

**NLWJC - Kagan**

**DPC - Box 033 - Folder 016**

**Immigration - New Law**

▶ **Julie A. Fernandes**  
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Record Type: Record

To: Elena Kagan/OPD/EOP, Maria Echaveste/WHO/EOP  
cc: Laura Emmett/WHO/EOP, Marjorie Tarmey/WHO/EOP  
Subject: Mandatory detention

FYI -- background and follow-up information from last week's immigration meeting.

On October 9, the Department of Justice's ability to waive the mandatory detention requirements to IIRIRA (the 1996 Immigration Act) expire. INS is seeking a two-year extension of the waiver for two reasons: first, b/c Congress has not appropriated enough money to the INS for them to build adequate bed-space to accomodate the detention of all criminal and deportable aliens; second, even if they had the space, they believe that the mandatory detention of all criminal and deportable aliens (regardless of their assessment of the likelihood of flight; regardless of how old the offense it) is bad policy. The Administration strongly opposed this provision when it became part of the 1996 Act.

INS has drafted language that would provide for a two year extension of the waiver. At first, INS wanted to send a formal transmittal letter that said that they want an extension of the waiver b/c: (1) the INS does not have the bed-space (2) and we need more time to convince the Congress that there are better ways of achieving their ends. Now, they have agreed to informally transmit the amendment (through Kennedy's staff) and make our position clear in testimony that was delivered last Friday on the subject.

julie

## SUSPENSION OF DEPORTATION

### Background:

- The 1996 immigration bill substantially restricts the availability of waivers from deportation due to hardship. "Suspension of deportation" (or now "cancellation of removal") has been a traditional form of potential relief for otherwise-deportable aliens who have developed deep roots in our communities that provided the basis for a showing of hardship.
- The new law raises the existing hardship standard and lengthens the time that an alien must be in the country from 7 to 10 years. Most significantly, it sets an annual cap of 4,000.
- The 4,000 annual cap for FY97 already has been reached.
  - This is due primarily to a timing disparity in the law. While the more restrictive standards only took effect prospectively (for cases commenced on or after April 1, 1997), the cap became effective immediately (on September 30, 1996).
  - These two timetables are in direct tension: while the 4,000 cap is tailored to the new standards, it is far too low for those cases adjudicated under the earlier, more lenient rules. This has created a transitional "spike" in the numbers of potentially eligible claims.
  - The full implications of establishing different effective dates appears to have been overlooked during Congressional consideration of the bill.
- Presently, the Administration is holding temporarily eligible cases above the cap. However, a legislative fix to the cap would be necessary to allow us to grant any more suspensions to persons satisfying the hardship standard this year. If no legislative fix is enacted, the INS would begin enforcement of deportation orders. The Administration has begun an internal discussion and informal inquiries on the Hill about how to accomplish a legislative correction.
- The best option appears to be to try to achieve support for reconciling the disparity of the two different dates of enactment so that the cap would be applied beginning with proceedings begun after April 1, 1997. (These cases are unlikely to exceed the cap anyway, given the much stricter standards).
- There is little momentum in Congress for a legislative change now, but this can be expected to change as enforcement of deportation hardship cases becomes imminent. The INS intends to issue regulations after your trip that will establish procedures for holding cases temporarily and this should also begin to focus attention on the issue.

**Talking Points:**

- Our common goals should be to minimize disruption to our economies, to political stability, and to your citizens in the U.S.
- The Administration is taking several steps to meet these goals:
  - First, you can be assured that there will be no massive deportations and no targeting of Central Americans.
  - Second, the Administration has decided that between now and October 30, 1997, no order of deportation will be issued to any person who would have qualified for suspension in the absence of the ceiling.
  - In the next 7 months, the Administration will work vigorously with the Congress and seek other remedies to address this issue in a more humane way.
  - We also will make sure to keep you informed of any developments on these matters so that you can take appropriate steps -- both to inform your fellow citizens in the U.S. and to make any necessary preparations at home.

