

NLWJC - Kagan

DPC - Box 034 - Folder 009

**Immigration - Structural
Reforms [4]**

THE WHITE HOUSE
WASHINGTON

March 19, 1998

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

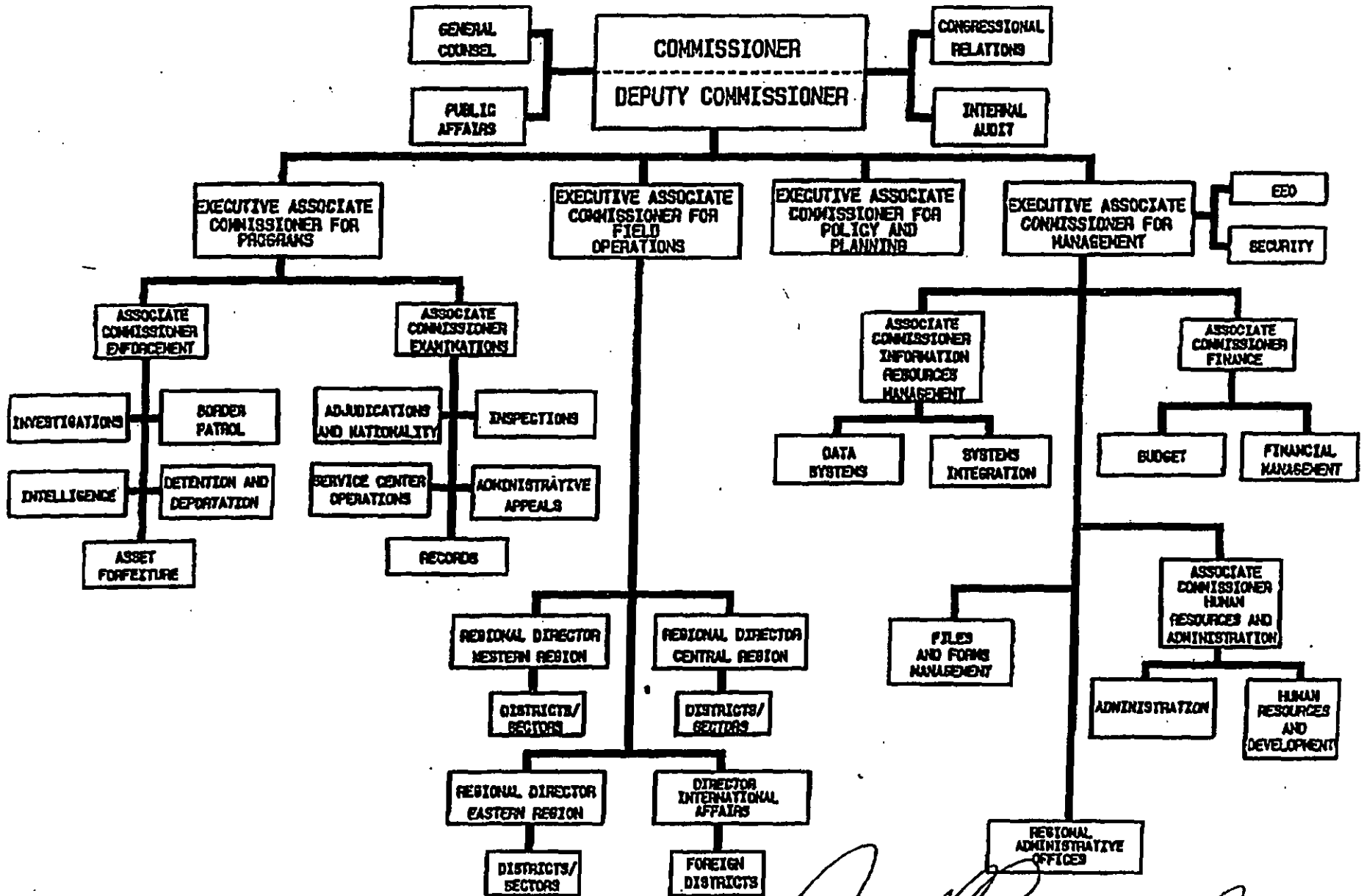
We recommend that the Administration propose a reform model that clearly separates enforcement and service operations within the INS, while retaining the INS as a single entity.

Agree: _____

Disagree: _____

Let's Discuss: _____

IMMIGRATION AND NATURALIZATION SERVICE



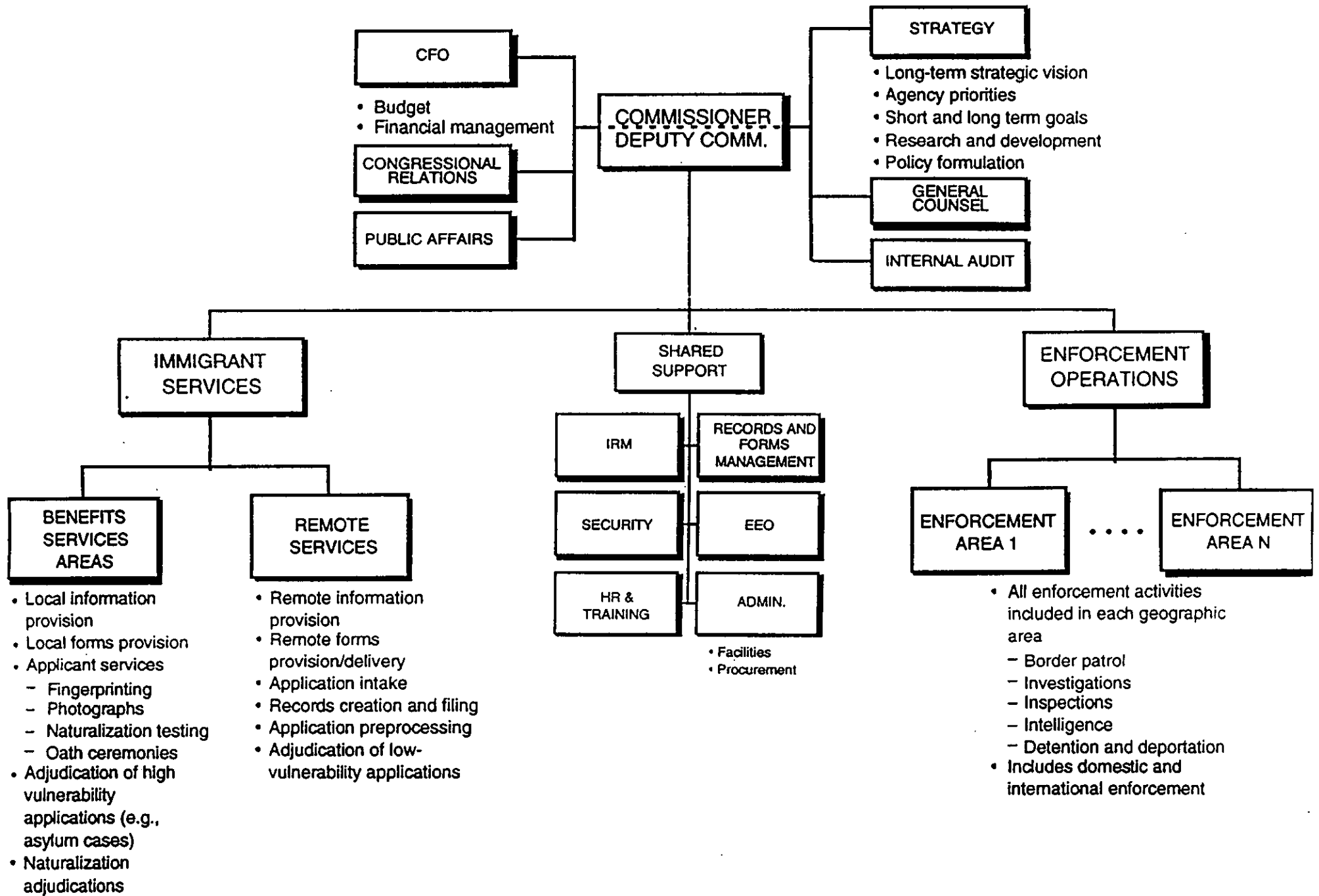
Approved: _____

JANET RENO
Attorney General

Date: _____

July 14, 1994

PROPOSED INS ORGANIZATION



▶ **Julie A. Fernandes**
03/09/98 05:37:43 PM
.....

Record Type: Record

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

Elena,
I just got off the phone with James Costello from the Justice Dept. They would like to get something from us that describes our process and conclusions to prepare the Commissioner for her March 31st oversight hearing.

Justice is also contemplating putting together a report from the AG to Congress, pursuant to the 1998 appropriations language that required the AG to report back by April 1st on the CIR recommendations, and may want to use this communication to assist in writing this report. I had understood that the Commissioner's testimony would serve as the required "report" to Congress, but Costello thinks that the AG may be contemplating something more.

We have not yet decided what form our communication to the AG re: conclusions from our review should take. Is it a memo from Bruce to the AG? Or something more informal? How should we proceed with this?

Thanks.

julie

Immigration - restructuring

Discrepancy
paper
list. (b) / State
Q & A (Ac)
Mara

Agenda/Decision Items
INS Restructuring Meeting - March 16, 1998

A. Outstanding Restructuring Issues

1. Booz Report
 - ✓ Placement of Shared Service Organization - change chart
 - ✓ Creation of Enforcement Officer Corps
2. CIR Recommendation
 - Consolidation of Adjudication Functions

B. Rollout Issues

1. Administration Report
 - Cover Letter Signed by Reed/Reno/Raines
 - Brief description of the review process
 - Executive summary of Administration restructuring plan
 - Side-by-side comparison of CIR/Administration plan as attachment to the letter
 - Booz Report
2. Letters of Support to Chairman Rogers
 - Letters from Secretaries of Labor and State voicing support for the Administration plan
 - Prepared to coincide with the submission of the Administration plan on March 31.
3. Schedule of Senate/House Authorization Committee Hearings
4. Timing of Reprogramming Notification to Appropriators/Draft Implementing Legislation
 - Develop legislative language

Rogers to drop in Hill??

(hand out talking points) / Mar/Fres
pub lead to press ←

Outreach to constituency groups
• INS! (esp. e.v. Border Patrol)
(including unacc)
• Advocacy groups -
(lawyers)

Talk to CIR

Maria G.
conv & a

Royes

March 2

Immigrant - Senate appropriators

Budgetary issues

1. overarching problem
is this, not very
better starting model

2. nationalization
how do we sustain momentum

3. service

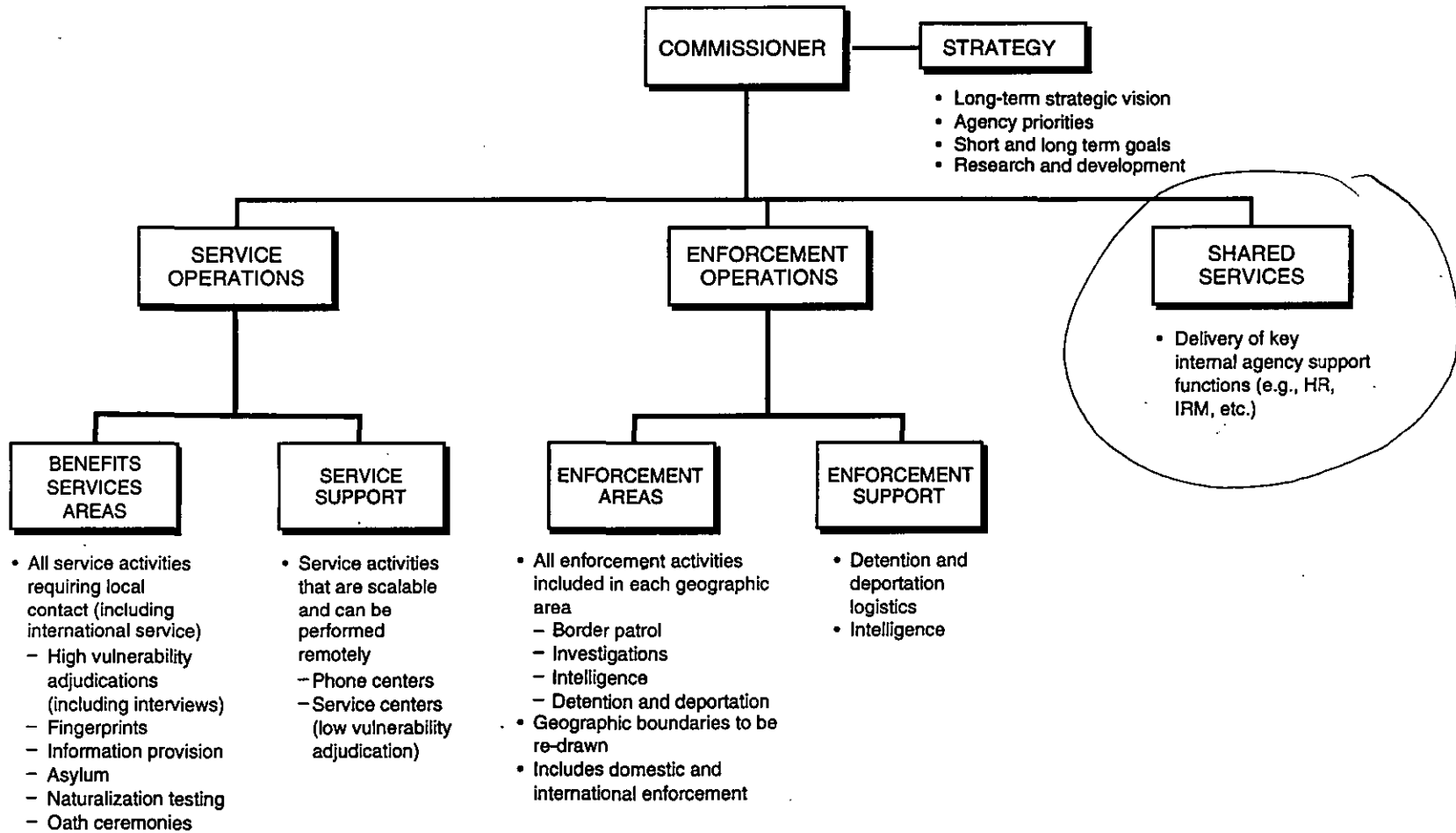
4. interim enforcement

why two } Customs /
separate? } border

Detail...Service...

