NLWJC - Kagan

DPC - Box 032 - Folder 008

Immigration - Deportation Rules [1]

Immigration - deportation

Categories?

? ?
Report language - treatment of ES/Haiti
expeditiously / humanely
Hold over people who ~~fit~~ meet std
but can't fit w/in cap - not
deport.

Still problems -

NJB
Cap
Haitian

Bob
Kennedy/Graham - sep. Haiti -
bill - same time -
modeled after Nicar -
amnesty.

Not likely
to pass

No agreement yet.
Phil Graham says no go.

Timing - this afternoon?

endgl [illegible] or do -
how to define -

Dec 30

in/pp/[illegible]
dirs

Immigration - deportation

Julie A. Fernandes
01/16/98 12:26:13 PM

Record Type: Record

To: Maria Echaveste/WHO/EOP

cc: Miriam H. Vogel/WHO/EOP, Elena Kagan/OPD/EOP
Subject: Central Americans and Haitians

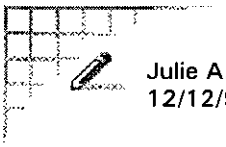
Maria,

I spoke with John Morton about 10 days ago, and he informed me that the AG had agreed to proceed with the administrative procedure, pending Holder's final approval, and that OLC had told them that the procedure would be lawful. He was supposed to call when he got the final word from Holder, but I have not heard from him. Morton also said that after getting final approval from Holder, he would coordinate with your office to meet with the advocates (to discuss with them the procedure, etc.).

I have a call in to Morton and will give you an update as soon as I get it. Thanks.

Julie

Immigration - deportation



Julie A. Fernandes
12/12/97 06:39:43 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: Central Americans

Elena,

This afternoon, Maria held an advocates meeting to discuss the implementation of the Central American legislation. First, the fax that I sent you earlier was more of an advocacy piece by the EOIR on why we should not do an administrative remedy (they want to keep it). DOJ has since convinced EOIR of their decision to proceed with this administrative alternative if possible. .

At the meeting, the advocates stated that: (1) they want a regulation that provides for a presumption of extreme hardship for those covered by the legislation. The advocates maintain that the INS grant rates are actually much lower for Salvadorans and Guatamalans then INS says they are, in part because of the wide discretion given to immigration judges that allows for caprice to sometimes determine outcomes. Thus, they argue that without a regulation that provides a presumption of extreme hardship, they will still have low grant rates; and (2) that they would prefer, with our without a regulation, to proceed with an administrative adjudication rather than with EOIR (admin judges).

We explained to them our concerns about doing a regulation: (1) that we could not do administratively what the Congress expressly did not do by legislation -- i.e., provide amnesty for the Guat. and Sal.; and (2) that we do not want to create by regulation a definition of "extreme hardship" for this class of aliens for this adjudication that is different from how we adjudicate extreme hardship in other circumstances. However, we did express a willingness to further explore an adminstrative adjudicative process (within INS), and that we would look into developing training materials and guidance for the asylum officers who would be adjudicating these claims that sets out with particularity the standard that should be used for making these determinations. It would not be as clean as a regulation, but it would provide strong guidance to the INS officers on what factors to look for, and thus somewhat direct their discretion in a way that looks favorably on the group covered by the legislation.

So, we are pretty much where we were with three remaining concerns: (1) I would like to better clarify the grant rates for Salvadorans and Guat. discussed by INS. They say that the grant rates are much higher than the groups think is valid (and did not come with the very specific information that we had asked for last time) and, according to DOJ, there are wildly disparate grant rates for these groups between offices (92% grant rate in S.F.; 62% grant rate in LA). Morton from DOJ had no explanation for this. (2) DOJ still owes us a breakdown of how many people covered by the legislation are in each of the relevant procedural categories; i.e., how many ABC class members v. non-ABC (rem: ABC class members have an entitlement to an asylum process anyway, so the admin. option would be folded into what they would already be doing); how many have already had an asylum hearing; how many are in some other INS process, etc.; and (3) according to the legislation, those people with a letter of deportation (b/c , for example, they were denied asylum but did not qualify for suspension under the 1996 law) will have to file a motion to re-open within

240 days of January 14, 1997. According to many present, this is too short a time period to get a lawyer ($) and file a motion, unless the filing is pro forma. INS has to decide how to make this a reasonable process.

