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AMENDMENTS TO H.R. 1510, THE IMMIGRATION REFORM AND CONTROL ACT OF 1983

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AMENDMENTS TO H.R. 1510, THE IMMIGRATION
REFORM AND CONTROL ACT OF 1983

H.R. 1510, the Immigration Reform and Control Act of 1983, was reported by the House Judiciary Committee on May 13, 1983 (H. Rept. 98-115, Pt. 1) and sequentially referred to four other committees. The following is a summary of the amendments to H.R. 1510 adopted by the Committee on Agriculture which approved the bill on June 22, 1983, and by the Committee on Education and Labor and the Committee on Energy and Commerce, both of which approved the bill on June 23. The proposed amendments are briefly compared with the provisions they amend, if any, in the Judiciary-reported bill. The amendments are organized by committee within the overall framework of H.R. 1510.

I. TITLE I--CONTROL OF ILLEGAL IMMIGRATION
(Part A. Employment--Sec. 101. Control of unlawful employment of aliens)

A. House Education and Labor Committee Amendment: Hawkins Amendment

H.R. 1510 as reported by the House Committee on Education and Labor makes major changes in Sec. 101, the employer sanctions provisions. These changes are the result of an amendment offered by Congressman Augustus Hawkins, the Chairman of the Subcommittee on Employment Opportunities. The Hawkins amendment changes the title of Sec. 101 to "Unlawful employment of aliens and unfair immigration-related employment practices." The following is a summary of the major ways in which Sec. 101 of H.R. 1510 as reported by the Committee on Education and Labor differs from the provisions reported by the Judiciary Committee.

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1. Offenses and Verification Requirements

Like the Judiciary Committee version of H.R. 1510, the Education and Labor version prohibits after enactment the hiring, or recruitment or referral for a fee or other consideration, for employment of an alien knowing he is unauthorized to accept employment in the United States. It also provides that good faith compliance with the verification procedures constitutes an affirmative defense against violation.

The Education and Labor version differs from the Judiciary version in providing that a person or entity which employs, etc. four or more employees and hires unauthorized aliens will be considered to have done so knowingly unless the person or entity has complied with the verification requirements. A person or entity which employs fewer than four employees which hires, etc. unauthorized aliens will be considered to have done so knowingly if that person or entity has not complied with the verification requirements and has been warned within the preceding two-year period that he or it has hired, etc. unauthorized aliens. However, the Education and Labor bill does not explicitly require compliance with the verification procedures nor provide penalties for their violation, unlike the Judiciary bill.

The verification procedures themselves are not changed by the Hawkins amendment except for the provision that verification cannot be revoked as well as withheld for any reason other than that an individual is an unauthorized alien. Additionally, the amendment specifically deletes the provision in H.R. 1510 which provides that employers will be deemed to have complied with the verification requirements with respect to the hiring of an individual referred by a State employment agency if they retain documentation from the agency.

In addition to the employer sanctions provisions, the Education and Labor bill also provides that "it is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee or other consideration, of the individual for employment because of such individual's national origin or alienage." This provision does not apply to a person or other entity employing three or fewer employees, to discrimination already covered under Sec. 703 of the Civil Rights Act of 1964, or to discrimination because of alienage required in order to comply with the law.

The Education and Labor version of H.R. 1510 revises both the penalty structure and the enforcement procedures of the Judiciary Committee bill to, among other things, provide for parallel treatment of the employment, etc. of unauthorized aliens and the unfair immigration-related employment practice described above.

2. Penalties

The Education and Labor bill differs from the Judiciary Committee bill significantly in not providing criminal penalties for violation. Under the Education and Labor bill, a person found to be intentionally either engaging in an unfair immigration-related employment practice or violating the prohibition against the knowing hiring, etc. of unauthorized aliens may be required to pay a civil penalty of not more than $2,000 for each individual involved, followed by a civil penalty of not more than $3,000 for each individual involved for subsequent violation. A pattern or practice of such discrimination or violation is punishable by a civil penalty or not more than $4,000 for each individual involved. The graduated penalties provided by the Judiciary bill are an

administrative citation by the Attorney General for a first offense, which need not be knowing, followed by civil fines of $1,000 and $2,000 and a criminal penalty of not more than $3,000 and/or one year's imprisonment, in each case for each alien involved.

The Education and Labor bill also provides that persons or entities found to have unintentionally or intentionally discriminated or violated the prohibition against employing, etc. unauthorized aliens must be required to cease and desist from such a practice or violation, and may be required, as appropriate: (a) to comply with the verification requirements during a period of up to three years, (b) to retain for up to three years the name and address of each person who applies for a job or for recruitment or referral for employment, and (c) to hire adversely affected individuals with back pay, as specified. The Judiciary bill requires employers who have received an administrative citation from the Attorney General, which need not be for knowing violation, to henceforth comply with the verification requirements, with a $500 fine per individual for violation.

3. Enforcement Procedures*

The Education and Labor bill differs markedly from the Judiciary version regarding who has authority to prosecute the sanction provisions and the manner in which-alleged violations are to be adjudicated.

The Judiciary bill places primary enforcement responsibility with the Attorney General. It is he, or his delegee, who initiates civil penalty proceedings by providing notice to the person or entity against whom a penalty is sought to be imposed. A contested violation is heard by an administrative law judge under the Judiciary bill in accordance with procedures set forth under the Administrative Procedures Act. Regarding appellate procedure under the

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* This section is by Larry Eig, Legislative Attorney, American Law Division.

