

NLWJC - Kagan

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**Immigration - Structural
Reforms [2]**

Draft

**TESTIMONY OF COMMISSIONER DORIS MEISSNER
SENATE SUBCOMMITTEE ON IMMIGRATION
CUSTOMER SERVICE AND RESTRUCTURING**

Introduction

Thank you Mr. Chairman. I'm very pleased that you have chosen to use today's hearing to focus on the issue of service at Immigration and Naturalization Service (INS).

It is a tremendous responsibility to lead an agency that affects so many lives in such a personal way. The decisions our officers make every day can mean the difference between whether people can work in the United States, whether a mother and daughter may be reunited after years apart, if a couple separated by an ocean will be able to marry, and whether people who have come to this country to make their own American dreams come true will become citizens. These decisions are not made lightly, and I realize our work has an enormous impact on those we serve.

To be frank with you, the issue of customer service has not gotten as much attention as it deserves. As Commissioner, I can tell you that we are clearly not where we want to be in providing service to our customers.

We are not as timely as we want to be.

We are not always as courteous as we should be.

In fact, the history of the agency and its entire culture has never truly been service oriented although it clearly needs to be.

We are very committed to changing that. And we are.

While we have already laid some groundwork, we hope to win your support for fundamentally restructuring INS to build customer service into the way we do business everyday.

We want to take an institution with a weak reputation and turn it into a world class service agency. What will it take?

We need to reach the following goals:

First, we know we must create higher standards for what our customers can expect from us.

And we must be able to enforce those standards consistently nationwide – so that individuals are not advantaged or disadvantaged, as they are now, by where they live. People in Detroit should get the same high level of service as those in Boston.

We know we must use modern technology and processes to maximize efficiency.

We know we must improve access to information-whether it is getting a citizenship application or the status of a Green Card request.

We know we must locate our offices more conveniently to the people and communities we serve. And that these offices must be customer friendly - in the way they look, feel and operate.

We know we must develop a better trained work force of individuals who choose to develop a career in service—not as it is now, where the best way to climb the career ladder of INS is through proving yourself as an enforcement officer.

The bottom line is that reaching these goals relies on two basic things: infrastructure and structure.

Let me give you an overview of where we started, where we have come, and where we must go.

History

As you know, the Administration made immigration a priority from the beginning. The difficulty was that INS had been so badly neglected, that for the first two years our energies were almost solely devoted to conducting triage of critical problems that had undermined immigration enforcement in this country altogether.

Five years ago, the SW border was completely out of control, the asylum system was badly abused and criminal and illegal aliens had little fear of ever actually being deported. Since then, with the Administration's commitment and Congress' support, we have made tremendous progress addressing those urgent illegal immigration problems.

It is not that customer service issues were not anywhere on the radar screen. It is just that they were not flashing as brightly or urgently as the enforcement problems that had to become our first priority.

How Backlogs Began

In FY 1995, needs on the services side of the agency became more clear as they became more urgent. That year, the number of people applying for benefits grew dramatically.

Congress had just passed a new law, 245(i), that enabled people to adjust their status through INS here --rather than overseas through State Department consulates. In just the first 10 weeks, after it was enacted, we received 180,000 applications. As a result, by the end of the year, the number of people applying to INS for status changes more than doubled.

In addition, in that same year, the political climate for immigrants was beginning to change. Proposition 187 had just passed in California and the country was beginning a new round of debate about the future of legal immigration. Literally hundreds of thousands more people began to apply for citizenship to secure their status, and INS could not keep up with processing as many applications as it received.

That is when we started digging a hole that we have never been able to climb out of.

Since then, the number of people applying for naturalization has tripled and the waiting times for citizenship and other services have increased to completely unacceptable levels.

Daily Workload

In addition, our workload goes beyond adjudicating applications for immigration benefits.

The range and scope of our customer service responsibilities is very broad and the number of people we serve - in some way - each and every day is also on the rise.

For example, with international trade and travel on the rise, we inspect over a million people a day coming in through our land, sea and air ports.

We take xx calls a day through our Phone Centers

We fill requests for x forms a day through our Forms Center

We provide information to x people daily on our website

We fingerprint over

We interview thousands of people a day.

What We Can Do About It

We want to not only handle this growth in demand for services—we want to truly EXCEL at it. We are committed to doing what it takes.

The challenges we face on the services side are not unlike the ones we faced five years ago. Just as the nation had failed to create an immigration agency capable of truly enforcing the immigration laws, we had also failed to create an agency capable of delivering modern day services.

We had never built the proper infrastructure.

Over the course of the last few years, we have begun to construct one. But we now recognize that infrastructure alone is not going to be enough.

We have just completed working with management experts at Booz, Allen and Hamilton and determined that to truly create a service oriented organization capable of realizing the goals I outlined earlier, we need more than infrastructure. We also need a fundamentally new structure.

We need to separate INS service and enforcement functions so that each side can develop a sharper focus on its responsibilities, while still supporting a joint mission.

The service side of the agency has long been overshadowed by enforcement and must be able to grow on its own with its own staff who have the time, energy and ambition to focus on service delivery and who can be held accountable for it.

Our restructuring proposal calls for eliminating the regional and district offices and replacing them with offices tasked solely with service or enforcement responsibilities. Service offices would be responsible for handling all adjudications and providing information and be located close to our customers.

Enforcement offices would be organized with staff from multiple enforcement disciplines to comprehensively address the challenges at the border and in interior of the country and be located where there are enforcement vulnerabilities.

We would create two different chains of command from the top of the agency to the smallest offices in the field. Each would have clear reporting relationships and manageable spans of control. This would alleviate the current confusing and overlapping organizational relationships that have produced lack of accountability, and difficulty managing large numbers of staff across too wide a span of control.

We would develop clear career paths—one for service and one for enforcement in order to recruit, train and retain the best employees with the right skills and abilities for their jobs.

With an entire chain of command whose top priority is delivering service, we can set standards for what customers can expect nationwide and hold our staff accountable for meeting them. We can develop consistent standards for how long it should take a naturalization applicant to get to an oath ceremony and how many minutes it should take to find by phone how to apply.

As I stated earlier, reaching our goals is incumbent upon not only fundamentally restructuring the agency, but also building a solid infrastructure. We must develop new technological platforms, implement better record keeping methods and better ways of providing information, conduct more outreach to communities we serve, improve our facilities and more staff.

Let me tell you the status of all of these and how our restructuring proposal will support them—starting with the technological tools that really define our capabilities to function. After all, they determine our efficiency, our speed and the way we share information between INS offices and with our customers.

Building Blocks

This means installing both basic computers and high tech information systems.

Computers

This is an area in which we have made enormous inroads bringing the agency's computer capabilities up to date —especially when we started a decade late. When I started my tenure in late 1993, it was clear that the agency's computer infrastructure had been neglected for years. It was stuck in time.

Remember what businesses and government agencies were like in the early 80's when every staff person didn't have a personal computer? When using email or accessing databases was still a novelty? When records were stored in file rooms in manila folders and not in computers where they could be called up for reference in a matter of seconds? When each local office couldn't communicate by computer or share case files?

This is what INS looked like in 1993. Our productivity and service capabilities were absolutely hamstrung by the fact that many offices lacked personal computers and fax machines.

In the last five years, we have been able to put computers on all desks and fax machines in every office. Of course, this has tremendously improved the way we do business.

We have also designed computer programs that have reduced the amount of paperwork that bottlenecked. And we have created other computer innovations that have won the agency's Information Resource staff top awards from Federal Computer News and other recognition.

This year, we to install a comprehensive, new computer database and tracking system, called CLAIMS 4, that will allow our offices to share individual case information and enable our staff and our customers to quickly check the status of cases. It will also help strengthen our quality assurance process by ensuring that cases move forward only when each step in the application process is appropriately completed. (*rework)

Despite these leaps forward, we are still behind the technological curve. In 1998, we are one of the few federal government agencies that is still reliant on paper case files.

Centralized Records

We do have a plan, however, to centralize all of these records so that we can improve the way we store and handle our customers' case information.

The outdated way we keep these records is largely responsible for the fact that we frequently can't find applicants' files and end up losing them when they are mailed between offices — a source of tremendous frustration for everyone.

The difficulty in tracking down files has created particular problems for people applying for citizenship. It creates delays for them at the beginning and end of the application process. If we can't find an applicant's permanent file, for example, our Service Center must wait three months before creating a temporary file and moving the application forward. If the permanent file is never found, that person's case must be reviewed by a supervisor before it is granted — an extra step that further slows down the case.

In November, we asked Congress to approve a plan to move our paper records out of file rooms into a central facility where they will be entered into a nationwide INS computer database. Unfortunately, we have been waiting for approval from the House for seven months now.

In the meantime, offices like Los Angeles, are having trouble finding workspace for the new staff they have hired to help reduce the case backlog. LA has rooms literally filled to the ceiling with boxes of old files that need to be archived — space that could be used to house new employees.

We hope the House will allow us to move forward to resolve the physical storage issues and the problems of lost files.

Remote Services

In addition to working to strengthening the way we handle the information that relates to our customers internally, we have begun to create better ways of communicating with them externally.

We want to make sure that people don't have to come to an INS office every time they want information. Three years ago, our customers had few options but to visit a district office and wait in line or try repeatedly to get through busy telephone lines. The stories I heard about people running up huge long distance bills while they waited on the telephone for us were nightmarish. Today, while those stories are not as common, they are still too frequent.

Although there is now a much better system in place for many of our customers, however, it is still not good enough in the Western part of the country. We have given our customers the option of telephoning a centralized information office or using the Internet to get basic facts and forms, but both our Western Phone Center and our Website need to be improved.

Phone Centers

In 1995, when we first began to carefully survey our customer service improvement needs, the only option for all our customers to get basic information was to call their local offices or be transferred to a long distance office to ask their question. In 1996, we created two Phone Centers where customers can call for answers on eligibility for benefits, application procedures and individual case status. The Eastern Phone Center enables people for the first time to call INS toll free 24 hours a day for recorded messages and from 8-6 for personal assistance. Unfortunately, our plan to make the same toll-free service available to our customers in the West was a casualty of the budget process.
(Jeff: can we be more specific)

We carefully monitor our performance at each of these centers because we want to deliver service that is on par with industry

standards, and while we're not there yet, we're not too far off in the Eastern Phone Center. The industry standard is to answer calls within 45 seconds, and we know we are doing so for calls coming into our eastern region. In addition, the average industry standards for those callers who hang up before their call is answered is 2%, and our rate is 6%.

Unfortunately in the West, where we have far fewer staff to answer fewer lines, we are falling terribly short of meeting the industry standards. It is not uncommon for our customers to wait several minutes before a staff person can take their call.

Forms Centers

In addition to access to information, we are also committed to ensuring that customers have quick access to the forms they need. In the last year, we have expanded the capabilities of our Form Centers to respond faster to requests. This year, our average response time is 3 to 5 days — a vast improvement over last year's which regularly took as long as 10 days.

Website

In addition, to these phone options, INS launched a Website in August 1996 and augmented it last October. We are still working to improve it. It averages 40,000 to 80,000 visitors each month. Individuals can pull forms down directly or request that they be sent to a specific address. While we realize not everyone has access to this service, immigration advocates and attorneys can make these requests as well.

Facilities

While we work to improve the number of options customers have to obtain information from INS without going to an actual INS office, we are in the midst of both revamping our current offices and rethinking the way to use them in the future. We want them to be easier

for the immigrant community to access and more customer oriented once they are there.

For example, when we began to require applicants to have their fingerprints taken at an INS facility last year, we created new offices known as Application Support Centers (ASCs) in communities across the country. These offices, whose sole purpose is to serve applicants, are the pre-cursor for the kind of facilities we want to create under our restructuring plan.

Under restructuring, we want to develop "Immigrant Services" offices that will provide a range of services from fingerprinting to interviewing to testing. Depending on community needs, some offices may be configured as full-service centers and others will serve as satellite locations to perform specific functions.

Like the Application Support Centers, they will be located in immigrant communities, where public transportation and parking is accessible. 75% of applicants live within 10 miles of an ASC and 92% within 25 miles. Each is being designed with standard customer-friendly features, like comfortable waiting areas, clear signage and some evening and weekend hours.

We estimate that more than two million people will use the ASCs on a yearly basis.

The same cannot be said, however, for the non-fingerprinting facilities. Overall, the agency needs one-third more space than we currently occupy, which means we are quite literally busting out at the seams. No major office is in what you or I would define as good enough shape for the people we serve.

Most of the larger offices are being renovated or have plans to be renovated. Even some new offices are outgrowing their current space. Many of these growth issues would be resolved through restructuring - given that new offices won't require housing all of the functions currently required of them.

