NLWJC - Kagan

DPC - Box 032 - Folder 004

Immigration - Central America Legislation

Group Type	Relief	Salvadorans	Guatemalans	Hondurans	Haitians	Total
ABC-like	Adjustment	190,000	50,000	10,000	0	250,000
	Presumption (leg only)	190,000	50,000	10,000	0	250,000
	Presumption (leg+reg)	[illegible]	[illegible]	10,000	0	15,000
Haitian-like	Adjustment	290,000	220,000	20,000	0	530,000
	Presumption (leg only)*	290,000	220,000	20,000	0	530,000
	Presumption (leg+reg)*	100,000	170,000	20,000	0	290,000
Nicaraguan-like	Adjustment	330,000	220,000	80,000	50,000	680,000
	Presumption (leg only)*	330,000	220,000	80,000	50,000	680,000
	Presumption (leg+reg)*	140,000	170,000	80,000	50,000	440,000

* Numbers could be reduced if individuals do not meet 7 year residence requirement by the time of hearing

Immig. Center Americas

Immig - Central American

Julie A. Fernandes
12/18/98 12:06:03 PM

Record Type: Record

To: Maria Echaveste/WHO/EOP

cc: Elena Kagan/OPD/EOP, Scott Busby/NSC/EOP
Subject: Re: FYI -- TPS meeting this afternoon

Yes. If DOJ (OLC) agrees that we can do DED for Salvadorans and Guatemalans covered by NACARA, we would want to annouce that and TPS for Honduras and Nicaragua as soon as we can (before Christmas, if possible).

If OLC concludes that we cannot do DED for Salvadorans and Guatemalans covered by NACARA, we need to decide whether to annouce TPS for Honduras and Nicaragua on its own, or whether that announcement needs to be coupled with an announcement re: legislative or administrative parity (presumption of extreme hardship). Alan Ehrenbaum from INS thinks that the groups are so focused on the NACARA regulations at this point that they may not react well to an announcement re: legislative parity -- they might see that as a signal that we have decided not to do anything more aggressive with the regulation.

After today's meeting, we should have a better sense of OLC's thinking re: DED.

julie

Immig - Central America

Julie A. Fernandes
12/01/98 07:02:18 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Maria Echaveste/WHO/EOP

cc: Leslie Bernstein/WHO/EOP, Laura Emmett/WHO/EOP, Marjorie Tarmey/WHO/EOP, Scott Busby/NSC/EOP

Subject: Central American relief

Scott Busby and I met this morning with DOJ, INS and State to develop final recommendations on how we should proceed with announcements related to the post-Mitch situation in Central America. The following outlines the issues discussed and the decisions that we need to make.

1. TPS

We received the first half of q&a from State and were promised the rest by the end of the day today. Also by c.o.b. today, State is going to provide us with a final position on whether we should reinstitute stays of deportation for either the Dominican Republic or Haiti given our decision to provide stays for Guatemala and El Salvador (to ensure consistency). State will also provide any information we need to support our final decisions on this issue.

The group recommends that Commissioner Meissner make the TPS announcement, along with a person from the State Department. It was thought that Doris would be best equipped to respond to the immigration questions. We would seek to have her do the announcement on Monday aftrenoon (she is out of the country this week) to give us adequate time to brief representatives of the countries before the Central Americans presidents arrive on Thursday for the debt relief conference.

As to addressing concerns about fraud, INS proposes to reduce the TPS registration to six months (it has traditionally been coextensive with the TPS period) and will be developing questions to assist in determining eligibility.

2. Legislative Parity

All of the legislative affairs folks (Caroline Fredrickson (WH), Patty First (DOJ), Allen Erenbaum (INS), Broderick Johnson (WH), and Gina Abercrombie-Winstanley (NSC)) agree that we should not make any announcement supporting legislation to achieve "parity" for Salvadorans and Guatemalans until after they have had much more time to work with members of Congress. Their fear is that if we make the announcement too soon, that will only give those who will be opposed to the legislation (such as Lamar Smith) a chance to get to the swing voters or other key members before we can. The leg. folks feel particularly strongly about this in light of indications of support for some kind of legislative action for Central Americans by Sens. Hatch and Abraham. Caroline noted that Hatch would be particularly put off by an announcement of our decision on legislation after he has indicated interest, but before he has been fully consulted about such a proposal.

However, the group agreed that it would be a good idea to indicate to the advocacy community and the Ambassadors to El Salvador and Guatemala (and possibly the presidents if there is a POTUS or VPOTUS meeting with them) that we plan to work with Congress to enact legislation

next year that would achieve parity for Salvadorans and Guatemalans.

3. Extreme Hardship and the NACARA regulation

DOJ (including INS) is opposed to including in the final NACARA regulation any presumption of extreme hardship (rebuttable or otherwise) for nationals from El Salvador and Guatemala. This opposition is based on the following: (1) such a presumption has never before been utilized; (2) a country-based presumption would be inconsistent with the concept of "individual adjudication" that underlies suspension claims; (3) it would be inconsistent with the facts (b/c it would not be "extreme hardship" for some Salvadoran and Guatemalan nationals to return to un-harmed parts of their countries and b/c hardships created by the hurricane will be significantly diminished by the time these adjudications occur); and (4) such a conclusion would be inconsistent with our decision not to grant TPS to these countries (b/c a presumption of extreme hardship would imply that these countries cannot really absorb their nationals).

INS would agree to provide information to immigration judges and NACARA adjudicators on hurricane-related conditions in El Salvador and Guatemala and direct them to take these conditions into account when adjudicating suspension claims for nationals of those countries. They would also consider amending the NACARA regulation to specifically identify conditions relating to natural disasters as relevant to the extreme hardship determination.

Thus, we may be able to couple our TPS announcement with a general statement that we plan to ensure that the conditions created by Hurricane Mitch are taken into account in the process of deciding NACARA suspension cases.

4. Next Steps

We need to decide the following:

a. Whether we agree to defer announcement of our support for legislative parity until we have had more of a chance to work with Congress.

Scott and I agree that this announcement should be deferred, in the interest of actually getting the legislation passed. We also agree that we should indicate to the advocacy community and the Ambassadors to El Salvador and Guatemala that we plan to work with Congress to enact legislation next year that would achieve parity. Jim Dobbins and Scott would conduct the briefings with the Ambassadors.

b. Whether we agree with the INS/DOJ view that we not adopt a presumption of extreme hardship for Salvadorans and Guatemalans covered by NACARA (n.b., such a presumption would be based on the totality of the circumstances vis-a-vis Salvadorans and Guatemalans covered by NACARA -- i.e., the history of unfair denial of asylum claims; ABC litigation; NACARA; our statements in support of parity).