BALANCING WORKLOAD AND EFFICIENCY OF OPERATIONS ARGUES FOR FUNCTIONAL ALIGNMENT AT THE NEXT LEVEL FOR SERVICES

BENEFITS STRUCTURE: RECOMMENDED OPTION



Note: Does not include General Counsel, Congressional Relations, Internal Audit or Public Relations

FSCH993-002-030WWa

Implementation - structural reform

Steven M. Mertens

01/31/98 02:49:58 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: DPC/OMB Meeting with Booz-Allen/INS/DOJ

FYI: Julie Fernandes and I met with Booz-Allen, INS and JMD staff Thursday to discuss the status of their effort, expected end-products and to expand on the restructuring proposal outlined in the OMB passback. In general the meeting was very positive.

Booz-Allen is committed to providing a draft work product by February 16 that will define and detail the organizational structure as outlined in the passback, speak to the necessary interfaces between enforcement and benefits, and lay out an implementation plan. During the discussion of this last piece (the implementation plan), Booz-Allen seemed to be laying the groundwork for a follow-up implementation contract. However, after some discussion, Booz understood that they are expected to detail a final rationale and implementation strategy for the proposed organizational structure as part of the existing contract by the March 1 due date.

Our briefing on the rationale for the recommendations in passback was also very well received by Booz-- more so than by JMD staff. The establishment of an enforcement sector organization (based around existing Border Patrol sectors) and the elimination of the district office concept (with a move to a community-based organization for the provision of services) is exactly where the Booz study was headed. We also explained our rationale for one INS deputy (rather than separate deputies for enforcement and benefits), the importance of establishing a separate CFO for budget and finance, and the need to reduce headquarters overhead. ?

Both Julie and I were pleased with the receptivity of Booz-Allen and got the clear sense that our agency/reorg plan is their agency and plan. Julie and I will keep you posted as this process moves forward. Thanks.

Message Sent To:

Michael Deich/OMB/EOP
Elena Kagan/OPD/EOP
Julie A. Fernandes/OPD/EOP
Leanne A. Shimabukuro/OPD/EOP
Kenneth L. Schwartz/OMB/EOP
David J. Haun/OMB/EOP
Ingrid M. Schroeder/OMB/EOP
Theodore Wartell/OMB/EOP
Patricia E. Romani/OMB/EOP

Immigration - structural reform

Steven M. Mertens

03/06/98 06:14:51 PM

Record Type: Record

To: Michael Deich/OMB/EOP, Elena Kagan/OPD/EOP, Julie A. Fernandes/OPD/EOP

cc: Kenneth L. Schwartz/OMB/EOP, David J. Haun/OMB/EOP

Subject: Commissioner Meissner/INS Reorg and Shared Services

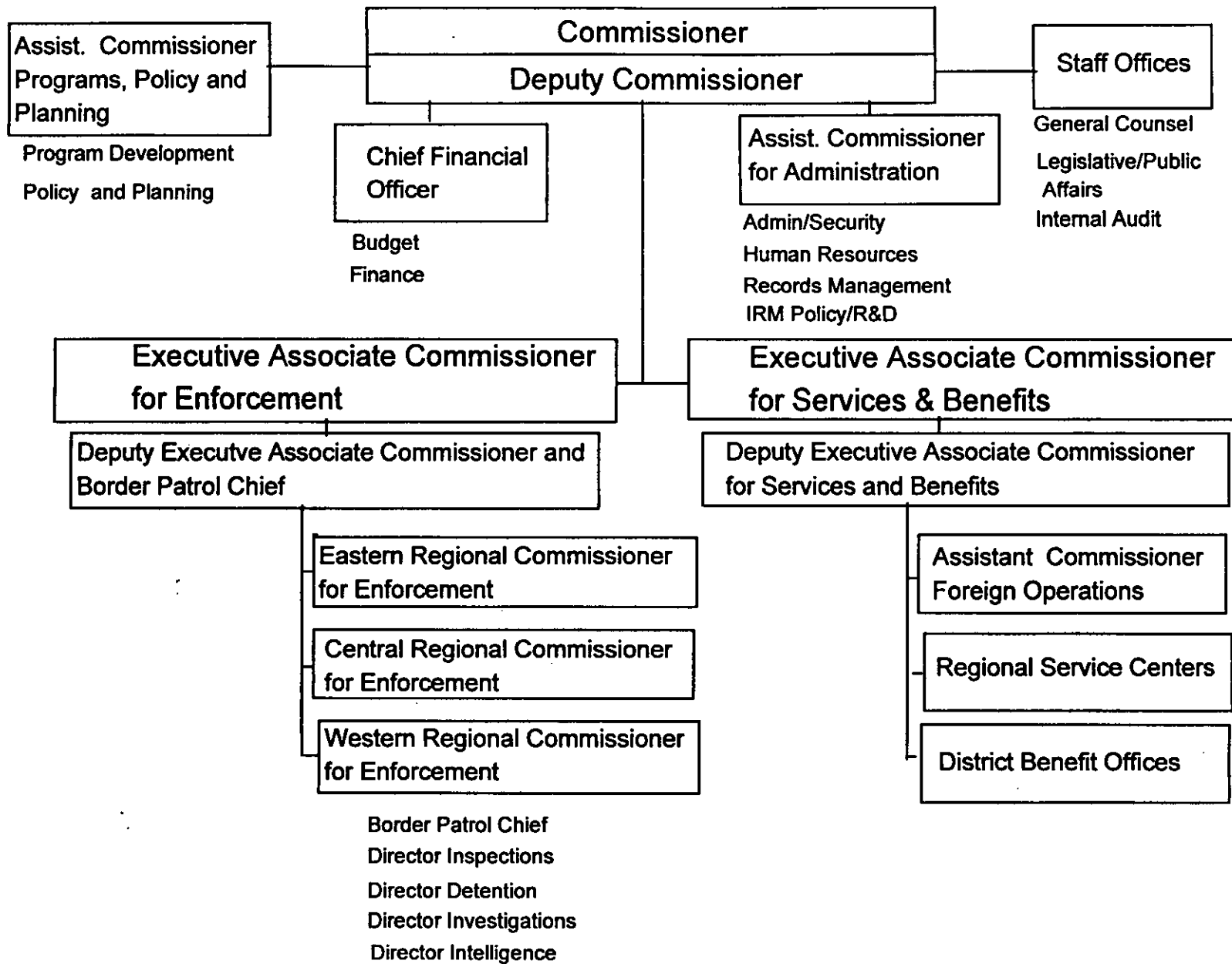
I spoke with Assistant Attorney General Colgate about the conversation between the AG and the Commissioner on the placement of the shared service function on the Booz INS organizational chart. He said that the Commissioner expressed concern to the AG that splitting shared services (i.e., personnel, recordkeeping construction) and placing them within the operating areas of services and enforcement would lead to duplication and under funding of these important functions as well as weakening the glue that holds the agency together.

I explained to Colgate that we agreed the shared services operation was an important function and it was never our intention to establish two separate support functions -- one within each operational component. Rather, we believed that shared services (functions that serve the entire agency or which can be done more efficiently or cost effectively on a centralized basis) should be provided centrally. Our recommendation for its placement off the Commissioner -- as a staff function similar to finance, budget and strategic planning -- was for the optics created by having services and enforcement represented as the preeminent focus within a restructured INS. Colgate agreed that this was essentially a matter of function over substance. Colgate called the Commissioner and tried to make this pitch. He called me back and said that he was unsuccessful and recommended that Elana/Michael make a call to Doris to explain the DPC/OMB rationale.

Colgate understood our position completely and had no objection to it. He also indicated in confidence that the AG would not fall on her sword on this issue.

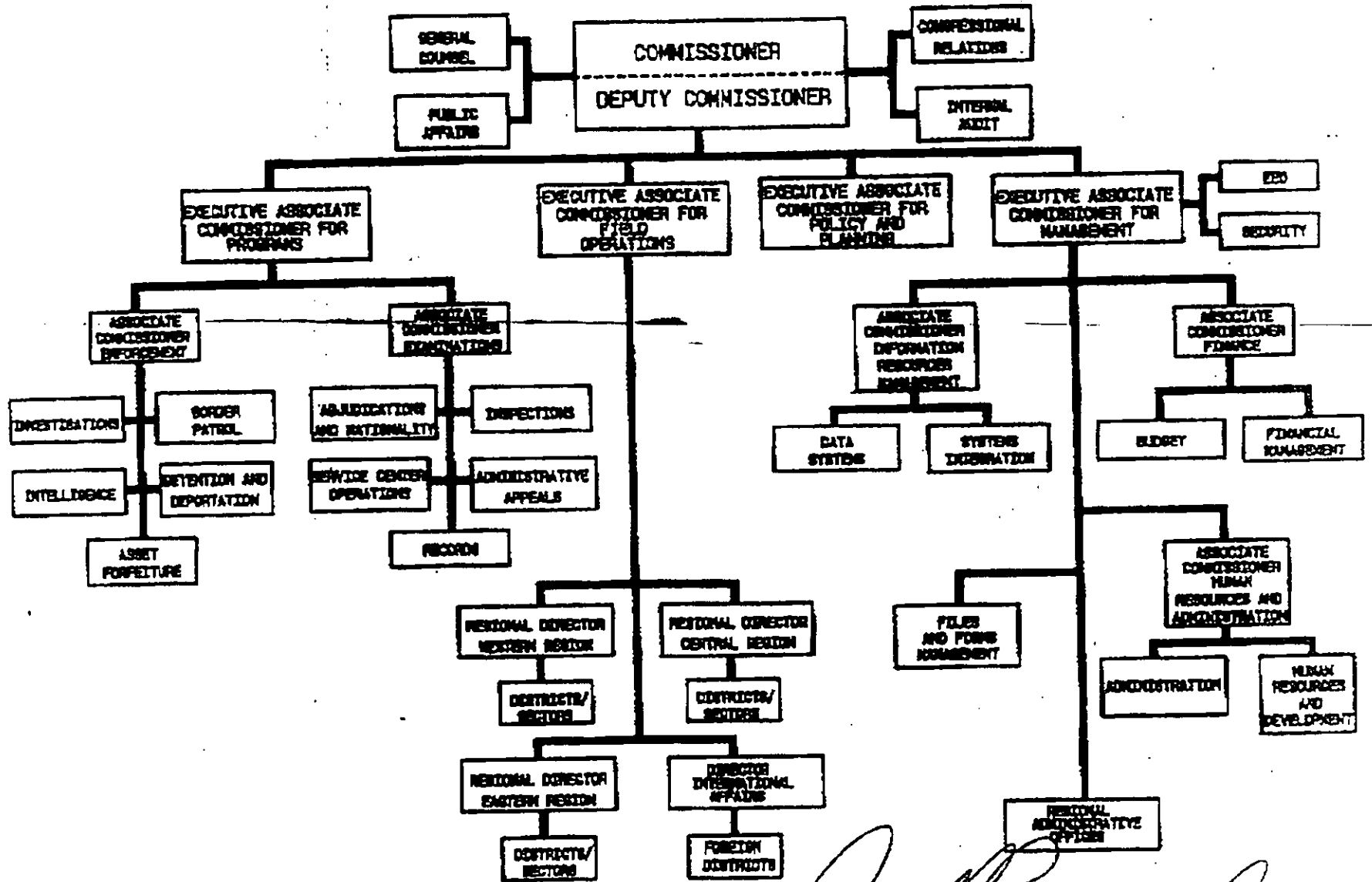
Michael: Following our meeting on the Hill, Elana suggested that both of you should talk to Doris on this issue.

unofficial - structural reform



Immigration - structural reform

IMMIGRATION AND NATURALIZATION SERVICE



Approved:

Janet Reno
JANET RENO
Attorney General

Date:

January 14, 1998

Immigration-structural reform

TALKING POINTS

Immigration and Naturalization Service Restructuring

1. What is the Administration's plan?

The Administration's approach is to recognize the need for INS to be organized along programmatic and function lines but to keep the INS intact. Separating enforcement and benefit/services operations -- both in headquarters and in the field -- will result in a more efficient and effective operation and strengthened accountability and lines of authority. The key features of the OMB strawman which is being further refined by Booz-Allen are:

- INS remains intact with a Commissioner and Deputy Commissioner responsible for overall agency operations;
- Two Executive Associate Commissioners. One responsible for enforcement, the other for services/benefits;
- Strengthen INS' regional and operational field structure;
- Integration of the Border Patrol (BP) into INS' enforcement line-of authority and the establishment of a field structure that closely corresponds to the BP sector model. This will bring inspections, investigations and detention functions/personnel clearly under enforcement rather than under the current "district" structure where these functions are mixed with services;
- Move from the current outmoded "district" field structure for the provision of immigration benefits to a "community based" approach that brings services to the immigrant client population (this builds off the naturalization redesign effort and the establishment of 80+ community based INS offices for fingerprint and testing services);
- Establish a Chief Financial Officer (CFO) to improve INS deficient financial, accounting and budget execution systems; and
- Clarify headquarter responsibilities and lines of authority.