Border Facilitation

Customer service is not just about how we provide better service to the immigrant community. It is also about how we interact with commuters and other travelers who cross our borders every day. In working to facilitate cross-border commerce and reduce wait times for all commuters between Mexico and the United States, INS set a 20-minute goal for average wait times at land ports. This goal has been met most dramatically at the main port of entry in San Diego, where commuters using the world's busiest land border port used to wait for more than two hours.

We have also piloted a dedicated commuter lane for low-risk, frequent travelers that utilizes various technologies and enables pre-screened enrollees to further reduce their wait times to under three minutes. Based on the success in California, INS is currently importing this technology to other border ports of entry including those in Texas, New York and Michigan.

Community Relations Officers

While utilizing technology is critical and helpful to cutting down the time it takes we need to make the effort to listen to our customers and respond to their needs to truly be customer oriented.

We have put a premium on local offices building relationships with the communities they serve. In the last several years, many more of our offices have established community advisory groups or other outreach mechanisms, and our regional offices and largest districts have hired community relations officers. By doing so, we have increased our understanding of community issues and customer service needs.

Staffing

Taking the time to understand and work with the community, as well as giving each customer the time and attention they deserve is in large part a function of having the right number of staff and the right staff to do the job.

We currently lack staff dedicated to service functions. We need adjudicators to examine applications, information officers to handle applicants' questions and administrative staff to provide clerical help and simply answer the phones.

The huge rise in applicants has not been matched by a concurrent increase in staff to process their paperwork and interview them. This has not only contributed to longer waiting times, but it has also consumed the time and attention of staff, making it harder for them to give each customer the quality of service they deserve.

Congress has allowed us to use funding for temporary staff, but we want to invest training and time in those employees to make them feel invested in us and our customers, as well as truly accountable to both.

We must be able to offer people permanent slots and opportunities for advancement in order to recruit and retain the best people. And we must be able to hold our staff accountable for the service they offer. It must be timely, efficient and courteous.

Under our restructuring proposal, by creating a new chain of command in which staff is responsible solely for service delivery, we will be able to increase accountability and expand the advancement possibilities for people who consistently meet the standards we expect of them.

Creating these standards and accountability will not cost us more money it is a matter of structure. But building a service infrastructure and hiring the number of people necessary to do the job will. Whether we restructure or not, INS needs more staff on the service side, simply to keep up with demands.

Resource Limitations

New staff and the other infrastructure building blocks require new investments. Let me explain what INS' limitations are in making them.

Fundamentally, INS does not have the additional funding or the flexibility in using available receipts to meet these growing needs.

Staff, computers and other tools for service functions are underwritten by our customers themselves through the fees they pay into the Exams Fee Account. These vital resources do not receive any appropriated funds. The problem with that is: after conducting an extensive study of our fee structure, INS now knows the fees we are collecting do not cover the real cost of doing business.

Secondly, when we do have available receipts that can be used to improve services, we need to ask Congress for permission first.

Those requests are not always granted and are not always timely. For example, we have tried for several years to hire full-time adjudicators and clerks to stabilize the workforce that processes applications.

As you are well aware, we are now in a very troubling Catch 22. We know we must increase fees to improve customer service, but we also want our customers to feel they are paying for the kind of service they deserve.

The fee schedule for the Exams Account was last revised in July 1994. During the last rate revision process, the INS publicly acknowledged deficiencies in the rate setting process and made a public promise to improve the management of its fee accounts, including the method by which it calculates fees. We have met this promise.

The proposed increase is needed to generate sufficient funds for the processing of immigration adjudication and naturalization applications and petitions. The INS has not increased these fees in three years, while costs have continued to escalate.

To make matters worse, for several years, we were able to subsidize funding with 245(I) penalty revenue; however, in January 1997, Congress redirected these funds to detention activities, resulting in a loss of \$130 million to the Exams Fee Account.

I often hear our critics cite the enormous influx of new resources INS has been given in the last several years. They wonder why we are not doing a better job on the service side.

But the new Border Patrol agents, scopes and sensors that have helped stem the flow of illegal immigrants at the Southwest border do not help the hundreds of thousands of legal residents who have been waiting to become citizens for the last two years.

New detention space, buses and deportation officers have certainly helped remove record numbers of people here illegally, but they have not impacted the backlog in the thousands of people waiting to adjust their status to live here legally.

In other words, in the enforcement arena, where INS has been given new resources to do our job, we have performed successfully. On the service side, where there are not adequate resources to the job, we CAN not perform the way we want to—or the way we are expected to.

Nonetheless, INS can certainly make some improvements without more money or more staff.

It doesn't take new resources to be courteous. And I am all too aware of the complaints we receive about rudeness. There is no excuse for that.

While our staff is trained and expected to behave courteously at all times, I plan to recommend the agency to improving the way we deal with our customers on a daily basis. Beginning this fall, employees in our large district offices will kick off an agency-wide customer service training effort. We will follow that up with a series of initiatives that will engage all INS employees in efforts to take a customer friendly approach to everything we do.

For example, we will follow through with the Vice President's directive to communicate more clearly in simple English and not bureaucratic language that is often confusing. This summer we will start an effort to make our written communication with customers clearer and more consistent across the country.

Conclusion

Mr. Chairman, I have now given you an overview of how much work has been done and how much there truly is left to do to improve services that INS performs.

Whether it is centralizing our records or expanding our office space, we are committed to delivering better services to the people we serve. All of these pieces I have outlined will enable us to transform INS into a service-oriented agency.

~~I hope I have helped clarify some fundamental facts. First, that the agency's service responsibilities are enormous in scope and in volume, as well as in part to the people, families and businesses affected by our work. Second, that the agency has never been equipped to handle these responsibilities effectively. We have lacked the resources, the proper structure and perhaps, more importantly a service-oriented mindset.~~

I am confident that the barriers to better service can be removed by continuing to build the infrastructure and by restructuring the agency.

It is a big challenge, but it is one we are committed to overcoming.

Immig-structural reform

A BILL

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To provide for the restructuring of the Immigration and Naturalization Service, and for other purposes.

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

SECTION 1. SHORT TITLE.—This Act may be cited as the "Immigration and Naturalization Service Restructuring Act of 1998".

SECTION 2. PURPOSES.—The purposes of this Act are to—

(a) Advance the effective enforcement of our immigration laws at our borders and in the interior, and the efficient provision of immigration and citizenship services.

(b) Untangle INS' overlapping and frequently confusing organization structure by replacing it with two clear organizational chains of command—one for its enforcement mission and one for providing services—from the highest level of the agency to the lowest.

(c) Create two organizations which can each focus on its unique management, knowledge, skills and abilities, while also retaining the essential functions for coordinating these operations.

(d) Improve customer-oriented immigrant services by:

- (1) Creating new local service offices;
- (2) Establishing accountability and clear lines of authority;
- (3) Setting clear standards for customer service; and,
- (4) Using technology to improve efficiency and customer service.

(e) Strengthen enforcement operations by:

- (1) Establishing a single, coordinated enforcement function;
- (2) Integrating enforcement and strengthening accountability; and,
- (3) Organizing enforcement areas by function, including Border Patrol, inspections, investigations and removals, detention, and enforcement support.

(f) Provide for efficient integration of service and enforcement by:

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(1) Creating an administrative and technical backbone of support for enforcement and service; and,

(2) Managing essential immigration records, developing computer systems, providing training and sharing administrative functions.

SECTION 3. DEFINITIONS.—For purposes of this Act, the following definitions shall apply—

(a) the term "INA" refers to the Immigration and Nationality Act of 1952, as amended up to the effective date of this Act.

(b) the term "INS" means the Immigration and Naturalization Service.

SECTION 4. EFFECTIVE DATE.—Except as otherwise provided by this Act, this Act shall take effect on October 1, 2000.

TITLE I—AGENCY ORGANIZATION

SEC. 101. AGENCY ORGANIZATION.—The Immigration and Naturalization Service shall be composed of the following components.

(a) Headquarters will consist of functional units responsible for providing advice and guidance directly to the Office of the Commissioner. These functions will include internal audit, general counsel, public affairs, congressional relations, a chief financial officer, and strategy and planning.

(b) The Office of Immigrant Services will be headed by a Senior Executive who will report directly to the Office of the Commissioner. Immigrant Services will encompass all aspects of INS service operations and will consist of two broad components. Benefits Service Areas will be responsible for functions that are community based and require personal contact with the public. Examples of such functions are interviewing naturalization candidates, naturalization testing, oath administration, and fingerprinting. Remote Services will be responsible for those activities which benefit from economies of scale, can be performed from a remote location, and require consistency in execution. These include application intake, record creation, application preprocessing, adjudication of some applications (including extensions of stays and employment authorizations), and telephone center operations.

(c) The Office of Enforcement Operations will be headed by a Senior Executive who will report directly to the Office of the Commissioner. Enforcement Operations will encompass all activities relating to the enforcement of immigration laws, including border patrol, inspections, investigations and removals, and detention and enforcement support.

1 (d) Shared Support will encompass functions that support both immigrant services and
2 enforcement operations. These functions will include records, information resources
3 management, training, human resources, equal employment opportunity, and administrative
4 support.

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7 SEC. 102. SAVINGS PROVISIONS

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9 (a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants,
10 loans, contracts, agreements, certificates, licenses, and privileges—

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12 (1) that have been issued, made, granted, or allowed to become effective by the
13 President, the Attorney General, the Commissioner of the INS, or any other
14 Government official, or by a court of competent jurisdiction, in the performance of any
15 function that is transferred; and

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17 (2) that are in effect on the effective date of such transfer (or become effective after
18 such date pursuant to their terms as in effect on such effective date);

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20 shall continue in effect according to their terms until modified, terminated, superseded, set aside,
21 or revoked in accordance with law by the President, any other authorization official, a court of
22 competent jurisdiction, or operation of law.

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24 (b) Proceedings.—This Act shall not affect any proceedings and any application for any
25 benefits, service, license, permit, certificate, or financial assistance pending on the date of the
26 enactment of this Act before an office whose functions are transferred by this Act, but such
27 proceedings and applications shall be continued. Orders shall be issued in such proceedings,
28 appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this
29 Act had not been enacted, and orders issued in any such proceeding shall continue in effect until
30 modified, terminated, superseded, or revoked by a duly authorized official, by a court of
31 competent jurisdiction, or by operation of law. Nothing in this subsection shall be considered
32 to prohibit the discontinuance or modification of any such proceeding under the same terms and
33 conditions and to the same extent that such proceeding could have been discontinued or
34 modified if this Act had not been enacted.

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36 (c) SUITS.—This Act shall not affect suits commenced before the date of the enactment of
37 this Act, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in
38 the same manner and with the same effect as if this Act had not been enacted.

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40 (d) Nonabatement of Actions.—No suit, action, or other proceeding commenced by or
41 against the Department of Justice or the Immigration and Naturalization Service, or by or
42 against any individual in the official capacity of such individual as an officer or employee in
43 connection with a function transferred by the Act, shall abate by reason of the enactment of this
44 Act.

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1 (e) Continuance of Suits.—If any Government officer in the official capacity of such
 2 officer is party to a suit with respect to a function of the officer, and under this Act such
 3 function is transferred to any other officer or office, then such suit shall be continued with the
 4 other officer or the head of such other office, as applicable, substituted or added as a party.
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6 (f) Administrative Procedure and Judicial Review.—Except as otherwise provided by this
 7 Act, any statutory requirements relating to notice, hearings, action upon the record, or
 8 administrative or judicial review that apply to any function transferred by this Act shall apply to
 9 the exercise of such function by the head of the office, and other officers of the office, to which
 10 such function is transferred by this Act.
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 13 TITLE II—IMMIGRATION OFFICER COMPENSATION
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15 SECTION 201. (a) IN GENERAL.— Section 1 of the Act of March 2, 1931 (8 U.S.C. §
 16 1353a) is amended to read as follows:
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18 "EXTRA COMPENSATION: OVERTIME AND PREMIUM PAY FOR
 19 IMMIGRATION INSPECTORS
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21 "(a) EXTRA COMPENSATION.-
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23 Immigration inspectors shall be allowed extra compensation for overtime services and
 24 services at night or on Sundays and holidays to perform immigration examination, inspection or
 25 preinspection duties in connection with any person arriving or landing in or departing to the
 26 United States at the rate specified herein.
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28 "(b) OVERTIME PAY.-
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30 "(1) IN GENERAL.- Subject to paragraph (2) and subsection (d) an immigration
 31 inspector who is officially assigned to perform work in excess of 40 hours in the administrative
 32 workweek of the inspector or in excess of 8 hours in a day or for an immigration inspector
 33 under a compressed work schedule in excess of the number of hours of the compressed work
 34 schedule shall be compensated for that work at an hourly rate of pay that is equal to 2 times the
 35 hourly rate of the basic pay of the inspector. Overtime pay provided under this subsection shall
 36 not be paid to any inspector unless such inspector actually performs work during the time
 37 corresponding to such overtime pay. For purposes of this paragraph, the hourly rate of basic
 38 pay for an immigration inspector does not include any premium pay provided for under
 39 subsection (c).
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41 "(2) SPECIAL PROVISIONS RELATING TO OVERTIME WORK ON CALLBACK
 42 BASIS.-
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44 "(A) MINIMUM DURATION.- Any work for which compensation is
 45 authorized under paragraph (1) and for which the immigration inspector is required to return to

1 the inspector's place of work shall be treated as being not less than 2 hours in duration; but only
2 if such work begins at least 1 hour after the end of any previous regularly scheduled work
3 assignment and ends at least 1 hour before the beginning of the following regularly scheduled
4 work assignment.