Scott and I recommend holding off on this decision until after the end of the comment period for the NACARA regulation (end of January). This gives us more time to consider this option and avoids our making regulatory decisions outside of the notice & comment process.

c. Whether we continue to believe (given the strong possibility that the announcement will be TPS only) that press availability on the announcement (with Doris and someone from the State Dept.) would be better than a press release.

Scott and I recommend that Doris and someone from State should do a press availability. Our concern is that a press release would result in an uncontrolled message.

d. Whether we continue to believe that we need to announce TPS for Honduras and Nicaragua before the POTUS or VPOTUS possibly meets with the Central American presidents (on Dec. 10th or 11th). Our thinking had been that we did not want the TPS question to be open when the POTUS meets with the presidents; however, in light of the fact that the annoucement will be good news for two countries and not for the other two, does that change the calculation?

Scott and I recommend that we make this annoucement Monday afternoon (December 7th). Jim Dobbins was agnostic, but we think that (1) the decision in overdue (Dobbins agrees); and (2) there is an advantage to taking the TPS issue off the table in advance of the presidents' visit.

Please let me or Scott know what you think about these issues and whether you would like to get together to discuss them. Thanks.

julie

THE PRESIDENT HAS SEEN
12-11-98

Immig - Central American

THE WHITE HOUSE
WASHINGTON

December 10, 1998

MR. PRESIDENT:

Attached is a memo on the status of immigrants from Honduras, Nicaragua, El Salvador and Guatemala in the wake of Hurricane Mitch. It is styled as an information memo, but it could easily be read as seeking a decision from you. *I've spoken with Maria about it, and there's no need for you to make any decisions -- unless you object, your advisors are implementing a plan of action consistent with sentiments you've previously expressed.*

Please note however, that because Honduran and Nicaraguan nationals will receive different treatment than those from El Salvador and Guatemala, your advisors recommend delaying announcement of these relief actions until after your meeting tomorrow with the Central American Presidents.

Phil Caplan

cc: d
Echaveste
Berger
Reed
Podesta

THE PRESIDENT HAS SEEN
12-11-98 8261

THE WHITE HOUSE

WASHINGTON

December 9, 1998

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: MARIA ECHAVESTE
SAMUEL BERGER
BRUCE REED

SUBJECT: Immigration Response to Hurricane Mitch

In the wake of Hurricane Mitch, one of the key issues raised by both the Presidents of countries in Central America and many immigration advocacy groups is what to do about Central Americans who are without legal status in the United States. In early November, the Immigration and Naturalization Service (INS) temporarily stayed removals of all nationals from Honduras, Nicaragua, El Salvador, and Guatemala. At your request, the INS then extended that delay until January 7, 1999. The long-term economic devastation and social destruction left by Hurricane Mitch, however, requires a more systematic approach to the treatment of those individuals. This memorandum sets out a proposed course of action.

Temporary Protected Status

As you know, the Attorney General has authority to grant Temporary Protected Status (TPS) for 6 to 18 months to nationals of a country if she finds that there has been an environmental disaster in that country that renders it temporarily unable to handle the return of its nationals. Persons who qualify for TPS are not subject to removal and are eligible for permission to work in the United States during the time period designated by the Attorney General.

The Department of State has evaluated conditions in Central America and recommends that the Attorney General grant TPS to nationals from Honduras and Nicaragua. The Department of Justice (DOJ) agrees that TPS would be appropriate for nationals of these countries. We recommend that the Attorney General grant TPS to nationals from Honduras and Nicaragua for a period of one year. At the end of that one year period, the designation could be renewed.

cc: Vice President
Chief of Staff

The Department of State does not recommend TPS for nationals from El Salvador and Guatemala. The Department has concluded that the effect of Hurricane Mitch in these two countries is insufficient to warrant a TPS designation. More than 90 percent of the deaths and displacement caused by Mitch occurred in Honduras and Nicaragua. Moreover, while the economic and infrastructure damage in El Salvador and Guatemala has been serious, it is not severe enough to meet the TPS standard.

Alternative Relief for El Salvador and Guatemala

Because Mitch had serious effects on El Salvador and Guatemala and because we are interested in providing a coordinated response to all four affected countries, we believe we must also address the circumstances of Salvadorans and Guatemalans in the United States.

As you recall, the Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted in late 1997, authorized virtually automatic permanent status for Nicaraguans and Cubans living in the United States since December 1995, while providing those Salvadorans and Guatemalans who applied for asylum prior to 1992 with only an opportunity to be considered under the more lenient (pre-1996 Act) rules for suspension of deportation (a form of immigration relief leading to permanent status). Hondurans were excluded altogether from this legislation. In your signing statement to the NACARA legislation, you noted that the Administration would seek to overcome disparities created by the legislation through the implementation process. In line with this statement, DOJ has recently proposed regulations that would greatly improve the chances for Salvadorans and Guatemalans seeking to obtain permanent status by affording them an additional non-adversarial hearing before an INS officer and codifying the legal standard applicable to their claims. The regulations, however, still do not provide the kind of guarantee of permanent status enjoyed by Nicaraguans and Cubans. And although DOJ has committed to ensuring that immigration officers take the effects of Mitch into account when adjudicating suspension claims under NACARA, even this special consideration will not guarantee that all Salvadorans and Guatemalans would meet the "extreme" hardship standard required for suspension of deportation.

During the last session of Congress, Rep. Gutierrez sponsored legislation that would have provided amnesty to Salvadorans, Guatemalans, and Hondurans equivalent to that obtained by the Nicaraguans and Cubans in NACARA. We did not support that legislation because we have generally not favored grants of

amnesty. However, given (1) that similarly situated Haitians were granted amnesty in the last session, and (2) the changed circumstances brought on by Hurricane Mitch, we recommend that we now commit to working with Congress to pass legislation that provides amnesty for Salvadorans and Guatemalans covered by NACARA (i.e., the pre-1992 asylum seekers), as well as a small group of similarly situated Hondurans. Though legislation of this kind would not provide relief for all nationals of El Salvador and Guatemala living in the United States, it would help a significant number -- approximately 300,000 out of an estimated 500,000 -- and would be consistent with your commitment to achieving parity for all similarly situated individuals covered by NACARA.

In addition to seeking parity through legislation, we also recommend that we seriously consider granting Deferred Enforced Departure (DED) to those covered by the proposed legislation (which would also make them eligible for work authorization). We would need to identify significant U.S. foreign policy and national security interests to justify this extra-statutory measure based on your constitutional authority with respect to U.S. foreign relations. Use of DED authority would help allay the perception that Salvadorans and Guatemalans are receiving second-class treatment in our immigration policy response to Mitch, and would ensure that individuals are not subject to deportation while we seek permanent relief for them. As you recall, we granted DED to Haitians in December 1997.