Judiciary bill, one provision states that a person or entity (including the Attorney General) adversely affected by a final order respecting an assessment of a fine may file a petition for review in the appropriate United States Court of Appeals. A second provision states that the United States Immigration Board is to hear and determine appeals from decisions involving the imposition of those fines assessed under the title of the Immigration and Nationality Act of which the employer sanctions are to be a part. The Judiciary bill alternatively permits the Attorney General to seek civil relief directly from a United States District Court whenever a pattern or practice of violations is alleged. Recourse also may be had to the district courts for collecting fines.

In contrast to the Judiciary bill, the Education and Labor bill places much greater emphasis on private parties and the independent United States Immigration Board created by H.R. 1510 in the enforcement and adjudication of employer sanctions. Under the Education and Labor provisions, which appear to be generally based on the National Labor Relations Act, an action to enforce employer sanctions may be initiated by the filing of a charge with the Special Counsel of the United States Immigration Board, an officer appointed by the President, with Senate approval, for a four-year term. Any of the following persons is eligible to file a charge with the Special Counsel: (1) any person adversely affected directly by alleged unlawful discrimination or by an alleged unlawful hiring, etc; (2) any person, including a class, representing a person allegedly so directly affected; or (3) an officer of the Immigration and Naturalization Service who alleges unlawful discrimination or hiring, etc., is occurring or has occurred. The Special Counsel also may initiate an action upon his own initiative.

The Education and Labor bill directs the Special Counsel to investigate each charge received and determine within 30 days whether to pursue it by filing a complaint with the Board. If Special Counsel decides not to pursue a charge of unlawful discrimination, the charging party nevertheless may file a complaint directly before the Board. When Special Counsel fails to pursue an unlawful hiring, etc., charge, the charging party may petition the Board to determine whether the failure to pursue was an abuse of discretion, and the Board may order Special Counsel to file a complaint despite his previous decision not to file. Whenever an action is initiated by a charge by a private person, that person becomes a full party to the complaint before the Board and any subsequent appeal.

Under the scheme set forth by Education and Labor, a complaint filed before the Board initially is heard by an administrative law judge. The administrative law judge, in turn, issues a proposed report and recommended order to the parties and the Board. The recommended order becomes the Board's final order if no exceptions to it are made. If exceptions are made, further processing may be taken before the Board. Upon determining upon a preponderance of the evidence that a violation has occurred, the Board is to order the offending entity to cease and desist from its unlawful practice. Additionally, the Board may order the offending party to pay a fine, hire an adversely affected individual, or comply with other relief it deems appropriate, depending on whether the violation is determined to be intentional or not.

The Education and Labor bill adopts specific provisions of the National Labor Relations Act regarding judicial enforcement and review. Pursuant to these provisions, the following actions may be taken: (1) Special Counsel may petition a United States Court of Appeals to enforce a Board order and grant appropriate temporary relief; (2) any person aggrieved by a Board order may

obtain review in the appropriate Court of Appeals; and (3) Special Counsel may petition the appropriate United States District Court to enjoin a party before the Board from continuing in the allegedly unlawful practice at issue.

4. Other Provisions

The Education and Labor version of H.R. 1510 includes the Judiciary provisions requiring the President and the Civil Rights Commission to monitor and report on implementation of the section. However, it does not include the provision establishing a joint Justice-Labor-EEOC taskforce to monitor implementation and investigate complaints of employment discrimination. Provisions in the two bills relating to the preemption of State and local laws, the one-year education period, and the six-month delay in implementation are similar.

B. House Agriculture Committee Amendments

1. Verification Provisions: Morrison Amendment

The Judiciary Committee version of H.R. 1510 requires compliance with the verification procedures for every new hire in cases where they are either mandatory or being complied with voluntarily.

An amendment offered by Congressman Sid Morrison and adopted by the Agriculture Committee provides that in the case of agricultural workers only, the prospective employee's eligibility for employment must be verified only at specified intervals, regardless of how many times he is rehired (or recruited or referred). In the case of a U.S. citizen or national, the employer must comply with the verification requirements every 5 years; in the case of an immigrant, every 3 years; in the case of a nonimmigrant, a period not to exceed 1 year; and in the case of other aliens, a period not to exceed 3 years.

2. Verification Provisions: Coelho Amendment

H.R. 1510 as reported by the Judiciary Committee requires the President to study and report to the Congress three years after enactment concerning the need for changes and additions that may be necessary to establish a secure system to determine employment eligibility in the U.S. An amendment offered by Congressman Tony Coelho and modified by Congressman Richard Durbin provides also that the Congress may then provide for such a system.

3. Penalty Provisions: Morrison Amendment

The Judiciary Committee bill provides for graduated civil fines of $1,000 and $2,000 for each alien for whom a violation of the prohibition against hiring, etc., unauthorized aliens occurs. An amendment offered by Congressman Sid Morrison and modified by Congressman Harold Volkmer changed these penalties to not less than $100 and not more than $1,000, and not less than $500 and not more than $2,000, respectively.