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6 **"(B) COMPENSATION FOR COMMUTING TIME.-**

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8 **"(i) IN GENERAL.-** Except as provided in clause (ii), in addition to the
9 compensation authorized under paragraph (b)(1) for work to which subparagraph
10 (2)(A) applies, the immigration inspector is entitled to be paid, as compensation
11 for commuting time, an amount equal to 3 times the hourly rate of base pay for
12 the immigration inspector.

13
14 **"(ii) EXCEPTION.-** Compensation for commuting time is not payable
15 under clause (i) if the work for which compensation is authorized under
16 paragraph (1)-

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18 **"(I) does not commence within 16 hours of the immigration**
19 **inspector's last regularly scheduled work assignment, or**

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21 **"(II) commences within 2 hours of the next regularly scheduled**
22 **work assignment of the immigration inspector.**

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24 **"(c) PREMIUM PAY FOR IMMIGRATION INSPECTORS.-**

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26 **"(1) NIGHT WORK DIFFERENTIAL.-**

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28 **"(A) 6 P.M. to MIDNIGHT.-** If the hours of regularly scheduled work of an
29 immigration inspector occur during the period beginning at 6 p.m. and ending at 12 a.m., the
30 inspector is entitled to pay for the actual hours worked during such period (except for work to
31 which paragraph (2) or (3) applies) at the inspector's hourly rate of basic pay plus premium pay
32 amounting to 15 percent of that basic rate.

33
34 **"(B) MIDNIGHT to 8 A.M.-** If the hours of regularly scheduled work of an
35 immigration inspector occur during the period beginning at 12 a.m. and ending at 8 a.m., the
36 inspector is entitled to pay for the actual hours worked during such period (except for work to
37 which paragraph (2) or (3) applies) at the inspector's hourly rate of basic pay plus premium pay
38 amounting to 20 percent of that basic rate.

39
40 **"(2) SUNDAY DIFFERENTIAL.-** An immigration inspector who performs any
41 regularly scheduled work on a Sunday that is not a holiday is entitled to pay for the hours
42 worked between 12:01 a.m. and 12 Midnight at the inspector's hourly rate of basic pay plus
43 premium pay amounting to 50 percent of that basic rate for that Sunday work that is not in
44 excess of 8 hours, or for an employee on a compressed work schedule for that Sunday work that
45 is not in excess of the employee's compressed work schedule for that day.

1 "(3) HOLIDAY DIFFERENTIAL.- An immigration inspector who performs any
 2 regularly scheduled work on a holiday is entitled to pay for that work at the inspector's hourly
 3 rate of basic pay plus premium pay amounting to 100 percent of that basic rate for that holiday
 4 work that is not in excess of 8 hours, or for an employee on a compressed work schedule for
 5 that holiday work that is not in excess of the employee's compressed work schedule for that day.

6
 7 "(4) PAYMENT OF PREMIUM PAY DIFFERENTIALS.- Premium pay provided
 8 under this section shall be paid only for actual nonovertime work performed during the periods
 9 for which the differentials are authorized. An Immigration Inspector shall receive payment for
 10 only one of the differentials for any one given period of work. The order of precedence for the
 11 payment of premium pay differentials is holiday, Sunday, and night work.

12
 13 "(5) TREATMENT OF PREMIUM PAY.- Premium pay provided for under this
 14 subsection shall not be treated as basic pay for any purpose, nor shall it be used in calculating
 15 lump sum annual leave payments in accordance with sections 5551 and 5552 of title 5, United
 16 States Code.

17
 18 "(d) LIMITATIONS.-

19
 20 "(1) CALENDAR YEAR CAP.- The aggregate of overtime pay under subsection (b)
 21 (including commuting compensation under subsection (b)(2)(B)) that an immigration inspector
 22 may be paid in any calendar year may not exceed any limitation established by law, except that-

23
 24 "(A) the Commissioner of the Immigration and Naturalization Service or her
 25 designee may waive this limitation in individual cases in order to prevent excessive costs or to
 26 meet emergency requirements of the Immigration and Naturalization Service. This authority
 27 may not be delegated below the Deputy Commissioner of the Immigration and Naturalization
 28 Service, and

29
 30 "(B) the Commissioner is authorized to pay any immigration inspector for one
 31 assignment that would result in the overtime pay of that inspector exceeding any statutory
 32 limitation established by law, in addition to any overtime pay that may be received pursuant to a
 33 waiver under subparagraph (A).

34
 35 "(2) EXCLUSIVITY OF PAY UNDER THIS SECTION.- An immigration inspector
 36 who receives overtime pay under subsection (b) or premium pay under subsection (c) for time
 37 worked shall not receive pay or other compensation for that work under any other provision of
 38 law.

39
 40 "(e) REGULATIONS.- The Attorney General shall promulgate regulations to prevent-

41
 42 "(1) the abuse of callback work assignments and commuting time compensation
 43 authorized under subsection (b)(2); and

44
 45 "(2) the disproportionately more frequent assignment of overtime work to immigration

1 inspectors who are near to retirement.

2

3 "(f) DEFINITIONS.- As used in this section:

4

5 "(1) The term 'immigration inspector' means an individual whose position of
6 record is that of an 'Immigration Inspector' or 'Supervisory Immigration Inspector,' consistent
7 with such applicable standards as may be promulgated by the Office of Personnel Management
8 and the Attorney General, with the exception of those Immigration Inspectors and Supervisory
9 Immigration Inspectors meeting the definition of a law enforcement officer under section
10 5541(3) of title 5, United States Code.

11

12 "(2) The 'term holiday' means any day designated as a holiday under a Federal
13 statute or Executive Order."

14

15 (b) NECESSARY CONFORMING AMENDMENTS.-

16

17 (1) Section 2 of the Act of 1931 (8 U.S.C. § 1353b) is amended to read as follows:

18

19 "It shall be the duty of the master, owner, agent or consignee of a vessel, aircraft or other
20 conveyance arriving or landing in or departing to the United States from foreign
21 territory to reimburse the Attorney General for any extra compensation paid to
22 immigration inspectors pursuant to section 1353a of this title. Such compensation shall
23 be paid if such immigration inspectors have been ordered to report for duty and have so
24 reported whether immigration examination, inspection or preinspection services are
25 actually performed or not: Provided, That this section shall not apply to the provision of
26 immigration examination, inspection or preinspection services to passengers arriving by
27 international ferries, bridges, or tunnels, or by aircraft, railroad trains, or vessels on the
28 Great Lakes and connecting waterways, when operating on regular schedules. The
29 Attorney General shall promulgate regulations that establish the rate(s) at which the
30 master, owner, agent or consignee of a vessel, aircraft or other conveyance shall be billed
31 at a level that will ensure the recovery of the full cost of any extra compensation paid to
32 immigration inspectors pursuant to section 1353a of this title. Notwithstanding section
33 80503 of Title 49, the owner, operator, or agent of a private aircraft or private vessel shall
34 reimburse the Attorney General for the full cost of any extra compensation paid to
35 immigration inspectors pursuant to section 1353a of this title."

36

37 (2) Section 1 of the Act of March 4, 1921 (8 U.S.C. §1353c) is amended to read as
38 follows:

39

40 "Nothing in section 209 of Title 18 of the United States Code, relative to the augmenting
41 of salaries of officers and employees of the executive branch of the United States
42 government from non-United States Government sources shall prevent the Attorney
43 General from receiving reimbursements for extra compensation for overtime services and
44 services at night or on Sundays and holidays incident to the immigration examination,
45 inspection or preinspection of persons arriving or landing in or departing to the United

1 States. Such reimbursements shall be deposited as offsetting receipts in the Immigration
2 User Fee Account to remain available until expended."

3
4 (3) Section 1353d of title 8 (8 U.S.C. 1353d) is repealed.

5
6 (4) Section 286(h)(1) of the Immigration and Nationality Act (8 U.S.C. 1356(h)(1)) is
7 amended by adding a new subparagraph (C) to read as follows:

8
9 "(C) Notwithstanding any other provision of law, all reimbursements received pursuant
10 to section 1353b of this title for extra compensation paid to immigration inspectors
11 pursuant to section 1353a of this title shall be deposited in the Immigration User Fee
12 Account."

13
14 (c) EFFECTIVE DATE.- The amendments made by paragraphs (a) and (b) shall apply to
15 immigration inspectional services provided on or after the first day of the first applicable pay
16 period beginning 180 days following the date of enactment of this Act.

17
18 (d) ADDITIONAL BENEFITS FOR IMMIGRATION INSPECTORS.-

19
20 (1) TREATMENT OF CERTAIN PAY FOR RETIREMENT PURPOSES.-

21
22 Section 8331(3) of title 5, United States Code, is amended-

23
24 (A) by striking out "and" at the end of subparagraph (D);

25
26 (B) by striking out the semicolon at the end of subparagraph (E) and
27 inserting "; and";

28
29 (C) by adding after subparagraph (E) the following:

30
31 "(F) with respect to a immigration inspector (referred to in subsection
32 (f)(1) of section 1 of the Act of March 2, 1931), compensation for overtime inspectional services
33 provided for under subsection (b) of such section 1, but not to exceed 50 percent of any statutory
34 maximum in overtime pay for immigration inspectors which is in effect for the calendar year
35 involved;"; and

36
37 (D) by striking out "subparagraphs (B), (C), (D), and (E) of this
38 paragraph," and inserting "subparagraphs (B), (C), (D), (E), and (F) of this paragraph".

39
40 (2) FOREIGN LANGUAGE PROFICIENCY AWARDS.- Cash awards for foreign
41 language proficiency may, under regulations prescribed by the Attorney General, be paid
42 to immigration inspectors (as referred to in section 1(f)(1) of the Act of March 2, 1931)
43 for languages other than those for which a formal course of instruction is provided by the
44 Immigration and Naturalization Service for continued employment in the position or for
45 which proficiency is a condition of employment. Such awards may be paid to the same

1 extent and in the same manner as would be allowable under subchapter III of chapter 45
2 of title 5, United States Code, with respect to law enforcement officers (as defined by
3 section 4521 of such title).
4

5 (e) EFFECTIVE DATE.- The amendments made by paragraph (d) shall take effect on the first
6 day of the first applicable pay period beginning 180 days following the date of enactment of this
7 Act, and apply only with respect to service performed on or after such date.
8

9 SECTION 202. FUNDING.- For the purposes of carrying out this Act, additional funding to
10 compensate inspectors within the Immigration and Naturalization Service Salaries and Expenses
11 Account shall be subject to appropriation. For inspectors funded with offsetting collections, this
12 Act shall not impact the level of planned obligations as depicted in the President's Fiscal Year
13 1999 Budget. Given the following receipt levels, offsetting collections credited to the
14 Immigration and Naturalization Service shall not exceed the following:
15

16	<u>Fiscal Year</u>	<u>Offsetting Receipts</u>	<u>Obligations</u>
17	1999	\$1,426,000,000	\$1,463,000,000
18	2000	\$1,417,000,000	\$1,227,000,000
19	2001	\$1,429,000,000	\$1,272,000,000
20	2002	\$1,447,000,000	\$1,319,000,000
21	2003	\$1,437,000,000	\$1,319,000,000

24 TITLE III—CONFORMING AMENDMENTS

26 SEC. 301. CONFORMING AMENDMENTS.

27
28 (a) Section 103(e)(2) of the INA, 8 U.S.C. section 1103(e)(2), is amended by striking
29 "district office of the Service" and inserting "designated office of the Immigration and
30 Naturalization Service".
31

32 (b) Section 242(b)(3)(A) of the INA, 8 U.S.C. section 1252(b)(3)(A), is amended by
33 striking "Service district" and inserting "designated office of the Immigration and Naturalization
34 Service".
35

36 (c) Section 316 of the INA, 8 U.S.C. section 1427, is amended—
37

38 (1) in section (a) by striking "district of the Service" and inserting "area serviced
39 by the designated office of the Immigration and Naturalization Service"; and
40

41 (2) in section (f)(1) by striking "district of the Service" and inserting "area serviced
42 by the designated office of the Immigration and Naturalization Service".
43

44 (d) Section 319 of the INA, 8 U.S.C. section 1430, is amended—
45

1 (1) in section (a) by striking "district of the Service" and inserting "area serviced
2 by the designated office of the Immigration and Naturalization Service";

3
4 (2) in section (b)(3) by striking "district of the Service" and inserting "area serviced
5 by the designated office of the Immigration and Naturalization Service";

6
7 (3) in section (c)(5) by striking "district of the Service" and inserting "area serviced
8 by the designated office of the Immigration and Naturalization Service"; and

9
10 (4) in section (d) by striking "district of the Service" and inserting "area serviced
11 by the designated office of the Immigration and Naturalization Service".

