THE WHITE HOUSE

WASHINGTON

February 23, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Proposed Testimony of Allen F. Breed, Director of the National Institute of Corrections, Before the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee

The above-referenced testimony is scheduled to be delivered tomorrow, and the Department of Justice has requested OMB clearance. There is much in the proposed testimony that is problematic and perhaps even inconsistent with Administration policy. The testimony details the severe overcrowding problem confronting state and local corrections systems and suggests that increased prison and jail construction is not a feasible solution: "Just as we learned in the last century that there is no such thing as a free lunch, we now need to learn that locking people up is not a cost-free solution to an excessively high crime rate" (p. 8). Much of the anti-crime rhetoric of the Administration has been along the "lock 'em up" line, however, as have some concrete proposals, such as abolition of parole, no bail for dangerous offenders, mandatory sentences for firearms violators, and so on. The testimony ignores what, for want of a better term, may be called the supply side theory of corrections: as we lock up more offenders, crime rates will go down, reducing the flow of offenders into prisons.

Much of the testimony criticizes States for reducing corrections budgets, and draws a direct link between these reductions and prison disturbances. In terms of specific federal proposals, the testimony urges:

1. passing legislation permitting donation of surplus Federal property for use by states as correctional facilities,

2. earmarking money from the jobs bill for prison construction and repair,

3. authorizing federal loans for prison construction, and

4. devising tax incentives for private firms to construct and operate prisons.

OMB advises that it has serious problems with the testimony, and has raised these problems with Mike Uhlmann. Uhlmann is going to determine if the testimony has received any policy review at DOJ (I strongly suspect it has not). The end result will be either substantial changes or postponement of the testimony. Since the concerns raised by the testimony are being addressed -- and we will be kept advised -- I see no need for any action by this office at this time.

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Subject: Statement regarding the National Institute of Corrections and the relationship between Federal, State, and local correctional policies

ROUTE TO: Office/Agency (Staff Name)	ACTION Action Code	ACTION Tracking Date YY/MM/DD	DISPOSITION Type of Response	DISPOSITION Code	DISPOSITION Completion Date YY/MM/DD
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5/81

Department of Justice

DRAFT

STATEMENT

OF

ALLEN F. BREED
DIRECTOR, NATIONAL INSTITUTE OF CORRECTIONS

BEFORE THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES AND THE ADMINISTRATION OF JUSTICE

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

10:00 A.M.

FEBRUARY 24, 1983

RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, D.C.

Mr. Chairman and members of the Subcommittee:

I appreciate the opportunity to appear before you this morning to discuss the National Institute of Corrections and the relationship between Federal, State, and local correctional policies. The National Institute of Corrections is the primary Federal resource to provide direct assistance to State and local corrections programs. These number 3,500 local jails, 529 state institutions, 2,900 probation and parole agencies, 745 community residential facilities, and 419 juvenile facilities.

The Institute was started in 1974 in response to a recommendation made at the National Conference on Corrections, convened by the Attorney General in 1971 in the aftermath of the tragic Attica prison riot. That recommendation -- strongly supported at the conference by Chief Justice Warren Burger -- called for a national training center for corrections personnel similar to the F.B.I. Academy.

The National Institute of Corrections' founding legislation mandated that it provide training, technical assistance, clearinghouse services, research, and policy/program formulation and development to improve State and local corrections. The Institute was first funded in 1977, as a line item in the Federal Bureau of Prisons' budget, at $5 million dollars. It continues to be administratively attached to the Bureau.

Since 1977, the Institute has provided management and specialty-skills training to roughly 12,000 administrators, managers, and staff trainers working in corrections. It is estimated that an additional 150,000 corrections line staff have benefited by training sponsored by the Institute through small grants to agencies to devise and conduct staff training.

In July 1981, the Attorney General authorized the Institute to establish a National Academy of Corrections at Boulder, Colorado. The Academy opened on October 1, 1981. In the first year of operation, funded entirely out of existing appropriations, over 2,000 state and local corrections staff received intensive training. As state budgets are being reduced across the nation, training for corrections personnel has been reduced by as much as 50%. The Federal Government has a critical role in shoring up these training deficiencies by continuing the Institute's training efforts.

Technical assistance to meet the most critical needs of state and local corrections continues to be in high demand, and the Institute last year provided on-site help to corrections agencies in nearly 1,000 instances. Assistance is provided only to agencies that officially request it; no effort is made to coercively approach the states and localities from the Federal level. Assistance provided covers a broad gamut -- from helping small, rural jails develop the most basic of policy and procedures -- to providing extended assistance in the aftermath of prison riots -- to mediating contested conditions of confinement -- to improving classification systems in institutions, probation, and parole.

Our information center in Boulder, Colorado, serves a longstanding need for current and accurate information to be made available to corrections practitioners and legislators. The information center is a national depository and clearinghouse for corrections information and provided assistance to over 5,000 requestors last year. The center also serves to link State, local, and Federal corrections efforts throughout the country, thereby reducing the isolation in which most corrections departments and programs had been operating.

Program development activities have produced transferable models in many critical areas. Models have been developed in prison and probation classification, an area that is critical to the effective placement and supervision of offenders. Models have also been developed in the areas of parole guidelines, bail guidelines, protective custody, inmate grievance mechanisms, and probation workload measures, to mention just a few; architectural design models for correctional facilities are currently being developed.

As one example, the Federal role in assisting the states in implementing effective offender classification systems has been most effective. Most offenders are overclassified, i.e., confined and/or supervised at unnecessarily high levels of security and deprivation. Currently, better than 50% of all inmates are classified and confined to maximum security facilities. However, based on the experience with the use of the latest classification technology, only 10 to 15% of the inmates in state institutions warrant this degree of security and custody. The converse is true with minimum security where only 11% of the offenders are classified to this level of security, although as many as 30 to 35% may be so safely confined. Classification is not only critical to expanding the use of the most appropriate level of confinement necessary for public safety, but also as an economic factor to be considered in public policy choices regarding sentencing sanctions. Construction of a 500-bed maximum security prison, for example, averages $35 million, while construction of a 500-bed minimum security facility averages about $11 million. Annual operating costs of a maximum security prison average $12,000 per inmate -- annual operating costs of a minimum security facility average $6,000 per inmate.

Annual operating costs for a probation supervision program average $463 per probationer.

Modern classification systems can provide the most cost effective, rational, and safe method of assigning offenders to the most appropriate program and custodial level.

In all of its work, the Institute strives to move state and local corrections toward levels of efficiency, cost-effectiveness, managerial competence, humaneness, safety, and fairness. National policy is desperately needed to espouse programs and procedures that will give state and local corrections guidance on the elements of safe, constitutional, and equitable corrections systems.

Mr. Chairman, I will limit myself in regard to your request to discuss the relationship between Federal, State, and local correctional policies, to discussing the two most critical problems facing American corrections: severe overcrowding in our prisons and jails, and the disabling impacts of reduced state and local funding for corrections.

Overcrowding is by far the most critical problem facing corrections today as we squeeze more than 400,000 people into state and federal prisons. An additional 160,000 are in detention in local jails throughout the country. The number of confined offenders in state and federal prisons has increased by 60 percent over the decade, 1970 to 1980. By the end of the third quarter of 1982, prisoners in state and federal facilities numbered 405,371 an increase of 29% in less than 2 years. If the number of people entering prisons continues to escalate at the same rate, the U.S. prison population will exceed half a million people before the end of 1984.

Because of severe prison overcrowding, nearly 10,000 state prisoners are backed up into county jails making the safety of local correctional facilities even more precarious.