All agree that we have to decide asap whether we are doing this admin. adjudication and what it will look like. (to allow for notice to communities, etc.). I am, as before, in favor of the administrative option, provided we can get some answers in the next couple of days on the remaining questions. Scott and DOJ also favor the admin. adjudication. Maria, I think, is on board with the admin. adjud. as opposed to the reg., as long as the training and guidance are there.

julie

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. Carrett, 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

Immigration - deportation

Julie A. Fernandes
01/06/98 10:34:46 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

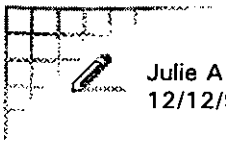
cc: Laura Emmett/WHO/EOP
Subject: Central Americans

Elena,

According to John Morton from the DAG's office, the AG has agreed to proceed with the administrative procedure for Central Americans, pending Holder's final recommendation. Morton is meeting with Holder tomorrow afternoon to get his final approval. The last time that we spoke to Maria about this (at the meeting that we all had a couple of weeks ago), she was also comfortable with proceeding in this way (rather than by a regulation that would alter the standard for "extreme hardship"). Also, OLC has told the DAG's office that the administrative procedure would be lawful. As soon as Morton gets final DOJ approval, he will call us and he and OPL can then contact the advocates to let them know what we are doing. Earlier, we all agreed that Justice would take the lead on this implementation once these decisions were made.

Julie

Immigration - deportation



Julie A. Fernandes
12/12/97 10:44:56 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: Central Americans

Elena,

I am faxing you the briefing paper prepared by DOJ on whether the INS should process the Salvadorans, Guatamalans and Eastern Europeans covered by the recent law under the ususal procedure (immigration court) or under a more expedited administrative adjudication. As we discussed, the groups are pushing for a regulation (with presumptions), but we all (DOJ, NSC and us) favor an administrative adjudication scheme (though, INS more favors no change to the current process). Maria seems to agree that an administrative procedure would be a fair result, but has not yet concluded that it is the best solution (wants to further consider a regulation).

I thought you might want to look over an outline of the administratie scheme before our meeting this afternoon with the advocates (2pm in room 476). (OPL, NSC, DOJ, INS, us). Thanks.

julie

THE WHITE HOUSE

Domestic Policy Council

DATE: 12/12

FACSIMILE FOR: Elena

PHONE: ( ) - FAX: ( ) -

FACSIMILE FROM: Julie Fernandes

PHONE: ( ) - FAX: ( ) -

NUMBER OF PAGES (INCLUDING COVER): 4

[ ] FOR YOUR REVIEW
[ ] PER MY E-MAIL OR VOICE-MAIL MESSAGE TO YOU
[ ] PER YOUR REQUEST

COMMENTS:

Briefing Paper

Issue:

Should INS be given authority to handle suspension cases on a "grant or refer" basis for El Salvadorans, Guatemalans, and Eastern Europeans, or should these cases continue to be handled in Immigration Court, with those of all other nationalities?

Background:

Suspension of deportation is strictly a form of relief from deportation, unlike other forms of relief which Immigration Judges may grant such as asylum, voluntary departure, or adjustment of status. Therefore, jurisdiction over suspension of deportation has always vested solely in the Immigration Court and Board of Immigration Appeals.

Suspension of deportation is a complex and specialized area of immigration law. Determining eligibility for suspension of deportation involves weighing various factors with regard to whether the applicant has demonstrated 7 (or in some circumstances 10) years' continuous physical presence, extreme hardship (or in some circumstances exceptional and extremely unusual hardship), good moral character and a favorable exercise of discretion. The issue of demonstrating extreme hardship, in particular, requires an Immigration Judge to carefully weigh and evaluate a very wide variety of factors, such as family ties, job skills, ties to the alien's country of nationality, and health. In addition, Immigration Judges, as independent adjudicators, must ultimately determine, in their discretion, whether the alien ultimately merits a grant of suspension of deportation, based on numerous other factors such as service to the community, payment of income taxes, and other issues which go to the character of the alien.