12
13 (e) Section 324 of the INA, 8 U.S.C. section 1435(a)(1), is amended by striking "district of
14 the Service" and inserting "area serviced by the designated office of the Immigration and
15 Naturalization Service".

16
17 (f) Section 328 of the INA, 8 U.S.C. section 1439, is amended—

18
19 (1) in section (a) by striking "district of the Service" and inserting "area serviced
20 by the designated office of the Immigration and Naturalization Service";

21
22 (2) in section (b)(1) by striking "district of the Service" and inserting "area serviced
23 by the designated office of the Immigration and Naturalization Service"; and

24 (3) in section (c) by striking "district of the Service" and inserting "area serviced
25 by the designated office of the Immigration and Naturalization Service".

26
27 (g) Section 329(b)(2) of the INA, 8 U.S.C. section 1440(b)(2), is amended by striking
28 "district of the Service" and inserting "area serviced by the designated office of the Immigration
29 and Naturalization Service".

30
31 (h) Section 335(f) of the INA, 8 U.S.C. section 1446(f), is amended by striking "district of
32 the Service" each time the phrase appears and inserting "area serviced by the designated office of
33 the Immigration and Naturalization Service".

34
35 (i) Section 338 of the INA, 8 U.S.C. section 1449, is amended by striking "district office
36 of the Service" and inserting "designated office of the Immigration and Naturalization Service".

37
38 (j) Section 339(b) of the INA, 8 U.S.C. section 1450(b), is amended by striking "district
39 office of the Service" and inserting "designated office of the Immigration and Naturalization
40 Service".

41
42 (k) Section 404 of the INA, 8 U.S.C. section 1101, note, is amended—

43
44 (1) in section (b)(2)(A)(i) by striking "a district director of the Service" and
45 inserting "a designated Immigration and Naturalization Service officer"; and

1
2
3
4
5

(2) in (b)(2)(A)(iii) by striking "in a district" and inserting "in a designated office of the Immigration and Naturalization Service".

Section-by-Section Analysis of the "Immigration and Naturalization Service Restructuring Act of 1998."

Background

America has always been a nation of immigrants. Significant progress has been made in improving the Nation's immigration system. Over the last five years, illegal immigration has been curtailed through tougher border control, a badly abused asylum system has been reformed, and a record numbers of criminal and other aliens have been removed. While important progress has been made, recent changes in the breadth and scope of the Immigration and Naturalization Service's mission require a rethinking of its structure.

In its final report to Congress last fall, the Commission on Immigration Reform (CIR) called for significant reform to our Nation's immigration system. The major thrust of the CIR's proposed reform was to dismantle the INS and to parcel out its immigration functions to the Departments of Justice, State and Labor.

In response to CIR's recommendations, the President asked the Domestic Policy Council (DPC) to "evaluate carefully the [CIR] proposal and other reform options designed to improve the executive branch's administration of the Nation's immigration laws." In conducting this review, the DPC, working closely with the Office of Management and Budget, consulted with the Departments of Justice, Labor, and State, CIR staff, immigration experts and advocacy groups, and other White House offices, including the National Security Council. This review examined organizational and restructuring options including those formulated by the CIR and members of Congress. From this effort, a new framework for reform was established, and the Justice Department contracted with a management consulting firm to provide an independent assessment of structural options and assisted in developing a framework.

The DPC review process concluded that the CIR report correctly diagnosed many of INS' longstanding problems - insufficient accountability between field offices and headquarters, lack of consistency, need for greater professionalism, overlapping organizational relationships, and significant management weaknesses. These problems have hampered the INS' ability to effectively enforce our immigration laws both at our borders and in the interior, and to efficiently provide immigration and citizenship services. Improving the ability of the INS to pursue these critical priorities must be the goal of any restructuring.

General description of the amendments

The most effective way to remedy the issues identified by the DPC review is to implement dramatic and fundamental reforms within the INS. The reforms to be implemented will untangle INS' overlapping and frequently confusing organizational structure and replace it with two clear organization chains of command - one for

accomplishing its enforcement mission and one for providing services. Each operation will be headed by an Executive Associate Commissioner (EAC) who will report directly to the Commissioner through the Deputy Commissioner.

The reorganization will eliminate the current field structure in which regional district offices serve both enforcement and service functions and replace it with separate enforcement and service offices that bring the right mix of staff and skills to local service caseload and enforcement efficiency and effectiveness. The reorganization will allow each operation to focus on its unique management, knowledge, skills, and abilities, while also retaining the essential functions for coordinating these operations.

The new immigration services operation will locate new service offices in immigrant communities around the country. These offices will focus on providing efficient and effective service, while maintaining the integrity of application processing. The offices will provide a range of services, including: providing information to applicants, taking fingerprints and photographs, testing, and interviewing. Depending on community needs, some offices will be configured as full-service centers and others will serve as satellite locations to perform specific functions. These new service facilities will have a standard "look and feel" with clear signs, comfortable waiting rooms, evening and weekend hours, and other customer-friendly features.

The reorganization will create an operational chain of command dedicated solely to immigration enforcement, focus comprehensively on illegal immigration problems at the border, and establish better linkages with interior enforcement through a single point of accountability for performance. This approach will strengthen professionalism and improve results. This structure also will ensure priorities are shared and allow close coordination of day-to-day operations among each enforcement discipline. The new enforcement operations areas will combine all functions related to the enforcement of immigration laws. Each enforcement area will be organized according to four functions, and led by a single director. The Area Enforcement Director will report directly to the Executive Associate Commissioner for Enforcement.

The shared support operation (e.g., records and data management, technological support, employee relations, and administrative support) will serve as the administrative and technological backbone upon which both enforcement and service operations depend under the new framework. Under the reorganization, each side of the agency will have the appropriate administrative and technological tools to do its job in the most efficient and cost-effective way. These tools will range from new computer software systems that are "user friendly" for enforcement agents and service officers, to appropriate training to strengthen professionalism.

Pay Reform

In 1992, the United States Customs Service sought legislation to reform the

overtime pay for Customs Inspectors. The Customs Officer Pay Reform Act of 1993 (COPRA) was enacted as part of the Omnibus Budget Reconciliation Act of 1993, P.L. 103-66. It significantly changed overtime pay for Customs Officers. Under the provisions of COPRA, overtime for Customs Officers (defined as Customs Inspectors and Canine Enforcement Officers) is paid at 2 times basic pay for actual hours worked, officers are paid substantial differentials for night work, and an officer's overtime up to one-half the statutory pay cap is considered basic pay for retirement purposes. This legislation amends the provisions under which Immigration Inspectors in the Immigration and Naturalization Service (INS) are currently paid overtime, Sunday, and holiday pay to afford Immigration Inspectors the same pay that Customs Inspectors are currently receiving, with minimal changes to reduce the cost of providing such pay and retirement benefits while at the same time paying premium pay to such Inspectors for actual hours worked.

The Customs Service and the INS share jurisdiction over Ports-of-Entry. Inspection of cross-border traffic has been parceled out statutorily by subject matter: the Customs Service is responsible for cargo (clearing the entry of goods and merchandise) while the INS is responsible for persons (screening travelers seeking admission into the United States). Under current law, both agencies are cross-designated to enforce each other's respective areas of laws and are cross-designated to enforce Federal drug laws. Consequently, INS Inspectors, like their Customs counterparts, interdict inadmissible aliens, contraband, and drugs. However, INS Inspectors and Customs Officers are paid premium pay and overtime pay under two significantly different pay systems, often for performing the same duties.

The current rules regulating INS Immigration Inspector overtime compensation date to 1931, a time when international travel occurred solely by sea and when actual arrival times varied by several hours. This is no longer the case since the vast majority of inspections can be scheduled with relative precision. Nonetheless, the international nature of the Inspectors work, particularly in light of the rapid increases in air travel, requires that the Inspections staff be fully deployed on a full seven day - 24 hour basis. The judicious use of overtime to fully maintain 24-hour control is required at all but the smallest entry locations. Application of the current rules requires inordinate amounts of time by local management in managing overtime staff hours to ensure proper scheduling to meet the needs of the traveling public.

The proposed provision for overtime modernization will both strike equity in pay between the INS Inspector and the Customs Officer and more fairly compensate the INS Inspector by streamlining the specific rules for overtime work. The issue of equitable compensation between the two agencies is inextricably linked to the corresponding span of duties of each agency. Both Customs and INS Inspectors are charged with a similar mission—protecting the United States borders, either from the illegal entry of goods or the illegal entry of people—and continue to perform these duties side by side. Parity in pay and retirement benefits is required.

Section-by-section analysis

Section 1. This bill may be cited as the "Immigration and Naturalization Service Restructuring Act of 1998."

Section 2. The purpose of this bill is to restructure the Immigration and Naturalization Service within the Department of Justice by replacing the current organizational structure with new organizational chains of command. Under the revised structure, the Immigration and Naturalization Service will consist of two separate functions: one enforcement function and one service function, with separate lines of authority. The revised structure will also include one support office that will provide administrative and technical support to the two separate functions.

Section 3. This section contains the definitions applicable to the bill.

Section 4. The effective date of this bill is October 1, 2000, unless otherwise specified.

Section 101(a). This subsection identifies the functional units within the Headquarters functions that provide advice and guidance directly to the Office of the Commissioner. The units include internal audit, general counsel, public affairs, congressional relations, a chief financial officer, and strategy and planning.

Section 101(b). This subsection describes the immigrant services function of the INS. This functional unit encompasses all aspects of service operations and consists of the benefits services areas, which will provide personal processing of benefits, and remote services, which will perform activities that benefit from economies of scale and can be performed from remote locations.

Section 101(c). This subsection describes the enforcement operations unit, which encompasses all activities relating to the enforcement of immigration laws, including border patrol, inspections, investigations and removals, and detention and enforcement support.

Section 101(d). This subsection describes the shared support function that will support both immigrant services and enforcement operations. This unit will include records, IRM, training, human resources, equal employment opportunity, and administrative support.

Section 102(a). This subsection provides that all legal documents that are in effect prior to the restructuring shall continue in effect until modified or terminated.

Section 102(b). This subsection states that the restructuring shall not affect any proceeding or any application for a benefit that is pending on the date of the enactment of the bill.

Section 102(c). This subsection states that the restructuring will not affect any suit that was commenced prior to the time the restructuring occurs.

Section 102(d). This subsection provides that the restructuring will not abate any action or suit pending against the INS or any individual in his or her official capacity.

Section 102(e). This subsection provides that if any INS official is party to a suit with respect to that officer's function, and said function is transferred, the suit will continue with the new officer or office as a substituted or added party.

Section 102(f). This subsection indicates that all statutory requirements relating to administrative procedure and judicial review that currently apply to an office in which a function is transferred will apply in the same way to the new office.

Section 201 provides for a 2 x hourly rate for basic overtime pay. The basic compensation provision for overtime, as well as the following array of related provisions, will both strike equity in pay between the INS Inspector and the Customs Inspector and more fairly compensate the INS officer by modernizing the specific rules for overtime work. The issue of equitable compensation between the two agencies is inextricably linked to the corresponding span of duties of each agency. Although each enforces a totally different body of laws, the agencies share physical facilities and the officers themselves in their daily work environment, duty hours, and exposure to danger perform similar duties. It follows that in pay compensation there should exist a general balance. The current lack of parity, a consequence of the recent update in the Customs officer's pay structure, creates a general atmosphere of tension within the port facility as the INS officer is compensated generally at a lower level than his/her Customs colleague. Additionally staff morale, often difficult to maintain in many of the larger port work environments, is further degraded by pay disparities between the two agencies.

Section 201 also provides for a 2 x hourly rate for callback. Callback provisions involve compensation when an officer is recalled for duty at a time not immediately preceding or following an assigned shift. The proposed language simplifies the application of call back conditions by establishing a direct link as a multiple of hours worked.