State and federal incarceration rates indicate imprisonment of 97 individuals per 100,000 population in 1970; 138, in 1980; 153, in 1981; and 169 per 100,000 population by the end of the third quarter of 1982. This increasing rate of incarceration is not only driving up the cost of state and local correctional services, but also consuming a greater proportion of annual state expenditures. In 1970, 1.2% of state expenditures ($931.4 million) was earmarked for corrections. For the current fiscal year, 2.63% ($6.1 billion) of state expenditures is budgeted for corrections.

This influx of prisoners is literally crippling the ability of already antiquated and physically deplorable facilities to accommodate offenders in any sense of safety, humaneness, or decency. To house the increasing numbers of persons sentenced to prisons, the states are using tents, hallways, prefabricated buildings, and recreation space. The states are double and triple bunking facilities and are reopening old facilities that had previously been closed due to antiquity and disrepair.

In fiscal year 1982, state systems added 11,516 beds through new construction. For the four-year period beginning with fiscal 1983, monies have been appropriated for construction of an additional 60,000 beds. Of these, 12,000 are to be completed during the current fiscal year at a projected cost of $1.5 billion. These 12,000 beds represent space for less than half of the nearly 25,000 new prisoners that entered state facilities in the first half of 1982. The monthly net increase in prison populations in California, Texas and Florida justifies a new 500-bed institution in each state every month just to keep even!

In 1981, 37 states and the District of Columbia were involved in litigation regarding prison conditions. In 1982, 39 states were under court orders to reduce prison overcrowding; 23 were operating under court-ordered limits.

Mr. Chairman, I cannot overemphasize the critical point that prison and jail overcrowding has reached in this country.

We have in effect overcrowded ourselves into potential disaster. We find ourselves on the horns of a dilemma. If we do not reduce crowding quickly we face increased disturbances, escapes, riots, and injuries and death to both the keepers and the kept. If we attempt to relieve the current pressure through construction alone and if funds were made available today -- it would be a minimum of three years before the first cell could be occupied. How much tragedy can we tolerate in the next three years?

However, if we decide to build on the basis of straight line population projection requirements, we are going to bankrupt the responsible jurisdictions. We have all heard the astronomical costs of prison construction, but seldom is it presented with an economist's portrayal of actual expenditures over a 30-year period. When a legislature decides to spend, say, $100 million in new prison construction, it is committing the taxpayers of that state to $1.6 billion in correctional expenditures over the ensuing three decades. Construction is only 6% of the charge to taxpayers over 30 years. For every dollar of construction, there will be $16 in operating costs. The construction is only the down payment. Corrections has become a $5 billion a year business. The crisis nature of corrections is beginning -- in an era of diminishing fiscal resources -- to erode fiscal support needed for education, health, roads, and general welfare.

The build/not build controversy has become so emotional that both sides find it hard to deal objectively with present conditions. Certainly there is some justification for the contention that new construction seems to result in a self-fulfilling prophecy as prison populations expand to fill the available space. But this argument ignores the increasing number of prisoners held in intolerable, overcrowded conditions as we fail to replace outdated structures -- not to mention building new space for increasing populations.

Jail and prison populations must be seen as less the result of such quantifiable indicators as the baby boom and the crime rate than the result of basic policy decisions reflecting beliefs about how we choose to deal with offenders. These policies represent the important and crucial explanatory element necessary to understand the current crisis of overcrowding.

Under this premise, the number of people in prison -- rather than being a factor of demographics and the crime rate -- is largely a result of decisions made by actors in the criminal justice system: police, prosecutors, defense lawyers, judges, corrections officials, parole boards, legislators, and governors. Thus, solutions lie not with jailers and wardens, but with the key decisionmakers spread throughout the criminal justice system.

The involvement of all three branches of government (legislative, executive, and judicial) in the corrections process in numerous ways and to various degrees further exacerbates the task. An additional complexity arises from the need to identify and analyze correctional trends within the larger socio-economic, legal, and political environment. Trends in corrections must also be viewed among the same forces that propel movement in other parts of the social anatomy of our democratic government -- the belief systems and political attitudes of people.

Only as the key decisionmakers throughout the criminal justice system begin to accept responsibility for their actions in contributing to the problem and, in turn, are provided with the necessary information to make responsible reasoned decisions, will the crisis diminish. Just as we learned in the last century that there is no such thing as the free lunch, we now need to learn that locking people up is not a cost-free solution to an excessively high crime rate.

This somewhat gloomy appraisal does not imply hopelessness but, rather, is made to underscore that neither a stroke of the pen to enact new laws, a bountiful appropriation, nor a new commissioner of corrections by itself will make prison overcrowding go away. All of the studies -- all of the analyses and technical solutions -- will be of little value without a jurisdiction having a clear-cut public policy on corrections. This policy must reflect the courage to tackle the multiplicity of overcrowding problems -- and the tenacity to shepherd long-term solutions. Do we need more prisons? No,-yes,-maybe. The processes leading to and the conditions surrounding overcrowding are as varied as the 50 states -- as the many courts that sentence prisoners -- and as the officers who arrest. An appropriate solution for one state may be politically, economically, and legally infeasible in another.

For a solution to be developed, the key decisionmakers must see prison overcrowding as a societal problem, not as a corrections problem. The Federal Government can assist in analysis of the need and propose alternative solutions, but the public policy decision to build or not to build belongs at the city, county, and state levels of government.

Increasing the capacity to incarcerate must be accompanied by serious efforts to assist jurisdictions in developing mechanisms for population control. This responsibility has been one which the National Institute of Corrections has pioneered, and should continue to be a major focus of its program development and technical assistance activities. Regardless of new strategies for population control, State and local governments are going to have to construct some new jails and prisons. The immediate problem is too many prisoners in too little space.

I am not here to suggest that the Federal Government allocate funds for such construction, particularly in light of the need to reduce Government spending. There is no single panacea to the problems of overcrowding, but one can suggest areas in which Federal programs could play a key role in assisting the current situation.

First, the current overcrowding has been eased slightly by the transfer of Federal surplus properties to the states and localities for correctional use. From October 1980 to date, eight Federal properties valued at an estimated $21,082,200 have been transferred, providing 4,051 beds. Only two of the properties were donated outright; leasing arrangements exist in most instances. An additional six property transfers are pending finalization of sale or leasing arrangements. It should be noted that the Government currently both sells and leases at fair market value.

While the Administration has been supportive and bills are pending before Congress to authorize outright donation of surplus Federal properties for state and local correctional use, legislation was not passed at the last session of Congress. The donation of surplus

Federal buildings and land on which the states and localities could construct or remodel facilities would be a significant contribution.

Second, there is currently a $4.3 billion job bill before Congress. The proposal includes $765 million for repair of federal buildings, military housing, prisons, and related facilities. It also includes $1.2 billion in accelerated spending for community development and urban development grants to local government for maintenance and construction projects. I would suggest to you that any Federal funds made available for repair and construction at the state and local levels should provide authorization for the construction of state and local corrections facilities. I know of nowhere that the need is so great. Nor so urgent.

Third, the Federal Government might consider making low-interest loans available to the states for construction of new prisons and jails. Federal loans would enable the states to undertake necessary construction and renovation without further taxing the states' budgets or abilities to pass bond referendums.

Fourth, tax incentives could be created to encourage the assistance of the private sector in construction and renovation of correctional facilities. Efforts are underway in some states to have private investors build and operate prisons for lease to the state. Liberal tax benefits would make this more appealing to potential investors. Similarly, tax incentives could be implemented to expand the participation of private enterprise in prison work release programs. These programs would remove numbers of inmates from institutions during daytime hours when the effects of crowding and idleness are most severe.