The Administration has engaged a consultant to "flesh" out the specifics of this plan and begin development of an implementation strategy to achieve this restructuring. This strategy is currently being developed and is expected to be completed by March 1. The restructuring of the INS, however, will likely be accomplished through a phased approach as is being done in the naturalization redesign.

In addition, the Administration will address the CIR concerns about duplication and overlapping responsibilities and problems with coordination between the Departments of Labor and State and the INS through DPC convened working groups. This effort will focus on how to better coordinate INS and State visa application and adjudication responsibilities and involve the Department of Labor in worksite enforcement efforts where appropriate. We believe that most of the problems identified by the CIR can be accomplished without structural change.

2. Why does the Administration's plan differ from the Commission on Immigration Reform's recommendation?

The CIR recommended splitting INS' enforcement and benefit/service responsibilities and sending benefit/services to the Department of State. We don't believe separating these functions will improve immigration services -- in fact -- we believe such a division will adversely impact the necessary "synergy" between INS' enforcement and benefit sides. To perform effectively, INS' service function must have ready access to immigration "enforcement" data bases. Similarly, enforcement must be equally adept at understanding "benefit" eligibility to ensure standard enforcement of immigration law.

INS has made considerable strides in the past five years. It has nearly doubled the number of Border Patrol agents, inspectors and investigative personnel. At the same time, it has handled an unprecedented wave of migrants seeking benefits. While problems have occurred, INS and the Department can be credited with taking a proactive approach to address them -- not as bandaid fixes -- but through systemic long-term solutions (e.g. naturalization redesign, asylum reform). Further, reshuffling the boxes between Departments will have a devastating impact on INS' employee morale and operational effectiveness at a time of enormous workload and intense scrutiny.

3. What about the Reyes plan to separate the functions but keep them within the Department of Justice?

Again, this approach will result in significant disruption to the INS with little appreciable benefit. Congressman Reyes believes that enforcement operations have been neglected and as a result a stand alone enforcement entity should be established. The Administration believes integration of the Border Patrol into INS' enforcement line-of-authority and a programmatic structural division of the INS will achieve the same result.

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET**

Route Slip

FAX TO: ELANA KAGAN	Take necessary action	
MICHAEL DEICH	Approval or signature	
	Comment	
	Prepare reply	
	Discuss with me	
	For your information	
	See remarks below	

From: Steve Mertens

Date: January 16, 1998

Remarks:

In preparation for the January 21 meeting with Booze-Allen and INS on restructuring, I have attached the statement of work for the Booze-Allen contract.

One of the concerns expressed at the December DPC meeting was that any contract should be narrowed to support the proposed Budget narrative; geared to a production schedule that will permit a more detailed presentation of the Administration's plan by the budget roll out date of February 2; and focused on implementation rather than organizational study.

As written, the statement of work calls for a far ranging study of all reorganization options currently on the table (including Reyes and CIR which the Administrative, based on the budget narrative, have rejected). Since the statement of work was completed prior to the DPC meeting INS may have verbally narrowed the Booze-Allen work product, however, Justice Management staff believe that this statement continues to be operating procedure for the contract.

The meeting Wednesday will allow a discussion of work products and a report timetable with INS and Booze-Allen.

Attachment

c: David Haun
Julie Fernandez

STATEMENT OF WORK

Support to the Department of Justice to Provide Organizational Structure Alternatives for the Immigration and Naturalization Service to Rationalize its Continuing Enforcement and Service Functions

I. Purpose and Objectives

The purpose of the series of tasks listed in the following statement of work is to work and consult closely with Department of Justice and Immigration and Naturalization Service managers and designated staff to: (a) examine all pending INS reorganization proposals advanced by both INS and major external groups; and (b) develop alternative proposal(s). The objective of the proposal(s) should be maintaining, in a single agency, rationalizing and more clearly delineating INS' enforcement and service missions, and the development of management, organizational and structural approaches for ensuring their compatibility, mutual support and productive interaction.

II. Statement of Work

A. Background.

The Immigration and Naturalization Service has one of the most demanding missions in the Department of Justice and within the entire Federal Government. The effective performance of its critical border enforcement and benefit service functions continue to be high Administration, Congressional, and public priorities. As a public organization, INS has been confronted with some of the most extraordinary conditions in which to operate in recent Federal public administration.

Since 1993, INS has experienced a dynamic policy and statutory environment, including extensive increases in its duties authorized under new laws; large staff and budget enhancements; ever-higher public demand for services which is driven by factors beyond the agency's control and which often cannot be anticipated; and the commensurate substantial executive and management responsibilities to accommodate, plan and direct policy and operations according to these conditions. An example of INS' forward-looking executive initiatives in this environment is its undertaking and managing one of the most significant national office automation and interconnected enforcement/services information systems changes in government.

The Department of Justice and Immigration and Naturalization Service leaderships have used many successful approaches to streamline INS' administrative infrastructure; ensure the best, state-of-the-art technological support for its Border Patrol and other law enforcement officers; and to implement a customer-driven approach to its strategic planning and operational decisions. Similarly, it has also significantly reformed and transformed many elements of its organizational structures to deliver better services and improve its enforcement capabilities in response to complex challenges noted above. Implementation of such continued and rapid structural innovations is exceedingly difficult in any public organization, as well as in private firms. Of necessity, however, INS has moved proactively, although not without inevitable criticism and some dislocations attendant upon any such decisive and ambitious structural transformations, to create a national organizational design that employs sophisticated information systems, sound public administration methodologies, and state-of-the-art fiscal and growth management strategies to accomplish its mission.

At present, the Department and the INS wish to examine the cumulative contributions of the recent reorganizations and changes, which include those in progress such as the National Fingerprint Centers, streamlined, effective naturalization procedures, and international border technologies that are successfully preventing illegal immigration. Together with these the Department and INS wish to examine pending reorganization proposals including internal INS proposals, and external proposals, such as the ones set forth by the Commission on Immigration Reform, the Office of Management and Budget, and the Reyes bill (H.R. 2588 Border Security and Enforcement Act of 1997). While these proposals and others share several common reorganizational elements, they run the gamut from internal INS streamlining to the separation and removal of certain INS current functions, such as enforcement and service responsibilities, and placing them in different agencies, such as the Departments of State or Labor or in another DOJ entity.

Given the diversity of such proposals and the request from Congress to the INS to develop a plan to effectively manage immigration control efforts, the Department and the INS wish to examine all reorganization proposals and develop organizational alternative(s) which would uphold the organizational integrity of the INS while accommodating any further proactive structural changes that would sustain and increase the agency's successful performance of its enforcement and service duties.

B. In response to this Statement of Work, the contractor shall perform the following services.

The contractor shall propose a scope and methodology for a thorough examination of the existing organizational structure of the INS, for the review of all pending proposals to reorganize INS, and for the development of an alternative reorganization proposal or proposals. The contractor shall develop a project plan, with an accompanying schedule for its completion, that includes a timeline and an estimate of resources required to perform project tasks. The project shall include, but is not limited to, completion of the following tasks:

Task 1. Review Phase

Review, synthesize and summarize all pending proposals to reorganize INS, including those INS has developed and considered, as well as those proposed by others, such as the Commission on Immigration Reform (CIR), the Office of Management and Budget (OMB), and the Reyes bill.

Task 2. Interviews and Data Collection

Consult with all parties advocating the various pending reorganization proposals.

Conduct structured interviews with INS policy managers, headquarters staff.

Conduct selected field site visits to INS field offices within a 250 mile geographic radius of Washington, D.C. to observe INS field operations and conduct interviews.

Conduct structured interviews with INS clients within the Department of Justice, such as the Office of Immigration Litigation, Civil Division.

Conduct structured interviews with officials from government and non-government outside organizations and interested parties, including the Departments of State and Labor, the Office of Management and Budget (OMB), the CIR, the Domestic Policy Council (DPC), the General Accounting Office (GAO), and the National Academy of Public Administration (NAPA).

Convene a series of focus groups in Washington, D.C. for key INS policy and senior management officials, including field-based officials, such as Regional Directors, District Directors, Chief Border Patrol Agents, Regional and District Counsels, and INS Headquarters officials, including the Commissioner and other senior managers.

Task 3. Benchmarking

Consult with other Government agencies which have both enforcement and service functions, such as the Social Security Administration (SSA), the U.S. Customs Service, the Internal Revenue Service (IRS), and the Departments of State and Labor, to gather pertinent information on how these agencies manage these functions, how they are organizationally structured and their applicability to INS.

Task 4. Development of Alternative Reorganization Proposal(s)

Develop an alternative reorganization proposal or a range of proposals whereby the current enforcement and service functions of INS continue to be carried out by the INS under the authority of the INS Commissioner. These alternative proposals should build upon the naturalization process redesign work currently being performed for INS by the consulting firm of Coopers and Lybrand, with particular attention paid to effective customer service. In addition, any proposed alternative organizational structure should:

- Identify the interconnecting relationships among and appropriate placement of INS' core enforcement and service functions, such as: (1) border and interior enforcement, and detention; (2) enforcement of immigration-related employment standards; (3) adjudication of immigration and citizenship benefits; (4) administrative review of decisions made by front line agents; (5) new INS initiatives; and (6) any impact on INS based on its projected workload and related factors over the next several years. Each reorganization proposal must clearly recognize how these dual responsibilities interrelate and demonstrate how they are compatible and co-exist appropriately.
- Examine the management and field structures required, including the roles and responsibilities of INS Headquarters, Regional Offices, District Offices, and single mission organizations of the INS such as Asylum Offices, Service Centers, and Border Patrol Sectors, and their interconnectivity.
- Identify and analyze organizational proposal implementation issues, such as how position grade, pay structures, career paths/development, between the enforcement function positions and service function positions would be affected. Seek equitable pay and career opportunities for enforcement and service personnel.

III. Progress Reports and Status Reporting

The contractor shall provide detailed, written progress reports to, and meet bi-weekly with, a Senior Policy Board of INS officials to brief on project progress, solicit input, and receive guidance.

IV. Period of Performance

The duration of this project will be two months, beginning on December 31, 1997. The contractor's final report will be due to the Department of Justice by March 1, 1998.

V. Government Support

The contractor will receive the following Government support for the performance of these tasks:

A. Documentation. Access to reports, studies, data and related materials necessary to perform these tasks.

B. Technical Assistance. Points of contact will be designated from applicable INS and DOJ offices to ensure consistency in areas related to data exchange and verification and other liaison matters. This assistance normally will be available only during normal business hours.

C. INS Senior Policy Board Input. The contractor will meet bi-weekly with a Senior Policy Board of INS officials to discuss progress and problems related to the successful completion of these tasks and deliverables in accordance with the approved workplan and schedule. The INS policy board will provide assistance and guidance to the contractor as necessary. The MPS Contracting Officer's Technical Representative will also attend the Senior Policy Board meetings.

VI. Government Contacts

A. Contracting Officer's Technical Representative

Terry M. Simpson (primary)
~~Robert J. Comiskey (secondary)~~
Management and Planning Staff
Justice Management Division

Louis C.
Santone-

B. Point of Contact - Immigration and Naturalization Service

Robert L. Bach
Executive Associate Commissioner
for Policy and Planning
Immigration and Naturalization Service

VII. Deliverables

In performance of the above tasks and in accordance with the above purpose and objectives, the contractor shall submit the following deliverables:

<u>Deliverables</u>	<u>Due Date after Award</u>
develop structure for the review	1 week
define data requirements	3 weeks
develop/present draft report	6 weeks
develop/present final report	8 weeks

Immigratic - structural reform

Steven M. Mertens

01/26/98 05:23:13 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: INS Restructuring Follow-up

I talked with Bob Deigleman (Justice/JMD) this afternoon concerning the INS Booze-Allen study -- he was very upbeat. He reported good news. Booze-Allen, through their review effort to date, has come to the same conclusion as the OMB passback -- enforcement and benefits should be totally separated both in the field and headquarters. Booze also agreed to continue their contract and will focus on the implementation of this concept through the March 1 contract due date. Booze will have a draft report completed by 2/16, as we suggested, and both Michael and Elena will be invited to Senior Policy Board Meeting -- the first will be scheduled next week (I told Bob that Julie and I would likely be the attendees -- but that Michael and Elana should be formally invited).

Bob said that the meetings held last week turned this process around. He also reported that the AG told the Commissioner that she wanted INS to ensure that DPC/OMB were fully involved in the restructuring process and that the final outcome reflected what we wanted. Bob also said that prior to the Friday meeting, the Commissioner said that there shouldn't be any disagreement with DPC/OMB because INS essentially got what it wanted -- keeping the agency intact. Hopefully, this effort can now continue in a more positive/constructive vein.

JMD/Booze will contact me and Julie tomorrow to further discuss the OMB passback approach. I will keep you posted.

Message Sent To:

Michael Deich/OMB/EOP
Elena Kagan/OPD/EOP
Julie A. Fernandes/OPD/EOP
Kenneth L. Schwartz/OMB/EOP
David J. Haun/OMB/EOP
Leanne A. Shimabukuro/OPD/EOP

Steven M. Mertens

02/25/98 06:28:40 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: Re: White House Immigration Working Group

----- Forwarded by Steven M. Mertens/OMB/EOP on 02/25/98 06:28 PM -----

Steven M. Mertens

02/25/98 06:19:59 PM

Record Type: Record

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

cc: Julie A. Fernandes/OPD/EOP@EOP, Kenneth L. Schwartz/OMB/EOP@EOP, David J. Haun/OMB/EOP@EOP

Subject: Re: White House Immigration Working Group 

Booz sent over a rough draft of the report last Friday night. Julie Fernandez and I meet with Booz, Justice, the Commissioner and INS staff for four hours this morning to discuss the draft findings and what the INS/Administration want from Booz as a final report. The meeting was constructive and we will meet with this Senior Policy Board again tomorrow afternoon to continue the discussion.

