We do, however, entertain certain reservations regarding the scope of the changes proposed in the bill. Specifically, consolidating the present mental health provisions in one section which bars the admission of persons who could endanger public safety, is probably too ambitious an undertaking. This is too strict standard, which does not take into account those who may be unable to function in society, and who may have to be supported at taxpayer expense.

Similarly, abolition of the provisions barring persons who are likely to become a public charge, or who become a public charge following entry, is unnecessary and could result in needless burdens on various social welfare programs. A significant number of persons are denied admission for this reason each year. Very few aliens have been deported on this ground in recent years, because of the standard applied to substantiate a finding of public charge. Basically, it is necessary to establish that the person has received public assistance, has been asked to reimburse the agency providing the assistance, and has failed to do so. Rather than eliminate the provision, however, revision of the overly strict standard should be considered.

Similarly, it is not clear to us that repeal of the grounds of excludability and deportation relating to prostitution and immoral sexual activities is warranted. In practical terms, no desirable objective is served by the admission of persons who have engaged in or who might engage in such activity. To the extent that

prospective immigrants have been affected by Section 212(a)(12), a waiver of inadmissibility has been available for those with certain family relations.

Other sections of the bill basically consolidate existing provisions, with some modifications in the language. This is true, for instance, of Section (4) entitled Economic Grounds for Certain Immigrants" and Section (6) entitled "Documentation Requirements."

I would like now to return to the revisions in the political activities grounds for exclusion and deportation. I have taken this approach to avoid the appearance that our sole interest in the bill was confined to this one subject. In fact, as has been apparent from the Administration's support for immigration reform as a whole, there are many subjects which can and should be addressed for a variety of important reasons.

In any case, as this aspect of the bill is obviously of considerable interest, I would like to offer several observations and comments. As I noted earlier, revision of the political activity exclusion and deportation grounds was previously considered by the Select Commission on Immigration and Refugee Policy and then omitted in its final recommendations. The fact that the Commission followed this course should give us pause, because it did address other equally controversial issues, such as legalization and employers sanctions. While we may agree that the

present grounds for exclusion and deportation encompass persons who are not a threat to the United States, fashioning language to meet legitimate foreign and domestic policy considerations is no simple task.

In essence, the bill would allow any alien to enter the United States as long as the activity the alien intended to engage in did not contain a violent element or objective. The Department of Justice defers to the Department of State on this issue in most respects, because most of the recent instances where an alien has been denied a visa have involved legitimate questions of foreign policy. Nonetheless, I would like to suggest that it is entirely conceivable, as has happened before, that substantial considerations of foreign or domestic policy or both will militate against the admission of particular individuals or members of particular organizations. Any revision of the existing provisions should provide authority on the part of the Secretary of State or Attorney General to take such considerations into account. In my judgment, the bill before us does not meet this standard.

I would like to emphasize, however, that my particular comments on portions of the bill, such as those I have just made, are not meant to indicate reluctance to consider revisions in the exclusion or deportation provisions, or any other facet of the immigration laws. I certainly hope that they will not discourage examination of these laws by this Subcommittee. We all know the difficulties and obstacles that face any immigration reform, and

the persistence that is required to see a change through the legislative process.

This Administration agrees that immigration legislation is needed, and is very willing to work with the members of this Subcommittee toward an improvement in both the substance and the administration of the laws.

Thank you for the opportunity to appear before you today.

THE WHITE HOUSE

WASHINGTON

June 11, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Draft Statement of Edward M. Rowell Concerning H.R. 4509, the Immigration Exclusion and Deportation Act Amendment

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

THE WHITE HOUSE

WASHINGTON

June 26, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Draft HHS Testimony on H.R. 4509, the Immigration Exclusion and Deportation Act Amendments

Counsel's Office has reviewed the above-referenced draft testimony. On page 8, line 17, we recommend inserting "from medical examination" or something similar after "predicted." The Administration has testified on several occasions in the past that dangerous or violent acts can be predicted, in the context of assessing the probability of future dangerous criminal conduct on the basis of past criminal conduct. The argument that future dangerousness can be predicted is an essential lynchpin of the Administration's position on preventive detention.

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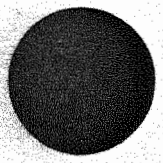

Name of Correspondent: James Muir

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Subject: Draft HHS testimony on H.R. 4509, the Immigration Exclusion and Deportation Act Amendments

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

June 25, 1984

SPECIAL

LEGISLATIVE REFERRAL MEMORANDUM

TO: LEGISLATIVE LIAISON OFFICER

Department of Justice
Department of State
National Security Council

SUBJECT: Draft HHS testimony on H.R. 4509, the Immigration Exclusion and Deportation Act Amendments.

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

Please provide us with your views no later than June 26, 1984.

(NOTE -- A hearing before a subcommittee of the House Judiciary Committee is scheduled for 6/28/84.)

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

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: Kathy Collins
Sylvia Malm
Fred Fielding
John Cooney
Susan Gates
Mike Uhlmann
Patti Woodworth

Read 6/25/84

STATEMENT OF

THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

ON

H.R. 4509, "THE IMMIGRATION EXCLUSION AND

DEPORTATION AMENDMENTS OF 1983"

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

June 28, 1984

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to comment on the health and social welfare aspects of H.R. 4509, the "Immigration Exclusion and Deportation Amendments of 1983."

In the late nineteenth century, following the growth of immigration and the social problems which it engendered, the Supreme Court declared unconstitutional all State laws regulating immigration, and the Federal government assumed sole authority for the regulation of immigration. Because of evidence that foreign officials were deporting to the United States convicts, paupers, mentally ill persons, and persons incapable of self support, the chief features of early Federal immigration law prohibited the immigration of such persons. Although at various times in the history of the United States measures were taken to encourage foreign immigration, and at other times to restrict and regulate it, there has generally been consensus on the desirability of excluding mentally ill and socially misfit immigrants, as well as those with certain contagious diseases. Such exclusions have been a consistent policy, from the colonial period, through the period of State regulation, into the present period of Federal regulation.