Finally, additional funds could be made available specifically to those states that would develop strategies for reducing prison crowding. Such a program which the National Institute of Corrections and the Edna McConnell Clark Foundation are jointly sponsoring saw 22 states and Puerto Rico applying for participation. Funding permitted participation of only four of these states. For a modest investment of money, the States of Oregon, Colorado, Michigan, and South Carolina are making real progress in developing well thought out strategies to deal with their problems of overcrowding.

The second problem that is having a severe impact on corrections is diminishing resources at the state and local levels to operate government programs. Although corrections workloads have markedly increased, the dollars available to provide necessary staffing and programming have dramatically decreased.

Corrections finds itself facing a double dilemma. As offenders are entering the prisons at unprecedented rates, prison staffs and inmate programs are being reduced. Increasing numbers of offenders are also being placed on probation and parole, yet resources to provide adequate supervision and support services are being reduced.

An example of the impact on state prison systems is the State of Michigan, where 85 corrections officers, 8 teachers and vocational instructors, and 36 support personnel in the prisons were layed off last fall due to a budget reduction for the corrections system of $3.6 million. Michigan, like other states, has some very old and dangerous institutions; three riots occurred there in 1981 that resulted in $5 million worth of damage.

Budget cuts also reduced the probation and parole agent workforce by 50, which caused a marked increase in the size of caseloads.

Likewise, California's diminished resources reduced the operational budgets of 52 county probation departments by 32%. Caseloads in Los Angeles County soared to over 300 offenders per officer which provides little in the way of supervision and nothing in terms of public safety.

In Wisconsin, prisons are overcrowded by 900 inmates and population increases of nearly 15% last year is projected at similar levels until 1988. In January of this year, one Wisconsin prison experienced the taking of 15 hostages and damage to one building in excess of $55,000 -- all of which is attributed to overcrowding.

When Americans are concerned about safety in the streets, when state prison systems are being operated under conditions of confinement that have been found to be unconstitutional, when prisons have extremely poor physical conditions and serious safety and sanitation problems, reductions in probation, prison and parole workforces are simply intolerable.

Again, Mr. Chairman, I can only make general suggestions on how federal programs could help address these problems which exist at the state and local levels without incurring significant additional expense to the Federal government.

Perhaps our greatest help could be to assure that we at the Federal level do not make matters worse.

Recent "Driving while Intoxicated" legislation passed by Congress requires states receiving Federal highway funds to jail DWI offenders for two days or sentence them to ten days of community service. Although one cannot object to the sincerity of the legislation, the appropriateness of increased mandatory use of jails under current overcrowded conditions, could perhaps be reviewed. While the impact of this legislation has not been evaluated, there are 1.5 million arrests annually on driving while intoxicated counts. The potential impact on local jails is great.

At a minimum, it would seem appropriate to have a cost impact study prepared on any proposed Federal legislation that would affect state and local corrections.

In January of this year, an amendment to the Service Transportation Act prohibited state prisoners from manufacturing highway signs, metal and wooden highway barriers, and iridescent vests worn by highway workers. Prohibitive legislation has a negative enough effect when it impacts the corrections system's ability to generate new programs. However, in this instance, the amendment has effectively shut down a 30-year-old prison industry that until recently operated in 37 prisons across the country. The State of Colorado alone has reported a projected loss of $400,000 in capital investment that will be idle; $146,000 inventory loss; $250,000 loss in sales; and loss of 45 inmate jobs and 3 civilian jobs. The State of Connecticut reported that $1.4 million in capital investment will be idle because of this one piece of legislation.

Prison industry is a self-sustaining operation and this legislation will also negatively impact the manufacture of other prison industry goods. It is estimated that the states will have to

spend hundreds of thousands of dollars in start up funds to replace the industry lost to this amendment.

Prison industries has long been a source of revenue to the state corrections systems. These programs are also essential to reducing inmate idleness; providing training, skills, and improved chances of employment upon release; and providing monies with which the offender can assist his family in the community. The Chief Justice of the Supreme Court has often spoken out on the need to make our prisons into factories where constructive skills can be learned and useful goods manufactured.

Unfortunately, present legislation prohibits the Federal Government from purchasing goods and services produced by state prisoners. By opening the Federal market to state prison industries, the Federal Government could assist the maintenance and growth of state prison industries at no additional -- and likely lower --- expense to itself, while feeding tax dollars back into the states. A potential 100% increase in state prison industry would take less than 1% of the total Federal market.

In summary, it would seem to me that we at the Federal Government level should do everything possible to keep from compounding the critical problems that state and local corrections are facing. This would include a review, and elimination where possible, of all prohibitive legislation affecting state and local corrections systems; the development of cost/impact studies on all pending Federal legislation affecting state and local corrections; and the increased sharing of surplus Federal resources.

In addition, the Federal Government's role of leadership should be exerted through continued support of training, technical assistance, information sharing, and program/policy development.

Webster has defined leadership as "showing the way."

We at the National Institute of Corrections feel we can "show the way" through non-coercive, but very responsive programs -- responsive to the real needs of state and local corrections. With continued Congressional support, we promise such responsiveness.

THE WHITE HOUSE

WASHINGTON

February 23, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Testimony by the Attorney General Concerning the Immigration Reform and Control Act

The Department of Justice has submitted the above-referenced testimony, to be delivered on February 28, for OMB clearance. Senator Simpson, before whose subcommittee the Attorney General will be testifying, has introduced as S. 529 the immigration legislation which overwhelmingly passed the Senate in the last Congress. The proposed testimony reiterates Administration support for this legislation. The core of the bill is the provision of employer sanctions, to discourage the hiring of illegal aliens, and the grant of legal resident status to most illegal aliens currently residing in the United States. The Attorney General's testimony suggests a few technical changes in S. 529, but generally tracks his earlier testimony on immigration reform. I see no legal objections.

ID # 126423 CU

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Subject: Testimony by the AG concerning the Immigration Reform and Control Act

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5/81

DRAFT

TESTIMONY

BY

126423

WILLIAM FRENCH SMITH

ATTORNEY GENERAL

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

SENATE COMMITTEE ON THE JUDICIARY

CONCERNING

THE IMMIGRATION REFORM AND CONTROL ACT

FEBRUARY 28, 1983

Chairman Simpson and members of the subcommittee,

I am delighted to have an opportunity to appear before you to discuss a matter on which we totally agree—the pressing need for immigration reform. During the 97th Congress this subcommittee made a tremendous stride toward achievement of that goal by successfully crafting and negotiating through the Senate the immigration reform bill which is identical to the legislation we have before us today. The decisive and bipartisan margin by which that legislation passed the Senate is a tribute to how well you accomplished your task of balancing the many competing interests in any consideration of comprehensive immigration reform.

It is the Administration's view that it is of paramount importance that we pick up where we left off in attempting to secure adequate legal authority to regain control of our borders while maintaining our country's heritage as a nation of immigrants. The pressures which mandated our original review of the immigration issue have not diminished and in many respects have increased. For this reason we were particularly pleased with the prompt introduction of S. 529, the Immigration Reform and Control Act of 1983, in the 98th Congress and the early hearing schedule which was established.

Historically, I believe it is relevant to note that few subjects have received as exhaustive a legislative and executive branch review as reform of our immigration laws. Both Republican and Democratic administrations have established high level task forces to develop workable proposals and the Select Commission on Immigration and Refugee Policy conducted a two year study of our immigration policies culminating in their submission of recommeneded changes in our laws to the President and the Congress.