Booz has spent considerable time "drilling down" to what a possible local office -- enforcement and services -- would look like (this was an INS request to ensure that the enforcement/services split is workable). This made up most of today's briefing. INS is still kicking with muted screaming about the service/enforcement split from headquarters to the field. They kept focusing on the need for integration and at what levels integration needed to be accomplished. Booz has been very good at defending the functional split rationale and stressing that integration can be accomplished through process and technology NOT organizational structure and reporting relationship.]

Julie and I have one organizational problem with the Booz package and a presentation question we would like your guidance on prior to the meeting tomorrow:

Organization -- The draft organization Booz has drawn up establishes an "enforcement operations," "service operations" and "shared services" organization under a Commissioner. The shared services function would include all the administrative functions (personnel, information resources management, etc.). I told INS and Booz that we believed the administrative support function should be a staff responsibility reporting to the Commissioner (this is how it was portrayed on the strawman). From an optics point of view we wanted the INS restructuring to focus on the mission driven operations of enforcement and services -- with no other subagency head of comparable

stature. We also need to address the role of HQ administrative services since the success of the operational components depends on competent execution (some administrative operations such as IRM might be better placed under operations with admin services providing R&D and ensuring consistency across the agency -- this was the thrust of the strawman). Booz, on Monday agreed with me, but today indicated that their organizational proposal was similar to the corporate world and it would be their recommendation.

If you agree, Julie and I will raise this issue again tomorrow and seek this change. We would tell INS/Booz that as a policy issue DPC/OMB believe a restructured INS should focus on an enforcement and services split as the preeminent sub-commissioner functional breakout with shared or administrative services reporting to the commissioner as a staff support function. ✓

Presentation -- The detail of the Booz product or report will be the focus of the discussion tomorrow. The draft shared with us (and which we will share with you) was 50+ pages of charts and graphs showing how Booz arrived at this organizational structure and briefing explaining how it would work. They planned to develop a 10-20 page executive summary and append the charts as their final product. There was discussion of the proper level of detail we should provide to Congress by April 1 and questions about whether an executive summary document with a minimum number of charts and milestones for implementation should serve as the Booz report. The concern was whether providing too much documentation (and detailed organizational proposal that had not been fully developed at this stage of the process) may open the Administration up to Congressional criticism. We were leaning towards a more minimalist approach -- an executive summary document that explains the Administration's proposal, specifically address Congressional concerns (performance measures related to lines-of-authority, consistency, professionalism and accountability) and a milestone chart showing how the INS planned to move from its current organizational structure to the restructured entity. ✓

Do you have a preference on the final report format -- Executive Summary or Executive Summary plus appendices?

DOJ plans to extend the Booz contract until March 10th so they can complete this effort. A revised draft report (one of the options above) will be recirculate either Friday or Monday.

Julie and I will keep you posted on the outcome of the meeting tomorrow. If you have any questions or need additional information, please contact either of us. Thanks.

immigration - structural reform
(and)
immigration - general
(and)
immigration - H1B Visas

▶ Julie A. Fernandes
01/29/98 06:13:39 PM
.....

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP, Leanne A. Shimabukuro/OPD/EOP
Subject: INS reform and H1B visas

Elena,

Any reform that we recommend to the H1B program will likely cause employers to raise other issues related to immigration and the Labor Department. The following are a couple of policy issues that we may have to confront as part of this process.

1. Labor Certification

As the Labor folks indicated yesterday, employers use the H1B program as a way to get foreign workers into the country fast -- short application and no labor certification process (as there generally is with the permanent employment-based visa program). Thus, any changes that limit or more closely subscribe the use of the H1B may cause employers to focus on what they believe is wrong with the labor certification process, as presently performed by the Labor Department.

The CIR recommended that the Labor Department no longer perform labor certification prior to the issuance of a permanent employment-based visa, largely because it takes them too long and because the tools that they use do not fairly reflect the dynamics of the labor market. The CIR did not suggest an alternative method for testing the labor market to determine if workers are needed in a particular job category, but suggested, as part of their overall proposal, that State somehow take care of it. The Carnegie folks suggested, informally, that the function could be contracted out to a private entity who could do the labor market tests more quickly and maybe better.

This is an issue that we likely need to focus on as part of the overall INS reform package and as it relates to the H1B program. As you would imagine, any proposal to change the labor certification process is very controversial -- particularly any proposal to eliminate Labor's role in performing a market-test as a predicate to an employment-based permanent visa.

2. Employer Sanctions

The CIR recommended that Labor should be empowered to sanction employers for failure to verify whether their employees are authorized to work. Under the current system, if a Labor Department inspector discovers that an employer is not verifying authorization to work (as demonstrated by their not filling out the I-9 forms), they refer the case to the INS -- Labor has no authority to sanction the employer for this violation. The CIR and others have suggested that Labor have this sanction authority, in part b/c referrals to the INS for this are almost never followed up on.

In preliminary discussions about this, Labor expressed some concern that their increased role in enforcing the immigration laws might chill the reporting of other labor violations by undocumented workers. However, Labor already has a role (by checking for I-9 violations and reporting them to INS) and this increased authority could be understood as enforcing labor laws

(that relate to the labor market), not immigration laws. The chief opponents to this change would likely be Republicans on the Hill who are concerned with businesses not being penalized for hiring illegals at all. This opposition could be significant, but the concept of sanctioning employers for failing to take steps designed to ensure that they hire legal workers is a strong one. Also, this is a good companion to our successful push last year to launch an employer verification pilot program, to improve the system of verifying whether employees are authorized to work.

Aside from the concerns that relate to the Labor Department, there are two areas of policy decision-making that we may want to resolve in conjunction with the INS reform. These are both less pressing, but are likely important to keep an eye on.

1. State Department and Visa Issuance

For employment-based visas issued overseas, there are three players: INS, State and Labor. Many (including the CIR, State and INS) have commented that this current process is duplicative. One suggested reform would be to remove State from doing a separate analysis of the application, and limiting their role to checking to ensure that there were no international or foreign policy restrictions on the applicant (checks with Interpol, etc.). Under the current system, State often readjudicates the visa petition rather than perform a more limited check. State has also identified a need for greater clarity regarding ultimate responsibility for certain decisions (like this one) where more than one agency plays a role.

We may, as part of our proposed reform, want to better clarify State's role as limited to international/foreign policy concerns only.

2. Immigration appeals

Under the current system, administrative review of immigration decisions is conducted by numerous entities located at the various agencies (State, Labor and Justice). In addition, the Bureau of Immigration Appeals (BIA) -- a 15 member panel appointed by the AG -- has nationwide jurisdiction over a wide range of cases, including decisions of Immigration Judges in exclusion, deportation, and removal decisions. Decisions of the Bureau of Immigration Appeals are reviewed by the Attorney General. The CIR recommended the creation of an independent body within the Executive Branch to hear all appeals of immigration-related administrative decisions, including deportation hearings. Decisions by this entity would be binding on the Executive Branch.

We have not yet fully explored whether the existing immigration appeals system needs dramatic reform or, if so, whether we would recommend a solution along the lines of that proposed by the CIR. It is not clear that this question has to be answered in the short term, but we may want to keep it within our sites.

Kennedy / Abraham Mtg 2/12/98

Abraham - Also split the cut / service - w/in DOS if not INS

Kennedy - how to show that accountability will be there.

hard to know how to do in conf chair

but has to show - this means real change.

Why not expedite appeals? level of consistency through port.

Also: set up unit almost like a port dept

border patrol - like it COP.

or for advancement

move to professionalize

Abraham series of hearings - look at diff functions.

Start in March? thru end of Conf.

Accountability

Consistency of decisions

Customer service

Competency (cultural? payment schemes?)

link to professionalism + accountability)

Immigration - general
and
Immigration - structural
reform

▶ Julie A. Fernandes
02/23/98 12:59:56 PM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: WH Immigration working group mtg.

Elena,

The meeting last week went very well. We covered lots of subjects, but we need to make decisions in a few areas.

1. Public Charge

We have received draft guidance from INS on how "public charge" should be determined for purposes of deportation and exclusion under the INA. This has been a bit of a sticky issue of late, largely b/c of confusion that was created in the wake of welfare reform. Both INS and State Dept. field officers have questioned whether current or prior use of Medicaid, food stamps, WIC or other welfare-type benefits necessarily results in a finding that the individual is or is likely to become a "public charge." WIC is clearly not a trigger, and INS issued guidance to that effect last December. INS has drafted guidance on Medicaid and Food Stamps that we need to clear. One question for us is how the guidance should be crafted -- i.e., should it say that x, y, and z are triggers or should it say that it is a totality test (as it currently does), but that q, r, and s and not triggers. Rob Weiner raised the question of whether we should issue a regulation, rather than guidance, to more firmly establish the criteria for field officers and EOIR judges.

Jack Smalligan from OMB has called a meeting for Wed. at 3pm so that we can decide whether to authorize INS to approve its draft guidance on Medicaid, food stamps, and other welfare-like benefits.

Also, the State Dept. recently issued a cable to its consular officials that is inconsistent with INS's current "public charge" guidance. Because this was internal State Dept. guidance, it was not sent to OMB or DPC for clearance. Scott Busby is going to contact folks at State to figure out what they are doing. We may need to convene a meeting with State and INS to get State's guidance to conform with what INS is doing.

2. INS Reform

Several people at the meeting (including Maria) urged us to decide to adopt the CIR recommendation that Labor be empowered to sanction employers for failure to verify whether their employees are authorized to work. According to Steve Mertens, the AG has the authority to delegate this authority to Labor. However, we need to decide whether we want to make this happen. Under the current system, the Labor Dept. checks to determine whether an employer is verifying authorization to work (as demonstrated by whether the I-9 forms have been completed for each employee) as part of a regular labor standards inspection. If they find a violation, they refer the case to the INS -- Labor has no independent authority to sanction the employer. The INS almost never follows up on these referrals.

I recommend that we push for this change. We will likely catch heat for it on the Hill, primarily from those in Congress who oppose any change that would get tougher on employers who hire illegal workers. This opposition could be significant, but the concept of sanctioning employers for failing to take steps designed to ensure that they hire legal workers in a strong one.

3. Central Americans

As you know, Justice has committed to issuing guidance to asylum adjudicators that explains the legal standard that the BIA and the AG have established for the handling of suspension claims. This guidance would simply spell out the standard, with no modification. Maria raised the issue of doing the same thing by regulation. This reg would not change the standard for "extreme hardship" or anything else; rather, it would codify existing law. Maria thinks that a reg would send a stronger signal to the groups. The only practical difference between guidance and a regulation would be that the reg would also apply to the EOIR. However, the EOIR is already charged with following the law in this area (as developed by the BIA and AG). A reg that codifies the law might be seen as a statement that we don't believe the immigration judges will follow the law without further guidance. John Morton at DOJ stated that they are opposed to a reg b/c of (1) how it would be seen by EOIR; and (2) that it would create a forum (through notice & comment) for the groups to advocate for a change in the legal standard. According to Morton, it was difficult for EOIR to accept having this process taken from them to begin with. Any reg on how the cases should be handled might be seen as further slap.

I recommend going forward with guidance, and ensuring that the process of developing guidance is inclusive (with the groups) and that it will effectively communicate the legal standard as developed by the BIA and AG.

4. Foreign Health Care Workers

Section 343 of the 1996 Immigration Act provides that all foreign health care workers (except doctors) that want to enter the U.S. to work must be certified by a designated U.S. agent. According to Mike Koplovsky at USTR, this is a likely conflict with Chapter 16 of NAFTA which prohibits such certifications. Koplovsky tells me that the Canadians are very upset about this, and may take the U.S. to the NAFTA dispute resolution entity once we begin to enforce this provision, which will happen as soon as the regs are in place.

INS is getting me an update of the status of the regs, etc. According to Bob Bach, there has been some back-and-forth between the AG and the Canadians on this. He is sending me a summary, so that we can know the status of those conversations. We may need, at some point, to ask INS, State, and/or DOJ if, in their respective legal opinions, it is possible to reconcile Sec. 343 with NAFTA.

If there is a conflict, we may have to decide whether to try to amend Sec. 343 to carve out an exception for Canada and Mexico -- according to those who remember when this provision went through, it was largely directed at the problem of Filipino nurses. However, according to some conference language, the Congress knew that there was a potential conflict with NAFTA and passed the provision anyway.

cc: France
Julie
LeanneImmigration - 2002
structural reform

IMMIGRATION

Backlog, Management Woes Fuel GOP Drive To Dismantle Agency

But Immigration and Naturalization Service plan to streamline and restructure may counter Republican plans

In recent years, the Immigration and Naturalization Service (INS) has been about as unpopular on Capitol Hill as any federal agency. Its most determined detractors want to tear it apart and start over. Its defenders — or what passes for such — can only muster the faintest praise: that it could be worse, and will be if critics get their hands on it.

This year, Republicans in Congress are intent on restructuring the agency, but first they must develop a consensus among themselves on how to do it, then overcome objections from the Clinton administration.

Rep. Harold Rogers, R-Ky, chairman of the Appropriations subcommittee

that funds the INS, which is part of the Justice Department, has been soliciting support for a proposal to terminate the agency and hand its functions to other parts of the government. Other Republicans agree that an overhaul is needed, but they want to move cautiously.