The Department of Health and Human Services supports the continued exclusion of aliens based on the health and social welfare concerns that have been the foundation for the specific categories of excludable aliens now set forth in the Immigration and Nationality Act.

Our testimony addresses the changes that the bill would make in the Act's current restrictions that are designed to keep from entering the United States those persons who would endanger public health or safety, as well as those who would violate the rights of others or present a social or economic burden to society, including those who are likely to require medical care, or institutionalization, or both. Specifically, the Act (Section 212(a)(1) through (8), and (15)) now excludes:

Aliens who are mentally retarded;

Aliens who are insane;

Aliens who have had one or more attacks of insanity;

Aliens afflicted with psychopathic personality, or sexual deviation, or a mental defect;

Aliens who are narcotic drug addicts or chronic alcoholics;'

Aliens who are afflicted with any dangerous contagious disease;

Aliens not comprehended within any of the foregoing classes who are certified by the examining surgeon as

having a physical defect, disease, or disability, when determined by the consular or immigration officer to be of such a nature that it may affect the ability of the alien to earn a living, unless the alien affirmatively establishes that he will not have to earn a living;

Aliens who are paupers, professional beggars, or vagrants;

Aliens who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission, are likely at any time to become public charges.

H.R. 4509 would reduce the health-related grounds for exclusion to:

Any alien who is afflicted with any dangerous contagious disease; and

Any alien who suffers from any mental illness likely to result in the performance of acts which could endanger public safety.

The bill would also identify for exclusion, as one of several grounds under the heading of "criminal and moral grounds," any alien who is a narcotic drug addict.

The bill would repeal entirely the economic grounds for exclusion under the current law - the vagrancy and public charge categories mentioned above - and would also eliminate present provisions for the deportation of immigrant aliens who become institutionalized for mental illness at public expense, or become a public charge, within five years after entry. It would also repeal the present provision for discretionary relief from certain medical exclusions.

H.R. 4509 addresses an important issue - revision of the current categories of exclusion. We agree that the specific formulations of the medical exclusions have become outdated, and that revision is needed to alter obsolete language and to achieve conformity with current medical, psychiatric, and public health standards and practices in the United States.

However, the Department is unable to support the bill because the scope of the proposed exclusionary criteria is too narrow, and the result would be to permit the entry of some persons who would endanger public safety, who would violate the rights of others, or who would present a social or economic burden to society. We believe that the basic principles underlying the present exclusions are sound, and do not agree with the far-reaching change that the bill would make in current immigration policy as it falls within the purview of this

Department. Keeping in mind the underlying social policy reasons for the exclusions, I would like to discuss some specific examples of the impact the bill would have.

A major concern of the Department is that the bill would eliminate as a ground for exclusion the likelihood that the applicant would become a public charge.

For example, the bill would no longer exclude aliens certified by the medical examiner as having a physical defect, disease, or disability which would affect the ability to earn a living, (now excludable under subsection 212(a)(7)), nor other aliens unable to support themselves after admission (now excludable under subsections 212(a)(8) and (15)) In FY 1983, the United States refused more than 4,600 applications for visas on the grounds that the aliens had no means of support and would become public charges.

The exact financial impact of admitting these applicants is difficult to quantify, but we estimate that had they been admitted, the likely increase in welfare costs in the FY 1985 through FY 1989 period, under programs like Supplemental Security Income (SSI), Food Stamps, and Medicaid, would have been in the range of $200 to $300 million. The costs over the

long run would be even higher because the relaxation of these provisions would be an incentive for other such aliens to apply.

Our concerns also extend to aliens with impairments which result in their being unable to care for their economic, social, and health care needs. The bill would eliminate as a basis for exclusion the present law's category of "Aliens who are mentally retarded" (subsection 212(a)(1)).

Under this modification, there would be no basis for excluding aliens with severe mental retardation who are unable to support or care for themselves. Thus, a severely or profoundly retarded alien would be able to enter the United States without restrictions. In FY 1983, 247 aliens were excluded because they were mentally retarded and unable to meet the waiver requirement of family and financial support. Here again, there would have been substantial Federal costs involved in benefits for these persons. Additional Federal costs would probably be incurred if the family and financial support requirements were dropped for those aliens who are now eligible for a waiver of excludability.

While we agree that it would be appropriate to consider modifying the present barrier to mentally retarded persons --

such as allowing admission of those more mildly retarded persons who would not pose a public burden -- we believe there needs to be some basis for excluding those who would be likely to draw heavily on the social service and benefit programs of our land.

In addition, elimination of the public charge criteria would result in the loss of savings now accomplished by income attribution provisions of benefit laws. The Social Security Disability Amendments of 1980 and the Omnibus Budget Reconciliation Act of 1981 amended the Social Security Act to provide for attribution to an alien of a sponsor's income and resources for purposes of determining the eligibility for an amount of benefits of the alien under the SSI and Aid to Familes with Dependent Children (AFDC) programs within three years of the alien's entry into the U.S. As a result, for example, awards of SSI to aliens have dropped from about 1,300 per month for the year before this provision was enacted, to 209 per month for the 17 months starting January 1981. Conservative estimates of savings are $40 million a year for SSI and $15 million a year for AFDC. These savings would be lost by eliminating the public charge exclusions of the current law.

We are also concerned about changes that the bill would make in other health-related grounds for exclusion.

The present exclusions on grounds of mental illness would be modified. The present law excludes "aliens who are insane" and "aliens who have had one or more attacks of insanity" as well as "aliens afflicted with psychopathic personality, or sexual deviation, or a mental defect" (subsections 212(a)(2),(3) and (4)). The bill's sole mental illness category would be a new one excluding only those suffering from "any mental illness likely to result in the performance of acts which could endanger public safety."

While the present law in this regard certainly needs to be rewritten, the language of this bill would permit the entry of many aliens who we believe should be excluded, and in any case would present great difficulties in interpretation and application. Essentially, dangerous or violent acts cannot be predicted, and in most cases neither psychiatrists nor anyone else would be able to make a determination of mental illness "likely to result in the performance of acts which could endanger public safety." Thus, the bill's language would probably not serve to exclude many mentally ill or afflicted aliens who are now excludable and wno could endanger public safety or become public charges.