**Q&As:**

**Q: Why did you sign the immigration bill with this provision in it?**

**A:**

- The Administration opposed instituting a cap during deliberations on the bill. But this provision was part of a lengthy complex bill, most of which supported my objectives of fighting illegal immigration through strengthened border control, tougher worksite enforcement and increased removal of criminal and other deportable illegal immigrants. I signed the bill for that reason.
- Correcting this is consistent with the principles that guide my Administration's immigration policies: keeping unauthorized immigrants out of the United States, welcoming legal immigrants to our country; and maintaining our nation's humanitarian traditions.
- This measure in its present form threatens to tear apart families even when that result causes "exceptional and extremely unusual hardship." Our illegal immigration control policies should be tough, but not harsh, particularly where young children are involved.
- That is why I want to correct the temporary problems that the cap poses and have instructed my staff to pursue discussions with Congress to try to achieve that goal.

**Q: How many people might qualify for relief from deportation due to hardship if not for the cap?**

**A:**

- The Department of Justice estimates that there are between 19,000 and 39,000 persons in the pipeline over the next 3-5 years. The majority of these will be Central American, but the solution would cover all suspension cases. (It is possible that litigation could send this estimated total higher.)

## TALKING POINTS ON SECTION 245(i) AND BARS TO REENTRY

### I. Section 245 (i):

#### Background:

Presently, under Section 245 (i), an individual unlawfully in the U.S. may adjust his or her status to lawful resident while remaining in the U.S. and paying a fine. (This money is used to support INS detention operations). Section 245(i) is scheduled to sunset on September 30, 1997. Thereafter, an individual would have to leave the U.S. and return to their home consulate to obtain a visa.

#### Talking Points:

- [I have proposed to extend section 245(i)] in my budget to Congress. This would allow individuals to adjust to lawful residence while residing in the U.S.
- If this section is extended by Congress, then an individual who stays in the U.S. will face the same risk of apprehension and removal that they do now. [If Congress does not pass this proposal, then a person would be required to return to their country to avoid a 3 or 10 year bar to reentry.] My staff will work hard with Congress to seek enactment of this extension.

### II. 3- and 10-year Bars to Reentry:

#### Background:

- The new law includes bars of 3/10 years for aliens who have resided unlawfully in U.S. for 180/365 days. It includes a waiver based upon humanitarian grounds.
- During Congress' consideration of these bars, the Administration argued against imposing automatic consequences for unlawful residence. [Because it would lead to needless and costly litigation on concerning how long the individual was unlawfully in the U.S. & would have a negative impact on 245(i) operations.] We argued for inclusion of a waiver for hardship if the bars were retained.

#### Talking Points:

- I commit that we will implement the waiver humanely and with compassion.
- In addition, we will continue efforts to improve the naturalization system. Naturalization would provide another avenue of relief for your citizens who have a lawful permanent resident relative in the U.S. If the relative naturalizes, then the person can immigrate legally the next year.

### **III. The 1 Year Aggregate Residence Bar**

#### **Background:**

There is an additional provision that establishes an automatic bar on legal immigration for an alien who resided unlawfully in the U.S. for an aggregate of more than 1 year and seeks to reenter unlawfully.

#### **Talking Points:**

- I continue to oppose the imposition of automatic consequences of illegal residency that strips the Administration of an opportunity for considering discretionary humanitarian or other significant hardship factors that may support relief in a particular case. I consider this to be consistent with our continuing to strengthen our removal efforts for criminal and other deportable aliens.
- [Not yet fully vetted at DOJ/INS] I will therefore support the following legislative changes and will work with Congress to achieve them:
  - I will seek waiver language for humanitarian purposes similar to that available in other parts of the law.
  - I will seek prospective application to allow a transition period prior to application of this provision of the law.

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### General Background and Talking Points on Migration Issues

As a result of the recent immigration and welfare bills, migration issues are among the more sensitive ones in our relations with Mexico and Central America. While the Administration is taking steps to address some of their concerns, their central demands will remain unanswered. In particular, Central Americans are requesting relief for the hundreds of thousands of their citizens (from El Salvador, Guatemala, and Nicaragua) who fled their war-torn countries in the 80s and now face deportation.