Such proposals are rooted in years of dissatisfaction with the agency's performance in handling its dual missions of trying to keep out illegal immigrants while welcoming those who come here lawfully. Since Republicans took control of Congress in 1995, they have been the loudest critics of INS, led by advocates of stringent immigration control such as Rep. Lamar Smith, R-Texas. But many Democrats acknowledge that some of the complaints are not unfounded.

Rogers' plan, which he hopes to include in the fiscal 1999 appropriations bill funding the departments of Commerce, Justice and State, would split the INS up and hand its functions over



Immigrants wait outside the Immigration and Naturalization Service Building in Los Angeles, Sept. 29, 1997. The INS is proposing changes of its own to counter GOP splitting up the agency.

to three other departments. Its border enforcement functions would remain in the Justice Department but would be better integrated with other law enforcement agencies. Visas and naturalization would be given to the State Department. And policing of illegal immigrants in the workplace would be given to the Labor Department.

Rogers recommends the split for two reasons. First, he said, the INS has botched so many missions that it is in need of radical restructuring. Second, its problems stem from the fact that it has two distinct — and sometimes conflicting — missions.

"They have a mixed mission," said Rogers. "At once they are charged with serving immigrants and at the same time enforcing the laws against those immigrants."

Rogers' proposal is based on recommendations made last year by the bipartisan U.S. Commission on Immigration Reform, a panel that was created through 1990 legislation (PL 101-649) to recom-

mend changes to American immigration policy. Its recommendation to split up INS was its last before disbanding. (1990 Almanac, p. 483)

The Clinton administration and INS officials adamantly oppose the split, arguing that there is an inherent inter-relationship between enforcement and immigrant processing, and splitting them into different departments would be a disaster. An agent considering a visa application, for example, needs to know in a timely manner if an applicant has entered the country illegally, or been convicted of a crime. A split would only compound the problems INS has had in coordinating its work with other agencies within the Justice Depart-

ment, they argue.

The INS is pushing a number of management reforms as an alternative. Or Feb. 9, agency officials announced a plan to streamline and improve its naturalization programs. By April, the INS is expected to release a management plan covering the entire agency.

Years of Problems

In criticizing the INS' general operations, lawmakers cite the agency's inability to reduce the ranks of illegal immigrants, estimated at around 5 million and its growing backlog of legitimate applications for visas and citizenship.

More specific criticism has centered on an INS effort to beef up naturalizations, known as Citizenship USA, during which approximately 180,000 people were granted citizenship in late 1995 and 1996 without proper background check (1997 Weekly Report, p. 595)

An outside audit by the accounting firm KPMG Peat Marwick, released Feb. 9, said 369 had been convicted of crim-

By Dan Carney

and should have their citizenship revoked. Another 5,954 had problems in their applications that could lead to revocation of citizenship. Most of these had been arrested for crimes and lied about it on their applications. The arrests themselves would not be grounds for denying an application, but lying on an application on such a serious matter would normally disqualify the applicant on the grounds that he or she lacked "good moral character." Just what to do with this group now that they have citizenship is still being studied.

After examining all qualifications for citizenship, the accounting firm also suggested the number of people who were given citizenship in error might be even higher. A random sampling of 5,438 of the more than 1 million naturalizations found problems with 3.7 percent. If extrapolated to the entire pool, that would be 98,850. Most of those were guilty of only technical offenses. But more than 11,000 could be considered to have failed the "good moral character" test.

Republicans argue that these problems were caused by pressure from the White House to naturalize as many citizens as possible before the 1996 election, with the thinking that the majority of those voting would select Democratic candidates. The INS vigorously disputes this charge, but freely concedes the program was mismanaged.

Among people reliant on the INS for their future, the agency comes under attack for the opposite reason. They criticize it for not processing citizenship applications fast enough for the overwhelming percentage of the applicants that are law-abiding. The current backlog, said Robert K. Bratt, executive director of naturalization operations, is more than 1.1 million. The bulk of the backlog is the result of a surge in applications, he said. But the effort to correct past errors has contributed as well.

A similar backlog occurred in the early and mid-1990s for permanent resident visas, when applications skyrocketed as a result of the 1986 Immigration Reform and Control Act (PL 99-603). In both instances, citizenship and visas, the INS did not see the wave of applicants about to hit them.

Lack of candor has also enraged INS critics. In 1995, INS managers at the Krome Detention Center south of Miami intentionally deceived a congressional fact-finding mission. In order to reduce overcrowding at the center before the arrival of the delegation, about 45 detainees were transferred to other facilities and 58 were released into the

community, according to an inspector general's report.

With a list of problems this long, interest in reforming the INS is widespread. But agreement on how to proceed is nowhere to be found. Rogers has had some discussions with the Republican leadership and other members who have jurisdiction over immigration



policy, and he hopes to write an INS split into his appropriations bill this year. But he is far from having the kind of support he would need.

"There's no consensus yet," said Rogers. "But we've just begun."

Opposition to his plan is coming from some unlikely sources, namely fellow INS critics. Smith, who chairs the Judiciary Committee's Immigration Subcommittee, and is one of the INS' most persistent foes, is urging a careful assessment.

A Top-to-Bottom Review

Smith is not impressed by anything he considers a quick fix. He said the agency's problems need to be rooted out through ongoing oversight and a management overhaul.

Any attempt to restructure the INS, he said, "needs to go beyond just moving people around or changing the organizational flow chart."

Similarly, Spencer Abraham, R-Mich., chairman of the Senate Judiciary

Immigration Subcommittee, is planning hearings but expects no immediate action. Judd Gregg, R-N.H., chairman of the Appropriations subcommittee that funds the INS, agrees with Smith that a thorough assessment is needed before overhauling the agency, an aide said.

Advocates for immigrants say the enforcement and naturalization branches of INS need to work together and that breaking the agency apart would undermine its overall mission. They also suspect an ulterior, divide-and-conquer motive on the part of those who want to break it up, saying that anti-immigrant forces in Congress would be in a better position to manipulate immigration policy if enforcement were placed in one part of the government and naturalization in another.

Pro-immigrant groups also say that those who want to break up the agency are simply trying to reduce immigration by neutering the agency that oversees it.

"It seems the INS serves as a proxy for immigration," said Frank Sharry, executive director of the National Immigration Forum, a pro-immigration group.

The INS may be the only agency that is at once unpopular in Congress and growing by leaps and bounds. Its budget has swelled by 166 percent in five years — nearly \$4 billion is proposed for fiscal 1999 — as Congress has placed greater emphasis on controlling the flow of illegal immigrants into this country. In some cases, Congress has given the agency more agents than it has asked for and says it can properly train. That is one indication that while the INS is a target of criticism in Congress, its enforcement mission is clearly a popular one on Capitol Hill.

The agency, meanwhile, is proposing changes on its own, including a beefed-up screening process to be undertaken when an application for citizenship is first received, and an enhanced fingerprinting system. Under the fingerprinting system, the INS itself would be responsible for all of the prints, which would be digitally recorded and sent electronically to the FBI for a background check.

INS Commissioner Doris Meissner said the agency was determined to "take every step possible to make sure the same mistakes are not made again."

A second report on the overall management structure of the INS is due by April 1. That report is expected to address the divided mission problem raised by Rogers by more clearly separating the enforcement and service portions of the INS. At the same time, it will oppose any formal split. ■

Immigration - structural reform

Steven M. Mertens

02/26/98 12:31:34 PM

Record Type: Record

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

cc: Julie A. Fernandes/OPD/EOP, Kenneth L. Schwartz/OMB/EOP, David J. Haun/OMB/EOP

Subject: Draft Booz Executive Summary Outline

In preparation for the meeting on the Booz Executive Summary report on INS restructuring this afternoon, Julie and I put together the attached outline to help focus INS/Justice/Booz on what we believe should be addressed in their final report. Any comments are welcome. Thanks.



99INSREP.W

INS Restructuring Report Format

The report should lay out the Administration's organizational plan (40K feet view) and explain the need for a functional, programmatic split from headquarters to the field. The report should elaborate on how this functional approach will address INS' programmatic and management issues. It should discuss how this structure will improve performance and ways the agency will measure improvement (consistency, lines-of-authority, accountability, customer service and competence) and show progress. It should spell out an implementation "action" plan (two years) that will allow stakeholder involvement as the restructuring is being developed and measurable milestones to track the evolutionary progress of the restructuring.

The report must clearly show that the Administration: (1) knows what INS' operational and management problems are; (2) has a clear, well defined organizational structure and rationale that will address these problems effectively; (3) is willing to measure the effectiveness of this organization as we move forward (understanding that this is a phased approach and modifications may occur as it is implemented); and (4) has a clear understanding/path/action plan on how to proceed.

Organizational Design Immigration and Naturalization Service

1. Outline of Restructuring Principles

- One agency -- both functions.
- Structure that improves operations -- not moves boxes.
- Builds on the advances, accomplishments and improvements achieved over the past 5 years.
- Maintain integration and synergy between enforcement and benefits.

2. What is the Administration's plan?

The Administration's approach is to recognize the need for INS to be organized along programmatic and function lines but to keep the INS intact. Separating enforcement and benefit/services operations -- both in headquarters and in the field -- will result in a more efficient and effective operation and strengthened accountability and lines of authority. Include Booz organizational charts/matrix that support this plan.

- INS remains intact with a Commissioner and Deputy Commissioner responsible for overall agency operations;
- Two Executive Associate Commissioners. One responsible for

- enforcement, the other for services/benefits;
- Strengthen and clarify INS' operational field structure;
- Integration of all border enforcement entities;
- Separation of service-related functions from enforcement and development of an organizational structure for immigration benefits that is a "community based" approach that brings services to the immigrant client population (building off the naturalization redesign effort);
- Establish a Chief Financial Officer (CFO) to improve INS financial, accounting and budget execution functions; and
- Clarify headquarter responsibilities and lines of authority.

3. How will this functional split address long standing management and performance problems within the INS?

- Outline Booz findings and recommendations regarding weaknesses in the current structural make-up and why a functional restructuring can improve INS' ability to accomplish its tasks.
- Address areas of concern and explain how this organization will improve operations and effectively measure performance and chart improvement.
 - Accountability
 - Line-of Authority
 - Consistency
 - Customer Service
 - Professionalism

4. What is the recommended action or work plan to implement this restructuring, address operational and management weakness, and accomplish this transformation?

- Establish a March 31, 1998, to March 31, 2000, timeline to chart the INS transformation. Include significant milestones (e.g. complete enforcement/service split, establish "model" local enforcement operation, etc.)
- Establish a temporary Office of Restructuring under the Commissioner
- The Department would solicit interest for an implementation contractor to further develop the INS restructuring, ensure coordination with and involvement of stakeholders, and guide the implementation process to completion (Coopers and Lybrand model).

Steven M. Mertens

02/26/98 09:34:03 AM

Record Type: Record

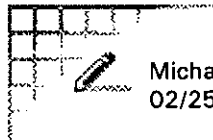
To: Elena Kagan/OPD/EOP, Julie A. Fernandes/OPD/EOP

cc:

Subject: Re: White House Immigration Working Group

Apparently this did not get mailed to you.

----- Forwarded by Steven M. Mertens/OMB/EOP on 02/26/98 09:32 AM -----



Michael Deich
02/25/98 10:08:34 PM

Record Type: Record

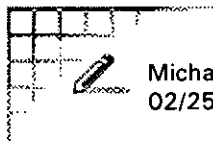
To: Steven M. Mertens/OMB/EOP@EOP

cc: Theodore Wartell/OMB/EOP@EOP, Patricia E. Romani/OMB/EOP@EOP

Subject: Re: White House Immigration Working Group

this didn't go through to elena and julie. would you please forward? thanks..

----- Forwarded by Michael Deich/OMB/EOP on 02/25/98 10:10 PM -----



Michael Deich
02/25/98 10:05:54 PM

Record Type: Record

To: Steven M. Mertens/OMB/EOP@EOP

cc: elena kagan/opd/eop@eo, julie a. fernandes/opd/eop@eop, kenneth i. schwartz/omb/eop@eop, david j. haun/omb/eop@eop

Subject: Re: White House Immigration Working Group

Organization>>> I agree with you and Julie. To me, your framework keeps the focus on INS principal functions (benefits/enforcement) without sacrificing administrative efficiency. I see no advantages in the Booz approach. Does INS?

Report format>>> I don't see what we lose by having Booz issue a more detailed report, as long as the report makes clear that it doesn't represent the Administration's final view on the issue. Since you and Julie have seen the actual report, however, I'll defer to your collective judgment on this.

MEMORANDUM

TO: Elena Kagan

FROM: Julie A. Fernandes
Leanne A. Shimabukuro

DATE: December 5, 1997

RE: INS Reform Meetings

The following is a summary of the meetings that we have held with various groups and agencies concerning our review of the final recommendations of the Commission on Immigration Reform ("CIR") and other reform proposals.

1. The Immigration and Naturalization Service (INS)
November 13, 1997

INS generally supports reform that would split enforcement functions from service functions at the field level, though they are in favor of keeping the functions integrated at the regional office level. Their proposal is heavily focused on improving the customer services orientation of non-enforcement employees. They also favor putting the Border Patrol in the chain of command, to address the issue of the increasing alienation of the Border Patrol from the rest of INS. The INS is also looking into ways to create pay parity between INS inspectors and inspectors with Customs as the disparity creates negative tension between officers that need to work together on the Border.

At that same meeting, OMB outlined their proposal of a higher level division between enforcement and services. OMB's view is that there is insufficient attention given to either of the two parts, so a more significant split would be a good remedy. OMB also advocates for the establishment of one enforcement officer for the border instead of the current organization of Border Patrol agents, inspectors and investigators.