For example, it would not provide a basis for excluding certain aliens with current or previous psychotic disorders, with disorders which result in antisocial acts or conduct, or with paraphilias, who are now excludable under the terms "insane" and "insanity," "psychopathic personality," and "sexual deviation" in the current law. Some aliens with conditions such as antisocial personality disorders or pedophilia (child molestation), may present a danger to public safety; others, such as voyeurs and exhibitionists, may violate the rights of other persons, even if not necessarily endangering them. Still others, such as those with some current or previous psychoses, may present a potential burden to society if costly medical care should be required.

The bill would also eliminate the present exclusion (in subsection 212(a)(5)) of chronic alcoholics (while moving the law's present barrier to narcotic addicts to the "criminal and moral" category).

We believe that there should continue to be a basis for excluding those with active alcohol dependency, and consideration should also be given to excluding those who are active alcohol abusers, who are not now excludable. We also believe that those dependent on, or who abuse, any drug specified in the Controlled Substances Act should be

excludable, but under the medical, rather than the criminal and moral, heading. The present law, and the proposed revision, speak only of addiction to narcotic drugs.

We have a few specific suggestions for other modifications of the bill that do not raise major policy issues, but which you should be aware of.

With respect to contagious diseases, we agree conceptually with retaining the category of exclusion intended by the text "Aliens who are afflicted with any dangerous contagious disease" (proposed section 212(a)(1)(A)), but in keeping with current public health concepts, we suggest replacing the phrase "any dangerous contagious disease" with "a communicable disease of public health significance." The Secretary would continue to specify the list of excludable communicable diseases.

In addition, the bill's conforming amendment to section 234 of the Act gives an alien a right to appeal a determination that he or she is afflicted with a contagious disease, but not other health-related determinations. This should be corrected to follow the present law, which permits appeals with respect to other determinations, but not in contagious disease situations.

As we have indicated, the proposed formulation of the exclusion categories in the bill before you would result in the admission of many persons, now excludable, who would endanger public health or safety, or become public charges. We urge that the Committee develop modifications in the law that would continue to exclude such aliens, while updating the obsolete terminology and categories. We will be happy to work with you on the specifics of the language necessary to accomplish the necessary exclusions.

Let me suggest a tentative framework for the Subcommittee's consideration of how the present exclusion categories might be modified. The basic principles of public health and safety and economic interests are the underpinning of the present law, and they ought to underlie any new formulation. On this foundation, we believe that the following classes of aliens should be excludable:

> Aliens who have a communicable disease of public health significance;
>
> Aliens who have a history or record of behavior, or manifestations of certain mental impairments, that pose a threat to the safety or welfare of others or to themselves, or a threat to property.

Aliens who are likely to become an economic or social burden because of physical or mental impairment, or predisposing social or financial conditions.

We would welcome a statutory scheme of exclusion categories based on these classes, together with these elements:

Authority for waivers and other discretionary relief in individual cases;

Authority for the Secretary of Health and Human Services to make distinctions and definitions within the classes or categories ultimately chosen; and

Authority to deport aliens who, within five years of entry, need long-term institutionalization at public expense for pre-existing health conditions, or who become public charges, or who fail to comply with the health-related terms of their admission.

Within categories based on such a framework, we believe that we would be able to make sound decisions with respect to the medical and public welfare considerations in the admission of aliens to the United States.

Mr. Chairman, this concludes my testimony. I would be pleased to answer any questions the Subcommittee may have.

JPF 0451L

THE WHITE HOUSE

WASHINGTON

June 18, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Draft Department of State Report on H.R. 4509, a Bill to Amend the Grounds for Exclusion and Deportation of Aliens

Counsel's Office has reviewed the above-referenced draft report. The statement on page 12, lines 6-7, that "since 1978 the United States has not been in a state of national emergency" is inaccurate. On several occasions since 1978 the President has declared a "national emergency" under the provisions of the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1701 et seq. See, e.g., Executive Order 12444 (Oct. 14, 1983) (continuation of export control regulations). The national emergency with respect to Iran was originally declared on November 14, 1979, see Executive Order 12170, and has been continued in effect since that time, the most recent continuation notice having been sent to Congress on November 4, 1983.

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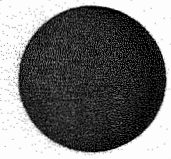

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Subject: Draft Dept. of State Report on H.R. 4509, a bill to amend the grounds for exclusion and deportation of aliens

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OFFICE OF MANAGEMENT AND BUDGET

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	Susan Gates	Approval or signature	☐
	Sylvia Malm	Comment	☐
	✓ Fred Fielding	Prepare reply	☐
	Mike Uhlmann	Discuss with me	☐
		For your information	☐
		See remarks below	☐
FROM	Branden Blum	DATE	6/7/84

REMARKS

Subject: Draft Department of State Report on H.R. 4509, a bill to amend the grounds for exclusion and deportation of aliens

In the attached draft report, which has been forwarded to Justice, Labor and HHS, State discusses a number of concerns with the bill. A hearing on H.R. 4509 is scheduled for 6/14/84. (Justice testimony has already been circulated for comment. HHS and State testimony will be circulated for review upon receipt.)

Please provide me with any comments by Monday, June 18, 1984.

Attachment

OMB FORM 4
Rev Aug 70

United States Department of State

Washington, D.C. 20520

Dear Mr. Chairman:

The Secretary has asked me to reply to your letter of December 6, 1983 enclosing for the Department's study and report a copy of H.R. 4509, "A bill to amend the Immigration and Nationality Act with respect to the grounds for exclusion and deportation of aliens."

Section 1 of the bill sets forth the short title of the bill and makes standard references to the Immigration and Nationality Act. The Committee may wish to correct the short title to reflect the current year.

Section 2 of the bill would revise the grounds for exclusion of aliens set forth in Section 212(a) of the Act and would group the revised grounds of exclusion in six major sub-categories.

Health-Related Grounds

Proposed new section 212(a)(1) would replace current sections 212(a)(1)-(4) and (6). Current 212(a)(5), which excludes chronic alcoholics and narcotic drug addicts, and is now considered to be one of the medical grounds of exclusion, would be modified and considered one of the "Criminal and Moral Grounds" under new section 212(a)(2) insofar as it relates to narcotic drug addicts.