Discussion:

With the passage of Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA), El Salvadorans, Guatemalans, and Eastern Europeans were permitted to seek suspension under the pre-IIRIRA standards as set forth in the Matter of O-J-O-, Interim Decision #3280 (BIA 1996). While this is a major benefit, which will probably permit many more of them to achieve suspension than would under the IIRIRA standard, the groups which represent them have sought additional concessions from the Administration in terms of even softer standards in applying the doctrine and quicker or different processing of individual claims.

The Department has made it clear that there will be no softer standards. However, in an attempt to meet the concerns of the Administration, the INS has proposed a procedural change, the transfer of these suspension cases to its Asylum Office for processing on a "grant or refer" basis. It is INS' view that its Asylum Corps can, with some additional training, handle these cases quickly and that this proposal will satisfy the Administration's and the outside groups' desires for a procedural change.

EOIR is opposed to this proposal on several grounds:

1. The INS Asylum Office is not now handling its caseload in a timely fashion. The addition of greater caseload responsibilities cannot help processing timeframes in either area.

2. It may be far more difficult to train INS Asylum Officers in this complex area of the law quickly and effectively than the Service asserts. In addition, it is hard to believe that the Service can do the training, publish new regulations, establish new procedures, hire new staff, and move the process more quickly at the same time.

3. If the Asylum Office grants a higher percentage of suspension cases, than the Immigration Court, our oversight committee will raise the specter of "Citizenship USA" and charge that INS is not taking adequate care with the cases. If the Asylum Office grants fewer suspensions than the Immigration Court, both the Administration and the NGO's will be upset.

4. The transfer of this procedure to INS will underline the special status of these groups and make the filing of lawsuits based on both disparate treatment and lack of equal protection under the law even more likely.

Finally, the case for EOIR's retention of suspension jurisdiction in its entirety is both clear and strong. It includes the following:

- We have over 200 sitting Immigration Judges, fifteen Board Members and over 100 Board staff who have been handling suspension cases and the intricacies of the suspension doctrine for years. In short, we are trained and ready to handle this caseload, as well as being the recognized experts in the field.

- EOIR adjudications are done on a case-by-case basis by Immigration judges and Board members who are enjoined to decide cases independently. Therefore, they make the Department far less subject to a charge that the Department has somehow tightened or loosened the standard to satisfy one group or another.

- Last year, we handled almost 80,000 combined suspension and asylum cases. We have room on the docket to do that again this year. In addition, we are currently expediting the scheduling of asylum cases, and can do so here as well.

Overall, we believe both the Department and the Administration are best served by leaving this function with EOIR. It is both the more efficient and the more prudent alternative.

Immigration - restructuring reforms
(and)
Immigration - deportation

Race Initiative

1. I have been working with the Town Hall people (Ann Lewis and Minyon heading the effort) on questions for the President and the moderator to use in Akron.

2. Also today, Tanya and I met with folks from the PIR and Bob Shireman to discuss the agenda for the December 17th Board Meeting. The topic is K-12 education. The proposed themes of the day are equity and excellence in primary and secondary education. They envision a more chatty format, with panelists taking questions from the audience and the Board. The proposed panelists include education experts (those who have promoted various models of school reform), students, parents and teachers from urban, suburban and rural school districts. These panelists would be expected to discuss the varying experiences of public education and the challenges that still exist (racial isolation; low expectations; etc.). Though they would take questions from the audience, they talked of scripting some questions or at least getting submissions from the group, and screening for interesting and relevant ones.