2. The Department of State
November 19, 1997

The CIR recommended the creation of an Undersecretary for Migration at the State Department who would head an office in charge of virtually all immigration services -- visas, adjustment of status, naturalization, labor certification, etc. The CIR has also recommended that the State Department perform all of the refugee applications overseas. Under the current system, State's immigration role is limited to: (1) issuance of passports; (2) staffing consular offices

abroad; (3) the processing of approximately 6.5 million visas overseas (including six million non-immigrant and ½ million immigrant visas) in conjunction with the INS; (4) an advisory role re: asylum cases adjudicated in the U.S.; and (5) advising the President about world conditions to assist him in determining the annual number of refugees the United States will accept from various regions of the world.

The State Department representatives expressed some interest in exploring the possibility of assuming full responsibility for refugee processing. They seemed to view this as a way to control a fee-based process, and thus boost their consular offices (which are now, according to them, understaffed -- particularly in high growth countries). They also acknowledged the value of "one-stop shopping" for benefits and the consolidation of enforcement. This, in their view, would assist quality control -- primarily reducing fraud. State also agreed that the visa process needs to be more streamlined to reduce some of the duplication between agencies and greater clarification is needed regarding ultimate responsibility for certain decisions where more than one agency plays a role. To this end, State and INS have been involved in an effort called Data-Share, that would create a shared database between agencies. This effort started aggressively, but has stalled.

On the other hand, the State representatives voiced significant skepticism of their ability to assume the responsibilities of a large part of the INS -- particularly since they are in the process of absorbing both the USIA and ACTA. They were also very opposed to the CIR recommendation to make consular decisions reviewable (as part of their assuming greater, system-wide responsibility for the visa process). Finally, though they were in favor of the Administration having an immigration policy that recognized both the domestic and foreign policy aspects of this issue, they expressed a general philosophical view that immigration was more of a domestic issue, and thus was mis-matched with State.

3. Advocacy Groups (e.g., MALDEF, ABA, AILA, etc.)
November 21, 1997 (enforcement) and December 4, 1997 (services)

In general, the advocates believe that the most important reforms we could make would be in the areas of standards and accountability. Specifically, they are concerned that no direct line of authority exists between Headquarters and the District offices, leaving the District Directors as final decision makers on significant matters -- including interpretation of regulations. Further, many of those present advocated for a high level DOJ official to handle immigration (e.g., an Assistant Attorney General for Immigration). Their view is that without such a person, the DOJ is less institutionally responsive to immigration issues. In addition, there was support for the creation of a permanent office at the White House to handle the various migration issues on a more global policy level.

None of the advocates endorsed the CIR recommendations; in fact, they primarily criticized them. However, they did acknowledge some need to separate enforcement functions from services functions. According to the representative from AILA, this needs to be done, at a

minimum, at the district level, but the problem of mixing enforcement and services (to the detriment of services) exists throughout the agency. However, they expressed concern that complete separation between enforcement and services (as in the Reyes bill) may result in even less accountability by enforcement agents who are perceived as fairly independent. There is some belief that the fact that INS workers train in both enforcement and services mitigates the harshness of enforcement. However, there is also concern that promotions are generally only made from the enforcement side (most District Directors are former investigators), and thus that final services-related decisions are being made by enforcement officers.

On the general issue of State's role, the advocates were more comfortable with allowing the Department of Justice to retain control of the service process because of Justice's greater familiarity with and dedication to due process rights -- in contrast to State which frequently opposes administrative review of field decisions. Finally, all were opposed to giving State any enhanced authority in the area of refugees. Apparently, it has been a long fight to get State out of this process, because of years of politicization (see, e.g., Central Americans).

On the issue of streamlining, the advocates suggested scaling back the Department's role in the processing of petitions for non-immigrant visas. Under the current system, State often re-adjudicates the application instead of just checking Interpol and possible foreign policy concerns, which is simply duplicating processes. It was proposed that INS control the process, but consult with State for the limited purpose of international checks.

On the labor issues, the advocates seemed to generally favor permitting the DOL to sanction employers who fail to check whether their employees are authorized to work. However, they voiced concern about protections for undocumented workers who report labor violations. Also, the advocates expressed the view that the labor certification process for immigrant visas does not work well because it takes way too long, and is not responsive to rapid changes in the labor market. Though they expressed a preference for moving the process out of the Labor Department, they did not present a substantive reform proposal. However, according to Maria and others, there have been a couple of studies on this issue over the past couple of years.

Finally, on the issue of administrative review, the advocates favor a consolidation that would place all review at the INS, but ultimately favor a return to greater federal court review of BIA (or Attorney General) decisions.

4. Department of Labor
November 24, 1997

Currently, Labor performs three basic immigration-related functions: (1) adjudication of applications by employers for employment-based visa categories (both temporary and permanent); (2) enforcement of labor standards which are part of the criteria for some employment-based visa categories (temporary and permanent); and (3) referral of findings of I-9 non-compliance (verification of employee work eligibility) to the INS. The CIR recommends

empowering Labor to sanction employers for I-9 violations (rather than just referring them to INS, where there is often no follow-up). The CIR also recommended eliminating Labor's role in the labor certification part of the visa process.

Labor has strong reservations about moving the labor certification process out of their agency (either to State or to INS). Though many criticize Labor for taking too long to process a labor certification (and thus forcing employers to hire workers with temporary visas until the paperwork is completed), they believe that the link between employment-based immigration and the labor market supports the continued use of a some sort of labor market test in deciding whether an employer is permitted to import a foreign worker. Labor believes that if this test is to have any meaning, it must be conducted by the Dept. of Labor.

Labor also believes that adjudication and compliance should be in the same agency. Thus, that Labor should have the authority to impose sanctions on employers for the wide range of violations related to labor standards -- including whether the employer adequately tested the labor market before hiring a foreign worker. Labor also favors consolidating all non-immigrant programs and giving them all a set of labor standards that the Department could enforce. In addition, Labor is in favor of their being permitted to sanction employers for failure to verify whether their employees are authorized to work in the U.S., though they do not want to be responsible for turning over employees who are possibly working illegally to the INS. They are concerned that a fear of deportation could chill the reporting of poor labor standards, which adversely affects all workers. Finally, in the area of employment-based immigration, Labor is in favor of moving from a three-step to a two-step process, which would include removing INS from the process entirely.

5. Michael Meyers
Chief Democratic Counsel, Senate Judiciary Committee
November 25, 1997

According to Meyers, there is little known support on the Hill for the CIR recommendations. Chairman Abraham has stated that he favors a split between enforcement and services, without expanding on what this means. Also, Meyers has received indications from Lamar Smith's staff that though they may be interested in changes to the INS, they are not likely to be interested in dispersing INS functions into different agencies. Meyers also believes that INS is not "mature enough" to be a separate agency, and it is unlikely that there would be much potential support for this type of option. He believes that the functions would best be kept within INS, but acknowledges that any "reform" proposal would need to be sold as dramatic change.

Meyers suggested that a possible option would be a split between enforcement and services within INS that goes all the way up -- would create two Deputy Commissioners, with two separate chains of command: one with responsibility for enforcement and the other for services. He also favors moving INS law enforcement up to the level (training; pay; etc.) of other law enforcement agencies within the DOJ. Meyers suggested that the enforcement side

could be organized like a police department: start as a border patrol agent (beat cop), move up to an investigator (detective) and further potential to move up to Deputy Commissioner. Under the current INS structure, the Border Patrol is almost completely set apart from the rest of the enforcement staff. Thus, the career ladder ends at a fairly early point, which causes the Border Patrol to lose a lot of good people. Also, they are generally isolated from the rest of enforcement, creating a perception of lack of accountability.

Meyers is very much in favor of the change that would allow the Department of Labor to sanction employers for failing to verify the work eligibility of employees. Though this would likely be disfavored by some Republicans (who tend to prefer the current, impotent system) it might be a good principled stand for us to take, even if the Republicans knock it down. Finally, Meyers also expressed support for the CIR's proposed consolidation of administrative review.

6. Commission on Immigration Reform
November 25, 1997

Several members of the CIR met with us to clarify some of the positions taken in their final report, and to answer our questions. In general, the CIR wanted to propose reforms that eliminated both perceived conflicting responsibilities within the existing structure, that made a greater distinction between legal and illegal immigration, and that made the system more efficient and easier to run and access.

On the enforcement side, the CIR recommended folding INS enforcement functions into Main Justice and upgrading it to a Division, which would require costly changes in salary structure. The CIR also recommended that the inspection function be re-cast as an enforcement function. On the services side, the CIR recommended that State assume responsibility for most of the service functions, with Labor left to enforce labor standards, including non-compliance with I-9 process.

The CIR believes that State has the capacity to handle all of the service functions now performed by the INS. In addition, the CIR views immigration policy ("international migration") increasingly becoming more of a foreign policy issue, thus more compatible with State's mission. They found attractive the idea of State building on its domestic capacity (passport offices). The CIR concluded that moving immigration services to State (a global fee-generating service) would allow them to save their consular offices abroad, which are at risk of being further devalued and de-funded.

The CIR looked at Canada and Australia to determine how this issue is handled in other countries. Both Canada and Australia have a Cabinet-level office that is in charge of migration generally. Their focus, however, is less on enforcement and more on facilitation of the process.

The CIR also recommended an independent appeals process, not located within DOJ or State. In the context of fewer issues being appealable to federal court, this would provide the

needed integrity for the administrative procedure. However, under their proposed system, this would also likely require review of consular decisions, to which State is very opposed.

When asked to recommend changes within the existing system, the CIR suggested that an interim step could be to upgrade of the Commissioner's position within the DOJ, and to create two deputies (one for services, one for enforcement), each with a separate line of authority. This would go a long way toward solving "mission overload," but would not address the problem of duplication of effort and dispersion of responsibility between agencies. Next, they suggested that Labor should be removed of their responsibility for labor certification. Though it is an open question how some other agency or entity would handle this, it is clear that the present system does not work well. Finally, they reiterated their support for allowing Labor to sanction employers for failure to comply with I-9 requirements, and possibly making the hiring of authorized workers a labor standard, enforced by the DOL.

7. Carnegie Endowment
December 1, 1997

The Carnegie Endowment is currently in the process of drafting a report on INS reform that will likely be ready in February 1998. Carnegie was not in favor of the CIR recommendations. However, they do think that more reform is needed, and attention on the CIR report may fuel the ability to make such reforms. In general, they favor reducing the redundancies in the processes, making it smarter, more transparent and more logical. They recognize that a more dramatic proposal that they might favor (possibly creating an independent agency) is not likely to get support on the Hill, and is thus no more realistic than the CIR recommendation.

There are, however, a set of reforms that Carnegie supports. On the labor front, Carnegie would like to see the DOL with the authority to sanction employers for failing to verify whether their employees are authorized to work (I-9 failures), but would like Justice to continue to prosecute employers for knowingly hiring unauthorized workers. They are also in favor of taking the labor certification process from DOL -- possibly to privatize it, which they believe would be more efficient and cheaper. Finally, they expressed interest in making legal hiring a labor standard, enforced by DOL as part of their general review of employers for compliance with other labor standards (minimum wage laws; equal pay for equal work; etc.)

On creating a more streamlined process, Carnegie is interested in looking at how to eliminate unnecessary steps in the visa process. They have called for more cooperation between agencies, that could possibly include data sharing -- with the appropriate privacy protections. Also, they are concerned that there continues to be a lack of high level policy coordination on the larger immigration questions. This could be rectified through elevating the Commissioner (to an AAG), or through the creation of a more permanent immigration or international migration office somewhere else in the Executive branch, including possibly the White House.

8. Department of Justice -- John Morton
December 2, 1997

The Attorney General is concerned with accountability within the existing system. Justice has thought about proposing a programmatic and policy split between services and enforcement within the INS that might create better lines of authority, and thus greater accountability. An open question remains as to how the split between enforcement and services would be structured. They seem at this stage to be inclined to consider a split that is more aggressive than the INS proposal to split at the district office level. Justice is also interested in proposals that better integrate the Border Patrol within the rest of the INS enforcement structure, in a way that upgrades the other components (though they have not thought about the police department model). In conjunction with a service/enforcement split, Justice is looking at breaking out of the district model, to (1) a more regional model for enforcement (including detention); and (2) a more community-based model for services (along the lines of the service centers now being piloted by INS).

Though Justice has not seriously considered moving enforcement out of INS and into Main, they are reluctant to create another law enforcement sub-agency within the Department. Also, DOJ is opposed to the creation of an independent agency for administrative review. They do not want to diminish the Executive's adjudicative and policy-making role.

Justice is interested in coordinating, to the extent possible, the DPC review with the Booze-Allen study that has been authorized. If we decide that internal restructuring is where we want to go, we should let INS and DOJ know our suggestions as soon as possible, so that they can use this study to look at areas of reform that we identify, rather than wasting time on those that we clearly oppose.

Finally, the Commissioner is set to propose several changes to the 1996 Immigration Act within the next couple of weeks to the DOJ. There is a question about whether this should proceed on a different track from the INS review process. We believe that a separate track would be advisable at this time.

MEMORANDUM

TO: Elena Kagan

FROM: Julie A. Fernandes
Leanne A. Shimabukuro

DATE: December 11, 1997

RE: Options for INS Reform

We have done a very brief summary of the major INS reform proposals and provided an outline of the broad options which integrates aspects of the different proposals (as well as other informal suggestions that were made during our meetings) as a thinkpiece for you.