Many of those changes form the basis of the legislation before us. Congressional committees, as this subcommittee knows only too well, have received hundreds of hours of testimony from interest groups, representing all facets of American life. The nation's press has dealt extensively with the subject through editorial commentary and almost daily analysis.

The involvement of this Administration began with the receipt of the Final Report of the Select Commission on Immigration and Refugee Policy in March 1981. President Reagan then established our interagency Task Force on Immigration and Refugee Policy, which I had the privilege to chair. We met regularly over a three month period and submitted our report and recommendations to the President in June of 1981. Thereafter, the President's Immigration Initiatives were announced on July 30, 1981, and the Administration's reform legislation was introduced in the Congress in the fall of 1981. Thorough hearings followed the submission of the bill and ultimately resulted in the introduction on March 17, 1982, of the bipartisan Immigration Reform and Control Act jointly sponsored by Chairman Simpson and Chairman Mazzoli. We supported that legislation because, like S. 529, it reflected the continuing broad agreement on the essential principles of comprehensive immigration reform.

Today we are once again provided with an opportunity to review those elements which lie at the core of any rational and comprehensive reform and to reiterate our strong support for their speedy enactment into law. Given the remarkably exhaustive treatment already afforded this subject and its national importance, I know I share the subcommittee's hope that our efforts will enjoy success early in this 98th Congress.

I would now like to comment on the general thrust of the Immigration Reform and Control Act of 1983 and then, with greater specificity, review its provisions. S. 529 seeks to increase the law enforcement resources of the Immigration and Naturaliza-

tion Service; impose sanctions on those who knowingly hire illegal aliens, with safeguards to prevent discrimination against any American; reform and expedite our procedures to return those who come or remain here illegally; and deal realistically with illegal aliens who are now here by granting many of them a legal status. While setting limits on legal immigration, your legislation would recognize the special relationship we have with our closest neighbors, Canada and Mexico. By establishing certain statutory provisions for the present H-2 temporary worker program it acknowledges the likely need for a legal foreign labor mechanism particularly during the transition from reliance on illegal alien labor, while providing protection for U.S. workers.

These elements must be included in any rational and comprehensive reform of our immigration laws. Failure to enact such reform legislation can only result in further illegal migration, greater public consternation over the lack of government contol in this area, and the likelihood of negative social and economic impacts that will be increasingly difficult to remedy. For all these reasons the Administration is firmly committed to enactment.

Let me move to discuss parts of the legislation more specifically.

ILLEGAL IMMIGRATION

At the root of our problem is the ready access of illegal entrants and visa abusers to jobs that are very attactive when compared to employment opportunities in their homelands. This bill lays as the cornerstome of immigration control, a provision making it illegal to knowingly hire aliens who lack authorization to work in the United States. This is the only credible way of stopping the illegal flow. As long as the American

job market remains open to them, illegal aliens will risk the dangers of illegal entry, the cost of smuggling or fraudulent visas, and the likelihood of apprehension and deportation.

As I said in my testimony last year, "In pursuing a law that will close the labor force to illegal arrivals, we must do so in a manner that is not unreasonably burdensome in cost and that is consistent with our values of individual liberty and privacy." Toward those ends, the Administration would recommend the following:

1. That the employer sanction provisions exempt employees of three or less employers, who represent half of our employers but employ only five percent of our workers. You have acknowledged the regulatory burden of this law by excluding such small employers from the paperwork requirements. The impracticality of enforcing this law against "mom and pop" businesses or the housewife hiring a gardener persuades me that a total exemption would would be the preferable approach.

2. That the prohibition on recruiting and referring illegal aliens be deleted as requiring redundant and burdensome employment eligibility verification on employment agencies and union hiring halls. The paperwork burden on recruiters and referrers would be enormous without materially preventing illegal employment. Verification of eligibility by employers is the essential check and sanctions are unlikely to be sought without first finding illegal aliens knowingly hired and working for an employer. If there is complicity in such hiring on the part of an employment agency or union hiring hall,

it would be possible to charge them with violations of Section 274, which prohibits the bringing in, transportation, harboring, or inducement to enter of illegal aliens.

3. That we work together as contemplated by the bill to develop a more secure system for verifying employment eligibility, but that we do nothing that would result in a national identity card or system. The President's Task Force on Immigration and Refugee Policy reviewed the alternatives to the use of existing documentation for establishing employment eligibility. We decided against proposing any new system on the grounds of cost and privacy concerns. As we indicated last year, the Administration is willing to study and report to you on the need and possibility for improvements in present documentation. We would be prepared to begin the implementation of appropriate changes within three years of enactment of this legislation. This period will provide us with an opportunity to evaluate the efficacy of relying on existing documentation and to determine what if any, improvements would be appropriate.

LEGALIZATION

The Administration agrees with the premise behind the legalization provisions in S. 529, that we must deal realistically with the fact that 3.5 to 6.0 million aliens now live in the United States illegally. This bill would give legal status to that portion of this illegal population which has shown a commitment to settling in the United States and the ability to be contributing members of their communities. This is a sensible and humane response to a regrettable situation that we intend never to allow to recur.

Although some have criticized these provisions as rewarding lawbreakers, as Attorney General I assure you that it represents a practical decision that is consistent with effective law enforcement. The failure to include such a legalization program would leave in place those long term illegal aliens who are most likely to resist removal from the United States, specifically using the procedural safeguards and administrative relief available under the existing law. This would divert important resources of the immigration and Naturalization Service at precisely the time when its enforcement priority should be effective implementation of employer sanctions.

S. 529 incorporates the compromise legalization provisions ably crafted by Senator Grassley and adopted by the full Senate last August. Illegal aliens who were in the United States before January 1, 1977, would be given permanent resident status. Those who came here between 1977 and January 1, 1980, would be given temporary resident status, and permanent status after three more years as law abiding, self-sufficient residents.

The bill also provides for a block grant program to assist the states and localities in providing medical care or other welfare services to the newly legalized residents while excluding the new residents from federal entitlement programs. That ineligibility would exist from three years following the granting of permanent resient status. This appropriately reflects shared federal responsibility for such increase in social welfare costs as may occur with the legalization of these aliens. The vast bulk of legalized aliens can be expected to continue as self-supporting members of the jurisdictions in which they live and pay taxes. I assure you that qualifying illegal aliens will have to provide evidence of past and current employment in order to overcome the public

charge ground of inadmissibility. But this impact aid program will help offset costs from persons who become seriously ill, incapacitated, or otherwise are able to access state of local assistance programs because of unforeseen circumstances..

TEMPORARY FOREIGN WORKERS

With the passage of the Immigration and National Act in 1952, Congress authorized the entry of temporary foreign labor when sufficent domestic workers were not available and as long as their entry would not adversely affect the wages and working conditions of American workers. It is an acknowledged fact that the labor needs of certain sectors of our economy have been filled over the past years by a sizable number of illegal aliens, who did not enter under the temporary worker provisions of the Act. The intention of the employer sanctions provisions of this bill is that such illegal aliens be discouraged from coming to the United States and prevented from entering the labor market. As we are making this concerted effort, it is essential that an adequate vehicle for the legal entry of temporary workers exist for employers who want to comply with the law but are unable to find American workers.