Timing

Because we recommend a TPS designation for nationals of only two of the four Central American countries affected by Mitch, we strongly recommend delaying this announcement until after the visit by the four Central American presidents at the end of this week. We also recommend that when we do make the TPS announcement, we put it in the context of the broader immigration relief that we are prepared to provide to people from the region. This will help to alleviate the disappointment that El Salvador and Guatemala may feel at not being granted TPS. We also believe we should hold off on making any announcement until after we have had more of an opportunity to consult with the Hill. We have received indications that some members, including some key Republican members, may also be interested in pursuing legislative relief for Salvadorans and Guatemalans; a premature announcement of our intention to seek parity legislation might prejudice our chances of enacting the legislation.

Immig - Central America

Julie A. Fernandes
12/09/98 03:09:30 PM

Record Type: Record

To: Maria Echaveste/WHO/EOP, Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP, Leslie Bernstein/WHO/EOP, Marjorie Tarmey/WHO/EOP
Subject: Cong. Letter re: presumption of extreme hardship

FYI. Caroline F. just forwarded me a copy of a letter sent to the AG from Sens. Kennedy, Abraham, Graham and Mack on Dec. 15th of last year in which they discuss their view that it would be consistent with the NACARA legislation for the AG to use her discretion to presume extremere hardship for NACARA beneficiaries generally. I will fax you a copy of the letter.

julie

Immig - Central America

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

December 15, 1997

The Honorable Janet Reno
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Room 1145
Washington, D.C. 20530

Dear Attorney General Reno:

We understand that you are considering various options for implementing Title II of the D.C. Appropriations Act, the "Nicaraguan Adjustment and Central American Relief Act" (NACARA), especially as it pertains to the provisions creating a special transition rule governing cancellation of removal for certain categories of applicants. We accordingly thought it would be appropriate to share our views with you on this subject.

As you no doubt are aware, because this title was added on the floor as part of an amendment, no Committee Report was written to accompany it. Instead, Senator Mack, the sponsor of the original version of the floor amendment on this subject that ultimately became Title II, inserted a statement in the Congressional Record. That statement represented the views of the sponsor and his cosponsors as well as the views of the Chairman and Ranking Member of the relevant Subcommittee of the authorizing Committee. It contains our views concerning a number of provisions that bear on the issues you are considering. We enclose it for your consideration. We see no need to restate the specific points it addresses, although we would like to reiterate our strong encouragement that, in recognition of the delays and uncertainties that the beneficiaries of these provisions have already experienced in seeking legal status in the United States, the Administration do everything in its power to adjudicate their applications for relief expeditiously and humanely.

A number of questions have been raised since enactment of the legislation concerning how much flexibility the Administration has concerning the procedures to set up for implementation of the provisions relating to suspension of deportation and cancellation of removal. In particular, it has been suggested that since the language of the special transition rule for cancellation of removal established in section 309(f) of IIRIRA (as added by NACARA) is based on language contained in former section 244 of the Immigration and Nationality Act, the procedures for implementing the special rule therefore must in every respect track those currently in place to implement section 244. It has also been suggested that any failure to do so would of necessity create a discrepancy in the way NACARA itself is applied. This would inevitably result, it has

been suggested, because some of the beneficiaries of the new transition rules were in deportation proceedings as of April 1, 1997, and hence their applications for relief would be in the form of suspension of deportation under section 244 of the INA, whereas others were not, and hence would have their applications for relief adjudicated under the cancellation of removal special rule of section 309(f) of IIRIRA. The only alternative, it has been suggested, would be to have any special procedural rules for handling section 309(f) applications also govern applications under section 244 filed by NACARA beneficiaries, which in turn would create arbitrary distinctions between the handling of different applications under section 244.

We would like to address the second point first. We believe the premise that any beneficiary of NACARA who was in deportation proceedings as of April 1, 1997 must have his or her application for relief adjudicated under section 244 is mistaken. IIRIRA's original transition rules make it plain that the Attorney General has complete discretion to take an individual in deportation proceedings as of April 1, 1997 and instead place that person in removal proceedings. See section 309(c)(1)-(3). Nothing in NACARA modified this authority, and indeed, one of the amendments made by NACARA to subsection 309(c)(5) makes clear that NACARA specifically contemplated that this authority would remain available and could be used to vitiate the "stop time" effect NACARA would otherwise give to old "orders to show cause." See IIRIRA section 309(c)(5)(B) (added by NACARA). NACARA also went out of its way to make clear that section 309(c)'s special rules on physical presence and cancellation of removal would apply to any NACARA beneficiary seeking cancellation of removal "regardless of whether the alien [was] in exclusion or deportation proceedings before the title III-A effective date." See IIRIRA section 309(c)(5)(C)(i) (as amended by NACARA). Hence, if a different set of procedures were developed for implementing section 309(f), the various discrepancies giving rise to the second concern could be avoided by the simple expedient of placing all NACARA beneficiaries in deportation proceedings before April 1, 1997 who wished to have their cases considered under the new procedures in removal proceedings instead. This would eliminate any discrepancies among NACARA beneficiaries that would be caused by establishing procedures for adjudicating IIRIRA section 309(f) cancellation applications that differ from those used for adjudicating INA section 244 suspension applications by having all the NACARA beneficiaries proceed under IIRIRA section 309(f).

This leaves only the question whether even if it creates no discrepancies among NACARA beneficiaries, there is nevertheless a problem with having one set of procedures for adjudicating applications of non-NACARA beneficiaries under former section 244 of the INA and a different set of procedures for adjudicating applications under IIRIRA section 309(f). we would respectfully suggest that there is nothing wrong with such an approach. To begin with, we agree that section 309(f)'s language draws heavily on the legal standards set out under former section 244. But as a general matter, neither section 244 of the INA nor new section 309(f) of IIRIRA details the procedural rules for adjudicating applications under either section. This is in contrast to former section 242(b)'s specification of the procedures for determining deportability, as well as in contrast to current section 240's specification of procedures for determining both admissibility and deportability, including the allocation of the burden of proof with respect to each determination. Accordingly, in our view, if you were to decide tomorrow that section 244

procedures should be changed, you would be free to change them, provided you did so in compliance with any other statutory or constitutional requirements. Accordingly, we see no reason why you are not equally free to set up different procedural rules for adjudicating applications under new section 309(f), such as, for example, creating a presumption of hardship if an applicant for relief meets certain prerequisites.[1]

We would also point out that Congress made a conscious decision to create a special transition rule for NACARA applicants' cancellation of removal claims. At various times in the

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[1]Section 244 does allocate the burden of proof on one issue. It states that an applicant for suspension of deportation must "prove[] that during all of [the] period [of required continuous presence] he was and is a person of good moral character." The very fact that 244 specifies the allocation of the burden of proof in that instance, however, is further evidence that its failure to specify anything on the point with respect to the "hardship" determination was a deliberate decision to leave the issue open for administrative resolution under that provision. Similarly, new section 309(f)'s failure to borrow the "prove" language even on the "good moral character" issue likewise indicates a Congressional intention to leave the matter of the allocation of the burden of proof to be resolved by you in whatever manner you believe will advance the purposes of NACARA--although we would note that with respect to that determination, in contrast to the hardship determination, we see no policy reason for departing from currently established procedures.