II. TITLE II--REFORM OF LEGAL IMMIGRATION
(Part B. Nonimmigrants--Sec. 211. H-2 Workers and Transitional Nonimmigrant Agricultural Worker Program)

A. House Education and Labor Committee Amendments: Miller Amendment

H.R. 1510 as reported by the Education and Labor Committee makes major changes in Sec. 211, relating to H-2 temporary workers and the transitional agriculture worker program. These changes are the result of an amendment offered by Congressman George Miller, the Chairman of the Subcommittee on Labor Standards. The amendment makes changes in the proposed H-2 provisions, establishes an 11-member commission to review the H-2 temporary worker program, and adopts the Senate version of the 3-year agricultural labor transition program.

1. The H-2 Program

The Education and Labor bill retains the broad outlines of the H-2 provisions contained in the Judiciary bill, with changes as noted in part below.

The Judiciary bill provides that H-2 agricultural workers' duration of stay will be determined by regulations of the Secretary of Labor. The Education and Labor bill provides that aliens may be admitted for nine months, with extensions determined to be in the public interest.

The Judiciary bill provides that in the case of H-2 agricultural workers, consultation with appropriate agencies means the Departments of Labor and Agriculture. The Education and Labor bill limits this to the Department of Labor, although at a subsequent point reference is made to consultation with USDA in formulating regulations for H-2 agricultural workers.

The Judiciary bill requires, as a condition for certification for H-2 agricultural workers, a determination that there are not sufficient domestic workers at the time and place of need. The Education and Labor bill requires a nationwide test of availability (as does the Judiciary bill for nonagricultural workers). The Judiciary bill requires only that application for certification be made as a condition for the admission of H-2 workers. The Education and Labor bill requires that certification must be granted as a condition for the admission of nonagricultural workers only.

The Education and Labor bill provides that H-2 agricultural workers cannot be admitted unless there are employment standards at least as effective as those under the regulations in effect on May 1, 1983. The Judiciary bill includes specific provisions relating to housing and workers' compensation, but makes no general reference to employment standards as such. Regarding housing, the Education and Labor bill requires the employer to either provide housing or

to secure it at no expense to the alien in the proximate area. The Judiciary bill offers the option of a housing allowance in lieu of on-site housing, providing housing is otherwise available in the proximate area.

The Judiciary Committee bill requires applications to be filed 50 days in advance of the date of need. The Education and Labor bill requires applications to be filed 80 days in advance of the date of need, and specifies that 60 days must be allotted for domestic recruitment.

The Judiciary Committee bill requires the notification of employers within seven days if the application does not meet the standards for approval, and requires that they be given an opportunity to resubmit a modified application. The Education and Labor bill requires that the employer be notified promptly, without specifying a time period.

The Judiciary bill requires the employer to continue to accept domestic workers until the alien workers depart for work. The Education and Labor bill requires the employer to accept domestic workers "until the end of such period as the Secretary provides in regulations."

The Judiciary bill provides that associations representing agricultural producers may file for certification, but that this does not relieve individuals of any liability. The Education and Labor bill provides that the association is solely liable if it is the sole employer or if it has demonstrated that it has sufficient financial resources to absorb any liability that may reasonably occur.

The Judiciary bill authorizes the annual appropriation of $10 million for recruiting domestic workers and monitoring the terms and conditions of H-2 and related employment. The Education and Labor bill authorizes the annual appropriation of $15 million for similar purposes.

The Education and Labor bill authorizes access to the courts by any person aggrieved by a violation of the H-2 provisions and regulations, with the possibility of alternative administrative action by the Secretary of Labor. It also allows any person who believes he has been discriminated against to file a complaint with the Secretary of Labor. The Judiciary bill does not include comparable provisions.

The Judiciary bill requires the Attorney General, in consultation with the Secretaries of Labor and Agriculture, to approve all regulations issued implementing these provisions. The Education and Labor bill provides that the regulations will be issued by the Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture.

2. The Commission

The Education and Labor bill establishes a commission to study and review the H-2 temporary worker program and to report to the Congress in approximately 2 years on its recommendations for improvements. These are to include legislative recommendations on specified items of concern, including maximizing the use of domestic workers and assuring access to nonimmigrant workers in times of labor shortage. The Commission is to consist of 11 members, five of whom are appointed by the Secretary of Labor, five of whom are appointed by the Speaker of the House, and one jointly by both.

The Commission replaces in considerably more detail the requirement in the Judiciary bill that the Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, is to report to the Congress in 2 years on recommendations for improvements in the H-2 program.

3. Agricultural Labor Transition Program

Both the Judiciary and the Education and Labor bills adopt a 3-year agricultural labor transition program under which the number of workers is phased down by one-third during the second and third years, with the program terminating at the end of the 3 years. However, the Education and Labor Committee has adopted the version of the transition program which appears in the Senate-passed S. 529 and differs in some significant respects from the program in the House Judiciary bill.

Major differences include the fact that under the Senate version the employer is required to meet the standards of the H-2 program only if he employs H-2 workers as well as transitional workers. The House bill requires H-2 standards to be met whether or not H-2 workers are employed.

The Education and Labor (Senate) transitional program provides that to be eligible to be a transitional worker, an undocumented alien must have been employed in seasonal agriculture in the U.S. for at least 90 days after January 1, 1980. It also restricts eligibility in the subsequent two years to those workers employed during the first year. The Judiciary bill does not include comparable restrictions.

The Judiciary bill establishes a new nonimmigrant "O" category for the transitional workers, which the Education and Labor bill does not. The Judiciary bill is generally more specific about the procedures to be followed by the Attorney General in administering the program.