They envision the second session as including a discussion of "promising practices" -- programs where schools or school districts have been successful in overcoming racial divides (in resources; expectations; racial segregation; etc.) This panel would include people who are involved in programs that bridge racial divides and education experts with different views on how best to achieve equality of opportunity for kids.

This is all still very rough, but we are hoping to seem more concrete stuff (including names of potential panelists) over the next several days.

3. I met today with John Goering (PIR) and Lisa Ross (DOL) re: the January 13th Board meeting on employment. It is in its very early formative stages.

Immigration

1. We (NSC, WHC, Maria) had a meeting with the INS and Justice this afternoon re: the implementation of the suspension of deportation provisions of the new law as applied to Guatemalans, Salvadorans and Eastern Europeans covered by the new law. The advocacy groups have asked (1) for a regulation that provides for a presumption of "extreme hardship" for all central Americans covered by the legislation; (2) an additional provision that provides for a presumption of "good moral character" for the same group; and (3) that the process be handled by asylum officers (w/in INS; an administrative process) rather than immigration judges (EOIR). The INS and DOJ are very opposed to doing a reg., but have proposed a new

administrative scheme that would permit asylum officers to determine suspension of deportation claims. This would expedite the process for applicants, be cheaper (no lawyers), but would still allow immigration review (de novo) if the applicant is denied by the asylum officer. It also seems to make sense because the ABC class members (who make up the bulk of those covered by the legislation) are entitled to an asylum adjudication anyway, and the suspension process could be incorporated into that proceeding. The INS is going to give us an outline of their proposal, which will include an explanation of how different groups covered by the legislation (i.e., those who have been through the asylum process already; those who have dates scheduled before EOIR, those not in the system, etc.) would be affected by this administrative change. We should have that by the end of the week.

2. Last Wednesday, Steve Mertens from OMB let us know that he was including a reform proposal in his passback to INS. Though INS had seen an earlier version of OMB's thinking a couple of weeks ago, we were concerned that INS not think that the OMB proposal was any kind of benchmark for our review, or that it in any way had the imprimatur of the EOP. We voiced these concerns to Mertens at that time. According to Scott Busby at NSC, Commissioner Meissner was displeased that OMB included a reform proposal in their passback, outside of the DPC process, and without further consultation with them. We spoke with Mertens today, and he informed us that Commissioner Meissner had informed the DOJ that it is inappropriate for them to comment on the OMB proposal while the DPC review is happening.

3. Leanne and I have one more INS reform meeting to go. On Thursday, we are meeting with the second group of advocates (arranged by Maria) to talk about services (the other was on enforcement). By the end of the week, we will have a summary for you on the meetings that we have had. Our next step, we think, is a White House meeting on the reform (trying to get a sense of where people are internally) where we would also discuss how much we think we need to have done by the middle to end of December (thinking about whether we want something to be part of the President's budget proposal). We would next want to meet with INS on their own, to discuss options. DOJ has told us that the sooner we can make some broad decisions (whether the restructure within INS, within DOJ, pull some functions out, etc.) the better they would be able to tailor the Booze Allen (management consultants) review that they are about to start.

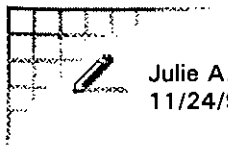
4. You had asked me to follow up on a letter that we received from the Carnegie Endowment re: employment verification pilot programs administered by the INS. Carnegie, et al was concerned about whether these pilots were being conducted with the appropriate concern for civil rights and privacy. I spoke with Bob Bach who informed me that INS has a RFP out to get bids on performing the evaluative function of the pilots. They will have chosen a winner by early Winter, with the hope of having the evaluation begin by March or April. The groups are

concerned that pilots are running now without evaluation. However, according to Bob, only one pilot (of 5) is operating now, and they are moving with the evaluation process as fast as they can. Bob has not been able to give the groups any more information on this effort, for fear of creating the appearance of impropriety in the bidding (i.e., the same groups that are asking for information on the process are bidding in response to the RFP; thus, if he gives too much information to one group on how they want the evaluations to be structured, they could be opening themselves up to a challenge on the fairness of their process)

5. As far as I know, we have not reached closure on the Haitian issue. Is there something else I should know or should be doing?