Proposed section 212(a)(1)(A) repeats, with minor editorial modification, current section 212(a)(6) which excludes an alien afflicted with a dangerous contagious disease. The Department presumes it to be intended that the United States Public Health Service continue to determine which diseases are "dangerous contagious" diseases and that the current medical examination system continue unchanged.

The Honorable
Peter W. Rodino, Jr., Chairman,
Committee on the Judiciary,
House of Representatives.

Proposed new section 212(a)(1)(B) would replace current sections 212(a)(1) through (4). Those sections now render excludable an alien who is mentally retarded, who is insane, who has had one or more attacks of insanity, or who is afflicted with psychopathic personality, sexual deviation or a mental defect. In lieu of these four specified bases for exclusion, an alien would be excludable only if he suffered from a mental illness likely to result in the performance of acts which could endanger public safety.

While the Department will defer to the comments of the Department of Health and Human Services concerning this proposal, the Committee may wish to consider the following observations.

First, the Department believes that the phrase "acts which could endanger the public safety" should be clarified. This phrase carries an implication of violence to others. There is a question whether it would include an alien dangerous to himself, but not to others. While the Department defers to the comments of the Department of Health and Human Services, it does believe that the intent of the phrase "acts which could endanger the public safety" should be made explicit.

Second, the Department believes that the elimination of excludability because of mental retardation leaves certain questions unresolved. Section 212(g) of the Act, which would be repealed by section 2(e) of the bill, now authorizes discretionary relief from excludability based on mental retardation to an immigrant alien who is the parent, spouse, son, daughter, or minor unmarried adopted child of a citizen, of a permanent resident alien or of an alien to whom an immigrant visa has been issued. In addition, excludability for this reason may be waived, also as a matter of discretion, under section 212(d)(3) of the Act for any nonimmigrant alien. While some mentally retarded individuals can lead independent and productive lives in spite of their mental handicap, others are so severely retarded that they cannot do so. The current discretionary relief and waiver authority allow for consideration of each case individually, taking into account the degree of retardation and the need, if any, for special care which might exist in an individual case. The total elimination of mental retardation as a ground of exclusion would eliminate any possibility of such case-by-case consideration. This fact would become especially significant in light of the proposed elimination of current section 212(a)(15) (excludability for public charge reasons) which is addressed further below.

Criminal and Moral Grounds

Proposed section 212(a)(2) would modify and replace current sections 212(a)(9), 212(a)(10), 212(a)(23), and 212(a)(33). Also, the prohibition on the issuance of visas to narcotic drug addicts contained in current section 212(a)(5) would become part of this proposed section.

Proposed section 212(a)(2)(A) contains the substance of current section 212(a)(9) which excludes aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense). It retains the current exceptions for aliens convicted of a single crime of moral turpitude committed while under the age of 18 and aliens who have been convicted of a single "petty offense". The only substantive change would be the elimination of the current provision excluding aliens who admit the commission of a crime involving moral turpitude. This change would have little practical effect on visa operations, since visa applicants rarely admit to a consular officer the facts required to support a finding of excludability.

Proposed section 212(a)(2)(B) is substantively identical to current section 212(a)(10) which excludes an alien who has been convicted of two or more offenses for which the aggregate sentences to confinement actually imposed are five years or more. As a technical matter, it appears that the word "confine" at line 12 on page 3 of the bill should be changed to read "confinement".

Proposed section 212(a)(2)(C)(i), which would replace current section 212(a)(23), excludes an alien who has been convicted of drug-related offenses and an alien who a consular or immigration officer knows or has reason to believe is involved in drug trafficking. The proposed new section differs from current law in significant ways.

First, excludability under this proposed section would be extended to aliens convicted of violation of laws or regulations relating to "psychotropic" and "controlled" substances and to traffickers therein, as well as to those convicted of violation of laws or regulations relating to marihuana or narcotic drugs and traffickers therein, as provided under current law. The Department perceives no objection to this proposed change, but suggests that it should be clarified. It appears that the term "controlled substance" may have had its origin in the Comprehensive Drug Abuse Prevention and Control Act of 1970, P.L. 91-513, 84 Stat. 1236, 21 U.S.C. 801, et seq. Title II of P.L. 91-513 is cited as the Controlled Substances Act and contains a definition of the term "controlled substances." If the Department is correct in its assumption, it might be preferable to modify proposed section

212(a)(2)(C)(i) to refer simply to controlled substances as defined in the Controlled Substances Act, since the definition appears to include all substances contemplated by the present formulation of proposed section 212(a)(2)(C)(i).

Second, the relief from excludability because of a single conviction for simple possession of 30 grams or less of marijuana would be broadened in two ways. Under section 212(h) of the Act as it now reads, relief from excludability for this reason may be granted by the Attorney General, as a matter of discretion, to immigrant aliens having certain specified relationships to a citizen or lawful permanent resident. The language contained in proposed section 212(a)(2)(C)(i) would make such relief automatic and would extend it to all aliens, immigrant and nonimmigrant, whether or not related to a citizen or permanent resident.

Proposed section 212(a)(2)(C)(ii) would replace, in part, current section 212(a)(5). Unlike current section 212(a)(5) which excludes both chronic alcoholics and narcotic drug addicts, proposed section 212(a)(2)(C)(ii) would exclude only narcotic drug addicts. Under current law, a finding that an alien is a narcotic drug addict is treated as a medical finding and may be made only through the medical examination process. The Department would be strongly opposed to any change that would raise any doubt as to the need for medical certification of an alien's addiction to support a finding of excludability. Thus, we urge that this provision be transferred into proposed section 212(a)(1) (Health Related Grounds).

Proposed section 212(a)(2)(D) would exclude any alien who ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion. This proposed section replaces and broadens significantly current section 212(a)(33) which includes the same language but applies only to aliens who were involved with the Nazi regime in Germany or related governments.