Section 201 also provides a 3 x hourly rate for commuting. In addition to furthering equity between INS and Customs officers performing a similar range of duties at port facilities, this proposal would provide for compensation when the officer must return to his/her duty station for additional work. It provides appropriate

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compensation for Inspectors who often work full shifts under difficult conditions and are later asked to return with little intervening rest time.

Section 201 also provides a night differential rate. This essentially both increases the compensation for Inspectors assigned to the operational complex evening hours, times at which INS port facilities often experience heavy traffic flows exacerbated by unique enforcement demands, and further differentiates between early and late periods of duty. It deviates from the provisions for Customs Officers which provide that a Customs Officer will receive premium pay for all hours of his/her tour of duty if the "majority" of the hours of the Customs Officers scheduled duty falls within one of the periods for night pay. This provision reduces the costs associated with the higher differentials by compensating Inspectors for the actual hours worked during the night period.

Section 201 also provides a 1.5 x hourly rate for Sunday Pay / 2 x hourly rate for Holiday pay. The Immigration Inspector's functions are required throughout the week. The demands of international travel, particularly evident during the busy holiday periods, require that the Inspections staff be fully deployed on a full seven day basis. At many locations Sundays represent heavy travel periods and require the assignment of additional staff hours. The current computation methodology is an arcane holdover from the time when international travel occurred solely by sea and when actual arrival times varied by several hours due to tide and poor communications. This is no longer the case since the vast majority of inspections can be scheduled with relative precision. Application of these rules require inordinate time by local management in recording hours worked for both scheduling and pay cap purposes. Implementation of the proposed provision will greatly streamline the weekly management of shift hours by simply allowing for a direct calculation at the proposed multiple of the basic rate as compared to the current system's computation based on larger blocks of time.

Section 201 also provides for a calendar year overtime earnings cap. This language is preferable to the inclusion of a cap expressed in law in a fixed amount. The INS overtime cap contained in current (and past) appropriation law applies to ALL INS employees and ALL overtime earned by these employees. If the overtime cap is included in Title 8 as a fixed amount, any changes in the cap effected through the appropriation law without changes to Title 8 could result in inequities between INS employees. Allowing Congress to set the limit in the annual appropriation language provides for greater flexibility in adjusting the level as conditions warrant. The attention of Congress was directed to this issue in 1984 with the public disclosure of very high earnings by some officers. This led to direct limiting language in the FY 1985 Budget. The reinstatement of limited waiver authority, absent since FY 1993, will allow the Commissioner needed flexibility in the rare instances when exceeding the cap is operationally required, essentially only at very small locations when one officer is unable to work. Paragraph (d)(1)(B) allows the Commissioner to pay inspectors overtime for one assignment over the cap to avoid potential grievances or complaints

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from employees who are prevented from working overtime because they are close to reaching the limit.

Section 201 also provides that the Attorney General will promulgate regulations to prevent the abuse of callback assignments and commuting time compensation and the more frequent assignment of overtime to Immigration Inspectors near retirement. Regulations will establish policy for assignment of overtime to prevent abuse and to ensure annuity integrity to the extent feasible.

Subsection 201(d) also provides for retirement pay. The duties of the Immigration Inspector require the continuing use of overtime to maintain full 24 hour control of immigration at all but the smallest entry locations. As a consequence overtime earnings represent a significant portion of an Inspector's total remuneration. This situation continues throughout the span of the officer's career. This heavy dependence on overtime earnings contributes to a broader-than-normal disparity between income before and after the officer's retirement. Since overtime is not considered as part of the pension percentage, the Inspector experiences an extremely large drop in earnings upon retirement. The proposed change would offset this problem by allowing half of the maximum earnings to be considered in the annuity computation.

Subsection 201(d) also provides that a Foreign Language Award may be provided for by regulation. This provision, allowing for compensation for language proficiency not gained during formal training, is expected to both enhance Inspector retention and recruitment efforts and provide important language expertise to improve program productivity. The international nature of the Inspectors work, particularly in light of the rapid increases in air travel, often demands that the officer be able to conduct the inspection in several languages. At many of the major international gateways, where over 10,000 foreign arrivals are often processed daily, the Inspector may interview individuals speaking a multitude of languages. Port managers have found that both facilitation and enforcement performance has been greatly aided when officers are available to conduct interviews in the applicant's native language. The provision differs from the Customs provision to take into account that the INS provides a formal course of instruction in Spanish as part of both its basic immigration officer and border patrol agent training academies.

Section 301(a). Amends Section 103(e)(2) of the INA by striking "district office of the Service" and inserting "designated office of the Immigration and Naturalization Service".

Section 301(b). Amends Section 242(b)(3)(A) of the INA by striking "Service district" and inserting "designated office of the Immigration and Naturalization Service".

Section 301(c). Amends Section 316 of the INA,(1) in section (a) by

striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service" each time it appears

Section 301(d). Amends Section 319 of the INA by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service" each time it

Section 301(e). Amends Section 324 of the INA by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service".

Section 301(f). Amends Section 328 of the INA by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service" each time it appears.

Section 301(g). Amends Section 329(b)(2) of the INA by striking "district of the Service" and inserting "area serviced by the designated office of the Immigration and Naturalization Service".

Section 301(h). Amends Section 335(f) of the INA by striking "district of the Service" each time the phrase appears and inserting "area serviced by the designated office of the Immigration and Naturalization Service".

Section 301(i). Amends Section 338 of the INA by striking "district office of the Service" and inserting "designated office of the Immigration and Naturalization Service".

Section 301(j). Amends Section 339(b) of the INA by striking "district office of the Service" and inserting "designated office of the Immigration and Naturalization Service".

Section 301(k). Amends Section 404 of the INA, 8 U.S.C. section 1101, note, by striking "a district director of the Service" and inserting "a designated Immigration and Naturalization Service officer" and by striking "in a district" and inserting "in a designated office of the Immigration and Naturalization Service".

4-5

Immigration mtg

Bill w/ pay comparability to be introduced, hopefully next week.

Kennedy - Watt (?) introduction

Direct sub to approps; mand - need of funds? Agreed in principle

6c issue examined separately on merits - whether all fed inspectors should be considered law ent of fs.

Depending on how that comes out, we can amend legis.

Decision for next year's budget - by December.

Abraham - hearings starting next wk. First hearing on service

(Sen. appropriator don't want to touch issue.)

send up let before Roper comes out w/ anything.

DRAFT

A BILL

1
2 To provide for the restructuring of the Immigration and Naturalization Service, and for other
3 purposes.

4
5 *Be it enacted by the Senate and House of Representatives of the United States of America in*
6 *Congress assembled,*

7
8 SECTION 1. SHORT TITLE.—This Act may be cited as the "Immigration and Naturalization Service
9 Restructuring Act of 1998".

10
11 SECTION 2. PURPOSES.—The purposes of this Act are to—

12
13 Advance the effective enforcement of our immigration laws at our borders and in the interior, and
14 the efficient provision of immigration and citizenship services.

15
16 Untangle INS' overlapping and frequently confusing organization structure by replacing it with two
17 clear organizational chains of command—one for its enforcement ^{ing} and one for providing
18 services—from the highest level of the agency to the lowest. _{ion}

19
20 Create two organizations which can each focus on its unique management, knowledge, skills and
21 abilities, while also retaining the essential functions for coordinating these operations.

22
23 Improve customer-oriented immigrant services by:

- 24 Creating new local service offices;
- 25 Establishing accountability and clear lines of authority;
- 26 Setting clear standards for customer service; and,
- 27 Using technology to improve efficiency and customer service.

28
29 Strengthen enforcement operations by:

- 30 Establishing a single, coordinated enforcement function;
- 31 Integrating enforcement and strengthening accountability; and,
- 32 Organizing enforcement areas by function, including Border Patrol, inspections,
33 investigations and removals, detention, and enforcement support.

34
35 Provide for efficient integration of service and enforcement by:

- 36 Creating an administrative and technical backbone of support for enforcement and service;
37 and,
 - 38 Managing essential immigration records, developing computer systems, providing training
39 and sharing administrative functions.
- 40
41
42
43

1
2 SECTION 3. DEFINITIONS.—For purposes of this Act, the following definitions shall apply—
3

4 (1) the term INA refers to the Immigration and Nationality Act of 1952, as amended
5 up to the effective date of this Act.
6

7 (2) the term INS means the Immigration and Naturalization Service.
8

9 (3) * * *
10

11 SECTION 4. EFFECTIVE DATE.—Except as otherwise provided by this Act, this Act shall take effect
12 on October 1, 2000.
13

14 TITLE I—AGENCY ORGANIZATION 15

16
17 SEC. 101. AGENCY ORGANIZATION.—The Immigration and Naturalization Service shall be
18 composed of the following components.
19

20 (a) Headquarters will consist of functional units responsible for providing advice and
21 guidance directly to the Commissioner and INS Senior Management. These functions will include
22 internal audit, general counsel, public affairs, congressional relations, a chief financial officer, and
23 strategy and planning.
24

25 (b) Immigrant Services will encompass all aspects of INS service operations and will
26 consist of two broad components. Benefits Service Areas will be responsible for functions that are
27 community based and require personal contact with the public. Examples of such functions are
28 interviewing naturalization candidates, naturalization testing, oath administration, and
29 fingerprinting. Remote Services will be responsible for those activities which benefit from
30 economies of scale, can be performed from a remote location, and require consistency in execution.
31 These include application intake, record creation, application preprocessing, adjudication of some
32 applications (including extensions of stays and employment authorizations), and telephone center
33 operations.
34

35 (c) Enforcement Operations will encompass all activities relating to the enforcement of
36 immigration laws, including border patrol, inspections, investigations and removals, and detention
37 and enforcement support.
38

39 (d) Shared Support will encompass functions that support both immigrant services and
40 enforcement operations. These functions will include records, information resources management,
41 training, human resources, equal employment opportunity, and administrative support.
42
43
44
45

1
2 SEC. 102. SAVINGS PROVISIONS
3

4 (a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants,
5 loans, contracts, agreements, certificates, licenses, and privileges—

6
7 (1) that have been issued, made, granted, or allowed to become effective by the
8 President, the Attorney General, the Commissioner of the INS, or any other Government
9 official, or by a court of competent jurisdiction, in the performance of any function that is
10 transferred; and

11
12 (2) that are in effect on the effective date of such transfer (or become effective after
13 such date pursuant to their terms as in effect on such effective date);

14
15 shall continue in effect according to their terms until modified, terminated, superseded, set aside, or
16 revoked in accordance with law by the President, any other authorization official, a court of
17 competent jurisdiction, or operation of law.

18
19 (b) PROCEEDINGS.—This Act shall not affect any proceedings and any application for any
20 benefits, service, license, permit, certificate, or financial assistance pending on the date of the
21 enactment of this Act before an office whose functions are transferred by this Act, but such
22 proceedings and applications shall be continued. Orders shall be issued in such proceedings,
23 appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act
24 had not been enacted, and orders issued in any such proceeding shall continue in effect until
25 modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent
26 jurisdiction, or by operation of law. Nothing in this subsection shall be considered to prohibit the
27 discontinuance or modification of any such proceeding under the same terms and conditions and to
28 the same extent that such proceeding could have been discontinued or modified if this Act had not
29 been enacted.

30
31 (c) SUITS.—This Act shall not affect suits commenced before the date of the enactment of
32 this Act, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in
33 the same manner and with the same effect as if this Act had not been enacted.

34
35 (d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or
36 against the Department of Justice or the Immigration and Naturalization Service, or by or against
37 any individual in the official capacity of such individual as an officer or employee in connection
38 with a function transferred by the Act, shall abate by reason of the enactment of this Act.

39
40 (e) CONTINUANCE OF SUITS.—If any Government officer in the official capacity of such
41 officer is party to a suit with respect to a function of the officer, and under this Act such function is
42 transferred to any other officer or office, then such suit shall be continued with the other officer or
43 the head of such other office, as applicable, substituted or added as a party.