There is one other difference between the language of former section 244 of the INA and new section 309(f) of IIRIRA that is worth noting. Section 244 stated that the Attorney General might grant relief "in the case of an alien who ... is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence." Section 309(f) of IIRIRA, in contrast, states that the Attorney General may grant relief if "the alien ... establishes that removal would result in extreme hardship to the alien or the alien's spouse parent, or child, who is a citizen of the United states or an alien lawfully admitted for permanent residence." "Establishes" could be interpreted to mean "proves by a preponderance of the evidence," since that is one of its ordinary meanings; but it can equally plausibly be interpreted to mean a showing that falls well short of proof by a preponderance of the evidence, since "establish" is used in that fashion as well in both ordinary and legal language. Cf., e.g., International Brotherhood of Teamsters v. United States, 431 U.S. 324, 357 (1977) (stating that the complainant must establish a prima facie case of discrimination by "offering evidence adequate to create an inference that an employment decision was based on a discriminatory criterion illegal under the Act"); Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (to avoid summary judgment under Rule 56, a party opposing a motion must "make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.") Since the word is ambiguous and both interpretations reasonable, you are free to choose either construction under Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

legislative process, it considered two other alternatives: placing the rule governing these applications under section 240A of the INA (as was proposed in the original bill on this subject transmitted by the Administration and introduced by Senator Mack and others) or placing them under former section 244 (as was proposed in a later version of the legislation offered by Senator Mack as an amendment to the D.C. Appropriations bill). Congress rejected both alternatives in favor of a special transition rule uniquely applicable to these cases. While no reason was given for this decision at the time, we would suggest that one natural rationale for it is that Congress believed these applications to be special cases, and hence that it was preferable to create a separate statutory scheme in part to leave the Administration more free to develop appropriate procedures for adjudicating them without being too closely bound by either the procedures for adjudication of applications under section 244 or section 240A of the INA.

Thus, it seems to us that you are entirely free to adopt procedures for adjudicating the hardship issue under section 309(f) that differ from those used to adjudicate the issue under former section 244 of the INA, and that these can include a rule that in light of the length of time they have been here and the difficulties they have faced, NACARA beneficiaries are entitled to a presumption of extreme hardship.

Sincerely,

Edward M. Kennedy
Ranking Member
Subcommittee on Immigration

Spencer Abraham
Chairman
Subcommittee on Immigration

Bob Graham

Connie Mack

Immig- Central American

Julie A. Fernandes
11/30/98 10:10:01 AM
****

Record Type: Record

To: Maria Echaveste/WHO/EOP, Elena Kagan/OPD/EOP

cc: Marjorie Tarmey/WHO/EOP, Leslie Bernstein/WHO/EOP, Laura Emmett/WHO/EOP
Subject: TPS

The State Department is sending over draft q&a on TPS for Honduras and Nicaragua by cob today. They are also providing updated summaries outlining the differences on the ground among the six countries (including the Dominican Republic and Haiti).

At our meeting with DOJ and State last Wednesday, we put forward the idea of directing a presumption of extreme hardship for purposes of suspension of deportation under NACARA for those from El Salvador and Guatemala. This would be a way of achieving parity for Salvadorans and Guatemalans covered by NACARA without having to wait for legislation (though we would still need legislation to permit the small class of Hondurans to be covered by NACARA). This would also be a way of recognizing and responding to the destruction done by Mitch in El Salvador and Guatemala, while maintaining the differences between these two countries and Nicaragua and Honduras. DOJ and INS resisted such a presumption, primarily b/c it is inconsistent with past practice to have country-specific presumptions (though they concede that it would be legally permissible). They would prefer to give guidance to their adjudicators that outlines the destruction in the two countries and that advises the adjudicators to take these conditions into account when making their decisions re: suspension. We have asked DOJ/INS for more specifics re: why they oppose a presumption and how their idea would operate.

Scott and I have scheduled a follow-up meeting with DOJ and State for tomorrow morning at 10am.

julie

Immig - Central America

Julie A. Fernandes
12/09/98 03:09:30 PM

Record Type: Record

To: Maria Echaveste/WHO/EOP, Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP, Leslie Bernstein/WHO/EOP, Marjorie Tarmey/WHO/EOP
Subject: Cong. Letter re: presumption of extreme hardship

FYI. Caroline F. just forwarded me a copy of a letter sent to the AG from Sens. Kennedy, Abraham, Graham and Mack on Dec. 15th of last year in which they discuss their view that it would be consistent with the NACARA legislation for the AG to use her discretion to presume extremere hardship for NACARA beneficiaries generally. I will fax you a copy of the letter.

julie

From NSC re TPS for Central Americans

Immigration - Central America

456.9140

Central America has been devastated by what is considered the worst natural disaster to hit the region in modern history leaving in its wake thousands dead and millions homeless. In immediate response to this disaster, the Immigration and Naturalization Service (INS) temporarily delayed all removals of nationals from Honduras, Nicaragua, El Salvador and Guatemala until November 23, 1998. Given the long-term economic devastation and social destruction left by Hurricane Mitch, however, a more systematic approach to the treatment of nationals of those countries currently in the US and the question of whether to remove aliens with final orders from those countries is required. This paper sets forth available options for administrative or executive action to suspend or delay removal of such aliens.

TEMPORARY PROTECTED STATUS

Section 244 of the Immigration and Nationality Act (INA) permits the Attorney General to grant temporary sanctuary to foreign nationals of a country, subsequent to designation by the Attorney General that extraordinary conditions exist within that country such as generalized violence, civil strife, natural disasters, or other unsettled conditions that would render return unsafe for the individual or would severely strain the resources of the affected country. INS section 244(b)(1). The TPS provision provides the sole authority under which the Attorney General may allow otherwise deportable aliens to remain in the United States "because of their particular nationality or region of foreign state nationality." INA Section 244(g). Persons who qualify for Temporary Protected Status (TPS) are not subject to removal during the time period designated by the Attorney General.