The Administration supports Section 211 establishing a distinct H-2, temporary worker program for agriculture, where a substantial number of illegal aliens work each year on our nation's farms and ranches. This program may be particularly important during the transition period from dependence on illegal alien labor to reliance on domestic labor and, perhaps, the development of new sources of American workers. During the past year the Departments of Justice, Labor, and Agriculture have been reviewing the H-2 program, which is of interest to each department. We are prepared to implement the statutorily modified program in a mutual fashion and report to you on recommendations for its improvement.

We believe that the provisions of Section 211 properly reflect the principles on which any temporary foreign worker program must rest:

1) where there are not American workers to fill needed jobs, some legal avenue to admit foreign workers should be provided;

2) safeguards must be provided to ensure that American workers are not adversely affected by foreign labor; and

3) the rights and welfare of the foreign workers must be protected.

The temporary worker provisions of S. 529 build on the experience of this program over thirty years. By authorizing funds for the Secretary of Labor to recruit domestic workers and monitor the terms under which the non-immigrant and domestic workers are employed, you have assured that these principles will be respected and that the program will operate in the overall national interest.

ADJUDICATION PROCEDURES AND ASYLUM

The Administration has been moving on a complementary track with many of the changes proposed under the Adjudication Procedures and Asylum portion of S. 529. Specifically we have established the Executive Office for Immigration Review within the Department of Justice, which incorporates the current Board of Immigration Appeals and the Immigration Judges who have been transfered from the Immigration and Naturalization Service. This consolidation which resulted from a study conducted by

the Justice Management Division, was accomplished in January of this year. Similarly we have begun upgrading the training of those immigration examiners who interview asylum applicants and who will continue to handle asylum applications prior to the training of the new immigration judges to assume this responsibility as provided by S. 529.

I appreciated the responsiveness of this subcommittee to suggestions which we made last year regarding the workability of certain provisions in these sections of the bill. In that vein I recommend three further modifications to Sections 122 and 124.

First, the number of immigration judges should not be fixed by statute in order to preserve flexibility to deal with emergency situations and workload changes. Already the prospect of handling asylum determinations in addition to the current caseload would argue for more than the seventy judges specified in the bill.

Second, it seems advisable to allow persons with previous service as special inquiry officers to be designated to hear asylum applications after receiving the special training in international relationship and international law. Otherwise there will be an enormous burden on newly selected immigration judges, while the former special inquiry officers will be limited in their duties even if appointed to permanent positions under the new selection criteria.

Third, the jursidiction of the United States Immigration Board should be capable of expansion by regulations of the Attorney General. The bill incorporates the present regulations on the jurisdiction of the Board and certain changes are already under consideration. Without this flexibility, we will be obliged to seek legislation when any addition is deemed necessary.

Finally, the Administration enthusiatically supports the proposed reform in S. 529 which seeks to streamline our adjudications procedures. It is universally recognized that the current appeals process which allows multiple opportunites for administrative and judicial review, has resulted in unconscionable backlogs and has seriously impacted the enforcement of immigration laws.

LEGAL IMMIGRATION

When the President's Task Force reviewed the laws governing legal immigration, we concluded that the existing laws were rational and fair and that changes in the preference system bore little relationship to the urgent problem of illegal migration. For those reasons we proposed only two changes: (1) increasing the number of visas available to Canada and Mexico, which should decrease the number of illegal entries for family reunification, and (2) streamlining the labor certification process. We appreciate the incorporation of these changes within the bill.

S. 2222 would substantially alter the existing legal immigration system. It would place an annual cap of 425,000 on all immigrant admissions, excluding refugees. It would create two separate preference systems, one for faimly reunification immigrants and one for independent (non-relative) immigrants. Relatives would be allotted 350,000 immigrant visas annually; independents, 75,000. Current relative preference categories would be maintained, except that adult unmarried sons and daughters of permanent residents would be dropped from the current second preference and brothers and sisters of U.S. citizens would be removed altogether as a preference group. The independent

category would include the current two preference classes for immigrant workers (3rd, for exceptional ability, and 6th, for skilled and unskilled workers) but would be expanded by adding a separate preference class for investors and an independent nonpreference class.

The Administration shares the concern of the bill's author that legal immigration be contained within realistic limits. But I must repeat our serious reservations over placing immediate relatives of U.S. citizens within an overall cap, even when the cap purports to be set at the current level of immigration. Over time, increasing admissions of these immediate relatives of U.S. citizens within the cap would significantly reduce the number of visas available to other relatives of citizens and those of permanent resident aliens. This successive "crowding out" would substantially diminish the historic role of family reunification under our immigration laws and might itself lead to greater illegal migration.

However, if Congress deems it essential that immediate relatives of U.S. citizens be brought under an overall cap, certain modifications should be made provide flexibility and limit immediate impacts. First, some provisions should be made for periodic review of immigration levels, perhaps every three years. An advisory council for this purpose would facilitate a flexibile national response to changing conditions. Second, to accomodate the increase of country ceilings for Mexican and Canada, from 20,000 to 40,000, the Administration believes that in fairness to petitioners for immigrants from other countries the worldwide ceiling should be increased by 40,000.

CONCLUSION

This subcommittee and your counterpart in the House of Representatives brought us to the threshold of historic action on immigration reform in the last Congress.

Your continuing commitment to that reform is exemplified by our hearing today and the hearings you have already conducted to provide all interested parties an opportunity to present their views on this important subject.

The Administration remains strongly convinced that it is in the national interest that comprehensive immigration reform legislation be enacted without further delay. In the bipartisan tradition which has characterized the debate on this subject, we pledge our support toward achievement of that goal.

THE WHITE HOUSE

WASHINGTON

February 28, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Testimony of Alan C. Nelson on the Immigration Reform and Control Act

The Department of Justice has submitted the above-referenced testimony, to be delivered February 28 before Senator Simpson's subcommittee, to OMB for clearance. Like the Attorney General's earlier testimony before this same subcommittee, Commissioner Nelson's testimony expresses support for S. 529, the re-submitted immigration legislation which passed the Senate during the last Congress. The testimony discusses some provisions of S. 529 in greater detail than previously submitted and cleared testimony, but generally tracks previously approved Administration positions. I see no legal objections.

U.S. Department of Justice

Assistant Attorney General
Legislative Affairs

February 22, 1983

TO: Maurice White
OMB

FR: Yolanda Branche
OLA (633-2111)

RE: INS Testimony for Feb. 28
for Clearance

Attached is Commissioner Nelson's testimony before the Senate Subcommittee on Immigration and Refugee Policy for clearance.

cc: Fred F. Fielding

SPECIAL

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ID # 126556 CU

FG017-05

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Name of Correspondent: Alan Nelson

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Subject: Testimony concerning the Immigration Reform and Control Act

ROUTE TO: Office/Agency (Staff Name)	ACTION Action Code	ACTION Tracking Date YY/MM/DD	DISPOSITION Type of Response	DISPOSITION Code	DISPOSITION Completion Date YY/MM/DD
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TESTIMONY

BY

ALAN C. NELSON

COMMISSIONER

IMMIGRATION AND NATURALIZATION SERVICE

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

SENATE COMMITTEE ON THE JUDICIARY

CONCERNING

THE IMMIGRATION REFORM AND CONTROL ACT

FEBRUARY 28, 1983

Chairman Simpson and Members of the subcommittee. I am pleased to be here and to comment S.529, the Immigration Reform and Control Act of 1983. It has been almost one year since I appeared before you and offered my comments on the Immigration Reform and Control Act of 1982, which passed the Senate on an overwhelming bypartison vote of 80-19 but failed to pass the House before the end of the 97th Congress. In this past year nothing has occurred which reduces the need for this legislation. In fact, the need has increased and will continue until positive action is taken by Congress and we have the added legislative authority necessary to gain control over the entry and presence of aliens in our country. For these reasons, Mr. Chairman, I wish to express my appreciation, and that of the Administration, for your prompt action in re-introducing this vital legislation.