The Department sympathizes with the objective of this proposal, but the expansion of what is now section 212(a)(33) has the potential for creating serious administrative and substantive problems. Current section 212(a)(33), limited as it is to aliens associated with the Nazi regime, deals with a relatively well-defined group which unquestionably should be excluded from this country. Because of the nature of the Nazi regime and the Nazi Party, no questions arise concerning the distinction between officially-inspired or directed persecution and persecution engaged in by private individuals or groups without the approval, or against the policy, of the government in power. Such questions might well arise under this proposed broader provision.

The term "otherwise participated in" is so broad as to create substantial difficulties of definition if it were applied to wider categories or groups. As an example, there have been accounts of Soviet dissidents who have been expelled from professional organizations in the USSR because of their political views. Typically, such actions are formally taken by a vote of the other members of the organization, although it is clear that the action is inspired by the Soviet Government. It would seem that any member of the organization who voted to expel a dissident member would necessarily have "otherwise participated in" the persecution of the dissident member because of his political opinion and would thus be permanently barred from entry into the United States. Administratively, the process of determining whether this exclusion would apply in such a case could be extremely difficult.

Finally, the Department foresees situations in which substantial complications could arise in our relations with another country. For example, acts constituting persecution might be imputed to a country although the government either challenged the imputation or said that the acts were committed by private individuals or groups without its consent and perhaps in spite of its best efforts to prevent such acts.

Security Grounds

Proposed section 212(a)(3) would replace current sections 212(a)(27), (28) and (29) and would substantially restrict the so-called "security" grounds of exclusion. As a technical matter, the Department believes that the word "is" in line 3 of page 4 should be deleted and that the word "of" in line 4 of page 4 should be changed to read "or".

Proposed section 212(a)(3)(A) would replace current sections 212(a)(27) and (29). These sections render excludable an alien who the consular officer or the Attorney General knows or has reason to believe intends to, or probably would, engage in activities (1) prejudicial to the public interest; (2) which would endanger the welfare, safety or security of the United States; (3) which would be prohibited by laws relating to espionage, sabotage, public disorder; or (4) other activities subversive of national security or the purpose of which is opposition to, or overthrow or control of the Government of the United States by force, violence or other unconstitutional means. These two sections are closely inter-related and to a considerable extent overlap each other. As an example, an alien who is a foreign hostile intelligence service operative and who we have reason to believe intends to engage in espionage in the United States would clearly be excludable under section 212(a)(29). Such an alien would also appear to be excludable under section 212(a)(27) since engaging in espionage clearly is prejudicial to the public interest is or likely to endanger the

welfare, safety or security of the United States. Cases of this kind would apparently continue to be covered by proposed section 212(a)(3)(A) as the wording of that section basically is a condensation of the wording of current sections 212(a)(27) and (29).

For many years the Department has also interpreted section 212(a)(27) to apply to cases in which an alien's entry or proposed activities in the United States could have potentially serious adverse foreign policy consequences. It has been the Department's view that in such a case the alien's entry or activities could properly be said to be "prejudicial to the public interest" within the meaning of that section. The Department of Justice has concurred in this interpretation. The exact phrase "prejudicial to the public interest" does not appear in proposed section 212(a)(3)(A), but the Department nevertheless believes that the wording of proposed section 212(a)(3)(A)(ii), which refers to activities which endanger public safety or national security, would continue to support findings of excludability on foreign policy grounds in certain cases. The Department believes the national security is protected not merely by military means alone, but also by diplomatic means. On this basis, activities which could have potentially serious adverse foreign policy consequences could endanger national security. If, on the other hand, the intent of the bill is to eliminate altogether visa denials on foreign policy grounds, the Department would oppose adoption of such a provision.

Proposed section 212(a)(3)(B) would replace current section 212(a)(28). Sections 212(a)(28)(A) through (E) now exclude anarchists, Communists, members of anarchist or Communist parties, members of any organization affiliated with a Communist party or organization, and those who believe in or advocate Marxist doctrine. Sections 212(a)(28)(F), (G), and (H) exclude aliens who advocate, or belong to organizations which advocate certain acts generally characterized as terrorist acts. Moreover, the provisions of section 212(a)(28) extend not merely to present, but also to past, membership, affiliations, belief or advocacy.

Proposed section 212(a)(3)(B) would omit virtually all the provisions of section 212(a)(28) and would exclude only an alien who is an active member of an organization which is engaged in violence or terrorist activities. The Department believes that the elimination of all current restrictions against the admission of members of Communist parties or organizations and of adherents of Communist doctrine is not in the national interest, but will defer to the comments of the Department of Justice with respect to this issue because of that Department's primary responsibility for internal security.

There are also several technical matters relating to the proposed section which deserve comment. First, the word "active" appears to require something more than mere membership in order to

support a finding of excludability. It seems that some unspecified degree of participation in the organization's activities might be required for this purpose. The Department suggests that this point be clarified.

Second, the Department notes that the concept of "affiliation" has been omitted and excludability will result only from active membership. This appears to pre-suppose that organizations of the kind described are sufficiently formal to have membership in the traditional sense. Terrorist organizations or groups are virtually all clandestine and often do not appear to be clearly structured. For this reason, the Department would suggest that proposed section 212(a)(3)(B) be expanded to exclude aliens affiliated with such organizations as well as those who are members.

Third, the Department questions whether it is appropriate to exempt from excludability aliens who advocate violence or terrorist activity while excluding those who engage in it.

Fourth, the wording of proposed section 212(a)(3)(B) clearly comprehends only present membership (presumably as of the time of visa application or application for admission). The Department foresees that aliens may try to avoid excludability by claiming to have terminated membership, perhaps only very recently. As many of the organizations within the purview of this proposed section are clandestine in character, verification of such a claim will be virtually impossible. For this reason, the Committee may wish to consider providing that excludability would result not only from present membership but also from past membership within a specified time period.

Finally, the Department notes that A-3 nonimmigrants (attendants, servants and personal employees of foreign government officials accredited to the United States) and G-5 nonimmigrants (attendants, servants and personal employees of representatives to, or employees of, an international organization) would be exempt from excludability under proposed section 212(a)(3)(B). This appears to transfer to this section the provisions of current section 212(d)(2) which would be repealed by section 2(d)(2) of the bill and which exempts A-3 and G-5 nonimmigrants from the provisions of current section 212(a)(28). While this exemption may be appropriate when the primary basis for excludability is membership in or affiliation with a Communist Party or organization, the Department questions whether it would continue to be appropriate if the basis for excludability were active membership in an organization which engages in violence or terrorism.