B. House Agriculture Committee Amendments

1. Nonimmigrant Seasonal Agriculture Program: Panetta Amendment

An amendment by Congressman Leon Panetta establishes a new "P" nonimmigrant seasonal agricultural program for perishable commodities only as an alternative

and supplement to the existing H-2 program and the revised H-2 program proposed by the Judiciary Committee bill. The Panetta amendment would not amend the proposed H-2 provisions. It does stipulate, however, that employers of H-2 agricultural workers may not simultaneously employ "P" agricultural workers. The program is also intended as a supplement to the proposed transitional program, but there are no restrictions proposed on the simultaneous use of transitional workers.

The principal differences between the program proposed under the Panetta amendment and the H-2 program proposed in the Judiciary bill include that the Panetta program is limited to perishable commodities only, the Panetta program allows the aliens to move from employer to employer within geographic regions and does not involve employer-employee petitions or contracts, and the Panetta amendment does not require a specified advance notification period during which time employers would be required to recruit domestic workers, although such recruitment is required. The Judiciary bill requires 50 days advance notification, and existing DOL regulations require 80 days.

The "P" seasonal agricultural workers would enter for a period not to exceed 11 months under a program established by regulation by the Attorney General in consultation with the Secretaries of Agriculture and Labor. The number of "P" nonimmigrants admitted would be controlled by month, year, and agricultural employment region, of which there would be no more than 10. Numbers would be determined in regulations promulgated by the Attonrey General on the basis of detailed applications submitted by agricultural employers, past patterns of employment needs and domestic worker availability, and consultation with the Secretaries of Agriculture and Labor. Provision is also made for an emergency increase in the numerical limitations on 72 hours notice.

Visas would be allotted according to a 3-category preference system which would give first priority to workers named specifically in employers' petitions, second priority to those workers with the most experience in seasonal agricultural employment in the United States, and third priority to other applicants in chronological order of application.

The amendment sets forth conditions which must be met by participating employers, including making a good faith effort to recruit willing and qualified domestic agricultural workers in the area of intended employment until the date alien workers report for work. Requirements relating to provisions of housing or a housing allowance and workers' compensation are similar to those in the Judiciary bill's proposed H-2 amendments.

Employers who fail to recruit domestic agricultural workers, who employ H-2 agricultural workers, who employ "P" workers for a job opportunity made vacant by a strike or lockout, who employ them for services other than agricultural services in the production of perishable commodities, who fail to provide for such wages or working conditions as would not adversely affect similarly employed U.S. workers, or who otherwise violate a stipulated provision would be disqualified for a period not longer than 3 years. The amendment provides further that it is unlawful for a person or entity who does not have an application approved to hire or recruit or refer for employment "P" nonimmigrants, and establishes graduated civil penalities of up to $1,000, $2,000, and $3,000 for each alien so hired, etc. Aliens violating the terms or conditions of "P" nonimmigrant admission or entering the United States unlawfully after the program goes into effect would be barred from participation in the program for five years.

2. H-2 Duration of Stay: Morrison Amendment

The Judiciary Committee bill provides that an alien may not be admitted to the U.S. as an H-2 agricultural worker for an aggregate period longer than determined by regulations of the Secretary of Labor. An amendment by Mr. Morrison shifted the responsibility from the Secretary of Labor to the Attorney General.

3. Adverse Effect Wage Rates: Staggers Admendments

Two amendments by Congressman Harley Staggers relating to adverse effect wage rates have no comparable provisions in the Judiciary version of H.R. 1510. One of them prohibits the Secretary of Labor from applying adjustments respecting the wages of H-2 agricultural workers retroactively.

The second amendment relating to wages provides that if, in determining the prevailing wage in an area in order to certify no adverse effect, the increase over the rate of the previous year is more than five percentage points above the rate of the increase in the consumer price index, upon the request of the petitioner, the Secretary of Labor must provide for a redetermination of that prevailing wage rate based on a new survey of the prevailing wages in the area and occupation.

4. USDA Appropriation Authorization: Morrison Amendment

Mr. Morrison offered an amendment to the H-2 provisions authorizing the appropriation of such sums as may be necessary for the purpose of enabling the Secretary of Agriculture to carry out his duties and responsibilities. The Judiciary bill includes no comparable provision.

5. Preemption of State and Local Law: Morrison Amendment

Mr. Morrison offered an amendment to the H-2 provisions providing that they preempt any State and local law regulating admissibility of non-immigrant workers. The Judiciary bill includes no comparable provision.

III. TITLE III--LEGALIZATION

A. H.R. 1510, as Reported by the House Committee on the Judiciary

Title III of H.R. 1510 would provide for the adjustment to permanent resident status of certain undocumented aliens in the U.S. The bill would provide that for five years after receiving the legalized status, aliens would be ineligible for Federal financial assistance, medical assistance under title XIX of the Social Security Act, and Food Stamps, and that States could declare them ineligible for the same period for their programs of financial or medical assistance, except for certain Cuban/Haitian entrants and assistance for the aged, blind, disabled, and medical assistance required for emergencies or in the interest of public health. The bill would also provide for 100 percent reimbursement to States of the costs of programs of public assistance provided eligible legalized aliens for the first 5 years after permanent status is granted, subject to amounts provided in appropriation acts; and would authorize payments to State education agencies to assist in the provision of education services for eligible legalized aliens enrolled in elementary and secondary public schools in the State, subject to available appropriations.