PROPOSAL SUMMARIES

Commission on Immigration Reform. The Commission on Immigration Reform (CIR) proposes significant structural reform to immigration operations. In its final report, the CIR proposed to eliminate the INS and restructure the immigration system into four main operations:

- **Immigration Enforcement:** All immigration enforcement (e.g., Border Patrol, inspectors, investigators) at both the border and the interior would be moved into a newly created Bureau of Immigration Enforcement and the Department of Justice.
- **Immigration Services:** The Department of State would assume responsibility for adjudication of all immigration-related applications, including immigrant, limited duration admissions (e.g., tourist, student visas), asylum/refugees and naturalizations. All immigration functions would fall under the jurisdiction of a new Undersecretary for Citizenship, Immigration and Refugee Admissions.
- **Worksite Enforcement:** All responsibility for enforcement of immigration-related standards for employers would be housed at the Department of Labor. This would include enforcing employer sanctions against employers who fail to verify I-9 forms for work authorization and monitoring compliance with employer attestations to sponsor skill-based immigrants.
- **Immigration Review:** An independent body within the Executive Branch would be created to hear appeals of immigration-related administrative decisions, including removal (e.g., deportation) hearings. Decisions by the appellate body would be binding over the Executive Branch. Only the federal courts and Congress would have the

authority to reverse.

Reyes Bill

- The Reyes proposed legislation, "The Border Security Enforcement Act of 1997," would make a significant structural change to INS by putting its entire enforcement component into a newly-created agency within the Department of Justice. The Director of the new Office of Enforcement and Border Affairs would report directly to the Attorney General. All enforcement, including Border Patrol, detention, deportations, inspections, intelligence, and investigations, would be moved to the new agency. INS would continue all remaining non-enforcement functions.

INS' Reorganization Proposal. The INS proposal would reorganize their existing structure and contains various management reforms.

- **Separation of Enforcement and Services:** The INS plan is focused on reengineering their delivery of services and moving toward a customer-service orientation. To this end, the INS plan would create a clearer delineation between enforcement and service functions by physically separating the functions at the district office level. Services staff and enforcement staff would be trained separately. This would also mean that individuals seeking services from INS would never come into physical contact with enforcement officers when entering district offices.
- **Infrastructure Improvements:** The INS plan focuses on making significant enhancements to technology, including the centralization and automation of INS records, in order to improve both delivery of services and law enforcement needs.
- **Management Reforms:** The INS plan would overhaul career development systems, and address longstanding pay issues to improve standards of professionalism within the Service.

OMB Proposal. The OMB proposal, similar to the INS proposal, retains current INS functions within the Service.

- **Separation of Enforcement and Services:** The OMB proposal would reorganize INS and create two Executive Associate Commissioners (EACs): one for enforcement and one for services and benefits. The EACs would report directly to the Deputy Commissioner. The Enforcement EAC would be responsible for all of INS' enforcement agents -- which OMB recommends merging into one uniform service and a white collar investigate service (CIR proposal). The EAC for Services would be responsible for regional service centers, foreign operations for refugees/asylees and all existing district office operations.
- **INS Headquarters Reorganization:** Headquarters would be focused on policy, strategic

planning and management, budget, and compliance with policy and procedures.

OPTIONS OUTLINE

As the outline below reveals, there are many ways that the various proposals could be combined. We have used three very broad categories as a guide to thinking about the issues: reforms within INS; reforms that involve changes within the Department of Justice structure; and reforms that impact other agencies.

I. Reform that would keep all functions within INS.

A. Separate enforcement from services -- from field up to Headquarters.

1. Create two Deputy Commissioners, with two separate lines of authority and chains of command: one with responsibility for enforcement and the other for services.
 - a. Could organize the enforcement side more like a police department: start as a border patrol agent (beat cop), move up to an investigator (detective) and further potential to move up in the chain of command to Headquarters.
 - i. Would address the concern that the border patrol agents are too isolated from the rest of enforcement, which creates the perception of lack of accountability.
 - ii. Could create a more substantial career path for agents, resulting in lower turnover and greater professionalism.
 - b. Would create a direct line of authority between Headquarters and district offices, providing for greater accountability that many say is lacking under the current system.
 - c. Would allow for the creation of a more regional model for location of all enforcement resources (i.e., Southwest Border emphasis) and a more community-based model for services.
2. Create two Executive Associate Commissioners-- one for services and one for enforcement. Resulting stovepipe structure for all enforcement and service functions could be same as above but would merge at the Deputy Commissioner's office.

- B. Separate enforcement from services at district office level only.
 - 1. Split enforcement from service functions at the field level, though keep the functions integrated at the regional office level and above.
 - 2. This option is favored by INS.

In addition, under either model, could better integrate the Border Patrol in the chain of command within enforcement, to address the issue of increasing alienation of the Border Patrol from the rest of INS. Also, could move law enforcement within INS up to the level (training, pay, etc.) of other law enforcement agencies with the DOJ. In addition, under either model could re-cast inspections as an enforcement function.

II. Reform that would keep all functions within the DOJ, but move some out of INS.

- A. Move enforcement from INS to Main Justice
 - 1. Would better integrate the Border patrol into the Justice enforcement structure, and may result in improved professionalism and retention.
 - 2. Would require costly changes in salary structure.
 - 3. John Morton from DOJ informed us that Justice is generally reluctant to create another law enforcement sub-agency. Other Justice law enforcement agencies (e.g., FBI, DEA) may also resist.
- B. Create a high-level person at the Department of Justice to handle immigration (e.g., an Assistant Attorney General for Immigration).
 - 1. Could help make DOJ more institutionally responsive to immigration issues.
 - 2. INS argues this would actually weaken stature of immigration function since Commissioner now reports directly to the Deputy Attorney General.
- C. Consolidate administrative review within EOIR at Justice:
 - 1. Under the current system, there are several discreet administrative review functions being performed by INS and Labor.

III. Reforms that impact other agencies

Any of the following reforms but the first could be done in conjunction with a restructuring within the INS or within DOJ.

A. State Department

1. The creation of an Undersecretary for Migration at the State Department who would head an office in charge of virtually all immigration services -- visas, adjustment of status, naturalization, labor certification, etc.
 - a. Strongly opposed by advocates, INS, and DOJ.
 - b. Strong reservations raised by State Department.
2. State Department to perform all of the refugee applications overseas.
 - a. Strongly opposed by advocates. Apparently, it has been a long fight to get State out of this process, because of years of politicization (see, e.g., Central Americans).
3. Scale back the Department of State's role in the processing of petitions for non-immigrant visas.
 - a. Under the current system, State often re-adjudicates the application instead of just checking Interpol and possible foreign policy concerns. Instead, INS could control the process, but consult with State for the limited purpose of international checks.

B. Labor Department

1. Empower Labor to sanction employers for I-9 violations, rather than simply referring to INS, where there is little follow through.
 - a. Concern about protections for undocumented workers who report labor violations.
 - b. Concern that fear of deportation could chill the reporting of poor labor standards, which adversely affects all workers.
2. Move labor certification out of the Labor Department to INS (or State, if they are handling naturalization and visas).
 - a. Many criticize Labor for taking too long to process a labor

certification, which then forces employers to hire workers with temporary visas until the paperwork is completed.

- b. Labor believes that the link between employment-based immigration and the labor market supports the continued use of some sort of labor market test in deciding whether an employer is permitted to import a foreign worker.
- 3. Consolidate all non-immigrant visa programs and give them all a set of labor standards that the Department of Labor could enforce.
 - a. Could include making legal hiring a labor standard, enforced by the DOL as part of their general review of employers for compliance with other labor standards (minimum wage laws; equal pay for equal work; etc.)
- C. Create an independent agency to handle all administrative appeals.
 - 1. According to John Morton, strongly opposed by the DOJ. They do not want to diminish the Executive's adjudicative and policy-making role.
- D. Remove INS from the process of determining employment-based immigration (leaving decision to Labor and State).
- E. Create a permanent office at the White House to handle the various migration issues on a more global policy level.

INS Reorganization

In response to the September 1, 1997, release of the final report of the Commission on Immigration Reform (CIR), the President directed the Domestic Policy Council (DPC) to review the CIR report and recommend ways to improve and streamline Federal immigration policy development and management. The DPC working group will use the President's FY 1999 budget as the vehicle to transmit the President's proposal to the Congress. Towards that end, the following organizational option for the INS has been developed. This reorganization proposal permits INS to meet the fundamental programmatic challenges facing the agency in a way that addresses the concerns identified by the CIR while permitting INS' core functions to remain intact. The Department and INS are requested to address this organizational proposal as part of any appeal.

Restructure Headquarters:

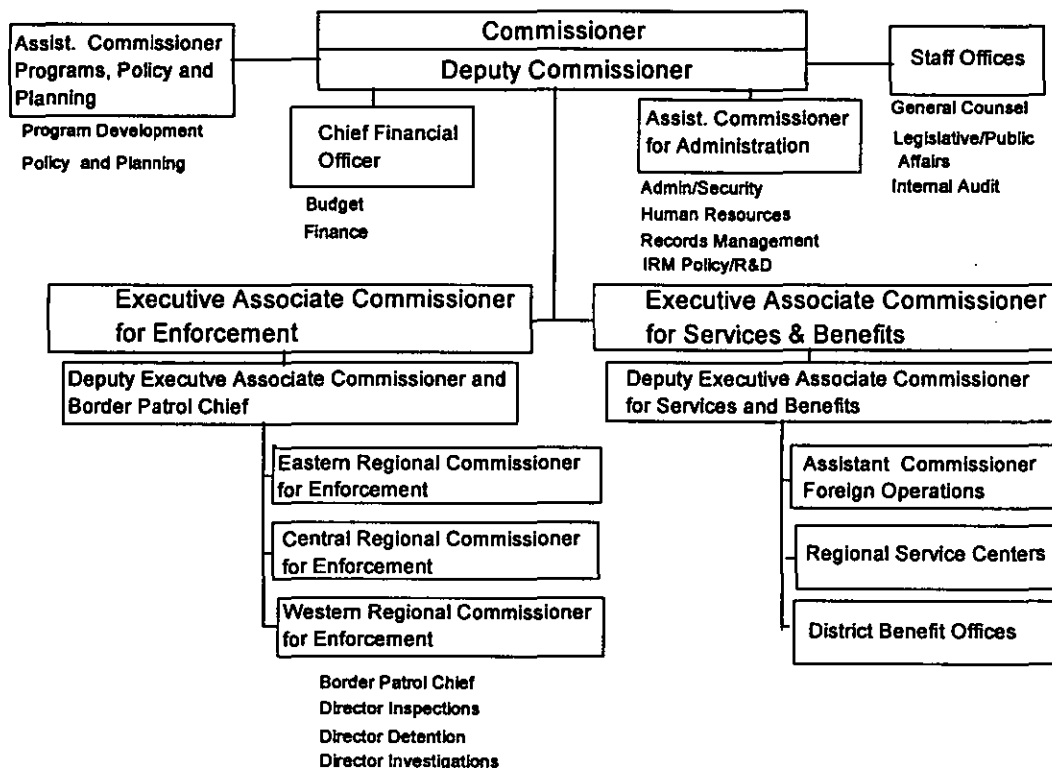
Up until 1993, INS operated with insufficient resources, weak or non-existent management systems and processes, and lackluster internal management. Since then INS has made progress implementing major changes to enforcement and benefit systems, improving management practices, and upgrading staff capabilities at a time when resources and responsibilities have grown significantly. Instead of dismantling an improved INS as recommended by the CIR, an effort should be made to build on the accomplishments of the past four years. What INS requires is a streamlined organizational structure based on programmatic priorities and clear lines of authority, responsibility and accountability. Such a structure would focus attention and assign responsibilities to those charged with carrying out INS' dual enforcement and benefit roles. We believe these dual but interrelated responsibilities should remain within one agency and properly within DOJ. A future INS organization should have these features:

INS Headquarters, lead by a Commissioner and Deputy Commissioner, would focus on policy, strategic planning and management support (finance, records, Information Resource Management (IRM) policy and R&D); budget formulation; and compliance with policy and procedures. All line management and operational authority for agency-wide support systems like finance, budget, IRM policy, R&D, and records management would be consolidated in Headquarters.

- Reflecting the importance of INS' fee and fine account receipts (\$1.4+ billion) and the deficient condition of INS' financial operations, a separate Chief Financial Officer (CFO) would be established and report directly to the Commissioner. The CFO organization would include agency-wide budget formulation and execution.
- IRM policy and standards and all R&D initiatives would be consolidated within Headquarters. Operational and support IRM functions would report to the respective program offices.

immigration - structural reform

- A small policy and planning office would develop long-range strategic plans, perform GPRA implementation and monitoring, and improve INS' important statistically policy and measurement responsibilities.
- Headquarters Administration should focus on consolidating records management, improving agency facilities, and managing a streamlined administrative service center operation to effectively meet the needs of field operations.



Programmatic Focus:

While the CIR recommends splitting the agency, a programmatic split that maintains the enforcement/benefit link necessary to function effectively accomplishes the same goal. The reorganization would separate **Enforcement** and **Services** under the leadership of two **Executive Associate Commissioners (EAC)**. The creation of these two EACs would ensure that clear lines of authority, responsibility and accountability exist in program operations, help bring a field perspective to Headquarters decision making, and reduce stovepipe operations currently

prevalent in enforcement operations. The CIR recommendation to merge INS' enforcement agents (Border Patrol, inspection and detention) into one uniform service and a white-collar investigative service should be implemented. This reorganization supports this evolutionary initiative by putting the Border Patrol Chief in a direct line of authority for all enforcement activities and operations organized along Border Patrol sector and regional boundaries. The CIR also calls for higher visibility and focused management attention on the provision of services and benefits to immigrants, and to ensure organizational safeguards exist so that fee account receipts support fee-related activities. The division of responsibilities as proposed under this reorganization and improved financial systems will help achieve these goals. Under this proposed organizational structure, the EACs for Enforcement and Services would be responsible for the following:

Executive Associate Commissioner for Enforcement would coordinate all enforcement operations and staff (Border Patrol, investigation, inspections, intelligence and detention).