Economic Grounds for Certain Immigrants

Proposed section 212(a)(4) incorporates the labor certification requirement of current section 212(a)(14) with a substantive amendment and the provisions of current section 212(a)(32) excluding foreign medical graduates who have not passed Parts I and II of the National Board of Medical Examiners examination or an equivalent examination.

Proposed section 212(a)(4)(A) would replace current section 212(a)(14). Under current law, labor certification generally cannot be granted by the Secretary of Labor if qualified workers in the United States are able, willing and available for the position for which the alien's services are sought. In the case of members of the teaching profession and of artists and scientists of exceptional ability only, United States workers must be equally qualified -- not merely qualified -- able, willing and available in order to support a denial of certification. Proposed section 212(a)(4)(A) would apply this more stringent "equally qualified" test also to cases of aliens holding doctoral degrees who will be employed as researchers by a college, university or other nonprofit educational or research institution. The Department defers to the comments of the Department of Labor with respect to this proposed amendment.

Proposed section 212(a)(4)(B) repeats present section 212(a)(32) without substantive amendment. The Department will defer to any comments the Department of Health and Human Services may have with respect to this provision.

Illegal Entrants and Immigration Violators

Proposed section 212(a)(5) would incorporate current sections 212(a)(16) (aliens previously excluded); 212(a)(17) (aliens previously deported, removed at Government expense, or removed as alien enemies); 212(a)(18) (stowaways); 212(a)(19) (aliens who have procured or sought to procure a visa or other entry documentation by fraud or a willfull misrepresentation); 212(a)(24) (aliens who arrived less than two years previously in foreign contiguous territory or an adjacent island on a carrier which had not signed an agreement with the Attorney General or which had failed to comply with the terms of such an agreement); and 212(a)(31) (aliens who for gain assist others to enter the United States illegally). Of these sections, only present section 212(a)(31) would be substantively amended.

Current section 212(a)(31), which becomes proposed section 212(a)(5)(E), would be amended by deleting the current requirement that the alien's activities have been for gain in order to support a finding of excludability. This change would open the way for

finding aliens excludable for attempting to assist family members to enter the U.S. illegally for purposes of family reunification, an action that in the past has not warranted such a harsh penalty. Also, it would make it more difficult to determine what degree of assistance would invoke excludability. Assistance provided in exchange for money may be presumed significant but it would be more difficult to establish whether a casual suggestion made to a friend or family member should be so presumed.

The Department urges that current section 212(a)(24), which becomes proposed section 212(a)(5)(F), be repealed. This section has its origins prior to World War I in legislation to regulate the conditions under which immigrant aliens were transported by vessel to United States ports of entry. It was enacted in 1917 to prevent unscrupulous shipping companies from evading those restrictions by carrying immigrant aliens to ports in Canada or Mexico, for example, and leaving them there to make their way to the United States. The virtual elimination of transoceanic passenger vessels and the standardization of passenger accommodations on commercial aircraft have long since rendered this section obsolete. It nevertheless remains in the law as a trap for the unwary. While the number of immigrant aliens subject to this ground of exclusion is very small, not more than a handful annually, its perverse effects impose upon those few a very real hardship for which there is no substantive basis. For this reason, the Department urges removal of this provision from the grounds of exclusion.

Documentation Requirements

Proposed section 212(a)(6) would incorporate current provisions which establish the requirements for travel and entry documents for immigrants (current sections 212(a)(20) and (21)) and nonimmigrants (current section 212(a)(26)). As a technical matter, it would appear that the word "or" in line 18 of page 8 of the bill should be changed to "and". Otherwise, the documentation requirements under proposed section 212(a)(6)(B) for nonimmigrant aliens would call for either a valid travel document or a valid entry document, but not for both.

Current Exclusion Grounds Eliminated by H.R. 4509

In addition to restructuring and amending certain of the present grounds for exclusion, as has been described above, section 2(a) of the bill would, if enacted, eliminate altogether certain other current grounds for exclusion, namely: section 212(a)(7) (medical condition affecting the ability to earn a living); 212(a)(8) (beggars, paupers and vagrants); 212(a)(11) (polygamists); 212(a)(12) (prostitutes, procurers of prostitutes and those who live from the proceeds of prostitution); 212(a)(13)

(those coming to engage in immoral sexual acts); 212(a)(15) (those likely to become a public charge); 212(a)(22) (aliens ineligible to citizenship or who departed from or remained outside the United States in time of war or national emergency to evade or avoid military service); 212(a)(25) (illiterates); and 212(a)(30) (an alien accompanying another alien excluded and certified to be physically or mentally helpless).

Three of these provisions -- sections 212(a)(7), (8), and (15) -- deal generally with economic or social welfare issues. They all relate to the general question of an alien's ability to support himself after admission in ways which conform to American customs and mores. Accordingly, the Department will defer to the comments of the Department of Health and Human Services with respect to the merits.

Operationally, the elimination of sections 212(a)(7) and (8) would have little, if any, effect on the visa function. In Fiscal Year 1983, for example, over seven million visa applications were processed, but only 54 visa applications were refused under section 212(a)(7) and eight under section 212(a)(8). During that same fiscal year 17 refusals under section 212(a)(7) were overcome, presumably on the basis that the alien had established that other arrangements had been made for his support, relieving the alien of the need to earn a living.

On the other hand, the elimination of section 212(a)(15) (the public charge provision) would have a major impact on visa operations. In Fiscal Year 1983 over 21,000 applications were refused under section 212(a)(15), of which over 13,000 refusals were subsequently overcome. The overwhelming majority of these actions related to immigrant visa applicants rather than to nonimmigrants. Overall, section 212(a)(15) is by far the most common ground for refusal of an immigrant visa application. Thus, elimination of this provision would result in a major reduction in the time required to adjudicate individual immigrant visa applications.