B. House Energy and Commerce Committee Amendments

Congressman Henry Waxman, Chairman of the Subcommittee on Health, introduced several amendments to H.R. 1510. Mr. Waxman's amendment #1, as amended by Congressman Dannemeyer and himself and adopted by the Energy and Commerce Committee, would expand the services for which legalized aliens would be eligible by specifying that such services would include medical assistance provided for an alien under age 18, for emergency services, or for services relating to pregnant women, other than for abortions except where the life of the mother would be endangered unless in a case of rape or incest. Another Waxman amendment adopted by the Committee would further authorize for legalized aliens Public Health Service Act programs and programs authorized under title V of the Social Security Act.

Mr. Waxman's amendment #3, also adopted by the Committee, would add a provision to the bill authorizing 100 percent reimbursement of the costs of programs of public health assistance provided eligible aliens or aliens applying on a timely basis to become eligible legalized aliens. These services would include State or local programs which provide public health services, including immunizations for immunizable diseases, testing and treatment for tuberculosis and sexually-transmitted diseases, and family planning services. This amendment would provide that the definition of programs of public assistance would not be limited to those existing at the time of enactment, as in the Judiciary Committee-reported version of H.R. 1510.

Mr. Waxman's amendment #3 also requires aliens seeking to become legalized to "undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice" in lieu of the requirement in the

Judiciary Committee-reported version of H.R. 1510 that the alien be required to "meet the same requirements with respect to a medical examination as are required of aliens seeking entry into the United States as immigrants."

Mr. Waxman's amendment #2, also adopted by the Committee, would require that the impact on public health and medical needs of individuals be included in the report on the impact of the legalization program required by the Judiciary Committee-reported version of H.R. 1510.

C. House Education and Labor Committee Amendments

Congressman William Goodling's amendment #1, adopted by the House Education and Labor Committee, would amend the Refugee Education Assistance Act of 1980 (P.L. 96-422) to authorize the same education services and Federal reimbursment for legalized aliens as the act authorizes for refugees and certain other alien groups. Other Goodling amendments adopted by the Committee would extend the authorization period for the Refugee Education Assistance Act and clarify that estimates on the number of eligible children for calculating reimbursement for services are to be based on the most recent data available from INS when such data is unavailable from State or local education agencies.

An amendment by Congressman Steve Bartlett was accepted by the Committee that would limit funds used under title IV of the Refugee Education Assistance Act for adult education of refugees and certain other aliens, including legal aliens in accordance with the Goodling amendment #1, to programs of instruction in English and the history and government of the U.S.

An amendment by Congressman William Ford, adopted by the Committee, would specify that legalized aliens would be eligible to participate in certain programs, including those under the National School Lunch Act, the Child Nutrition Act of

1966, the Vocational Education Act of 1963, chapter 1 of the Education Consolidation and Improvement Act, the Headstart-Follow Through Act, and the Job Training Partnership Act.

THE WHITE HOUSE

WASHINGTON

July 19, 1983

MEMORANDUM FOR WILLIAM P. BARR

FROM: ROGER B. PORTER RBP

SUBJECT: Immigration Bill

This morning's Washington Post included an editorial on the immigration bill suggesting that the various issues and interest groups and options were clearly defined and that the burden was on the House leadership to resolve these issues in a way that would produce a satisfactory bill.

I would appreciate having your assessment of the current situation in the House with respect to the immigration bill including:

1. The central issues and the committees in which they were considered;

2. The positions that the major interest groups have taken on these issues;

3. What you see as the major options; and

4. Your assessment of the prospects for the legislation.

I would like to have this by close of business on Tuesday, July 26, 1983.

Thank you very much.

Attachment

Ready for an Immigration Vote

THE SIMPSON-MAZZOLI immigration reform bill, which has been passed twice by the Senate, is at a critical stage in the House. Five separate committees have considered the bill, four have issued reports and, predictably, the interests represented on those committees vary greatly. Agriculture, for example, wants to ensure the availability of foreign workers to harvest crops; Education and Labor has a primary concern for preserving the jobs of Americans. Now it's up to the Rules Committee to devise an orderly method for dealing with these diverse interests, organizing a plan for floor votes on all important issues, while at the same time foreclosing the kind of hundred-amendment nit-picking that killed the bill in the House last year.

There are fewer than half a dozen major areas of disagreement on this bill, with two or three alternatives proposed in each case. The most important is employer sanctions, for unless these are preserved and made effective the main purpose of the bill will be destroyed. Disputes over record-keeping, penalties and potential discrimination can be settled with a few votes. Similarly, the date of the proposed amnesty for illegal aliens already in this country is easily determined. The question of foreign agricultural workers is a hot one, but the choices are clear-cut, the interest groups backing each alternative easily identified. Finally, in the category of major disagreements is the question of whether an overall ceiling on legal immigration should be imposed, as the Senate-passed bill requires. A single roll call can settle that straightforward and uncomplicated matter.

It would not be difficult for the Rules Committee to send the bill to the floor with either a time limit or a plan limiting amendments to these major areas. Immigration reform is badly needed and has been exhaustively studied in the executive and legislative branches and by a blue-ribbon select commission. Good momentum was achieved earlier this year when the Senate passed a bill, 76-18. All relevant House committees have had an opportunity to review the bill and to propose amendments. If it is delayed through the summer, that momentum begins to erode. As election year approaches, action on this politically sensitive question becomes less likely. It's time for the House Democratic leadership to get the bill to the floor, and it's possible to do so under conditions that will allow debate and orderly decision without either chaos or stalemate.