The statute specifically provides for a Temporary Protected Status (TPS) designation in those cases where a natural disaster has occurred, provided that the following criteria are met: i) there has been a natural disaster of such scope that a substantial, but temporary, disruption of living conditions has occurred; (ii) the foreign state is temporarily unable to handle the return of its nationals; and (iii) the country has formally requested designation under this statute. INA Section 244(b)(1)(B). This section has previously been invoked by the Attorney General in designating TPS for nationals of Montserrat in August 1997 following the eruption of a volcano that island.

Given the specific country conditions requirements imposed by section 244(b)(1)(b), the Attorney General is authorized to grant TPS to nationals of designated foreign states or parts of such states (or to eligible aliens who have no nationality and who last habitually resided in such states) . The statute does not contemplate the Attorney General designating a region larger than a state but she could designate all four countries after assessing on a country-by-country basis whether conditions are sufficiently severe to meet the TPS designation requirement. The Attorney General makes TPS determinations after consultation with the Department of State. This process was initiated on November 5th and the INS has received a preliminary assessment from DOS which suggests in their view the level of devastation in Honduras and Nicaragua meets the first and second requirements of the statute. We understand that both governments are expected to send formal requests for designation very soon. With respect to El Salvador and Guatemala, however, DOS reports suggest that the damage is more localized and may not meet the level of severity necessary to trigger a TPS designation for either country.

STAYS OF REMOVAL

Although TPS provides the exclusive grounds for delaying the removal of an alien based on nationality, the Attorney General retains the power to grant a stay of removal in individual cases, and has delegated that authority to District Directors pursuant to 8 CFR 241.6. Stays of removal under this section may be granted for numerous reasons, including a determination that "immediate removal is not practical or proper."[1]

One possible interpretation of this regulation would permit the Attorney General to issue a determination that immediate removal to El Salvador and Guatemala would generally be impractical during a specified period of time and, in those cases where it is appropriate, removal should be delayed. The District Director would retain the discretionary authority to deny the stay for other reasons (for example, the individual appears to be a threat to the community or is a criminal alien), but the factual determination regarding conditions in El Salvador and Guatemala would not be subject to interpretation by a District Director. In this way, removals could be limited on a case-by-case basis rather than on the basis of nationality alone.

This approach, while lessening the immediate impact of removals on El Salvador and Guatemala, could result in consequences that render unfeasible the use of stays as a short-term solution. Most notably, there does not appear to be statutory authority explicitly permitting the Attorney General to release from custody persons subject to mandatory detention once she has granted a stay of removal. Under Section 241(a) of the INA, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), once an order of removal has become final, the Attorney General must take the alien into custody. If the removal has not been completed within 90 days, a non-criminal alien may be released under an order of supervision—prior to that time, however, the law makes no explicit provision for release. In order to avoid unnecessary detention of individuals eligible for a stay of removal under these provisions, the Attorney General would have to determine that the mandatory custody provisions are inapplicable where the government has chosen to delay removal. [2]

Implementation of a short-term stay policy could also present problems with respect to processing employment authorization applications. Although the regulatory provisions governing employment authorization are sufficiently broad to permit EADs under such circumstances, it could be difficult to process such applications quickly enough to be meaningful for persons authorized to remain here for only a short time. Additionally, any designation by the Attorney General relating to conditions in Guatemala and El Salvador might form the basis of arguments for challenging the finality of the motion to reopen provisions (and may well be a factor in the finding of extreme hardship) within the context of Section 203 NACARA suspension of deportation and cancellation of removal claims.

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[1] Section 241(c)(2) of the INA. Section 241.6 of the regulations permits the District Director to make a discretionary determination to grant or deny a stay of removal, and directs him or her to look to the factors considered in section 212.5 of the regulations (regarding parole requests) and section 241. 6 of the INA (regarding stays of removal for aliens arriving at a point of entry). It does not require that specific conditions be met providing for administrative removal do not specify the specific conditions under which a stay may be grant

[2] Section 241(a)(1)(C) provides for an extension of the 90 day period where the alien refuses to cooperate in making travel arrangements for his removal or otherwise acts to prevent the removal. Conversely, it could be argued that in those case where the government has determined that removal would be impractical, the 90-day period may be suspended during the duration of the stay.

DEFERRED ENFORCED DEPARTURE (DED)

The Attorney General exercised prosecutorial discretion to temporarily stay deportation of aliens to countries experiencing civil strife from 1960 to 1990 through a grant of Extended Voluntary Departure (EVD). This concept has developed into the President's practice of directing Deferred Enforced Departure for certain nationals. Eligibility for EVD was based on nationality (although individuals could be barred for such things as conviction of an aggravated felony), but the program was never formally defined and was administered somewhat differently over the thirty-year period. The duration of the grants varied from a few months to several years. Some of the countries selected for EVD were Iran, Czechoslovakia, Cuba, Vietnam, and Cambodia.

The law providing for Temporary Protected Status (TPS) was enacted in 1990 and was intended to fulfill the same function fulfilled by EVD. The TPS statute requires that the Attorney General consult with other agencies about TPS designations and it also has specific country condition requirements that must be met before a designation is made. The TPS statute made it impossible for the Attorney General to continue to designate countries for EVD because it specifies that it is the sole authority for the Attorney General to permit aliens to remain temporarily in the United States based on nationality. INA section 244(g).

DED is, like, EVD, a non-statutory, discretionary, temporary form of relief from deportation granted to aliens from the designated country. DED was used after 1989 instead of EVD in part because there had been court challenges to EVD and in part because the TPS statute bars the Attorney General from providing nationality-based relief. The primary difference between EVD and DED is that DED is done by executive order, under the President's constitutional power to conduct foreign relations, whereas EVD was done by the Attorney General, citing prosecutorial discretion and general powers pursuant to INA section 103. Like EVD, DED proclamations generally specify a start date (by which time the alien must have been in the United States or fulfilled other conditions such as the filing of an asylum application) and an expiration date. DED was first used in 1990 and has been used a total of four times:

President Bush issued Executive Order No. 12711 on April 11, 1990, to provide temporary stays of deportation, and work authorization, for approximately 80,000 Chinese nationals who had been present in the U.S. since June 1989. DED for Chinese nationals lasted until it was superseded in 1993 by the Chinese Student Protection Act.