6. Leanne has been following up with Alan Erenbach re: battered women and 245(i).

Immigrati - - deportati -



Julie A. Fernandes
11/24/97 07:17:56 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:
Subject: Central Americans

Scott and Maria have arranged for a meeting next Tuesday at 3pm in Rm 208 with DOJ and INS to discuss how we want to proceed with administrative relief for the Central Americans --- i.e., whether to promulgate a reg. or whether to proceed with guidance to the field, with no reg. INS/DOJ are opposed to a reg. Maria is in favor. I have yet to read the memo from the advocates, but will do so and then take it from there.

Immigration - deportation

JANET MURGUIA [redacted]
11/18/97 11:23:58 PM

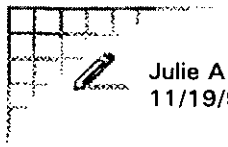
Record Type: Record

To: Ron Klain/OVP @ OVP, Maria Echaveste/WHO/EOP, Elena Kagan/OPD/EOP, Kay Casstevens/OVP @ OVP

cc: Peter G. Jacoby/WHO/EOP, Ricardo M. Gonzales/OVP @ OVP
Subject: VPOTUS/Immigration Event

As you know, on Wednesday (11/19) the President will sign into law the D.C. Appropriations bill. A small signing ceremony is scheduled to highlight the D.C. funding. But it would be a shame not to highlight and take credit for the important relief provided to Central American refugees also included in this bill. (The immigrants who will benefit most from the bill's provisions are located in Florida, Illinois, Texas and California). Does it make sense to try and schedule an event with the VPOTUS for sometime in early December to celebrate these changes and also the Section 245(i) relief provided to immigrants in the Commerce-Justice-State Appropriations bill once it has been signed? I believe there would be considerable interest for such an event from the Congressional Hispanic Caucus, Ambassadors from the relevant countries and from the groups in the immigration community. Please advise.

Immigration - deportation



Julie A. Fernandes
11/19/97 08:03:33 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: Haitians

Elena,

DOJ/INS are willing to go along with prosecutorial discretion (holding onto DED in our back pocket; maybe more that subtlely) with a couple of strong cautions: (1) that we will likely revisit this decision in the Spring -- they don't think that the AG will go along with prosecutorial discretion past then. We will then have to decide whether to do DED or resume deportation of Haitians; (2) that DED may be more difficult to justify after we have pursued legislation.

However, if we decide to recommend that the President do DED, it would likely have to be for a group larger than the Guantanamos -- it would be difficult to justify, for foreign policy reasons, deporting some Haitians and not others.

Rob Weiner agrees that we will likely face this problem again in the Spring. He believes that we should think about whether we want to do DED now, and only get politically hit once (though if we attempt to later introduce leg. for the Guantanamos, we will still be hit twice). Rob agrees that the DED class would have to be larger, but believes that we could carve out something that seems to make sense. Scott is now leaning toward DED. He thinks that the AG will be vulnerable to attack by Rep. Smith if she exercises her discretion. When asked which group of Haitians he would like to do DED for, he first thought the whole lot (those in the country before Dec, 31, 1995). That is consistent wtih DED, but inconsistent with our limited goal of providing relief for the Guantanamo group. Scott then said that he thought that DED could be limited to those with final orders (they would not be deported). That makes the numbers tiny, and undermines the foreign policy rationale for doing DED. OLCs only view is that DED is dangerous, and that they are unable to make the judgment as to whether the legislation is likely to move.

We told DOJ/INS that we would have a final decision to them tomorrow morning. Though they were very vocal with their reservations, they are willing to go along with prosecutorial discretion if that is what we decide. I set up a telephone appt. with Rob and Scott for first thing tomorrow (8:30) so that we can finalize our recommendation before getting on the phone again with Justice. If you can do it, I think you should be on the call.