07.19.83 WP

U.S. Department of Justice

Office of Legal Policy

Assistant Attorney General

Washington, D.C. 20530

MEMORANDUM

July 29, 1983

TO: Michael M. Uhlmann
Executive Secretary
Cabinet Council on Legal Policy

FROM: Jonathan C. Rose JCR
Assistant Attorney General
Office of Legal Policy

SUBJECT: Immigration Bill

At your request late last evening, I located the Director of Congressional and Public Affairs at INS. He gave me the following oral report with regard to the Immigration bill.

A basically acceptable bill passed the Senate overwhelmingly in April of this year. It contained the following major provisions:

1. Employer Sanctions - The bill prohibits knowing employment, recruitment or referral of aliens not authorized for employment. It also prohibits employers of four or more persons from hiring any individual without complying with recordkeeping requirements. Following a six month education period and a six month warning period first violation provides a civil fine of $1,000 per alien. For each subsequent violation a civil fine of $2,000 for each alien and for a sustained pattern or practice of violations, a criminal penalty of up to $1,000 or six months imprisonment or both.

2. Legalization - It provided for a "two tier" system of legalizing the status of aliens currently in this country. Those who can prove continuous residence prior to 1977 could be granted permanent residence status. Those here prior to 1980 would be granted temporary residence status with an ability to have it adjusted to permanent residence after three years of continuous residence in this country. New permanent residents are not eligible for federal benefits for three years and new temporary residents are ineligible for six years.

3. Increased Border and Other Enforcement - The Senate bill states the sense of the Congress that resources for Border Patrol and other enforcement activities of INS should be increased, further it amends the INS authorization and appropriates $200 million to carry out the provisions of the Immigration bill. In addition, it creates an emergency revolving fund of $35 million to provide for an increase in Border Patrol and other INS enforcement activities. Finally, it increases penalties for bringing in and harboring illegal aliens.

4. Secure Identification System - S.529 provides that for three years employers of four or more persons must examine specified existing forms of identification and must maintain records attesting that he has done so. Within three years the President is required to develop verification procedures and establish a "secure system to verify work eligibility." Upon completion of this requirement Congress has 30 days to disapprove any system of identification the President recommends.

5. Expands H.2 Temporary Worker Program - This legislation provides that the Attorney General in consultation with the Department of Labor and the Department of Agriculture shall approve all regulations concerning the H.2 program. It further provides that H.2 workers may not be admitted for more than eight months and precludes the Secretary of Labor from issuing a labor certification if "there is a strike or lockout in the course of a labor dispute." These provisions basically streamline and expand the potential of the H.2 program.

6. Temporary Transitional Worker Program - As a means to provide a transition to Agriculture the bill provides a phasedown over a three year period of agricultural workers. This provision will make the dislocation of agricultural labor under the employer sanctions program less severe.

B. The House Judiciary Committee consider approximately forty amendments to H.R.1510 and voted it out of committee on May 5, by a vote of 20 to 9. Here are the significant amendments:

1. Employer Sanctions and Enforcement - The committee voted to delay the required employment eligibility verification procedures until after an illegal alien was found in the employee of a business. Further, the committee voted to require a warrant prior to entry onto open lands for the purpose of interrogating suspected illegal aliens.

2. Adjudicatory Procedures and Judicial Review - The committee provided for exclusion and deportation review at the Circuit Court level. Further, it provided for class action judicial review, prior to exhaustion of administrative remedies.

3. Legalization - The Judiciary Committee created a "single tier" legalization program and advanced the eligibility date to January 1, 1982. Further, it increased the period of ineligibility for federal benefits by one year to five.

C. Amendments Offered by the Sequentially Referred Committees

1. Education and Labor Committee - The major amendment offered by this committee is the Hawkins Amendment which makes major changes in the bills employer sanctions provisions. The Hawkins amendments seeks to modify substantially employers sanctions by creating a special counsel within the United States Immigration Board to bring actions against employers who knowingly hire illegal aliens and against employers who discriminate against legal residence on account of national origin or alienage. Additionally, the graduated penalty structure in the Judiciary Committee version would be replaced by a "cease and desist" order system whereby administrative law judges could choose between a variety of enumerated remedies.

Another important amendment forwarded by this committee is the Miller Amendment which would largely modify the H.2 Program. This amendment makes changes in the proposed H.2 provisions and establishes an 11-member commission to review this program.

2. Agriculture Committee - The most important amendment approved by the Agriculture Committee was sponsored by Representative Panetta creating a non-immigrant seasonal agricultural worker program limited to qualified growers of "perishable commodities." This program would be in addition to the statutory H.2 Program and the Transitional Worker Program already established in the Judiciary Committee bill.

Other Agriculture Committee amendments include a modification of employer sanctions to allow flexibility in the amount of the penalty accessed, authorization of "such sums" for the USDA to carry out its role under H.R. 1510, permitting the Attorney General to determine the length of admission for H.2 workers and providing that Congress will be responsible for the issuance of any new form of secure identification.

3. Energy and Commerce Committee - This committee focused on the provisions of H.R. 1510 relating to state and local reimbursement for welfare costs associated with newly legalized residents. The committee endorsed the concept of 100 percent reimbursement but they did attempt to define more precisely "emergency" medical services to control the cost of the program. Additionally, the committee approved an amendment by Representative Dannemeyer prohibiting abortion funding under Medicaid pregnancy services.