DED was granted to approximately 150,000 Salvadorans who were registered for TPS when TPS expired for El Salvador in June 1992 (the executive order provided for bars for those convicted of aggravated felonies, persecutors, etc.). Salvadoran DED lasted until December 31, 1994, but work authorizations were authorized for an additional nine months. Most of the recipients of Salvadoran DED were eligible for benefits under the American Baptist Churches v. Thornburgh (ABC) settlement agreement after DED ended.

DED was used for a small (about 2,000) group of people evacuated from the Persian Gulf during the Persian Gulf War years. Most of these people were awarded asylum. DED was formally terminated for this group on January 1, 1997, but a private bill is under consideration to provide permanent relief for the few hundred members of this group not awarded asylum.

The fourth DED designation was made by President Clinton on December 23, 1997, and covered approximately 40,000 Haitians who had applied for asylum or were paroled into the United States before December 31, 1995, and had been continuously present in the United States since that date. The designation excludes certain persons (aggravated felons, persecutors, people subject to extradition, etc.), is in effect for one year, and provides for work authorization.

DED has been used in the past to defer deportation of nationals to countries where the statutory requirements for TPS are not met. The reasons for DED are not limited to the statutory considerations under TPS and ordinarily appear to be dictated by foreign and domestic policy considerations. The primary reasons behind the four designations have varied and include inability for the designated country to reintegrate huge numbers of its nationals (El Salvador), danger to the aliens (China and Persian Gulf), insecurity in the country and other domestic and foreign policy considerations (Haiti). If it is decided that some or all of the Central American countries affected by Hurricane Mitch do not meet the requirements for a designation for TPS, those countries could nevertheless be designated for DED.

Problems with such designations may arise, however. First, in the three instances in the past when DED was terminated, the nationals of the terminated country were by and large eligible for programs that replaced DED – specifically, the Chinese Student Protection Act, the ABC settlement agreement, and the Persian Gulf Evacuees private bill. In all three cases in which DED has been terminated few of the beneficiaries have returned home. Any such blanket efforts at mass deportation following termination of DED would face strong political opposition. Therefore, DED designations should be proposed with the possibility in mind that those who receive DED may eventually receive lawful permanent resident status, even if the original DED grant is expressly temporary. Second, there are large numbers of Central Americans present in the United States who would be eligible for DED. Estimates are uncertain at this point, but range from a low of perhaps 400,000 to a high of 1,000,000 for aliens from Honduras, Nicaragua, El Salvador, and Guatemala who would be eligible for TPS or DED. If the members of the ABC class are counted, the number of eligible aliens could be well over 1 million. This number of people receiving benefits, some of whom would be applying for work authorization for the first time, would place a great strain on INS resources (and would be politically unpopular in some quarters.)

Get rid of true TPS

If the President is inclined to authorize all four (or parts of one of more of the four countries) for DED it would be very helpful to the INS if the designation made specific reference to certain issues arising from such a determination. In the earlier cases, DED proclamations have not set forth the INS's powers and duties for such issues as the authority to terminate an individual's DED for appropriate reasons (such as a conviction for an aggravated felony, etc). There would be a host of administrative questions, including how DED would affect a suspension or cancellation claim by a Salvadoran or Guatemalan national under NACARA; whether DED suspends unlawful presence (as TPS does); and whether non-criminals currently detained and in immigration proceedings should be released. Given the number of persons potentially eligible, these questions will have significant influence on INS administrative and detention resources, which are being tested with the expiration of the Transition Period Custody Rules.

Another issue that should be considered in any Presidential directive of DED is whether it should apply only to nationals of the subject country who have received a final order of deportation or removal. Such a restriction would cut down on the administrative burden on the Service by reducing the number of people eligible for DED. However, restricting DED to aliens who have received a final order would create several problems. First, although the workload on the Service would be reduced, the workload on the Executive Office for Immigration Review would be correspondingly increased. Second, the mandatory detention provisions of IIRIRA require the Attorney General to detain aliens during the removal period of 90 days. It might be possible to avoid mandatory detention by stopping the removal procedure after a determination had been reached on the merits but before a removal order was actually issued; however, such a procedure would be inadvisable because of the questions it would raise as to appealability and due process. Third, if aliens received removal orders and the orders were not executed for some significant length of time (six months or more) because of DED, the Service could expect numerous legal challenges to the continued viability of those orders once DED ended. Such challenges might include motions to reopen, new asylum claims based on changed country conditions, and visa eligibility.

A more viable way of managing large numbers of people under a DED program might be to restrict the eligibility for DED to people who are not eligible to apply for any other type of relief from deportation. Thus, people who are ABC class members or who are eligible under NACARA would not be eligible for DED. Even if people eligible for other programs were excluded from DED eligibility, however, there would nevertheless be large numbers of Central Americans who would remain eligible for DED.

Immig - Central American

Julie A. Fernandes
11/19/98 04:21:40 PM

Record Type: Record

To: Maria Echaveste/WHO/EOP, BUSBY_S @ A1 @ CD @ VAXGTWY, Elena Kagan/OPD/EOP

cc: Leslie Bernstein/WHO/EOP, Marjorie Tarmey/WHO/EOP, Laura Emmett/WHO/EOP
Subject: AG date for TPS announcement

John Morton just called to let me know that he has reserved time on December 11th for the AG to do a press announcement and q&a re: TPS for Hondurans and Nicaraguans.

He also asked that we all make sure that we are comfortable with the AG briefing the press on this (with State), rather than just doing a release, with q&a provided to the respective press offices. John did not express a view either way, but wanted to make sure that we were sure.

julie

Immig - Central America

BUSBY_S @ A1
11/19/98 05:54:00 PM

Record Type: Record

To: Julie A. Fernandes

cc: See the distribution list at the bottom of this message
Subject: RE: AG date for TPS announcement

I like the idea of the AG doing the announcement but I don't like having to wait until the 11th for it to happen. We're going to continue to get lots of press and pressure between now and then. I'd rather that the AG make the decision sooner even if she is not available to announce it at a press conference.

Message Copied To:

Maria Echaveste
Elena Kagan
Leslie Bernstein
Marjorie Tarmey
Laura Emmett

Immig - central american

Julie A. Fernandes
11/19/98 12:33:37 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: TPS for Hondurans

At a meeting this morning in Maria's office it was decided:

- The AG will announce TPS for Honduras and Nicaragua in early December. DOJ is going to get back with us to confirm an exact date (checking on what works with the AG's schedule). A representative from the State Dept. will accompany the AG for the announcement (to better respond to questions re: conditions on the ground in the region, including the differences that exist among the 4 affected countries that warrant TPS for Honduras and Nicaragua and not for El Salavador and Guatemala).