The most controversial issues include the following:

- A perception that provisions in the new immigration bill imposing tougher action against illegal migrants will result in massive deportations. This, in turn, would dry up a major source of remittances for countries in the region and overwhelm their economies.
- The perception, fueled by other developments at the state level, that the anti-immigrant mood is primarily an anti-Hispanic mood and that the law targets Mexicans and Central Americans. While the perception is misplaced, statistically most deportees will be from the region because they constitute a majority of illegal aliens in the US.
- The welfare bill's harsh restrictions on benefits to legal migrants. The Administration is seeking to restore some of these benefits.
- A provision in the immigration bill that significantly curtails suspension of deportation, the remedy traditionally available to illegal aliens who have resided in the US for considerable periods of time and whose deportation would cause extraordinary hardship. The Administration is delaying enforcement of one of the most onerous aspects of this provision (a cap on the annual number of suspensions) and is working with the Congress to mitigate its impact.
- Provisions in the immigration bill that would impose lengthy bars on admission to the US on aliens who have resided here illegally. The Administration is seeking, through both administrative and legislative means, to soften the impact of these provisions.



- Termination of a provision of law that used to allow illegal aliens to legalize their status in the US without having to return to their home country. The Administration supports renewal of this provision. 1  
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- Incidents of police brutality against migrants. The Administration has vowed to respect the human rights of all migrants, regardless of their legal status, and to investigate all incidents of abuse.
- US practice of deporting criminal aliens without providing adequate advance notification to the home countries. The Administration has committed to having in place by June systematic procedures to notify governments of individuals removals.

#### Talking Points

- U.S. is nation of migrants, forged by people seeking freedom and refuge from persecution.
- Migrants give this country many times over what they ask from it.
- Diversity is defining feature of our country. World looks to us to see that it is possible for different groups to live and prosper together. Experience of other nations teaches that we gain strength from respecting each other and rising above tendency to divide in terms of ethnic, racial, tribal groups.
- Believe it critical to maintain our tradition of welcome to legal immigrants, and that is why I have objected to proposed measures around the country that would penalize migrants who work hard and play by rules.
- But tradition of generosity is threatened by those who abuse it -- only way to sustain support for legal immigration is by taking tough steps against illegal immigration.
- New immigration bill gives us tools to enforce law; that is why I signed it and why committed to enforcing it.
- At same time, concerned that some provisions of welfare and immigration laws are inconsistent with humanitarian tradition.

- Illegal immigration control policies should be tough, but not harsh, especially where young children are involved.
- Committed to take administrative steps and work closely with Congress to mitigate harm to immigrants who have played by the rules.
- Believe immigration efforts should be guided by following set of principles:
  - ⇒ Strong enforcement of U.S. laws against illegal migration and alien-smuggling to maintain integrity of our borders.
  - ⇒ Work in partnership with our neighbors to combat illegal immigration and minimize disruption on emerging market democracies caused by deportations. In particular:
    - ◊ avoid massive deportations that could have destabilizing effect;
    - ◊ provide countries with advance notification of return of criminal aliens so that they are better prepared to deal with them.
  - ⇒ Respect human rights of all migrants, regardless of status, and no tolerance for discriminatory treatment.
  - ⇒ Restore fair treatment for vulnerable legal immigrants affected by welfare bill, such as children and disabled.
  - ⇒ Minimize forced separation of families, particularly where young children are involved; work to maintain discretion to act humanely if faced with extraordinary humanitarian circumstances.
  - ⇒ Provide immigrants with fair notice of law; avoid inappropriate retroactive application of provisions that would impose harsh penalties for past actions.

Immigration - new law

Steve -

April 1, 1997

Here is the  
draft memo. I  
tried to keep  
it straight forward.  
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**MEMORANDUM FOR THE PRESIDENT**

**FROM: Bruce Reed**

**Subject: Major New Provisions of Immigration Law Take Effect**

Sweeping changes in the immigration laws take effect today as a result of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 that you signed last September. While the reform is far-reaching, most of the public attention centers on the law's new removal procedures, asylum application changes, and bars to legal reentry. This memorandum summarizes those changes.

**A. Easier Deportation**

The new law: 1) consolidates and streamlines the deportation process, making it easier and quicker to remove someone from the United States; and 2) makes it more difficult to obtain a waiver of deportation due to hardship.

While increasing the likelihood of deportation of illegal immigrants, the law also expands the activities that make legal immigrants deportable. In particular, it enlarges the number of crimes for which a legal immigrant may be deported. The media have highlighted this issue with personal stories of legal immigrants who lead productive, law-abiding lives while quietly raising their families who will face deportation because they were involved in an isolated and arguably minor violation of the law long ago.