This legislation, which represents a tremendous amount of work by you, your subcommittee, and others, is a well balanced approach to the multiple immigration problems we face in this country. It has the necessary elements of authority for enhanced enforcement of the law, humanitarian concern for aliens who have established strong equities in the United States, and provisions whereby the legitimate needs of employers may be met. It has the added advantage of providing a more efficient, workable law which can be implemented fairly.

The conditions which have led to our present problems in immigration are neither new or unusual. The United States has for many years presented an attractive lure to people from much of the world. The individual freedoms of its residents and the opportunity to better one's place in life has encouraged immigration since the very beginning of our country. Because

of this, we have developed as a nation of immigrants with all the benefits which people from every part of the world can provide.

We must recognize, however, that there are limits to the number of immigrants which the country can reasonably accommodate and most of all, immigration must be a controlled process accomplished under the provisions of law. The Immigration Reform Act of 1983 recognizes the historical role of the United States as the receiver of immigrants while placing the necessary controls on immigration.

As stated before, we believe the legislation achieves the balance necessary for fair and controlled immigration.

Through the placing of sanctions on the hiring of illegal aliens or of those who are not authorized employment in the United States, the bill addresses one of the primary reasons aliens enter illegally or after legal arrival, violate the conditions of their admission.

By providing for the legalization of aliens who have been productive members of our society for several years, the bill recognizes the reality of this situation and presents a humanitarian and realistic approach which will be fair to both the aliens and their employers and in the best interest of the general public.

The bill recognizes that employers may have legitimate short term needs for foreign workers in agriculture or other industies and provides the means by which workers may be allowed to enter if their entry will not disadvantage domestic workers.

Although we have discussed many of these points before, I would now like to comment on the specific provisions of S.529.

Illegal Immigration

Although the actual number of illegal aliens is unknown, the most often cited numbers range from 3.5 to 6 million. The presence of large numbers of illegal aliens in the United States and the continuing entry of others is an unacceptable situation and has destroyed much of the confidence and respect which the law deserves. Immigration must be a controlled and orderly process which reflects the best interests of our nation.

Employer Sanctions

A cornerstone of the bill is the sanctions which would be imposed on the knowing hiring of aliens not authorized to work in the United States. Although there are other reasons for illegal immigration, employment is the most compelling. We feel that this provision is absolutely essential to gaining control of our borders; only through this means can we remove the magnet which attracts so many illegal aliens to our country.

The bill makes it unlawful to knowingly hire, recruit, or refer for employment an alien not authorized to be employed in the United States, and makes it unlawful to continue to employ an alien hired after the enactment of the statute knowing that the alien is not authorized to work in the United States. The bill requires that a person who hires, recruits, or refers an individual for employment must complete a form for each individual and attest under penalty of perjury that the persons' right to be employed has been determined through the examination of documents which identify the individual and show that he or she is eligible to be employed in the United States. An individual who seeks employment in the United States must complete a form and attest under penalty of perjury that he or she is a United States citizen, an alien who has been admitted for lawful permanent residence, or an alien who has been authorized for employment.

The administration believes these provisions are appropriate as a means of controlling illegal immigration to the United States while safeguarding civil rights. Equality of employment opportunity for United States citizens and lawful permanent residents is not diminished by this bill. The record-keeping requirements of the bill balance the burden of additional paperwork with the need to provide employers with a means to prove that they have complied in good faith.

The bill provides a penalty structure based on the principle of progressive penalties which includes civil fines, injunctive remedies, and criminal penalties. Civil fines may be assessed only after notice has been provided and a hearing, if requested, has been conducted before an officer designated by the Attorney General. Repeated violations, or the failure to pay civil fines, will be brought before the appropriate United States district court.

Employment Eligibility Verification

A reliable means of determining employment eligibility is fundamental to employer sanctions. However, the Administration is opposed to the creation of a national identity card or system. We believe that the use of existing documentation provides an effective means for verifying eligibility and screening illegal aliens from participating in the work force. The bill adopts this pattern of eligibility verification but requires that within three years of enactment the President shall implement such changes as are necessary to establish a secure system of employment eligibility. That is a reasonable approach which will allow us an opportunity to evaluate the efficiency of relying on existing documentation and to determine what, if any, improvements are appropriate.

We would also note that the Administration is very conscious of the problem of document fraud, and we have worked to improve the security of existing documentation provided by federal, state, and local governments. The Immigration Service has cooperated with the Social Security Administration (SSA) and other agencies to reduce fraudulent claims in various entitlement programs. In addition, the Service's Fraudulent Document Laboratory and enforcement officers continue to work with state and local agencies regarding false or fraudulently secured documentation.

Legalization

The provisions of S.529 which allow the legalization of specified aliens who are in the United States illegally are a realistic and humane response to a circumstance which we intend not to allow to recur in the future.

The bill will allow permanent residence to be granted to aliens who have been in the United States illegally since January 1, 1977. Temporary residence may be granted to aliens who have been here illegally since January 1, 1980, and to Cubans and Haitians who have been in the United States on or after specified dates and are known to the Immigration Service. Aliens who initially qualify for temporary residence may apply after three years to have their status changed to permanent resident if they continue to reside in the United States and remain eligible under the other provisions of law.

Aliens who do not meet the standards for admission to the United States and whose residence would be contrary to the public interest would not qualify for permanent or temporary residence. This includes aliens who have been convicted for any felony or three or more misdemeanors committed in the United States and aliens who have assisted in the persecution of any person or account of race, religion, nationality, membership in a particular social group, or political opinion. Similarly, aliens who are not able to overcome the "public charge" exclusion of the Act will not be eligible for legalization.

The legalization provisions of S.529 are designed to insure that only aliens who are and will be productive members of our society can quality for residence.

Benefits to Permanent and Temporary Residents

Aliens who are granted permanent residence under this provision are not eligible for three years for most financial assistance furnished under Federal law. Aliens who are granted temporary residence are also ineligible for assistance during the period of temporary residence and three years after they are adjusted to permanent resident status.

Block grant assistance to States is provided to offset costs incurred by them in providing assistance to legalized aliens when it is required to meet the basic subsistence or health needs of those individuals and when it is required in the interest of public health.

Implementation of Legalization

The proposed legislation provides that aliens who believe they qualify for residence may apply for this benefit during an eighteen month period beginning on the date of enactment. It further provides that arrangements may be made with qualified voluntary agencies for the purpose of making the provisions of law known to the public and for the purpose of receiving applications for residence.

The Service will be given the task of legalizing a great number of aliens in a relatively short period of time. Extensive planning has been done since the Administration's Omnibus Bill was introduced in 1981. Our planning has been based on a number of assumptions or goals.

1. The program should not disrupt the normal business of the Service more than is absolutely necessary.

2. The program should provide a simple, non-threatening method for aliens to obtain information concerning their eligibility and to file applications.

3. Applications should be processed to completion as quickly as possible.

4. The procedures should guarantee to the extent possible that only eligible aliens receive benefits under the law.

A comprehensive implementation plan has already been developed incorporating these principles and the Service is confident that the legalization program contemplated by S.529 can be fairly and efficiently administered.

Recommendations

As the Attorney General has already indicated, the Administration is in complete support of the premise behind the legalization provisions in S.529. We do have certain recommendations however, which we feel will make those provisions more workable.