44

1 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by
2 this Act, any statutory requirements relating to notice, hearings, action upon the record, or
3 administrative or judicial review that apply to any function transferred by this Act shall apply to the
4 exercise of such function by the head of the office, and other officers of the office, to which such
5 function is transferred by this Act.
6

7
8 TITLE II—IMMIGRATION OFFICER COMPENSATION
9

10 * * *

11
12 TITLE III—CONFORMING AMENDMENTS
13

14
15 SEC. 301. CONFORMING AMENDMENTS
16

17 (a) Section 103(e)(2) of the INA, 8 U.S.C. section 1103(e)(2), is amended by striking
18 "district office of the Service" and inserting "designated office of the Immigration and
19 Naturalization Service".
20

21 (b) Section 242(b)(3)(A) of the INA, 8 U.S.C. section 1252(b)(3)(A), is amended by
22 striking "Service district" and inserting "designated office of the Immigration and Naturalization
23 Service".
24

25 (c) Section 316 of the INA, 8 U.S.C. section 1427, is amended—
26

27 (1) in section (a) by striking "district of the Service" and inserting "area serviced by
28 the designated office of the Immigration and Naturalization Service"; and
29

30 (2) in section (f)(1) by striking "district of the Service" and inserting "area serviced
31 by the designated office of the Immigration and Naturalization Service".
32

33 (d) Section 319 of the INA, 8 U.S.C. section 1430, is amended—
34

35 (1) in section (a) by striking "district of the Service" and inserting "area serviced by
36 the designated office of the Immigration and Naturalization Service";
37

38 (2) in section (b)(3) by striking "district of the Service" and inserting "area serviced
39 by the designated office of the Immigration and Naturalization Service";
40

41 (3) in section (c)(5) by striking "district of the Service" and inserting "area serviced
42 by the designated office of the Immigration and Naturalization Service"; and
43

44 (4) in section (d) by striking "district of the Service" and inserting "area serviced by
45 the designated office of the Immigration and Naturalization Service".

1
2 (e) Section 324 of the INA, 8 U.S.C. section 1435(a)(1), is amended by striking "district of
3 the Service" and inserting "area serviced by the designated office of the Immigration and
4 Naturalization Service".
5

6 (f) Section 328 of the INA, 8 U.S.C. section 1439, is amended—
7

8 (1) in section (a) by striking "district of the Service" and inserting "area serviced by
9 the designated office of the Immigration and Naturalization Service";
10

11 (2) in section (b)(1) by striking "district of the Service" and inserting "area serviced
12 by the designated office of the Immigration and Naturalization Service"; and

13 (3) in section (c) by striking "district of the Service" and inserting "area serviced by
14 the designated office of the Immigration and Naturalization Service".
15

16 (g) Section 329(b)(2) of the INA, 8 U.S.C. section 1440(b)(2), is amended by striking
17 "district of the Service" and inserting "area serviced by the designated office of the Immigration
18 and Naturalization Service".
19

20 (h) Section 335(f) of the INA, 8 U.S.C. section 1446(f), is amended by striking "district of
21 the Service" each time the phrase appears and inserting "area serviced by the designated office of
22 the Immigration and Naturalization Service".
23

24 (i) Section 338 of the INA, 8 U.S.C. section 1449, is amended by striking "district office of
25 the Service" and inserting "designated office of the Immigration and Naturalization Service".
26

27 (j) Section 339(b) of the INA, 8 U.S.C. section 1450(b), is amended by striking "district
28 office of the Service" and inserting "designated office of the Immigration and Naturalization
29 Service".
30

31 (k) Section 404 of the INA, 8 U.S.C. section 1101, note, is amended—
32

33 (1) in section (b)(2)(A)(i) by striking "a district director of the Service" and inserting
34 "a designated Immigration and Naturalization Service officer"; and

35 (2) in (b)(2)(A)(iii) by striking "in a district" and inserting "in a designated office of
36 the Immigration and Naturalization Service".
37
38

39 Sec. 302. MISCELLANEOUS CONFORMING AMENDMENTS.
40

41 * * *
42

▶ Julie A. Fernandes
05/18/98 05:30:17 PM

.....

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: INS reform -- update

Elena,

We had a meeting last week with Peter and folks from INS to discuss legislative strategy. Here is where we stand:

1. Alan Erenbaum (INS) gave us a draft of the legislation. Peter, Leanne, Steve and I are looking it over. It looks pretty general; codifying the outline of our plan. I will forward you a copy of the draft.

There is one issue remaining: whether the legislation should include a provision for inspectors to become equivalent (pay and benefits) to other federal law enforcement officers. As you recall, OMB stated last March that this would be very expensive and not possible to do in the first wave of our reform efforts. INS is insistent that this is a necessary building block for the reform. Alan is going to let us know by mid-week what their final position is on this (if they have come up with off-sets; whether they need "law enforcement" parity or could begin with parity with Customs, etc.) We may need to pull a meeting together with you, Doris and Michael to finalize how we will move forward.

2. According to Abraham's staff, he wants to hold hearings starting in mid to late June, with a second before the August recess and possibly a third in September. They would like to schedule one hearing each to discuss services and enforcement. Abraham might introduce his legislation sometime in September.

Our plan is to have our legislation introduced (they are talking to Watt and Kennedy) as soon as Congress returns from the Memorial Day break -- prior to when Abraham will hold his first hearing.

3. Doris is testifying at the House Judiciary Subcommittee on Immigration on Thursday on INS reform. Others testifying at the hearing are: Harold Rogers; Susan Martin (CIR); Diana Aviv (Counsel of Jewish Federation -- she will be supportive); Richard Gallo (from a Federal Law Enforcement group) and Demetri Papademetriou (Carnegie Endowment for International Peace -- also likely to be generally supportive of our principles).

Julie

immig-structural reform

UNITED STATES SENATOR • MICHIGAN

SPENCER ABRAHAM**INS REFORM****Floor Speech by U.S. Senator Spencer Abraham (R-Michigan)****Chairman, Senate Immigration Subcommittee****April 29, 1998**

MR. ABRAHAM. Mr. President, I would like to discuss the Immigration Subcommittee's plans for a series of hearings on reform of the Immigration and Naturalization Service. At the beginning of this Congress, I outlined my agenda as the incoming Chairman of the Subcommittee on Immigration. During that discussion I noted that the time had perhaps come to consider fundamental reform of the INS.

In particular, I raised the question whether an agency charged with both policing our borders and providing services to those seeking to come here legally and become citizens could perform either mission well.

Nothing I have observed since that time has persuaded me that these concerns were misplaced. To the contrary, the problems I have observed with the Service's functioning leave me persuaded that the current structure simply does not work. I also remain of the view that splitting responsibility for INS' different missions is an important part of the solution.

In my view, Mr. President, we must take a hard look at all aspects of the current INS structure. Right now, for example, the distribution of policy making authority between headquarters and field offices seems haphazard at best. There also seems to be almost no mechanism for implementing priorities and holding workers responsible for failing to do so. INS' bureaucratic culture appears to tolerate and almost expect failure.

Mr. President, I would like to spend a few minutes setting forth some examples of these rather serious problems.

Most people are by now familiar with the story of "Citizenship USA": how what began as a laudable effort to reduce the backlog of legal immigrants waiting to become Americans ended up sacrificing the integrity of the naturalization process, leaving a bitter aftertaste to what should have been the joyous experience of becoming a citizen of this great country.

In the course of that effort, thousands of criminal background checks were not completed, leading to the naturalization of people who had committed disqualifying crimes. As a result of the program's deficiencies, the INS is already working to revoke the citizenship of 369 immigrants, and is considering action in almost 6,000 other cases. Revocation of citizenship, however, is properly an onerous procedure, considerably more difficult than denying it in the first place to those the law says should not receive it. This particular episode has already received considerable attention, and I will not go through the details again.

What has received less attention, however, and is in some ways even more worrisome, is what this episode revealed about serious deficiencies in all aspects of INS operations. To begin with, many of the flaws that produced improper naturalizations in Citizenship USA had been identified years before, but gone unaddressed. A 1994 report of the inspector general's office identified two major problems with INS's background check process.

First, it found that the INS did not verify that fingerprints submitted with applications actually belonged to the applicant. Second, the INS failed to ensure that background checks were completed by the FBI. A General Accounting Office study conducted the same year confirmed these findings. Yet the problems went unaddressed for two years.

In November of 1996, after several front page stories reported on improper naturalizations, the INS Commissioner finally ordered that no naturalizations go forward without a completed FBI background check and unless new, more careful procedures for processing background checks had been followed.

In an audit completed five months after that directive was issued, however, Peat Marwick found that only 1 out of 23 INS offices was actually complying with this policy. 7 offices were only marginally compliant, and 15 were not complying with the new procedures at all. It was only a few months ago that KPMG and INS were finally able to say that the new procedures were being followed.

Allegations of fraud in testing also predate Citizenship USA. Indictments were handed down against 20 defendants in California this past January. But investigations into these allegations have been ongoing for several years and the INS received complaints as early as 1992 that should have alerted the agency to the potential for serious criminal fraud.

Criminal cases may take considerable time to develop and I am not criticizing anyone for taking the time necessary before bringing these particular prosecutions. My point, however, is that INS took no separate action to close the serious loopholes these allegations pointed toward until this year, the day before I chaired a hearing to look into the issue.

Mr. President, Peat Marwick also conducted a separate audit of all naturalizations done between August 1995 and September 1996. It concluded that we can be confident that naturalization was proper in only 8.6% of the 1,049,867 cases naturalized during that period.

The other 91.4% of cases either contained insufficient documentation to support a proper decision or (in 3.7% of the cases) involved an outright improper grant of citizenship. Thus, in addition to the 3.7% of cases improperly naturalized, we simply do not know whether almost 90% of those granted citizenship during that period met the requirements for naturalization.

It may well be that the vast majority of cases with insufficient documentation were decided properly. But the American people deserve to know that citizenship is being conferred only on deserving people, just as the vast majority of legal immigrants who come here to play by the rules and make a contribution deserve to gain citizenship without a cloud of doubt hanging over its propriety.

Unfortunately, these audits indicate that INS simply does not keep complete and accurate naturalization files and cannot even locate many files that should be in its possession. I have also heard numerous tales of fingerprints being taken and lost repeatedly, of inconsistent accounts being given about the status of people's files, and of an inability to get resolution on the simple question of a person's status.

Under these circumstances, Mr. President, it comes as no surprise that the backlogs Citizenship USA was designed to address are now back with a vengeance. As many as 1.8 million people are caught up in the nation's naturalization backlog and in some places the wait for citizenship can last up to two years.

Press reports suggest that INS officials have been attributing this slowdown to new procedures put in place in response to Congressional pressure. But when the subcommittee ranking member and I asked whether the new fingerprinting process might cause delays, the INS official in charge of developing them assured us that they would not.

Unfortunately, naturalization is only one area where the INS has not performed either its enforcement or its service mission adequately. For example, INS does not seem able to figure out how to deport criminal aliens directly after they have finished serving their sentences, and hence claims it cannot detain all of them pending deportation. At the same time, INS seems to detain many people with strong asylum claims in the same cells as hardened criminals. Who is detained, who is not, and for how long seems to depend less on the person's particular equities as the district in which he or she is found.

When I first raised the issue of fundamental INS restructuring and a split of its missions, I was not sure the idea would be seriously considered. But, as more problems have come to light, people increasingly seem agreed that reform is needed. The key issue is rapidly becoming not whether there will be a restructuring but what form it should take in order to solve INS problems.

The latest adherent of this view is the Administration. A few weeks ago, I received a letter from Attorney General Janet Reno, Assistant to the President for Domestic Policy Bruce Reed and Director of Management and Budget Franklin Raines, laying out the Administration's proposals on the matter. \

This letter acknowledges INS problems and their seriousness. The Administration also recognizes that one major source of these problems is INS' dual role as enforcer of our immigration laws and provider of immigration and citizenship services. Whether the Administration's proposed remedy is adequate to the task, however, remains to be seen. The Administration proposes to retain the current INS and have it perform all its current functions. Its plan would then untangle INS' overlapping and confusing organizational structure, replacing it with two clear chains of command, one for enforcement and the other for service provision. I will study this proposal closely. But I also will look at alternatives.

In particular, while separating lines of authority into enforcement and service is a good start, I am not convinced that it will suffice to allow officials to pursue each mission with sufficient enthusiasm and energy.

I also worry that, by retaining the current agency, even with significant restructuring, we may end up retaining the bureaucratic culture of toleration for failure that we must end.

Finally, I think everyone, including the Administration, understands that no reform plan could command the support necessary to carry the day without careful scrutiny of all relevant problems, the means the plan would use to address them, and the manner in which the plan would work in practice.

These are issues I intend to address through the series of oversight hearings I will launch shortly after the next recess. Because I believe this is a serious issue, I do not think it is necessarily one that can be resolved this Congress.

But I hope these hearings will help us formulate legislation this session that can serve as a starting point for further discussions. I look forward to working with all interested parties in this important endeavor.

###

Steven M. Mertens

03/25/98 08:08:38 PM

Record Type: Record

To: Michael Deich/OMB/EOP, Elena Kagan/OPD/EOP

cc: David J. Haun/OMB/EOP, Julie A. Fernandes/OPD/EOP, Ingrid M. Schroeder/OMB/EOP

Subject: INS Issues as a Follow-up to the Appropriations Committee Meeting

Following our meeting on the Hill with the House Appropriators I called INS (Weber- Budget) to relay to him our concerns about the need for pricing information and the organizational relationship with the Border Patrol.