In addition to expanding the grounds for deportation, the law restricts relief from deportation due to hardship. In the past, an individual could get an order of deportation suspended if he or she had been in the country seven years and could show that removal from the country would result in hardship. Now the standard is tougher. Beginning April 1st, an individual is required to show that he or she has been in this country ten years and that the deportation would cause "exceptional and extremely unusual hardship" to immediate relatives who are U.S. citizens or legal residents.

The availability of relief is restricted further because the law sets an annual cap on these cancellations of deportation at 4,000 -- a level that already has been reached this year. The INS estimates that there are thousands more above the cap who may be eligible this year and may face the prospect of deportation even after proving to an immigration judge that extreme hardship would result.

The new law is causing growing anxiety -- fueled by rumor and misinformation -- of INS enforcement sweeps and mass deportations. Because many families in these communities are a mix of citizen, legal immigrant and undocumented, there are fears that families soon may be split by the deportation of a close relative. As described more below, the INS has been taking steps to provide reassurance that its priority remains on identifying and removing criminal aliens and that there will not be mass deportations.

## **B. Asylum Restrictions**

✓ The rules for obtaining asylum also change. Beginning April 1st, a person generally will lose his or her right to claim asylum -- regardless of the validity of the claim of fear of persecution -- if the claim is not filed within one year of arrival in the United States. And the law restricts judicial review of asylum claims. This has led to concerns by some that this places too much power over the determination of the validity of an applicant's claim in the hands of immigration officers and that people will be denied entry without a fair and adequate opportunity to make their case.

## **C. Bars to Reentry**

With limited exceptions, the new law also imposes a three-year bar for applying for legal reentry into the United States for anyone who has been in the country illegally for six months. Persons who have been here illegally for a year or more face a ten-year ban. (Those who overstay their visas and remain in this country illegally will be subject to these bans.)

## **D. Legal Challenges**

Several lawsuits have been filed seeking to enjoin implementation of the law. Early this morning, an appeals court overturned a federal district court ruling that would have delayed implementation of the law until this weekend. Plaintiffs sought additional time to permit the public to learn about the law and to minimize the "confusion" and "chaos" it has caused. As a result of the appeals court ruling, the INS is moving ahead immediately with full implementation of the law. Other lawsuits have been filed challenging particular portions of the law and we expect that there will be additional legal challenges.

## **E. Administration Response**

The objective of the Administration's response is two-fold: 1) Get accurate information out about the changes in the law; and 2) Counter the misinformation that is heightening anxiety about the changes.

To accomplish this, the INS is conducting a large-scale education, training and outreach effort to familiarize INS officers and members of the public with the new law and to minimize confusion. The agency is providing detailed training for all 16,000 INS officers. In addition, the agency is meeting with community groups and non-governmental organization and conducting a number of public forums to discuss the law's impact. In key geographic regions, including the border states, INS district offices are extending telephone hours to respond to the growing volume of calls from the public.

While seeking to reassure the public that mass deportations will not occur, we have reiterated the Administration's position concerning the law as a whole which is that it provides important enforcement tools that support the Administration's continuing strategy of strengthened border control, tougher worksite enforcement and increased removals of criminal and other deportable aliens.

The DPC is working with the INS on this effort. We are also working with DOJ and others to review technical and possible substantive amendments to the law that may be necessary. In addition, the NSC and DPC have been working with the Department of Justice and State

Department to review the implications and options concerning the annual cap of 4,000 on cancellation of deportation for hardship.

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Laura/Leanne:

Attached are background and talking points that have been cleared by DOJ and INS. Also seen by Warnath. I will be forwarding to you additional points and qs and as later this afternoon.

Laura: Please pass to Rahm Emanuel for his quick clearance, as requested by Sylvia and Sandy (by 3:00 pm would be ideal).

For Leanne: Please pass to Bruce and let me know if there are any problems.