Julie

Immigration –
deportation –

Legislation:

Just like Nicaraguans/Cubans — Amnesty for Haitians
filed for asylum before 12/31/95
or
paroled into US (" ") ??
plus present for at least 1 yr
(but up to 170 days away in that yr)
certain family members –
spouse or minor child – have to
be present when make applic
otherwise admiss to US.

Covers 15–20,000 not incl. spouses
+children

Targeted at parolees + asylum applicants –
otherwise no good –
reaches an ex Guantanamo folks.

DOJ views:
Prosec discr – need right assurances
but otherwise receptive.
limited to people covered by Lill.
DED – so long as OLC doesn't say we can't,
then she's prepared to to all exp–
can exercise this option.

Foreign policy:
Stay to folks covered by leg – that would
be ethic.
Don't need to do DED right away –
keep DED in our back pocket if needed

Nuño y Hill raises further problems - en
El Salv/Guatemala ~~border~~ front.

Immigration - deportation

DRAFT

MEMORANDUM FOR THE ATTORNEY GENERAL AND THE DEPUTY ATTORNEY GENERAL

FROM: Philip D. Bartz and John T. Morton
Office of the Deputy Attorney General

David Martin, Allen Erenbaum, and H. Bradford Glassman
Immigration and Naturalization Service

SUBJECT: Administrative Options Regarding Guatemalans and Salvadorans Covered by Recent Legislation and Certain Haitians Parolees and Illegal Entrants

DATE: November 7, 1997

I. Introduction

Over the summer, the Administration introduced legislation to benefit certain Central Americans who fled civil strife in their home countries and were adversely affected by recent changes in the immigration law. The Administration's bill would have provided long-time Nicaraguan, Guatemalan, and Salvadoran immigrants relief from deportation under the more lenient standards in effect before the change in the law. Congressional Republicans have since introduced a counterproposal that would provide amnesty for Nicaraguans and Cubans, and relief under the old standards for certain Guatemalans, Salvadorans, Russians, and other nationals of the former Soviet bloc countries. Neither legislative proposal would cover the approximately 105,000 Haitians living in the country without permanent legal status, including the 12,000 Haitians paroled into the United States in 1992 and 1993 after the fall of Aristide.

Certain immigrant advocacy groups object to the Republican proposal because it treats Guatemalans and Salvadorans less favorably than Nicaraguans, and because it excludes Haitians entirely. The advocates have urged the Administration to take a range of administrative steps to address these inequities. With regard to the Salvadorans and Guatemalans, the advocates have requested administrative remedies that would achieve parity with the Nicaraguan amnesty. With respect to the Haitians, the groups have urged the Administration to take all possible steps to achieve permanent resident status for the Haitian parolees (and if possible, other Haitian nationals).

II. Administrative Options for Guatemalans and El Salvadorans.

The advocacy groups have urged the Administration to ensure that Guatemalans and Salvadorans receive relief from deportation at roughly the same rate as Nicaraguans. In practice, this would require the Department of Justice to administer the immigration hearing process in such a manner as to ensure that virtually all Guatemalan and Salvadoran applicants for suspension of deportation were granted relief.

A. **No Change.** Viable. Under the more lenient standards that will apply to Guatemalans and Salvadorans under the pending legislation, immigration judges and the Board of Immigration Appeals have granted suspension of deportation at a rate of 75 percent. The remaining 25 percent may well represent individuals who are either ineligible or appropriately denied the benefit on discretionary grounds.

B. **Relaxation of Standards by Regulation or Certification.** Not viable. The standards for suspension of deportation applicable to Guatemalans and Salvadorans under the pending legislation have undergone many years of interpretation by the Attorney General and the federal courts. An attempt to use the rulemaking or certification process to relax the standard for Guatemalans and Salvadorans would create an unacceptable appearance of preferential treatment. In addition, neither rulemaking nor certification provides a workable means of specifying neutral criteria to the same effect. Criteria such as economic stress, political instability, and flight from civil strife would cover many countries beyond Guatemala and El Salvador. Finally, as a matter of procedure and timing, rulemaking requires public notice and comment, and certification would not allow for assurances to the advocacy groups in advance of the decision.