Border Patrol -- The Commissioner has told Reyes that the Border Patrol will have this separate, special reporting relationship and a Border Patrol chief "responsible" for the Border Patrol. I told him our understanding, based on what the Commissioner said last week, was that all local enforcement officers had a clear chain of command through local units, to the area enforcement director, to the EAC for enforcement. I told him that the Border Patrol reporting structure that Alan outlined tonight blows a sizable hole in our "chain of command" argument.

Pricing - I also told him that we needed to work with INS to come up with a best estimate on pricing the restructuring out in FY 99 and possible cost areas as the restructuring moves forward into 2000 by Friday. He said that he was uncomfortable with developing any estimate given the lack of specificity in the restructuring at this time. He thought Hill staff agreed that pricing data could be developed over the Spring/Summer as the restructuring is finalized and moves forward. I said that the Commissioner and the Administration would look foolish if on Tuesday we didn't have any answer on possible costs of the restructuring if the Chairman asks (especially since he has CBO pricing out CIR). He also said that the Commissioner is still talking about law enforcement pay for INS inspectors (I told both Weber and the Commissioner's staff that the only pay issue she should speak about was the Customs/INS pay comparability proposal which the Department had forwarded to OMB) -- which is the possible BIG future cost.

He said someone would have to call the Commissioner to get this kind of pricing data and his response would be they couldn't do it by Friday.

Either Michael or Elana needs to talk to the Commissioner to clear up these issues -- or at least get an acceptable answer that the Administration feels comfortable with when she testifies next week and Rogers raised these issue. I don't know, maybe the CIR was right -- kidding.

Immig - structural reform

▶ Julie A. Fernandes
04/06/98 03:58:00 PM
.....

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: INS reform -- update

Elena,

I spoke with Peter re: next steps on INS reform. He thinks that we should be drafting legislation that would enact our proposal. INS General Counsel is taking a first stab at this, and we should have something to look at in about a week. After we have draft legislation, Peter would like to shop it to members. Both Kennedy and Mel Watt (ranking member on the House Judiciary subcommittee) have expressed interest in sponsoring the legislation. Peter would like to get Kennedy and Abraham to co-sponsor it. There will likely be at least one hearing on this after the break. Watt has asked Lamar Smith for a subcommittee hearing in May.

Peter feels strongly that we need to continue to work on developing policy to fill the holes in our proposal. This will indicate to Congress that we are serious about this reform, not just about stopping Rogers. Also, according to INS, Booz-Allen is continuing their work for the next three weeks. Julie Anbender (from INS) was unsure of what exactly they have been tasked to do, but will find out and let us know. Hopefully, they have been asked to provide more detail on the reform plan.

Peter also said that we need to be very prepared to respond to questions about cost. I have flagged this for OMB and INS.

Finally, according to INS, there will be a story in USA Today re: INS reform in the next couple of days. The reporter (Walter Shapiro) has spoken with INS communications and Doris.

Julie

Julie -
Where are we on this?
Elena

▶ Julie A. Fernandes
05/05/98 10:26:09 AM
.....

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP, Leanne A. Shimabukuro/OPD/EOP
Subject: INS reform -- update

Elena,
I spoke with Bob Bach from INS last week. He said that the draft legislation was not finished and that they had some questions about our strategy for moving forward. According to Bob, INS still wants to include pay equity for inspectors (equivalent to law enforcement officers) in the legislation. The last time we discussed this, OMB made clear that this was not do-able at this time (it would be very expensive and was not anticipated in FY99). According to Peter, we must get draft legislation introduced -- a vehicle to nail down Reyes and others and to keep the discussion moving with our proposal as a frame.

Last week, Abraham made a speech in which he stated his intention to hold oversight hearings (starting after the Memorial day recess) to determine the best way to reform the agency and that he would consider the Administration's proposal and other alternatives. He also stated that he does not think that the issue of INS reform will be resolved this Congress. This is a good sign, b/c it signals to the appropriators (Rogers) that Abraham sees this as his (not their) issue. However, INS has indicated that they may want to move forward with reform without blessing from the Congress. Peter's instinct, given Abraham's statement, is for INS not to move forward without Congress's o.k. He would, however, want to know if INS has any different intelligence on this. Peter has calls into their leg. person (Alan Erenbaum).

[I have a call into Bob to make clear our strategy and to ask that we set something up with us and OMB later in the week to resolve any lingering issues that they may have with the legislation and our overall legislative strategy.

Julie

04/02/98 THU 12:22 FAX
Immig - structural re form

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April 1, 1998

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*Bruce, Julie -
 FYI.*

The Honorable Lamar Smith, Chairman
 Subcommittee on Immigration and Claims
 B-371 Rayburn House Office Building
 Washington, D.C. 20515

Dear Chairman Smith:

In its report accompanying the fiscal year '98 Appropriations Act, the House Appropriations Committee directed the Attorney General to review the recommendations of the Commission on Immigration Reform and to develop a plan by April 1 to improve the functions of the Immigration and Naturalization Service (INS). In compliance with that requirement, the INS issued its report and plan yesterday and Commissioner Doris Meissner testified before the Commerce-Justice-State (C-J-S) Appropriations Subcommittee regarding it.

While it is appropriate for us to consider C-J-S Appropriations Subcommittee input in our evaluation of proposals to restructure the INS, I believe the ultimate recommendations about whether to restructure and the extent of any such restructure should be made by the Immigration and Claims Subcommittee of the House Judiciary Committee, the authorizing committee for the INS. I, therefore, urge you to hold a Subcommittee hearing on this matter as soon as possible after our return from the April recess.

Sincerely,



Melvin L. Watt, Ranking Member
 Subcommittee on Immigration Claims

cc: Doris Meissner, Commissioner
 Immigration and Naturalization Service

The Honorable Harold Rogers, Chairman
 Commerce-Justice-State Appropriations Subcommittee

The Honorable Alan B. Mollohan, Ranking Member
 Commerce-Justice-State Appropriations Subcommittee

Los Angeles Times

The INS Needs a Complete Makeover

DATE: 4-24-98
PAGE: A-11

*Immigration -
structural reform*

Immigration: Making it a new agency under the executive branch would increase accountability and effectiveness.

By DEMETRIOS PAPADEMETRIOU, T. ALEXANDER ALEINIKOFF and DEBORAH WALLER MEYERS

The INS, responding to widespread criticism of its performance, has proposed separating its service and enforcement functions but retaining both. The third significant such reform proposal in five years. A contending proposal, by the now-defunct Commission on Immigration Reform, would dismantle the INS and distribute its functions to other departments. We believe that the INS proposal does not go far enough, while the commission's takes us in the wrong direction.

The politicization of immigration policy and frustration with INS performance have been growing for more than a decade. Both proposals react to that but fail to ask the most fundamental question: What is the system supposed to do, and how should it be organized to do it?

We have developed an alternative proposal that starts with goals and principles and develops structures to put them into practice. Immigration policy is top and center of this structure.

The INS' self-conception is primarily as enforcer of laws that it often plays a marginal role in formulating. At times, it is a victim of congressional micromanagement; at others, it becomes a political football between the administration and Congress. The executive branch generally reacts rather than initiates.

We propose creating an independent agency within the executive branch to direct the nation's immigration system. The new agency's core purposes would continue to be complex: facilitating and controlling entry, enforcing the law and delivering services, removing the deportable and naturalizing the qualified.

Various functions currently scattered among several federal departments—such as labor certification (Labor), visa, passport and most refugee and migration functions (State) and refugee resettlement (Health and Human Services)—would gradually be consolidated under a single roof. Consolidation would follow a simple rule: Unless the function (or part of it) falls within the central mission of the department in which it is located, it should move

to the new agency.

An independent agency would be better prepared and situated to work with Congress to construct immigration policies that are consonant with other critical domestic and foreign policy priorities, from Social Security, welfare and human resources to education, economic competitiveness and international relations.

If congressional energy for fundamental reform falters, a second-best alternative would be to elevate the immigration function within the Justice Department through a new position of associate attorney general for immigration. This office would be charged with the formulation of immigration policy and the coordination of its execution.

Under both scenarios, service and enforcement functions would be separated within the agency. At the local level, separate immigrant service areas and enforcement sectors would be established. These steps would lead to greater accountability and better service for both immigrants and citizens.

The other options on the table are not up to the task. The INS plan would neither improve policy coherence nor ensure that program delivery is consistent with a policy's intent. Most important, it won't close the agency's credibility gap. The commission's proposal would hinder coherent policy even more, handing off to agencies with little institutional commitment to immigration the same problems of accountability, management and poor service that have dogged the INS.

No one lightly proposes creating a new agency. In 1970, President Nixon used reasoning similar to ours—that the importance of the environment required that a single independent agency oversee it—and created the Environmental Protection Agency.

Circumstances call for another exception. If the immigration function is as central to sound public policy across a variety of policy domains as we believe it is, if accountability and consistency in program delivery are as weak as many observers argue and if the service function is as much of a stepchild within the INS as even the agency's friends acknowledge, then creating a new agency and giving it the authority, resources and support it requires to do its job properly becomes a compelling choice.

Demetrios Papademetriou, T. Alexander Aleinikoff and Deborah Waller Meyers are with the international migration policy program of the Carnegie Endowment for International Peace.

INS Chief Eyes Radical Change to Shield Agency

By Marcus Stern
COPLEY NEWS SERVICE

WASHINGTON -- Fearful that a critical Congress might carve up the Immigration and Naturalization Service, Commissioner Doris Meissner is set to propose a radical restructuring of the agency to separate enforcement activities from services such as granting citizenship.

Meissner summoned senior INS managers from around the country to Washington this week for a two-day briefing that ended yesterday with some managers heading home saying they were confused and anxious about the far-reaching plan.

Under the plan, the INS district in San Diego would no longer exist as it does today, but would be subsumed by a larger area or region that would have its headquarters in Los Angeles or San Francisco.

Such decisions haven't been made, however, and it remained unclear yesterday how many local jobs were at stake, if any.

How Congress will react also is unclear. Meissner is scheduled to present the plan publicly at a hearing before a congressional subcommittee next week. She can expect a skeptical reception from Rep. Hal Rogers, R-Ky., chairman of the House subcommittee that oversees the INS budget.

Yesterday, Rogers repeated his call to break up the agency.

"They've reorganized time and again over the last several years," he said in an interview, adding that he still is awaiting a briefing on the plan.

"Nothing ever gets better. It gets worse. I'm very skeptical that anything (INS officials) recommend can be achieved or will be enough."

Meissner's plan calls for a complete separation of the agency's dual missions of both enforcing immigration laws and handing out benefits. But it would keep the two activities under the same agency roof in Washington.

"You need a wall, but the wall has to have windows," said an official familiar with the plan. "This new structure sends a clear message internally and externally that when you come to the INS for a benefit, you will be treated as a valued customer."

Others within the INS described it as a pre-emptive attempt to "inoculate" the agency from any efforts by Congress to break it up.

The U.S. Commission on Immigration Reform last year issued a final report calling for dismantling the INS, giving its benefit activities to the State Department, its duty to keep undocumented immigrants from getting jobs to the Labor Department, and leaving all of its border enforcement activities within the Justice Department, the parent agency of the INS.

Congress agreed with the commission that the INS was suffering mission overload and ordered the Clinton administration to review the recommendations and report to Congress by April 1 this year.

A White House review concluded that the INS should be kept intact. The administration hired the management consulting firm of Booz-Allen & Hamilton to help rearrange the agency's functions.

That study is now all but complete and serves as a basis for the latest reorganization initiative, Meissner's third since becoming commissioner in 1993.

Members of the now-defunct immigration commission and some congressional staff members are scheduled to get a White House briefing today.

"I don't expect members of the commission to find this to be an adequate response, but we'll listen," said ex-Rep. Bruce Morrison, who served as a member of the commission and once served as chairman of the House immigration subcommittee.

"It frankly is disappointing that the imperative seems to be to preserve the Immigration and Naturalization Service as a unit. That seems to have been very, very high on somebody's agenda," said Morrison, a Democrat from Connecticut.

Past calls for breaking up the agency have failed.

A government study in 1993 found that no broad-scale reorganization has ever been approved "because of opposition from agencies and departments that would lose jurisdiction, from congressional committees that would be similarly affected, and from agency personnel and private-sector organizations whose interests would be adversely affected."

"I'm not working under illusions that this is an easy process," said Rogers of Kentucky. "People have been trying to do this since the '30s because the agency has never worked. We've tripled (its) budget in the last few years and it keeps getting worse and worse. There's scandal after scandal.

"It's just time we admit that this agency just will not work and assign the chores to agencies that have proven records and can be held accountable."