Also, could you both please run by Bruce and Rahm the following paragraph from the draft joint communique with Central Americans and seek their views:

**"Having expressed their concerns to the President of the United States, the Presidents of Central America and the Dominican Republic and the Prime Minister of Belize are confident that the recent Immigration legislation approved by the United States will be implemented with full respect for the human rights and dignity of the individuals it may affect, and welcome the United States government's initiation of consultations with its Congress on the scope and consequences of the law on our people, with a view to achieving our common humanitarian goals."**

### General Points on Migration

- Made the point repeatedly at home: U.S. is country of migrants, and migrants give this country many times over what they ask from it.
- Also have stressed that defining feature of our country is our diversity. Experience of other nations -- Bosnia; Northern Ireland -- teaches that we gain strength from respecting each other and rising above tendency to divide in terms of ethnic, racial, tribal groups.
- So, while true that illegal immigration is difficult problem our nation must tackle, must carefully balance control and compassion. I am committed to maintaining our proud tradition of welcome for legal immigrants who come to our country to work hard and play by the rules and of respect for human rights of all migrants.
- Our approach must rely on working in partnership with you, our neighbors, to find joint solutions to these problems.

**Issue: Suspension of Deportation (principally for Central Americans)**

Background:

- Aliens unlawfully in the U.S. traditionally could apply for suspension of deportation if they had resided in the U.S. for 7 years and if deportation would cause "extreme hardship" to themselves or a close family member. Aliens who are granted suspension are authorized to work in the U.S. and can obtain permanent legal status virtually automatically. The recently enacted immigration bill significantly curtails this remedy by: (1) raising the standard for granting suspension; and (2) imposing a 4,000-person cap on the number of suspensions in any fiscal year, beginning in 1997.
- The 4,000 annual cap for FY97 already has been reached.
  - This is due primarily to a timing discrepancy in the law. The more restrictive standards took effect prospectively (for cases begun on or after April 1, 1997), but the cap became effective immediately (on September 30, 1996)
  - These two timetables are in direct tension: the 4,000 cap is tailored to the new standards, but is far too low for cases adjudicated under the earlier rules. This has created a transitional "spike" in the numbers of potentially eligible claims.
  - The full implications of establishing different effective dates appears to have been overlooked during Congressional consideration of the bill.
- This is of interest to hundreds of thousands of Central Americans who have been living in the U.S. under legal temporary status for years, many of whom expected to benefit from suspension of deportation. Their deportation would split families and create great hardship to their home countries that depend on remittances from the U.S. and whose economies could not absorb all the returnees.

Status:

- INS will not issue orders of deportation until the end of FY 97 to aliens who would have qualified but for the cap.
- In the interim, we will work with the Congress to seek to address the problem raised during the transition phase.



- Options include: (i) Making cap applicable only to cases commenced on or after April 1, to eliminate timing discrepancy; (ii) raising the cap for FY 97; (3) allocating FY97 suspension grants that exceed the ceiling over the next several years.

### Talking Points

- In enforcing its immigration laws, Administration is committed to humanitarian tradition that characterizes best of our nation's spirit.
- Nationals from Central America came here fleeing war-torn nations and have since worked hard and played by the rules, contributing to the well-being both of the U.S. and of their home countries.
- While remarkable progress in Central America means many can return home, our common goal should be to minimize disruption to our economies, to political stability, and to your citizens in the U.S.
- We are taking several steps to meet these goals:
  - First, you can be assured that there will be no massive deportations and no targeting of Central Americans.
  - Second, the Administration has decided that between now and October 30, 1997, no order of deportation will be issued to any person who would have qualified for suspension in the absence of the ceiling.
  - In the next 6 months, we will work vigorously with the Congress to seek remedies to address this issue in a more humane way.
  - We also will keep you informed of any developments on these matters so that you can take appropriate steps -- both to inform your fellow citizens in the U.S. and to make any necessary preparations at home.

### Qs and As

Q.: Why did you sign the bill with this provision?

A.:

- Administration opposed the cap during deliberations on the bill. But this provision was part of a lengthy, complex bill which generally supported my objectives of fighting illegal immigration through strengthened border control, tougher worksite enforcement and increased removal of criminal and other deportable illegal immigrants. I signed the bill for that reason.
- Addressing this problem is consistent with the principles that guide my Administration's immigration policies: keeping unauthorized immigrants out of the U.S., welcoming legal immigrants; and maintaining our nation's humanitarian traditions.
- This measure in its present form threatens to tear apart families and does not do justice to migrants who have spent years in the U.S. working hard and playing by the rules. Our illegal immigration control policies should be tough, but not harsh, especially where young children are involved.

Q.: Given the responsibility of the U.S. in the civil wars that drove Central Americans to flee, isn't the right thing to do to legalize their status and allow them to remain in the U.S.?