- This annoucement will not be coupled with an announcement re: our support for legislation that would achieve parity (amnesty similar to that obtained by Cubans and Nicaraguans in NACARA) for Guatemalans, Salvadorans, and a small group of Hondurans. INS felt strongly that coupling the two would likely promote a lot of confusion on the ground (with Central Americans themselves, as well as with INS officers in the field). Also, DOJ felt that we needed more time to work the Hill re: parity before announcing our support (if we really want this legislation to pass next session).

- The week prior to the TPS announcement, we will conduct a series of low-key meetings with immigrant advocates and selected Members to discuss why TPS is warranted for these two countries and not the other two, and will signal our commitment (consistent with the President's statements to the Hispanic Caucus last August) to parity for Salvadorans, Guatemalans and a small group of Hondurans. Jim Dobbins from NSC will have similar conversations with the Ambassadors of the four affected countries. The object of this effort is to attempt to blunt some of the criticism that we are likley to get for providing TPS for two of the four countries affected by Mitch. DOJ and INS are working on parity legislation that should be ready for our review soon.

- State is also drafting a paper that outlines why TPS was lifted for the Dominican Republic and Haiti (in order to be prepared for questions that compare the current situations in these countries). They have already asked the embassies of Haiti and DR for their views.

- State will work with DOJ on comprehensive q&a for this announcement.

Immig - Central Americans

Julie A. Fernandes
11/03/98 11:14:04 AM

Record Type: Record

To: Elena Kagan/OPD/EOP, Maria Echaveste/WHO/EOP

cc: Laura Emmett/WHO/EOP, Leslie Bernstein/WHO/EOP, Marjorie Tarmey/WHO/EOP
Subject: Hondurans

Congressman Gutierrez has sent the President another letter re: Hondurans. Unlike his previous letter (in which he asked for "parity" for Hondurans), in this letter he asks for DED for Hondurans who have been in the U.S. since prior to December 1995.

As you recall, during the last session of Congress, we attempted to get Hondurans who applied for asylum prior to December 31, 1992 (approximately 2,000 Hondurans) relief equivalent to that received by Salvadorans and Guatemalans in NACARA (essentially, to have the pre-1996 suspension of deportation rules apply). We have not pushed for amnesty for any of these groups, though the President indicated in his meeting with the Hispanic Caucus last August that he would consider legislation that provided amnesty for these groups (because it would bring parity between these groups and the Nicaraguans and Cubans given amnesty in the legislation).
On the question of DED, our position has been that though we agree that Hondurans similarly situated to Salvadorans and Guatemalans covered by NACARA should be treated the same, we have not endorsed DED for Hondurans. According to Scott Busby, the number of Hondurans likely affected by our proposed legislative fix is too small and the foreign policy rationale is not present.

Jim Dobbins at NSC (who covers Latin America) wants us to consider interim measures for Hondurans who might be covered by our proposed legislative fix. These options include: DED; TPS (temporary protective status); and the AG's prosecutorial discretion. There may be others. According to the NSC, the lack of equal treatment for Hondurans is the number one issue in our bilateral relationship with Hondurans.

Scott is going to pull together a staff-level meeting this week for us to consider the options.

julie

Immig - Central American

Julie A. Fernandes
11/13/98 04:25:59 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: TPS

At the end of the meeting with Maria, it was decided that at the radio address (which I suppose has already been taped), Mrs. Gore will recommend that the AG continue to stay deportation for nationals of all four Central American countries (El Salvador; Nicaragua; Guatemala; Honduras) through the holidays. On Monday, the DOJ will issue a statement effecting such a continuation, and set a date (likely January 1st or 6th) for when they will conduct their next review to determine if continued suspension is needed for each country.

During her trip to the region on Monday, HRC will reiterate the President's and Mrs. Gore's message.

Sometime within the next week or so, we will announce TPS for Honduras and Nicaragua. We will also announce our support for legislation that would give amnesty to the Salvadorans and Guatemalans in the ABC class (currently eligible for pre-1996 suspension of deportation with the modified procedure) and the small class of Hondurans who are equivalent; i.e., those who applied for amnesty prior to December 1992.

Immig - Central American

Julie A. Fernandes
11/16/98 04:51:59 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: talking points for jack lew

Jack Lew is meeting with Rep. Gutierrez tomorrow. OMB wanted a little background and a couple of talking pts. on Central American parity and Hondurans. Attached is a draft that has also been reviewed by Scott Busby at NSC.

julie


LEW.TP

Hondurans
November 16, 1998

Background

Temporary Protected Status (TPS) and Hurricane Mitch
Recently, in light of the catastrophic disaster that resulted from Hurricane Mitch, Rep. Gutierrez has written asking that the President grant Temporary Protected Status (TPS) to Hondurans, Nicaraguans, Salvadorans, and Guatemalans currently residing in the U.S. A grant of TPS would prevent nationals of these countries from being deported to their home countries and would provide work authorization for all nationals of these countries currently residing in the U.S. Though we have not yet reached an Administration position on the granting of TPS, today the Department of Justice is issuing a statement extending the temporary stay of deportation of these nationals to their home countries, at least through the Christmas holiday season (sometime in early January). We -- DPC and NSC, along with the Department of Justice and the State Department -- are considering whether it would be appropriate to grant TPS to one or more of these countries and what other kinds of relief we may be able to offer.

Talking Points

- As the President announced during his radio address last Saturday, we intend to extend our stay of deportation through the Christmas holidays for citizens of the affected countries living in the United States, while examining on an urgent basis recommendations for further relief, consistent with the recommendation Mrs. Gore made after her trip to the region.

"Parity" for Salvadorans, Guatemalans, and Hondurans
November 16, 1998

Background

The Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted during the last session of Congress, authorized the more lenient (pre-1996 Act) rules for suspension of deportation -- a means of obtaining permanent legal status -- to apply to pending cases of Guatemalans and Salvadorans, while providing amnesty (automatic "green cards") for Nicaraguans and Cubans. The Hispanic Caucus and many Central American advocates have urged the Administration to implement NACARA in a way that would achieve "parity" among all Central American groups affected by the legislation. Congressman Gutierrez has also urged that we seek legislative relief for certain Hondurans, who were completely excluded from NACARA. Congressmen Gutierrez and Becerra have strongly supported amnesty for Salvadorans and Guatemalans (equivalent to that received by the Nicaraguans and Cubans) and the additional class of Hondurans.