D. Rules Committee Consideration

At the time of the writing of this memo no hearing had been scheduled to consider and approve a rule controlling floor consideration of H.R. 1510. It is understood that the Chairmen of the Judiciary, Education and Labor, Agriculture, and Energy

and Commerce Committee have held discussions with Rules committee Chairman Claude Pepper (D-Fla.) to determine the method of consideration of the bill and associated amendments. It is most likely that the rules committee will not act prior to the Congressional recess beginning August 6, and ending on September 12. Shortly after the Congress reconvenes we expect a rule to be announced and a time-certain for consideration be established.

I hope this brief description of the somewhat complicated provisions of the Immigration Reform and Control Act of 1983 provides the kind of information helpful to you. Much of this information came from Mr. Greg Leo, Director of Congressional and Public Affairs of the INS. He has indicated to me his willingness to provide additional information as you determine necessary. He may be reached at 633-5231 at his office or at 544-2224 this weekend at his home.

SUMMARY OF THE IMMIGRATION BILL

PROVISIONS	S. 529	H.R. 1510	ADMINISTRATION POSITION
1. Employer sanctions			
Prohibition	Prohibits the knowing employment, recruitment, or referral for employment of aliens not authorized for such employment.	Same as S. 529.	There are no significant differences, but the Administration has preferred S. 529.
	Prohibits the continued employment of illegal aliens hired after enactment.	Same as S. 529.	
	Prohibits employers of 4 or more persons from hiring any person without complying with paperwork requirements.	Establishes an optional paperwork verification process until an employer is found to have employed an illegal alien at which time the process is mandatory.	The Administration favors the mandatory paperwork verification process for employers of 4 or more to facilitate enforcement and to avoid discrimination.
	Provides an affirmative defense if the verification procedures are followed in good faith.	Same as S. 529.	
Penalties	Following a 6 mos. education period, and 6 mos. where 1st offense receives a warning, (1) for a first violation, a civil fine of $1,000 for each alien; (2) for a subsequent violation, a civil fine of $2,000 for each alien; (3) for a pattern or practice of violations, a criminal penalty of up to $1,000 or 6 mos. imprisonment or both.	Provides a graduated penalty scheme: (1) first violation, a warning; (2) second violation, a civil fine of $1,000 for each alien; (3) for a third violation, a civil fine of $2,000 for each alien; (4) for a fourth violation, a criminal penalty of $3,000 per alien or 1 year imprisonment or both.	There are no significant differences, but the Administration favored criminal penalties only for a pattern or practice.
	The Attorney General is authorized to seek injunctions against a pattern or practice of violations.	Same as S. 529.	
	For a violation of paperwork requirements, a civil fine of $500.	Same as S. 529.	
Procedures	Provides administrative hearing before an immigration officer; AG may bring suit in District Court to collect fines.	Provides administrative hearing before ALJ's, appeal to Immig Board, and judicial review in Courts of Appeals.	The Administration strongly favors the less cumbersome S. 529.

PROVISIONS	S. 529	H.R. 1510	ADMINISTRATION POSITION
1. Employer sanctions (Cont.)			
Worker ID	For 3 years, employer of 4 or more persons must examine specified existing ID's, and maintain form attesting that he has done so, signed by himself and the employee.	Same as S. 529, but applies to those who recruit and refer also.	The Administration strongly favors H.R. 1510, whose provisions are considerably more flexible.
	Within 3 years, the President is required to make such changes or additions to verification procedures as are necessary to establish a "secure system to verify work eligibility."	Provides that within 3 years the President shall report to Congress on the need for changes or additions in the verification procedures to establish a "secure system."	
	Provides that secure system reliably determine a person's identity and that any documents be counterfeit-resistant.	No comparable provision.	
	Provides that the Congress has 30 days to disapprove any proposal for a new secure ID system.	Provides that the bill does not authorize the creation of a national ID card.	
2. User Fees	No comparable provision.	Permits the Attorney General to impose user fees.	The Administration supports S. 529.
3. Immigration Emergency Fund	Authorizes the appropriation of an immigration emergency revolving fund of $35 million.	Same as S. 529.	The Administration supports creation of the fund.
4. Adjudication Procedures			
Organization	Establishes a 9-member U.S. Immigration Board (replacing BIA) and immigration judges, appointed by the Attorney General.	Establishes a 7-member U.S. Immigration Board of PAS appointeds, and ALJ's appointed by the Chairman.	The Administration strongly prefers S. 529. The ALJ "independent agency" model fragments management and accountability. The judicial review provisions of H.R. 1510 could protract proceedings beyond current law. The "speedy trial" provisions are unworkable.