A.:

- U.S. welcomed Central Americans at a time when their home countries were devastated by war. Was right, humanitarian thing to do, consistent with our traditions.
- Countries have now made remarkable progress toward democracy, peace and reconciliation. Migrants no longer would face danger at home and it is time to think of return -- U.S. cannot accommodate everyone who wishes to come here.
- Our task is to do this as humanely as possible and by working closely with countries of region to minimize disruption to their economies and to the lives of the migrants.

[ADDED ISSUE FOR NICARAGUANS]

Background: Nicaraguans in the U.S. face the additional obstacle that the new law retroactively changes the manner in which their years of residence in the U.S. will be calculated for purposes of establishing eligibility for suspension. This retroactive

provision means that, because of the particular judicial procedures that were used in their case, a vast majority of Nicaraguans are unlikely to be granted suspension even if the cap were lifted.

Status:

DOJ/INS is considering administrative steps to address this problem.

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Talking Points:

- Understand concerns of Nicaraguan community in the U.S.
- Have asked DOJ and INS to look closely at how we can implement the law in a way that does not penalize them or other nationals.

**Issue: Extension of 245(i) -- adjustment of status (principally for Mexico)**

Background:

- Under section 245(i) of the INA, certain eligible aliens could adjust their status while unlawfully present in the U.S. without first returning to their home country to obtain a visa. This required payment of a penalty fee. This section will sunset at the end of FY 97 and it is not extended in the new immigration law; in other words, illegal aliens will need to leave the U.S. in order to apply for a visa, regardless of whether they qualified while in the U.S.
- The most difficult case will involve an alien living illegally in the U.S. with a spouse or child who is a lawful permanent resident or U.S. citizen. The alien would be on a waiting list for an immigrant visa and, under the prior immigration laws, would pay a fine and adjust status under 245(i) without having to first return home. The change in the law would force such an alien to leave his or her family and receive his visa at home, in some instances having to wait for substantial periods of time.
- The government of Mexico (GOM) claims that tens of thousands of Mexicans who have applied for immigrant visas are living illegally in the U.S. with a lawful permanent spouse and children. In order to regularize their status and avoid future ineligibility for admission in the U.S., they would need to be separated from their families for extended periods of time.

Talking Points

- *Agree that 245(i) should be extended; forcing aliens who have qualified for adjustment to return home to pick up their visa will impose senseless burden and might needlessly separate families.*
- *I have included a request for indefinite extension in the FY 98 budget submission, and Administration will fight for this.*

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Qs and As:

Q.: If these are illegal aliens, why should we allow them to stay in the U.S. and become legal?

A.: The issue is whether aliens who have qualified for legal status in the U.S. need to leave the country simply for the purpose of picking up their visa -- imposing a burden and disrupting their family lives for no sensible reason.

With 245(i), alien is permitted to legalize status without leaving but must pay a penalty because they were here illegally. Penalty has helped us fund INS detention programs.

**Issue: Bars on Admission and Re-entry (principally Mexicans)****Background:**

- Under the new law, aliens who are unlawfully present in the U.S. for 180 days after April 1, 1997 and then depart will be inadmissible for 3 years; similarly, aliens who are unlawfully present in the U.S. for one year or more after April 1, 1997 and then depart will be inadmissible for 10 years. (Section 212(a)(9)(b)).
- Imposition of these re-entry bars are waiveable on a case-by-case basis on humanitarian grounds, in instances where the unlawful alien is the spouse or child of a U.S. citizen or lawful permanent resident.
- The law also imposes a 10-year admissions bar on aliens who have been unlawfully present in the U.S. for an aggregate period of more than 1 year and who enter or attempt to re-enter the U.S. illegally. (Section 212(a)(9)(c))
- This bar is unwaiveable even in most extreme humanitarian circumstances -- such as where parent would be separated from his or her minor children living lawfully in U.S.
- During congressional consideration of these bars, Administration argued against automatic imposition of consequences for unlawful residence.

**Status:**

- Administration will support efforts to add waiver language in section (c) similar to that which exists in section (b).
- INS also will issue field guidance to make provision prospective.