02:00:47 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Peter G. Jacoby/WHO/EOP, Michael Deich/OMB/EOP
cc: Steven M. Mertens/OMB/EOP, Julie A. Fernandes/OPD/EOP
Subject: INS Reform Rollout

I just spoke with INS and they have had a change in heart on the rollout: they now would like for the Administration to be more visible on our plan leading up to Doris' testimony on March 31. INS has already started to quietly speak to the leadership of some of the immigration groups on the plan and are getting good feedback. The groups have opined that a strong rollout would be useful in helping to sell our reform package. In addition, the Carnegie Foundation will be unveiling their own recommendations for INS reform next Wednesday.

Some of INS' ideas to increase visibility include building editorial board support, possibly giving an advance to the NYT, and scheduling an AG press briefing -- all next week.

This heads in a different direction than we were talking about at Monday's meeting. I would defer in particular to Elena and Peter about our communications and legislative strategy.

Please let me know what you think and let me know if we need to set up a conference call to make sure everyone is on the same page.

Thanks,
Leanne

Immigration - structural reform

▶ **Julie A. Fernandes**
03/23/98 11:04:43 AM
.....

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: INS reform

Elena,
I just spoke with Julie Anbender at INS. INS has been working on an additional document to include in the packet to Congress (along with the letter, side-by-side and Booz study). They think that they need more meat on the bones for presenting the Administration's plan. Though it may be possible to add some more detailed language to the Rogers letter, INS thinks that a separate document is needed. According to Anbender, you spoke with Doris about this on Friday. Do you want us to work with INS to create this document? Should it be included in the packet to Congress? Thanks.

Julie

Immig - structural reform | Kagan

THE WHITE HOUSE
WASHINGTON
March 21, 1998

3-22-98
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Reed
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MEMORANDUM FOR THE PRESIDENT

FROM: PHILLIP CAPLAN *Phil*

SUBJECT: INS Restructuring

The attached Reed/Kagan memo seeks approval of a proposal on reorganization of the INS. All of your advisors, including the Attorney General, Secretary Herman and the State Department, are in agreement that the INS should not be disbanded, but that it needs to be significantly reorganized.

Background. In a report to Congress last fall, the U.S. Commission on Immigration Reform (CIR) called for reforming the immigration system including dismantling the INS. At your request, the DPC led an interagency review process of the CIR's recommendations. The FY '98 Commerce, State, Justice Appropriations Act requires the AG to report back to Congress on the CIR report by April 1.

Reorganization. The CIR's biggest criticism of INS centers on its failure to delineate clearly between its immigrant service and enforcement functions. Therefore they recommended the functions be split between State (immigrant services) and Justice (enforcement). Outside groups and your advisors are very concerned about the disruptions the CIR scheme would bring, especially to State (an agency with a completely different mission) and predict such a scheme would require a six- or seven-year transition and further delay immigration reform. But, the review process found widespread agreement with CIR's criticism of the way INS carries out these dual functions. Therefore, your advisors recommend a significant restructuring of the INS to create distinct lines of authority (chart attached). Under this model, each function would be organized in a way best suited to its core responsibility. Enforcement operations, for example, would be organized regionally (e.g., Southwest Border) and services/benefits would be located in areas of high immigrant concentration.

Congress. On the Senate side, the key authorizers and appropriators Abraham, Kennedy, Gregg and Hollings -- appear dubious of the CIR proposal and receptive to our plan. On the House side, it is more uncertain. Rep. Hal Rogers, Chair of the C/S/J subcommittee, is trying to gather support to dismantle the INS. Rep. Lamar Smith is playing his cards close to his vest, has indicated a desire to deal with structural reform, but has no preference for any particular proposal. It is unclear how the GOP leadership views the CIR proposal or whether they will try to make a political issue out of it.

John Podesta, Rahm, Maria, Larry Stein and Chuck Ruff concur in DPC's recommendation to significantly restructure the INS rather than split its functions between State and Justice.

Approve Disapprove Discuss

*Does
UP agree
9/30
P. Rosen*

THE WHITE HOUSE
WASHINGTON

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March 19, 1998

3-22-98

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: INS Structural Reform

In its final report to the Congress last fall, the United States Commission on Immigration Reform (CIR) called for significant reforms to our nation's immigration system, including dismantling the Immigration and Naturalization Service (INS) and reallocating its major functions to other federal agencies. The FY 98 Commerce, Justice, State (CJS) appropriations bill required the Attorney General to report back to the Congress on the CIR proposal by April 1.

At your request, the DPC led an extensive interagency review process of the CIR's recommendations and other immigration reform proposals. We worked especially closely with OMB because of its expertise in managerial issues. We also included OVP, OPL, Counsel's Office, NSC, INS, and the Departments of Justice, State, and Labor. We had many discussions with immigration experts and advocates, as well as with members of the CIR.

Based on this process, we recommend that the Administration (1) reject the CIR proposal to dismantle the INS, but (2) fundamentally restructure the INS to respond to problems that the CIR rightly identified. The principal feature of this restructuring plan would be a clear separation of enforcement and service operations within the INS. All participants in the review process concur with this recommendation, and we propose submitting our plan to Congress in response to the April 1 deadline.

Policy Discussion

The CIR charged that the INS's dual responsibility of welcoming immigrants who enter legally and deterring or punishing those who attempt to enter or stay illegally has resulted in "mission overload." To address this problem, the Commission proposed to move all immigration service functions to the Department of State, while consolidating all immigration enforcement activities into a new federal law enforcement agency within the Justice Department.

Nearly everyone consulted about this proposal raised serious concerns about it. People both inside and outside the Administration noted the disruption involved in reassigning immigration functions, especially to an agency (State) that has a different primary mission. They

also emphasized the inefficiencies created by placing immigration service and enforcement functions in two wholly distinct agencies.

Our review process identified serious risks in transferring authority over immigration service operations to the State Department. Some immigration advocates predicted that such a substantial transfer of authority would require a six or seven-year transition, thereby exacerbating the current long delays in processing basic immigration services. The State Department echoed these concerns, in part because it is already in the process of absorbing two other agencies: the United States Information Agency and the Arms Control and Disarmament Agency. The Department and immigration advocates alike also expressed the view that the domestic focus of many of INS's services conflicts with the Department's foreign policy mission. Finally, immigration advocates fear that Congress will short-change immigration service activities in the appropriations process if they are in a wholly separate agency from enforcement functions.

Our review also found real inefficiencies -- and a potential weakening of both enforcement and service functions -- in a scheme that places these activities in separate departments. Many experts pointed out the variety of ways in which service officials depend on data collected by enforcement officers, and vice versa, to ensure the integrity and effectiveness of both functions. Likewise, they noted the opportunities for coordination between these officials to enhance enforcement and service activities alike -- as when, for example, a service officer discovers that a person has overstayed his visa and become an illegal alien. For these reasons, almost all experts and advocates recommended keeping enforcement and service activities within a single agency.

At the same time, however, our review process found widespread agreement with the Commission that immigration policy has suffered from the INS's failure to delineate clearly between its service and enforcement operations. Advocates and experts consistently remarked on the absence of any lines of authority within INS reflecting this division in function. They particularly noted that many INS employees at both the headquarters and field levels have responsibility for both enforcement and service activities, notwithstanding the fundamental difference in knowledge, skill, and ability necessary to perform these functions effectively.

Our review process concluded that we have the best chance of achieving the optimum mix of separation and coordination by dramatically restructuring the INS itself. This fundamental reform would create two distinct lines of authority -- one for services, one for enforcement -- running from the field offices all the way up through headquarters. Under this model, each function would be organized in the way best suited to its core responsibility. Enforcement operations, for example, would be organized regionally (e.g., Southwest border, Northwest border), while the benefits operations would be located in areas of high immigrant concentration.

We are attaching two organization charts -- one showing the current INS structure, the other the proposed INS structure -- to give you a clear idea of the magnitude of this reform. We believe that the proposal would greatly enhance the effectiveness of immigration activities by encouraging the development of function-specific knowledge and skills and creating clear lines

of accountability throughout the organization.

Congressional Reaction

We have met with key Hill staff to try to get a sense of where the Congress is going on the INS reform issue, and how it would respond to our proposal. Chairman Rogers of the House CJS appropriations committee is trying to garner support to dismantle the agency along the lines of the CIR recommendations. Our conversations with Congressional staff from other offices, however, suggest that most members of Congress are approaching the issue cautiously. The key Senate authorizers and appropriators -- Sens. Abraham, Kennedy, Gregg, and Hollings -- appear dubious of the CIR's proposal and receptive to our alternative. The situation in the House is more uncertain. Rep. Lamar Smith, who will be critical to the outcome, is playing his cards very close to the vest, indicating a desire to deal with structural reform issues, but no preference for any particular proposal.

Recommendation

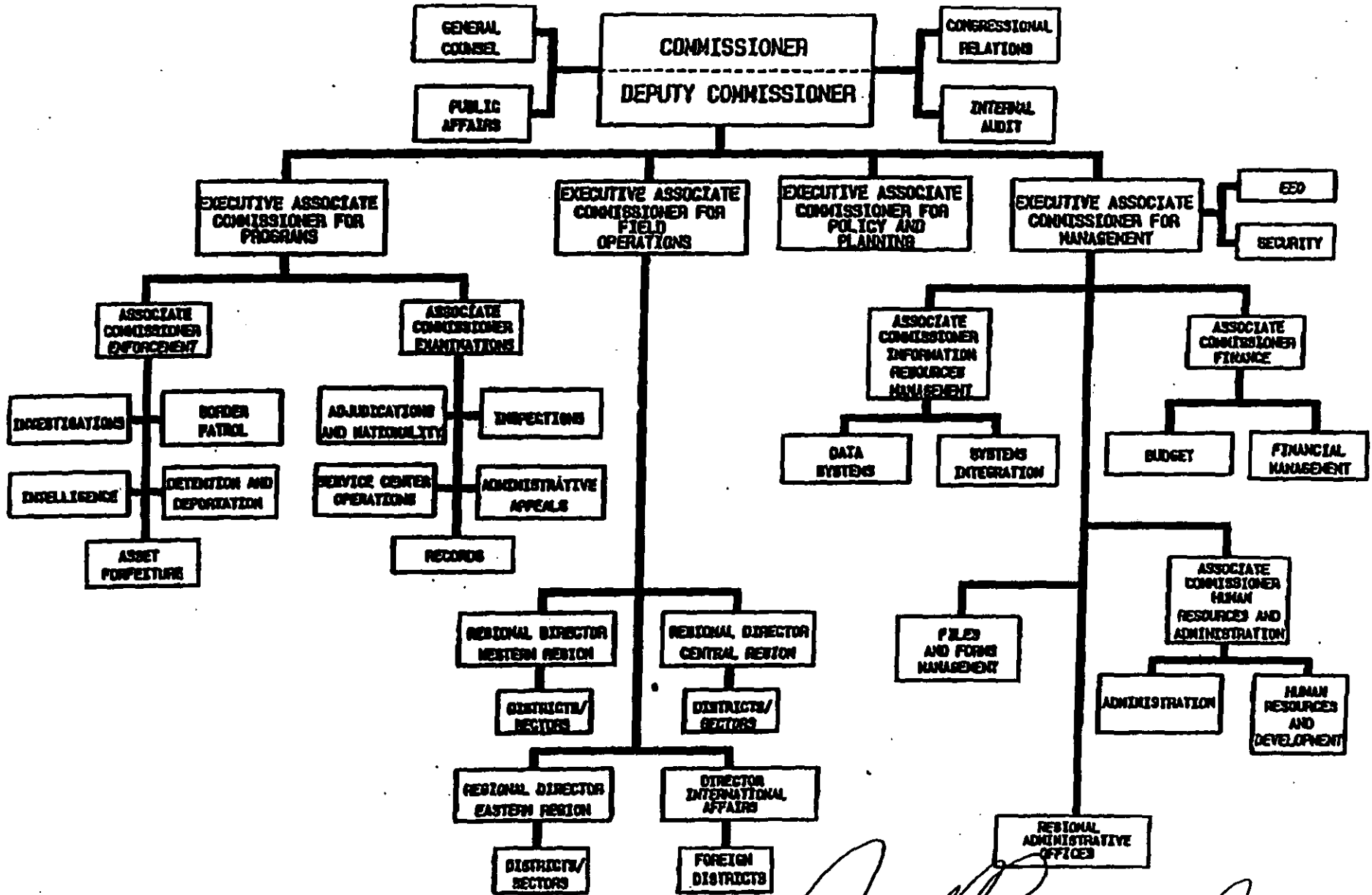
We recommend that the Administration propose a reform model that clearly separates enforcement and service operations within the INS, while retaining the INS as a single entity.

Agree: _____

Disagree: _____

Let's Discuss: _____

IMMIGRATION AND NATURALIZATION SERVICE



Approved:

Janet Reno
 JANET RENO
 Attorney General

Date:

July 14, 1994

PROPOSED INS ORGANIZATION