- A Deputy Executive Commissioner, who is also the Border Patrol Chief, would have line authority for all enforcement activities to ensure coordination between enforcement components.
- Three Regional Enforcement Commissioners would be responsible for coordinating INS enforcement functions within the regions. A Deputy Regional Commissioner would also be the Regional Border Patrol Chief with line authority in that region.
- INS enforcement functions would be organized along the Border Patrol sector model with sector chiefs for each function reporting to the region.

Executive Associate Commissioner for Services and Benefits would be responsible for providing efficient service and effective and accurate delivery of benefits to the immigration community.

- Regional Service Centers, which will play an expanded role as direct mail benefit processing comes on line, will report to this EAC.
- Foreign Operations, which has dual benefits and enforcement responsibilities for refugees, asylees and international anti-terrorism efforts would report to this EAC.
- All existing District Office operations (31 district offices or the expanded 80 suboffices currently under development) would report directly to the Deputy EAC. This direct reporting relationship will ensure that standards are consistent agency-wide and these standards and operating procedures are understood and applied consistently within all of INS' districts.

BRIEFING PAPER ON PROPOSALS TO REORGANIZE THE U.S. IMMIGRATION SYSTEM

November 13, 1997

The purpose of this paper is to briefly review proposals for the reform of the U.S. immigration system and the various agencies that form that system.

BACKGROUND

The starting point for discussion must be the depths to which the immigration system fell during the 1980s in its ability to manage an ever increasing workload related to historically high levels of legal and illegal immigration. In 1991, the General Accounting Office (GAO) issued a report entitled, *Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems*, that described a baseline of ineptness at the beginning of the decade and called for reforms of the immigration system through the 1990s. Unfortunately, many observers still use this dated experience not as a baseline but as a description of the current performance of the immigration system.

In the last 5 years, the Administration and Congress have combined forces to provide the immigration system and, especially, the historically neglected Immigration and Naturalization Service (INS) with the increase in resources needed to begin to get the job done. The INS received \$1.5 billion from all its accounts in FY93. Its FY98 budget will be approximately \$3.8 billion, a 152% increase over FY93 levels.

Under new leadership, the INS also started internal reforms to overcome the extensive management and organization problems of the past and to launch a reinvigorated agency to tackle the challenges of the 1990s. The first steps began in 1994 when INS reorganized to overcome the "stovepiping" of its former organizational structure. According to studies conducted by DOJ's Justice Management Division and the GAO, the former structure resulted in confused roles and responsibilities, excessive spans of control, inconsistencies in service processing and adjudications, difficulties in coordinating enforcement activities, and barriers to effective communication between the field and headquarters.

The 1994 INS reorganization took a first step to support the dramatic increase in resources and assignments. It began to reorganize to take advantage of the increasing resources by investing significantly in new technologies, reforming its core service systems beginning with the asylum system, coordinating new enforcement operations, especially along the Southwest border and in the Caribbean, and seeking a policy leadership role in immigration affairs.

INS also instituted at that time a management by objective system that foreshadowed the requirements of the Government Performance and Results Act (GPRA). INS is already fully involved in defining and monitoring its performance in outcome measures that tie closely to the budget process, as required for all agencies by FY99.

ACCOMPLISHMENTS

Growth in the INS workforce parallels the tremendous increase, after three decades of large-scale immigration, in the workload facing the immigration system. Simply recruiting, hiring, and incorporating the number of new personnel is an accomplishment that few public agencies have either faced or achieved. In FY94, INS had 17,486 full-time personnel. By FY97, it had reached 24,984.

In priority areas, INS reached nearly 100 percent of its ambitious hiring goals. With this action, INS will increase the Border Patrol, for example, from 4,226 in FY94 to a projected 8,859 by FY99. Reflecting the priority given to removals of illegal immigrants from the United States, the INS will also increase its deportation and detention officer corps from 1,260 in FY94 to a projected 2,900 by FY99.

The increase in staff has also lead to significant outcomes. In any year, the Border Patrol makes approximately 1.3 million apprehensions of people attempting to cross the Southwest border illegally. In areas where the Border Patrol has concentrated its new resources, the early signs of gaining control are emerging and apprehensions are dropping dramatically as fewer people attempt to cross in those areas.

The track record in removals of criminal and non-criminal aliens is also impressive. Working with the Executive Office of Immigration Review (EOIR), the Marshals Service, and other components of the Department of Justice, INS has increased its removals from 45,395 in FY94 to 110,000 in FY97. As resources continue to grow, INS projects it will remove 142,750 criminal and non-criminal aliens by FY99.

The capacity to provide immigration-related services has also grown substantially in the last 5 years. After three decades of large-scale immigration, new applications for immigration benefits, such as naturalization or family reunification, are growing at historically unprecedented rates and reaching unsurpassed levels. In FY94, for example, new naturalization applications reached approximately 540,000, which significantly surpassed any year since the early part of the century. By FY99, however, INS projects that new naturalization applications will reach 1.8 million. INS has been able to respond. In FY94, INS completed 444,0074 naturalizations. By FY99, INS projects completions to reach 2.4 million as the Service works off the backlog created during this period of tremendous growth.

Every year, the INS, Customs Service, and other Federal inspections agencies successfully examine millions of foreign and U.S. travelers passing without incident through border ports of entry and airports. For example, according to the Department of Commerce, which works closely with the INS to foster travel and tourism, international arrivals by air into the United States were 44.8 million in FY94 and are projected to increase to 57.2 million by year 2000. Across the southern land border, federal inspection agencies, working together, examine 300 million individuals on average per year. At the northern border, another 130 million travelers are inspected each year.

In FY97, INS also faced implementation of the new Illegal Immigration Reform and Individual Responsibility Act of 1996 (IIRIRA), which the President signed on September 30, 1996. A much smaller Immigration Service had been unable to write the regulations or to fully implement the Act's predecessor, the Immigration Act of 1990. A full five years after the 1990 Act, regulations had still not been published and significant parts of the law not implemented. In FY97, however, INS drafted new or amended regulations for more than 60 sections of the Immigration and Nationality Act, created, modified, and consolidated approximately 75 forms, added 25 new reporting requirements, and trained 16,000 officers by April 1, 1997, only six months after passage of IIRIRA.

The Department of State (DOS) has faced similar pressures from the growth of immigration and travel over the last few years. For instance, the Department issued over 6 million passports in 1997 and is expected to face, with INS, replacement of perhaps up to 5 million Border Crossing Cards. Without a Congressional extension, DOS and INS will have to replace 2 million cards and issue about 1 million new cards within a one-year period.

The scale of current operations and the progress being made throughout the current immigration system provide an essential backdrop to any discussion of reorganization. In considering the need for reorganization, it is important not to confuse unprecedented growth that comes with accomplishment, with expansion that creates malfunction. Even with the frustration that comes with bold expectations, and the need for many more improvements, the performance of the immigration system over the last few years has been unprecedented.

REFORM AND REORGANIZATION PROPOSALS

Over a year ago, INS began developing its second round of organizational reforms. Since 1994, the dramatic increase in personnel and workload supported another review and adjustment to increase the efficiency and effectiveness and to overcome problems that lingered from the initial reorganization. The decision was that the FY94 reorganization had not gone far enough to clarify roles and responsibilities among field and headquarters managers, to strengthen the position of the Border Patrol within the organization, and to reorganize the service delivery system. New problems had also emerged. Systemic problems with the naturalization program called for a complete overhaul of the way in which delivery of these services meshed with the need to protect against fraud.

INS leadership developed an interim reorganization plan that would correct some of these problems and set the stage for a more extensive reorganization in FY99 when core infrastructural developments had been fixed. These anticipated developments included the centralization and automation of records, personnel and pay reform, and naturalization reform.

The current Administration and Congressional review of the organization of the immigration system provides an early, but opportune mechanism for INS to put forward its long-term reorganization proposal. As an interim measure, INS has put forward for immediate Congressional approval elements of the interim proposal that strengthen administrative and financial management and that have already been thoroughly vetted through the Administration and Congress. The rest of the INS interim proposal will now be folded into the long-range, comprehensive plan to be put forward in the next few months.

In September, the Congressional Commission on Immigration Reform proposed reorganizing the functions of the immigration system into four categories. These include moving the following functions into new places within the Federal bureaucracy:

Immigration enforcement into a Bureau for Immigration Enforcement at the Department of Justice; Adjudication for eligibility for applications into the Department of State, creating a new Undersecretary for Citizenship, Immigration, and Refugee Admissions; Enforcement of immigration-related employment standards into the Department of Labor; and Appeals of administrative decisions, including exclusion, deportation, and removal hearings, into an independent Agency for Immigration Review.

The Commission testified on November 7, 1997, that these reforms are aimed at overcoming the inherent incompatibility of enforcement and service functions within one agency. The problems they believe this incompatibility create include competition for resources, lack of coordination and cooperation, and personnel practices that cause confusion about mission and responsibilities. The Commission also argues that combining responsibility for enforcement and benefits blurs the distinction between illegal immigration and legal admissions.

In opposition to the Commission's recommendations, Congressman Reyes submitted legislation (H.R. 2588) to establish the Office of Enforcement and Border Affairs within the Department of Justice and to separate out of INS all enforcement functions. The problems that this proposal seeks to overcome include a perceived weakness in the position of the Border Patrol within INS, competition for resources between enforcement and service activities, and the ambiguity of the status of Immigration Inspectors as law enforcement personnel.

INS' proposed reorganization addresses each of these problems and takes additional steps forward. Several examples are provided below.

For example, the INS proposal will strengthen the role of the Border Patrol within the agency, clarify the law enforcement status of immigration inspectors, and significantly improve communication with borderwide personnel by placing the Chief of the Border Patrol outside Washington, D.C., and closer to the majority of his agents on the Southwest border. These ideas have already generated demonstrable support from the Border Patrol Chiefs Association and others.

The INS has been working on personnel and coordination issues. For more than a year, for instance, it has been engaged in resolving a legacy of ambiguous, overlapping, and contradictory statutory authorities on personnel and, especially, pay reform issues. Working with the U.S. Customs Service and other Federal agencies, the INS has also demonstrated the capacity to achieve coordination and cooperation at critical points in the immigration system. For example, in response to a National Performance Review initiative, and during the last two years under Congressional mandate, INS and Customs have tested and demonstrated that coordinated management at the ports of entry is both possible and desirable. Successful coordination among Federal agencies performing their specialized functions under their own legal authorities is often preferable to unification under a single agency.

In INS' experience, the perceived competition for resources among enforcement and services results primarily from Congressional mandate and the structure of Congressional committees than from the structure of the immigration system. In fact, unless statutorily mandated by Congress, user fee accounts derived from adjudication of benefits cannot pay for any items that are not clearly related to providing the service or benefit for which the fees were paid. For example, resources from application fees cannot be expended for Border Patrol, Detention and Deportation programs or any other programs related expenses that are not in support of processing Exams Fee Account applications and asylum and refugee services.

INS and the Department of Justice are now facing an April 1 time frame set by Congress to put forward their full reorganization proposal. INS will hire two outside management consulting firms to assist in developing and validating its management and organization reform proposals.

The core features of these comprehensive reforms include the following:

comprehensive re-engineering of the way in which INS delivers services to legal applicants for benefits; dramatic improvement in the way INS interacts with its customers and the communities in which it works through function and physical delineation of enforcement and service delivery at local levels; strengthening of the Border Patrol in line with its increase in size and responsibility; deployment of new generations of technology made possible by returns on earlier, huge investments in infrastructure, including especially the centralization and automation of INS records. These changes in records makes efficient, streamlined, and prompt service possible, while strengthening the integrity of adjudications process; increase in the standards of professionalism within INS as a result of a complete overhaul of the career development system, including improved training and resolution of the pay and retirement issues that have caused internal personnel confusion; expansion of service to other Federal, state and local law enforcement needs through consolidation of records and information and improved identification systems involving state-of-the-art fingerprint technology; enhancement of communication between frontline INS employees and managers at all levels of the organization.

THRESHOLD QUESTIONS

Proposals to reorganize the Immigration and Naturalization Service and the entire U.S. immigration system have been considered in at least every decade since the 1930s. On occasion, the arguments have supported splitting various functions, while at other times they have advocated consolidation. In reviewing this long-

term history, and the experience of proposed reorganizations of other agencies, several threshold questions should guide deliberations on proposals for reorganization of any public agency. These include:

Reorganizations involve considerable redirection of effort and productivity during typically extended periods of debate and implementation. Reorganizations always take longer and cost more than anyone anticipates. Should the Administration or Congress delay progress in the current immigration system in order to design and test a new concept?

Is the diagnosis of current problems accurate? Efforts to reorganize the wrong problems can lead simply to new difficulties. Has there been sufficient analyses and broad-based agreement on the nature of the problems to warrant reorganization? All reorganizations are costly. Is reorganization the answer to the problems or can they be solved within current structures?

In the end, is what may be gained by reorganization so significantly different and better that it could not have been accomplished without the loss of time, effort, and resources to accomplish it?

Have all stakeholders' interests been taken into account, including the various groups, such as public employees unions, which have been strong and active participants in previous attempts at reorganization? Cross-agency reorganization involves complex personnel issues, including significant impacts on civil service and foreign service employees. In the era of labor-management partnership, has sufficient preparation and consultation occurred?

Beyond these threshold questions, the fundamental challenge in any review of reorganization proposals is to establish a basis for evaluation. Current organizational structures and agencies have a track record to examine and analyze thoroughly. But proposed organizations can offer performance promises that end up as superficial suggestions.