First, rather than an application period which will begin on the date of enactment and run for eighteen months we would recommend a twelve month application period to commence no sooner than three months after enactment. Such a delay in the receipt of applications is essential to allow the Service time to publish regulations, enter into the necessary contractual arrangements, begin the public information campaign and make other preparations.

As a corollary to this the statute should also contain language which would protect prima facie eligible aliens from deportation or exclusion during the first three months after enactment.

Second, the reference to voluntary agencies contained in the legalization provisions should be expanded to include other public and private organizations which would be willing and able to assist in providing information and assistance to aliens and assist the Service in the preliminary screening of applications.

Finally, the use of retired INS and other government employees who have a knowledge of immigration matters would be beneficial in a limited term program like legalization. Present restrictions on the conditions for hiring retired government workers generally make such employment undesirable to retirees, particularly the reduction in pension benefits. It would be advantageous to have language in the statute which would waive these restrictions.

Temporary Foreign Workers

The Administration supports the goals of S.529 which is to protect domestic workers from adverse impacts due to foreign labor and to provide a legal means for the entry of temporary foreign workers when the need is clearly shown and that need cannot be met by domestic workers. This will be extremely important if we are to have workable sanctions against the hiring of illegal aliens and to avoid the harmful effects that shortfalls of domestic workers would have on some employers, particularly agricultural employers, at least during the transition period between the introduction of employer sanctions and development of new sources of domestic workers.

Unlawful Transportation of Aliens

S.529 would amend Section 274 of the Immigration on Nationality Act to make it unlawful to bring an undocumented alien to the United States, even if that alien is presented to an immigration official and regardless of whether that alien is allowed to remain in the United States in parole status. This will resolve the problem created by the court decision in U.S. v. Anaya, et al., No. 80-231-CR-EPS, where persons who had transported Cubans in the Mariel boatlift were found not to have violated Section 274.

Exclusion of Undocumented Aliens

S.529 wisely restricts the right to an exclusion hearing to documented aliens. Aliens lacking entry documents would be subject to summary exclusion by an immigration inspector under proper supervisory control, similar to the existing procedures for crewmen and stowaways. There would be no administrative or judicial appeal in these cases. However, aliens who indicate a fear of persecution in the country where they last habitually resided based on race, religion, nationality, membership in a particular social group or political opinion will receive full and fair hearings to adjudicate their asylum claims.

This important provision will assist us greatly in handling the continuing flow of undocumented boat people and would be crucial in dealing with any future mass arrivals of visaless aliens.

Asylum Procedures

It is not surprising that proposals dealing with asylum occupy such a prominent part of your bill. There is a strong consensus of opinion in Congress and in the Administration that the present asylum system has been shown to be seriously defective. The defects that have come to light since the enactment of the Refugee Act are not the result of any misdrafting, or misdirection; they are simply the result of a quantum leap in the numbers of persons who have applied for asylum. At the time of this hearing, there are approximately 86,000 asylum applications pending before the Immigration and Naturalization Service exclusive of those received from Cuban and Haitian boat arrivals. New applications are filed at the rate of 2,800 per month.

Your bill provides that asylum cases may be considered only by immigration judges who are specially designated by the United States Immigration Board as having been given special training in international relations and international law. The number of the judges who may be designated for this purpose is limited to seventy and no individual who has served as a special inquiry officer prior to the enactment of the law may be considered. Appeals from adverse decisions could be made to the United States Immigration Board.

One difficulty we have with this section is the limitation on the number of immigration judges. The Administration has calculated that it would take a minimum of fifty trained asylum officers to handle just asylum claims even under expedited procedures. Therefore, the seventy immigration judges provided under S.529 to handle all types of administrative review including asylum would be woefully inadequate.

Another difficulty is that during the two year transition period none of the current immigration judges could hear asylum cases even if they were selected for permanent service. We believe these former "special inquiry offices" should be permitted to make asylum determinations after receiving specialized training.

Otherwise, its our view that the revised asylum proposals contained in S.529 would allow for a fair, impartial determination of asylum claims, while at the same time avoiding the perplexing delays which have so often developed in adjudicating applications under the Refugee Act of 1980. Adoption of such proposals is essential to any comprehensive immigration reform bill.

United States Immigration Board

S.529 contains an section creating a United States Immigration Board and establishing an immigration judge system, along with a conforming provision which sets up a transitional period to effect changes in personnel and jurisdiction from the present Board of Immigration Appeals and immigration judge system. As the Attorney General has already indicated, the Administration has been moving on a complementary track in implementing this proposal. Following a study conducted by the Justice management Division we have established the Executive Office for Immigration Review within the Department of Justice which combines the immigration judges with the Board of Immigration Appeals. The transfer of the immigration judges from the INS became effective on January 9, 1983, and from all reports the transition has proceeded smoothly.

In summary then, we support the provisions in Sections 122 and 124 and would join with the Attorney General in recommending only relatively minor additions or modifications.

Specifically we recommend that the statutory limit of 70 immigration judges be removed, that current immigration judges be permitted to make aslyum determinations once they have received specialized training in that area, that the jurisdiction of the United States Immigration Board should be capable of expansion by regulations of the Attorney General, and that the "withholding of deportation" provisions of section 243 of the Immigration and Nationality Act should be repealed to eliminate confusion over a parallel asylum process.

The Immigrant Admissions System

S.529 proposes several changes in the system through which immigrants are admitted to the United States. It creates separate preference systems for family members and the immigration of workers or "independent" immigrants. The creation of two preference systems in place of the current single-track system clarifies the separate goals of family reunification and economic growth/cultural diversity and eliminates some of the inequities and confusion sometimes generated by the current system. Similarly, the reordering of preferences and the change in the emphasis given each preference within this two-track system will clarify priorities and reflect more closely the needs of the United States in terms of reunifying immediate families and bringing in persons who will benefit the country economically and culturally.

S.529 retains the current first, second, and fourth preferences for family reunification, although the second preference is restricted to spouses and minor unmarried sons and daughters of permanent resident aliens.

S.529 does not continue the current fifth preference for brothers and sisters of adult U.S. citizens other than to clear the existing backlog of applicants in this category at a rate of 10 percent of the numerically restricted family visas each year, plus any numbers not used in the higher family reunification preferences.

Overall Cap and Numbers

S.529 allows immediate relatives and most special immigrants to immigrate without numerical restriction within the 425,000 worldwide total, 350,000 family reunification, and 75,000 independent immigrant limits. While we support some limit on immigration and, in fact, find this to be a desirable goal, we have reservations concerning a cap on total immigration. With a cap, increased immigration in these traditionally unlimited groups is of necessity at the expense of immigration in the family and independent preferences and from lower-demand countries. To the extent that immigration of immediate relatives and special immigrants continues to increase, the opportunity for others to immigrate will become increasingly limited. This trend will be especially true for those persons in countries sending over 20,000 numerically exempt immigrants a year since this excess would be subtracted from the 20,000 per-country limit for numerically restricted immigration during the next year.

After reviewing the laws governing legal immigration, the Administration concluded that the existing laws are basically rational and fair, and that changes in the preference system bear little relation to the urgent problem of illegal migration. More specifically, we have had reservations about placing the immediate relatives of U.S. citizens within an overall cap, as over time such a change could limit the opportunity to reunite families in this country, a purpose historically animating our immigration laws. We do however, favor increasing the country limits of Mexico and Canada to 40,000 with a corresponding increase in the overall limit. The Committee may wish to revisit the provisions affecting family reunification, and possibly defer consideration of changes in the current preference system to a later time.