The Department notes, however, that exclusion for public charge reasons is one of the earliest exclusions in our immigration law, dating from 1882. It is also one which has commanded considerable public attention from time to time, especially during the Depression. In 1950 the Senate Judiciary Committee discussed the public charge issue in detail in the study on which the Act was based (Senate Report 1515, April 20, 1950 at pp 346-350). More recently, at various times consular officers have been accused of applying the public charge provision too laxly or too stringently. It has even occurred that both accusations have been made at the same time.

An affidavit of support is commonly used to meet the public charge provision, but at present it is only a moral obligation. Over the last decade efforts have been made to amend the public charge provision to make the affidavit of support a legally binding document.

None of these proposals have been enacted, but other legislation relating to this point has been. Public Laws 96-265, 97-35 and 97-98 each amend legislation regulating Federal benefits programs to provide that the income and resources of the sponsor of an immigrant be attributed to the immigrant for purposes of determining the immigrant's eligibility to receive SSI, AFDC, or Food Stamp benefits if the immigrant applies for such benefits within three years after admission for permanent residence. These amendments also provide for recovery from the sponsor of the value of any such benefits paid to such an immigrant in error. For the purposes of these provisions, the sponsor of an immigrant is a person who executed an affidavit of support or similar document in behalf of the immigrant. Since the elimination of section 212(a)(15) of the Act would result in the abandonment of affidavits of support in the immigrant visa process, it would appear to have the practical effect of rendering these recently enacted provisions nugatory. The Committee may wish to take this fact into account in its consideration of the merits of eliminating section 212(a)(15) from the grounds of exclusion.

In considering the elimination of current section 212(a)(12) of the Act which excludes prostitutes, those who procure prostitutes or live from the proceeds of prostitution, the Committee should be aware that a conviction for prostitution, for procuring prostitutes or for profiting from prostitution would be a conviction for a crime involving moral turpitude within the meaning of current section 212(a)(9) -- proposed section 212(a)(2)(A). Thus, elimination of section 212(a)(12) would relieve from ineligibility only those whom the consular officer knew or had reason to believe were prostitutes, procurers of prostitution, or aliens who profited from prostitution, but who had not been convicted.

The Department can perceive no operational implications in the proposed elimination of current section 212(a)(13) which excludes aliens coming to engage in any immoral sexual act. In 1953 the Board of Immigration Appeals held that, in order to support an exclusion under this section, it was necessary to determine that such purpose was the alien's primary purpose in coming to the United States. This holding was in line with an earlier decision of the Supreme Court interpreting the predecessor provision in the Act of February 5, 1917. As a result, findings of excludability under section 212(a)(13) are extremely rare. There were none at all in Fiscal Year 1983, for example.

Section 212(a)(22) excludes aliens who are ineligible to citizenship or who, in time of war or national emergency, departed or remained outside the United States to evade or avoid military service. As matters stand now, this section is rarely invoked, for several reasons. First, compulsory military service (the draft) was terminated in 1973. Second, since 1978 the United States has not been in a state of national emergency. Third, the pardon issued by President Carter in 1977 has been interpreted to relieve from excludability any alien who, between August 4, 1964, and March 28, 1973, departed or remained outside the United States to evade or avoid military service. There remain nevertheless certain classes of aliens to whom this provision applies, namely: aliens who obtained relief from military service on the basis of alienage, aliens already serving in the Armed Forces who departed the United States to avoid completing such service (i.e., who deserted and left or remained outside the United States after deserting), and those who departed or remained outside the United States to evade or avoid military service prior to August 4, 1964. Since many of the aliens who most recently performed an act which would normally render them excludable under section 212(a)(22) have been relieved of such excludability by Presidential action, the Department interposes no objection to relieving others similarly situated from such ineligibility.

Section 212(a)(25) excludes an alien over the age of sixteen who is physically capable of reading and writing but who cannot read and write some language, not necessarily the English language. Under current law a returning resident alien, an immigrant alien fleeing religious persecution or one who is the parent, grandparent, spouse, son or daughter of an admissible alien, a lawful permanent resident or a United States citizen is relieved of this excludability. In addition, nonimmigrant aliens and aliens admitted as refugees are not subject to this ground of excludability. Thus, only third, fifth, and sixth preference immigrant visa petition beneficiaries and nonpreference principal aliens are subject to exclusion under section 212(a)(25). It is unlikely that a third preference petition beneficiary would prove to be excludable as an illiterate. The Department notes, however, that it has seen a number of unfortunate cases in which a fifth or sixth preference petition beneficiary was illiterate, while the beneficiary's spouse and/or children were literate. In such a situation, all members of the family group are excludable. The Department will defer to the comments of the Department of Health and Human Services with respect to the desirability of removing this ground of exclusion entirely.

Section 212(a)(30), excluding an alien accompanying another excluded alien who is physically or mentally helpless and whose protection and guardianship is required by the helpless alien, applies only to the port of entry inspection process and not to

the visa process. Accordingly, the Department will defer to the comments of the Department of Justice with respect to its proposed elimination.

Conforming Amendments

Section 2(b) of the bill would repeal section 212(b) of the Act which exempts certain classes of aliens from exclusion by reason of illiteracy (section 212(a)(25)). Since section 212(a)(25) would be eliminated by section 2(a) of the bill section 212(b) would become obsolete.

Section 2(c) of the bill would amend section 212(c) of the Act to conform with amendments made by section 2(a).

Section 2(d) of the bill would amend section 212(d) of the Act by repealing paragraphs (1), (2), (9) and (10), which would become obsolete, and by amending paragraphs (3), (4), (6), (7), and (8) to conform with amendments proposed in section 2(a).

Sections 2(d)(3) and 2(d)(8) would make conforming amendments to sections 212(d)(3) and 212(d)(8) of the Act. As a technical matter, the Department is uncertain of the meaning of the brackets around "(A)" in lines 10 and 18 on page 9 of the bill. In both cases the language being amended has the effect of prohibiting relief from or a waiver of the serious security exclusions and the exclusion of those who have engaged in persecution. For this reason, the Department would suggest that "(A)" be deleted from both texts, since, otherwise, active members of an organization which engages in violence or terrorist activities could benefit therefrom.