Adjudication Procedures (Cont.)	S. 529	H.R. 1510	Administration Position
Summary Exclusion	Provides expedited exclusion for aliens who arrive without documents or some reasonable basis for legal entry and who do not claim asylum.	Similar to S. 529, but provides that the alien must be advised of right to counsel and to ALJ redetermination.	
Other exclusion, deportation, and asylum	Provides an administrative hearing before an IJ, with an appeal to the U.S.I.B.	Provides a hearing before an ALJ with an appeal to the U.S.I.B. Creates "speedy trial" requirements for asylum cases.	
Judicial Review	Limited judicial review of exclusion, deportation and asylum decisions in the Courts of Appeals.	Judicial review of exclusion, deportation, and asylum decisions in the Courts of Appeals (with automatic stay of deportation).	
5. Legal Immigration Preferences	Provides extensive changes in existing preference system, including (1) placing immediate relatives of U.S. citizens under overall cap of 425,000, (2) dividing admissions into family and independent categories, (3) limiting 2d and 5th preference, and (4) doubling the country ceilings for Mexico and Canada.	No comparable provisions.	The Administration has stated its preference for deferring changes in our legal immigration system until after the more urgent problem of uncontrolled illegal migration has been addressed.
6. H-2 Temporary Workers	Provides that the Attorney General, in consultation with DOL and DOA, shall approve all regulations concerning the H-2 program.	Same as S. 529.	The Administration generally favors S. 529 as better reflecting the agreement between DOJ/DOA/DOL on appropriate modifications to H-2 and providing for a more limited transition worker program.
	Provides that H-2 workers may not be admitted for more than 8 mos., except where previously allowed by the Sec'y of Labor.	Admission period determined by DOL regs.	
	The Sec'y of Labor may not issue a labor certification if "there is a strike or lockout in the course of a labor dispute which, under the regs, precludes such certifica-	Same as S. 529.	

H-2 Temporary Workers (Cont.)	S. 529	H.R. 1510	Administration Position
	Establishes a transition program permitting agricultural employers to hire illegal aliens under conditions established by the AG for 3 years; 100% of historical need the 1st year; 67% the 2nd year; 33% the 3rd year. Only transitional workers employed during the 1st year are eligible the 2nd and 3rd year.	Similar to S. 529, except it permits application from outside the U.S. and "new" transitional workers during the 2nd and 3rd year.	
7. Legalization	**Provides permanent status to aliens in the U.S. before 1/1/77, and temporary status to those who came between 1977 and 1/1/80 (1/1/81 for Cuban & Haitian entrants).**	Provides permanent resident status to aliens in the U.S. before 1/1/82.	**The Administration strongly favors S. 529 and has conditioned its support for H.R. 1510 on a conforming amendment.**
	New permanent residents not eligible for federal benefits for 3 years; new temporary residents ineligible for 6 years.	Newly legalized residents are ineligible for federal benefits for 5 years except for emergency medical assistance (Medicaid).	
	Authorizes block grants to cover State and local cost of providing public assistance.	**Authorizes 100% federal reimbursement of State and local costs of public assistance and educational services to legalized aliens.**	
8. Authorization	Authorizes $200 million for FY 1984 to implement the Act.	Authorizes $734,205,000 for FY 1984; 718,553,000 for FY 1985; and 763,580,000 for FY 1986 to the DOJ for program support and to implement the Act.	The Administration prefers the more flexible and realistic approach of S.529.

Agricultural Labor Transition Program

Provision/Item of Concern	H.R. 1510	S. 529
1. Effective Date	6 months after the date of enactment.	5 months after the date of enactment.
2. Coverage of Program	"Maximum reasonable requirement for nondomestic seasonal agricultural workers."	"Up to 100 percent of his seasonal agricultural worker need," except that domestic workers and H-2's are not to be displaced.
3. Registration of Employers	By application to the Attorney General, who shall consider needs specified in application, historical employment needs of agriculture, and the availability of domestic workers, before approving application.	Application procedure would be covered by regulations presumably, but statute only requires that employer "notify the AG" of his intention to participate in the program and provide a "numerical count of the numbers of seasonal agricultural workers" employed in previous 12 months. (However, says that neither U.S. workers nor "legal foreign workers" should be displaced by transition agricultural workers.)
4. Eligibility of Aliens	a) Silent. If employer hires them, they are eligible. b) Still subject to deportation on certain grounds.	a) Must be already hired by an ag. employer, or have worked 90 days in agriculture since Jan. 1, 1980. b) Deportable as noted in House bill. c) Must register in first year in order to participate in 2nd and 3rd years.

Provision/Item Concern	H.R. 1510	S. 529
5. Issuance of Work Permits	Employer is to provide copy to the alien, send one copy to AG for "recordation" of the alien as a "non-immigrant", and retain one copy for his records to show compliance for this program and employer sanctions. (See #7).	Silent, except the employer is to report to AG a numerical count of the transitional workers employed.
6. Government registry, screening & documentation of aliens.	Only government recording of names of persons to whom work permits were issued.	Speaks of registry of aliens with government indirectly.
7. Entry from Outside the U.S.	Employer may send work permit to consular officer, who may issue visa to alien.	Silent.
8. Period of Legal Status in U.S.	Only when in possession of an unexpired work permit.	Silent.
9. Application of H-2 Wages and Working Conditions.	Covers all transitional ag. workers. Transportation mentioned specifically.	Applicable if and when employer employs H-2 workers.

Provision/Item of Concern	H.R. 1510	S. 529
10. Government Access to Records & Workers.	Silent.	Silent.
11. Maximum Period of Time for Work Permit.	Silent.	Silent.
12. Fees	AG may require a fee to recover reasonable costs of registering employers and issuing work permits.	Similar.
13. Regulatory authority.	AG in consultation with the Secys of Labor and Agriculture.	Same.
14. Definition of agricultural employer.	Social Security Act and Fair Labor Standards Act definitions cited in other parts of Section 211 dealing with H-2 program.	Silent.