Labor Certification

Both the Administration and S.529 recognize the inadequacies of the present labor certification system which has been criticized as being too slow and complicated. Your bill would provide a streamlined alternative to the present individual certification process by allowing the Department of Labor to certify shortages or over-supply of U.S. workers in certain occupations, using national job market data without reference to particular job openings. Presently, an employer is able to obtain labor certification only by advertising a specific job opening and being unable to fill that position with a U.S. worker. S.529 would allow the Department of Labor to expand the existing "Schedule A" list of precertified occupations on a broad scale and to issue labor certification without reference to a specific job opening. Although a job offer is required before a labor certification may be issued, this may be waived by the Attorney General when he deams it to be in the national interest.

OTHER PROVISIONS

Students

S.529 would require a foreign student in the United States to depart the country and reside in the country of his or her nationality or last foreign residence for two years before he or she could immigrate to the United States. This requirement could be waived in the case of students in certain fields of study if they were offered teaching, research, or technical positions. There is, however, a limit of 1,500 waivers per year which could be granted to teachers and 4,500 which could be granted to those in research or technical fields.

We note with regard to these provisions that the placing of numerical limits on the waivers granted would require the Service to establish a rather complicated accounting and allocation system to control the number of waivers granted each year in each of the two categories. Additionally, it has been our experience that waiver provisions are not abused and that the absence of a numerical limit would not result in an excessive number of applications being granted.

For these reasons, it is recommended that the numerical limits on waivers be eliminated.

G-4 Special Immigrants and Nonimmigrant Visa Waiver

S.529 also addresses the problem of employees of international organizations and their dependents who often spend many years in the United States. It would provide special benefits for some of these. The bill also provides for nonimmigrant waivers for visitors from some countries. We defer to the Department of State on these provisions.

Conclusion

In conclusion, I again want to express my appreciation to the Chairman for the introduction of S.529 and the early hearing schedule which was established. As Commissioner of the Immigration and Naturalization Service, I am particularly aware of the critical need for the reforms contained in this legislation. Those reforms provide both the vehicle and the opportunity to rededicate ourselves to the fair and firm enforcement of our immigration laws. The Immigration and Naturalization Service looks forward to working with you and all the members of the subcommittee in that endeavor.

THE WHITE HOUSE

WASHINGTON

February 28, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Testimony of Benjamin F. Baer, Chairman, U.S. Parole Commission

The Department of Justice has submitted the above-referenced proposed testimony, scheduled to be delivered on March 2 during oversight hearings of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Committee. The testimony briefly reviews developments over the past two years at the Parole Commission, including (1) development of pre-hearing review procedures, (2) use of new parole eligibility "scoring" systems, and (3) various research and automation projects. The testimony notes that the shift to smaller federal prisons has increased parole officers' travel time demands, and notes that the Commission is examining teleconferencing and the like to alleviate this burden. I see no legal objections to the testimony.

STATEMENT

OF

BENJAMIN F. BAER

CHAIRMAN

U.S. PAROLE COMMISSION

BEFORE

THE

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON COURTS

CIVIL LIBERTIES AND THE

ADMINISTRATION OF JUSTICE

CONCERNING OVERSIGHT HEARINGS

ON

MARCH 2, 1983

Mr. Chairman, I am very pleased to appear before your Committee concerning the operations of the United States Parole Commission. In the two years since the Oversight Hearings in March of 1981, the Parole Commission has moved forward in a number of program areas which I am pleased to highlight for you.

1. PRE-HEARING REVIEW

The Commission has implemented a procedure under which the prisoner's case file is reviewed in the Commission's regional office prior to the scheduled hearing and a tentative guideline assessment prepared. A copy of the assessment is provided to the prisoner in advance of the hearing. This pre-hearing review process has several substantial advantages. It identifies cases in advance in which critical information is missing; provides more time to prepare the guideline workup on complex cases - absent the pressure of the hearing room atmosphere; provides an additional quality control check on the decision process; allows the prisoner advance notice of his or her tentative guideline assessment; and allows for parole on the record authorized under 18 U.S.C. 4208(a) in certain cases where the facts and circumstances are clear and the hearing itself would provide no additional benefit. Overall, we believe implementation of this procedure has enhanced the quality of Commission decision-making and enabled more efficient use of our resources.

2. SALIENT FACTOR SCORE

Based upon the results of a research project using a data base developed jointly by Bureau of Prisons and Parole Commission staff, the Commission adopted a revised salient factor score (effective

August 1981). This device contains six items: prior convictions; prior commitments; commitment free period; age at current offense; whether on probation, parole, or custody status at time of current offense; and history of opiate dependence. This device is simpler and more reliable in scoring than previous versions of the salient factor score and displays substantial predictive power in differentiating better from poorer parole risks. Parole Commission Research Unit Report Thirty-one describes the construction and validation of this device.

3. OFFENSE SEVERITY SCALE

As a result of a two year effort, the Commission has refined its offense severity index (effective January 1983) to make it clearer and more comprehensive. We believe the revised format will assist Commission staff as well as probation officers, judges, and defense attorneys, in making accurate guideline assessments. This revision, and a summary of public comment received, is found at 47 Federal Register, No. 242, Thursday, December 16, 1982, pp. 56334-56341.

4. SENTRY SYSTEM

The Commission continues to work towards full participation in the joint Bureau of Prisons - Marshals Service - Parole Commission automated case information system (SENTRY). Last summer, a researcher was assigned full-time to the task of system design, and we are hopeful that the Commission phase of this effort will be operational by the end of this year. Once in place, this system will improve case scheduling, provide better codefendant information, decrease time associated with mail delays, and generally improve the information processing capacity of the Commission.

5. RESEARCH EFFORTS

During the past two years, our research section has completed a number of studies, copies of which I would be happy to provide to the

Committee. As noted, from these efforts the Commission has refined its severity index and salient factor score. Other research efforts have examined the impact of the presumptive date procedure on institutional behavior, reliability of guideline application, and the relationship of age to recidivism rate.

6. WORKLOAD

We expect to conduct approximately 15,000 parole hearings and to make approximately 36,000 parole consideration decisions (including hearings, record reviews, and appeals) during the current fiscal year. Examiners conduct on the average about 12 hearings per day. However, there are two factors of recent origin which may impact upon the Commission. First, the Bureau of Prisons has been replacing its older large institutions with smaller more modern facilities, which is desirable from a correctional standpoint. This action does, however, mean considerably more travel and increased time and cost for Commission hearing examiner staff. Second, as part of the general effort to reduce government spending, the Commission's authorized number of positions has been reduced from 175 to 161 during the past several years. Consequently, the Commission has been experimenting with innovative ways to reduce cost while maintaining quality of decision-making. Earlier, I have described the pre-hearing review process. Additionally, the Commission is exploring the possibility of sending one hearing examiner, rather than two, to conduct in-person hearings and having the second hearing examiner participate by conference telephone from the Commission regional office where a duplicate file is kept. This would preserve the panel decision-making that we believe is important to ensuring consistency and fairness in the decision-process yet could provide considerable saving in time and travel costs.

7. OTHER ISSUES

The Parole Commission and Reorganization Act is now close to seven years old. In this time we have become aware of a number of relatively minor changes in legislation that, in our opinion, would serve to improve the parole process. We have previously discussed these suggestions with your staff and with the Subcommittee on Criminal Justice; and most have been included by that Subcommittee in its proposed criminal code legislation. We would be most pleased to work with you and your Subcommittee if your Subcommittee would wish to consider acting upon these modifications separately from the larger criminal code revision effort.