Section 2(e) of the bill would repeal section 212(g) of the Act. This section now authorizes for immigrant aliens a waiver of excludability because of mental retardation, affliction with tuberculosis, or past attacks of insanity provided the immigrant is the parent, spouse, son, daughter or minor unmarried adopted child of a citizen, a permanent resident alien, or an alien to whom an immigrant visa has been issued. Under the amendments of section 212(a) of the Act proposed in section 2(a) of the bill neither mental retardation nor having had prior attacks of insanity would constitute a ground of exclusion unless it was determined that either condition was a mental illness likely to result in the peformance of acts which could endanger public safety. On the other hand, tuberculosis is now considered by the Public Health Service to be a dangerous contagious disease within the meaning of present section 212(a)(6). Since current section 212(a)(6) would remain in the revised section 212(a) as section 212(a)(1)(A), it is possible that tuberculosis could remain a "dangerous contagious disease." Should this prove to be the case,

the repeal of section 212(g) would have the effect of eliminating this existing relief from excludability for certain immigrant aliens afflicted with tuberculosis. The Department will defer to the comments of the Public Health Service with respect to this proposal.

Section 2(f) of the bill would amend section 212(h) of the Act. Section 212(h) currently authorizes for certain immigrants a waiver of excludability based on a conviction for a crime involving moral turpitude, confinement in excess of five years, prostitution or a single conviction for simple possession of less than thirty grams of marihuana, for an immigrant alien who is the parent, spouse, or child (including a minor unmarried adopted child) of a United States citizen or permanent resident. The proposed amendment would make what are essentially conforming amendments, but would also apparently perpetuate the discretionary relief for certain aliens excludable because of a single conviction for simple possession of 30 grams or less of marihuana. Since this relief would become automatic and applicable to all aliens under proposed section 212(a)(2)(C)(i), there would seem to be no reason to retain this discretionary provision in section 212(h). On the other hand, depending upon the meaning of the brackets around "(i)" at line 25 on page 9 of the bill, this relief would extend also to narcotics addicts. The Committee may wish to clarify what is intended by their inclusion.

Section 2(g) of the bill would amend section 212(k) of the Act to conform with amendments proposed in section 2(a) of the bill.

Section 2(h) of the bill would establish an effective date for the amendments contained in sections 2 and 4 of the bill with respect to applications for admission. The Department believes that this effective date provision should be modified to include the same effective date for visa applications.

Deportation Grounds

Section 3 of the bill would amend section 241 of the Act, which establishes the grounds for deportation of aliens, to conform it generally to the proposed grounds for the exclusion of aliens. There is, however, one significant difference. Under current law, both sections 212(a)(33) and 241(a)(19) direct themselves to aliens who ordered, incited, assisted or otherwise participated in the persecution of others under the direction of or in collaboration with the Nazi Government of Germany. As has previously been mentioned, section 212(a)(33), which would become proposed section 212(a)(2)(D), would be significantly broadened. Current section 241(a)(19), which would become section 241(a)(5), has not been substantively amended. It is not clear to the Department whether this was deliberate or inadvertent and the

Committee may wish to consider whether the two should conform to each other. In addition, current section 241(a)(10), which corresponds to current section 212(a)(24), would be retained as proposed section 241(a)(1)(D). Just as the Department urges the repeal of current section 212(a)(24), so the Department urges the repeal of current section 241(a)(10). Otherwise, the Department defers to the comments of the Department of Justice with respect to section 3 of the bill.

Additional Conforming Amendments

Section 4 of the bill would make a series of conforming amendments in various sections of the Act.

Section 4(a)(1) would make conforming amendments to section 101(f)(3) of the Act.

Section 4(a)(2) would make conforming amendments to section 102 of the Act.

Section 4(a)(3) would make a conforming amendment to section 203(a)(7) of the Act.

Section 4(a)(4) would make conforming amendments to sections 207(c)(3) and 209(c) of the Act.

Section 4(a)(5) would make a conforming amendment to section 211(b) of the Act.

Section 4(a)(6) would repeal section 213 of the Act. Section 213 now provides for the posting of a "public charge bond" in certain cases and would become obsolete because of the elimination of section 212(a)(15) (excludability for public charge reasons) by section 2(a) of the bill.

Section 4(a)(7) would make a conforming amendment to section 221(g) of the Act.

Section 4(a)(8) would make a conforming amendment to section 234 of the Act. This section establishes the requirements and procedures for the medical examination of aliens at ports of entry. The Department notes that excludability by reason of narcotics addiction in proposed section 212(a)(2)(C)(ii)) is included in the grounds of excludability for which a medical examination would be required. This reinforces the Department's view that excludability for this reason should be included in proposed section 212(a)(1) (Health Related Grounds), as has been mentioned above.

Section 4(a)(9) would make a conforming amendment to section 245(c) of the Act.

Section 4(a)(10) would make conforming amendments to section 236(d) of the Act.

Section 4(a)(11) through (14) would make conforming amendments to sections 241(c), 241(f), 272 and 277 of the Act.

Section 4(b) would make conforming amendments to section 242, 244(a), and 244(e) of the Act and to section 202(n) of the Social Security Act.

If the Committee should decide to approve proposed new sections 212(a)(3) and 241(a)(4), "Security Grounds," it may also wish to consider the repeal of current sections 101(a)(2), 101(a)(12), 101(a)(37), 101(a)(40), and 101(e), since the purposes they have served heretofore would be eliminated. For the same reason the Committee may wish to consider the repeal of Section 21 of the Act entitled "Act to provide certain basic authority for the Department of State," approved August 1, 1956 (22 USC 2691, popularly known as the "McGovern Amendment") as added by Section 112 of the Foreign Relations Authorization Act, Fiscal year 1978, P.L. 95-105, August 17, 1977, 91 Stat. 848. Proposed section 212(a)(3)(B) which would replace current section 212(a)(28), would render excludable aliens who were active members of organizations engaged in violence or terrorist activities. It does not appear to the Department that it would be appropriate to mandate that waivers of ineligibility be recommended for such aliens.

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

Sincerely,

W. Tapley Bennett, Jr.
Assistant Secretary
Legislative and Intergovernmental Affairs