**Talking Points:**

- *Understand your concerns about 3/10 year bars and possible risk of separating families and asked Administration officials to closely consider your proposals.*
- *Let me first seek to reassure you on several points:*

- These provisions will not result in any mass deportations or round-ups.
- Undocumented alien in U.S. is at no greater risk of apprehension and removal than under old law provided alien remains in U.S. If we succeed in extending 245(i), qualified alien will be able to adjust status in U.S. as under old law.
- Also commit that Administration will implement existing waiver provision humanely and with compassion.
- One way of accelerating adjustment of status for undocumented alien is for his/her relative to naturalize. If the relative naturalizes, then the alien will be able to legalize status in the next year. This is a message you may wish to convey to your nationals in U.S. In the meantime, we will continue efforts to improve our naturalization system.
- At same time, Administration is considering possible steps to soften harsh impact of law on persons unlawfully in the U.S. who leave and seek to re-enter.
- While we need to take steps against illegal immigration, I continue to oppose imposition of automatic consequences for unlawful stay. Administration should have ability to consider discretionary humanitarian factors that may justify relief in a particular case.
- Last year, my Administration sought waiver language on humanitarian grounds similar to that available in other parts of the law. I will continue to support that goal.
- In addition, INS intends to issue field guidance to make this provision applicable prospectively only, to give aliens proper notice and provide them with a transition period.

Qs. and As.

Q.: Why did you sign a bill with such a harsh provision?

A.:

- Administration opposed these provisions during deliberations on the bill. But this provision was part of a lengthy, complex bill which generally supported my objectives of

fighting illegal immigration. I signed the bill for that reason.

- The modifications we are seeking are fully consistent with the principles that guide our migration policies: keeping unauthorized immigrants out of the U.S., welcoming legal immigrants; and maintaining our nation's humanitarian traditions.
- Administration needs to maintain discretion to act humanely if faced with extraordinary humanitarian circumstances. Congress recognized this in other parts of the bill; waiver ability should be extended to 10 year bar for one-year aggregate unlawful residence.
- Principles of fairness also guide request for making law prospective. People are on notice, and from now on should face consequence if violate law. But not consistent with U.S. traditions to impose such harsh consequences for past actions without warning.
- We ought to be tough, but not harsh, especially where young children are involved.



**Issue: Welfare Benefits for Legal Immigrants (principally for Mexico)**

Background:

Welfare law denies most legal immigrants access to fundamental safety net programs unless they become citizens.

Status:

Administration's FY98 budget would correct welfare law's harsh provisions on legal immigrants. Includes \$14.6 billion to restore benefits for legal immigrants -- including Medicaid and Supplemental Security Income to legal immigrants children and to legal immigrants who become disabled after they entered the country.

Talking Points:

- *Restoring fair treatment for legal immigrants is a key part of my agenda this year.*
- *Welfare law denies most legal immigrants access to fundamental safety net programs -- even though they are in the U.S. legally, are responsible members of our communities, and in many cases have worked and paid taxes.*
- *These provisions had nothing to do with real goal of welfare reform, which is to move people from welfare to work.*
- *My FY 98 budget would correct the law's harsh provisions on legal immigrants -- provisions that would burden State and local governments and that punish children and legal immigrants with severe disabilities.*
- *This country should protect legal immigrants and their families -- people admitted as permanent members of the American community -- when they suffer accidents or illnesses that prevent them from earning a living. Similarly, we should provide Medicaid to legal immigrant children if their families are impoverished.*

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Stephen C. Warnath

03/25/97 12:32:30

PM

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Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: immigration law & policy material

I will drop off some material that identifies some of the major changes in the immigration law that are effective April 1st. This material (in draft) is the subject of tomorrow's INS briefing for the press and I am providing it to you for your information. The changes are sweeping, technical and complicated -- you will see from the material that the changes probably defy meaningful summary due to the danger of oversimplification. That is one of the reasons that there is so much misinformation heightening anxiety in many communities. (You may have seen that the NY INS office has had lines so long that it decided to close the office to walk-in traffic. People now must send in a form. To get the form, they have to call the INS. . . But because of the huge demand, the telephone lines are likely to be busy. A logistical mess, in other words!) This material reflects only the beginning of the changes that are to come with additional significant national policy and implementation issues needing decisions in the immigration area as a result of the new law.

I also dropped off in your box the agenda and some material that was distributed from this week's WH Immigration Core Group Meeting, again just FYI.

Hope this is helpful. thanks Elena.