Until quite recently, we took the position that Hondurans are not similarly situated to the Central American groups covered by NACARA, and thus had opposed special relief for this group. However, on October 29, 1998, the President sent a letter to Rep. Gutierrez that stated that, upon further study, we have concluded that there is a small class of Hondurans who are similarly situated to the Salvadorans and Guatemalans covered by NACARA, and that this group is entitled to the same relief provided to these other groups. At the end of the last session of Congress, we attempted to attach a provision to the Omnibus appropriations legislation that would have given NACARA-like benefits to Hondurans who applied for asylum in the U.S. prior to December 31, 1992. We were not successful in this effort. However, we continue to favor some kind of legislative solution that would achieve "parity" for this narrow class of Hondurans.

Talking Points

- The Administration shares your concern about the disparities in treatment in NACARA. As the President indicated in his signing statement, we are seeking to minimize these disparities in the implementation process.

  In this regard, the Attorney General has authorized a new administrative procedure for adjudicating the cases of Salvadorans and Guatemalans covered by NACARA. This modified procedure will be less adversarial than immigration court and will thus lessen the need for representation by an attorney.

- Also, as noted in the President's October 29, 1998 letter to you, the Administration is seeking legislative relief for the class of Hondurans that are similarly situated to the Salvadorans and Guatemalans covered by NACARA -- namely, those Hondurans who applied for asylum prior to December 1992.

- The President is generally supportive of efforts to achieve parity among similarly situated groups, but would have to review any proposed legislation carefully before deciding

whether he could support it.

Immig – Central American legislation

LUIS V. GUTIERREZ
MEMBER OF CONGRESS
4TH DISTRICT, ILLINOIS
2438 RAYBURN BUILDING
WASHINGTON, DC 20515
(202) 225-8203

Congress of the United States
House of Representatives
Washington, DC 20515–1304

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SUBCOMMITTEE:
HEALTH
RANKING DEMOCRAT

August 12, 1998

The Honorable Bill Clinton
The White House
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear President Clinton:

Thank you for the opportunity to visit you at the White House last week to discuss issues of importance to the Congressional Hispanic Caucus.

I was pleased to hear of your continued commitment to fairness and justice for Central American immigrants. In particular, I am gratified by your support for extending section 202 of the Nicaraguan Adjustment and Central America Refugee Relief Act (NACARA) to protect refugees from throughout Central America and Haiti. Such a step, as you may recall, would be achieved under my legislation, H.R. 3553.

As you requested, I am writing to explain in greater detail the circumstances that led hundreds of thousands of refugees to flee Honduras. Mr. President, I strongly believe that no justifiable reason exists to exclude Hondurans from the list of Central American nationals who we seek to help and protect under NACARA. Honduran nationals currently living in this country should be included in NACARA because they left their countries under very similar circumstances as their neighbors in Nicaragua and El Salvador. Exclusion of Hondurans from NACARA would result in different treatment for similarly situated people.

During the meeting, I appreciated the opportunity to express to you a principle formally endorsed by the membership of the Congressional Hispanic Caucus: that America's immigration and refugee policies should be implemented in an equitable fashion.

In practice, this premise dictates that individuals from the same region of the world who simultaneously experienced hardships of a similar nature– in the form of political persecution, government destabilization, threats of violence and severe disruption of daily life– be granted identical relief by our government.

The inclusion of Honduran refugees in a resolution of the crisis now facing Central American refugees would be entirely consistent with such a principle and would be in keeping with the concerns that you so eloquently expressed to us regarding refugees from other countries in the region.

Specific details of Honduran history offer compelling evidence of the threat posed to the nation's sovereignty and to its citizens during the period in question.

DISTRICT OFFICES
3781 NORTH ELSTON AVENUE
CHICAGO, IL 60618
(773) 509-0123
(773) 509-1538 TDD LINE
MONDAY-FRIDAY
9 A.M. - 5 P.M.

2132 WEST 21ST STREET
CHICAGO, IL 60608
(773) 579-0907
MONDAY-FRIDAY
9 A.M. - 6 P.M.

In the 1980's, Honduras became the staging ground for U.S. efforts to end insurgencies in El Salvador and Guatemala and to overthrow Nicaragua's Sandinista government. U.S. military and intelligence-agency personnel used Honduran territory as the operational base for the contras and for training and resupply of the Salvadoran and Honduran armed forces.

In 1983, the United States introduced a force of approximately 12,000 troops known as Joint Task Force Bravo located at Soto Cano (Palmerola) Air Base in Honduras. These troops were involved in military training exercises supporting U.S. counterinsurgency and intelligence operations in the region. At present, about 500 U.S. troops are still in Honduras.

Many experts believe that the enormous U.S. military presence in Honduras, with 14 military bases at one point, was one factor that led the Honduran military to adhere to a "national security doctrine" strategy. Under this strategy the Honduran army worked to eliminate dissent without regard for the human rights of the dissenters. Today, the National Commissioner of Human Rights in Honduras documents at least 184 cases of forced disappearances. Many of the disappeared were reportedly kidnapped, tortured and murdered by a Honduran military intelligence known as Battalion 3-16.

In addition, Historians and scholars agree that the presence of U.S. and contra forces at Honduras Soto Cano air base created disruptions throughout the country and resulted in mass exodus of Hondurans to other countries, including the United States. Such facts, I believe, place an additional responsibility upon Congress and the administration to resolve this matter in a manner most suitable to those whose lives were disrupted– at times violently– by those activities.

While civil war was not formally waged within Honduras, the geography of the region made it impossible for Honduras to be unaffected by the violence and turmoil that surrounded it. As a result of the hundreds of miles of easily penetrated border territory that it shares with Guatemala, El Salvador and Nicaragua, Honduras was directly affected by the violent internal conflicts taking place in its neighboring countries.

Moreover, Honduras experienced severe dislocation of its society and its resources. Experts estimate that by the time the war ended in Nicaragua, approximately 55,000 contras and their families relocated to Honduras and more than 200,000 Nicaraguans and Salvadorans are said to have fled across the border to Honduras.

In addition, as you know, representatives of Central American governments have made very clear their fear that the reintroduction of tens or hundreds of thousands of former residents to their countries– in addition to their U.S.-born dependents– would represent a drain on their economies that could dramatically worsen their current political situations.

Mr. President, I was gratified to hear you express your belief that the United States has a particular obligation to help Central Americans. On that basis, coupled with your support for the principles that guide NACARA, I believe that compelling reasons exist to warrant the extension of relief to all refugees of the regional conflict, including Hondurans.

Thank you for your serious consideration of this important matter. I welcome any opportunity to discuss this issue further with you or your designated staff.

Sincerely,

Luis V. Gutierrez,
Member of Congress