C. **Prosecutorial Guidance from the INS General Counsel.** Possibly viable.

1. **Direct Instructions.** Not viable. A direct instruction to INS trial attorneys would raise many of the same difficulties as rulemaking and certification, while lacking the authority of a regulation or certified decision. Such a method would thus create even greater exposure to litigation by groups not similarly favored.

2. **General Guidance.** Viable. Favorable indications in legislative history or a presidential signing statement could provide a sound basis for general field guidance to INS prosecutors. The guidance would be hortatory, calling attention to the evident intentions of Congress and the President, emphasizing the special circumstances of the Guatemalans and Salvadorans, and encouraging the trial attorneys to consider these factors in their prosecutorial decisions. While not assuring any particular result, this approach would probably increase the grant rate without any appearance of improper influence or favoritism.

D. **Administrative Suspension.** Not viable. Adjudication of suspension applications outside the immigration court process is possible but not operationally feasible. Administrative suspension would burden overtaxed INS adjudication resources at a critical time for important reforms in naturalization and other adjudicative processes. Administrative suspension would also require extensive rulemaking and implementation.

III. Administrative Options for Haitians.

The Congressional Black Caucus and a number of Haitian community leaders have urged a range of administrative actions by the Department, with a clear preference for options that would lead to permanent residence.

A. **Prosecutorial discretion not to place Haitians in proceedings.** Not viable. The courts will scrutinize nationality-specific administrative action far more searchingly than nationality-specific legislative action, especially where the authorizing statute is neutral on its face. This option would risk considerable litigation by others not similarly favored.

B. **Preferential asylum adjudication.** Not viable. The present asylum statute, neutral on its face, contemplates case-by-case adjudication according to

objective criteria--among them, the showing of a "well founded fear of persecution" on account of political opinion. The Supreme Court has construed the phrase "persecution on account of political opinion," and has given content to the "well-founded fear" standard. Any administrative action amounting to a nationality-specific reduction in the asylum standards would probably violate the statute, and would in any case open the gates to political efforts to favor certain groups.

C. **Certification of BIA decisions.** Not viable. Similar considerations circumscribe the Attorney General's review of decisions of the Board of Immigration Appeals. A decision of the Attorney General on certification must follow the statute, as construed by the courts. Although the Attorney General may make findings of fact regarding country conditions in Haiti, it is unlikely that such findings could precedentially ensure asylum for large numbers of the Haitian parolees.

D. **Temporary Protected Status (TPS).** Not effective. The Attorney General may grant Temporary Protected Status to nationals of a state in the event of armed conflict, environmental disaster, or "extraordinary and temporary conditions . . . that prevent . . . nationals . . . from returning to the state in safety." The decision to designate a country for TPS must follow the statutory criteria, and must determine that civil unrest, economic privation, and other hazards have reached a level so severe as to pose a general threat to public safety. The end result of a designation, moreover, is only temporary refuge; permanent status remains beyond reach of the TPS authority.

E. **Deferred Enforced Departure (DED).** Possibly viable, but of limited effectiveness. The prospect of a Salvadoran, Guatemalan, and Nicaraguan mass return raised foreign policy concerns sufficiently serious to motivate the President to signal his willingness, absent a legislative solution, to invoke DED, an extra-statutory exercise of executive discretion, generally based on foreign policy interests (and carried out only by presidential order). The foreign policy concerns implicated by the return of 12,000 Haitian parolees (or 105,000 Haitian nationals) to a fragile economy and political infrastructure might similarly justify DED. Although DED remains a possible administrative option, it does not confer permanent status, and should be viewed as a stop-gap measure only. Finally, the Office of Legal Counsel has raised serious concerns as to the propriety of DED in this context.

V. Recommendations

A. Salvadorans and Guatemalans. We believe that both non-action and general field guidance from the General Counsel are viable options with regard to the Salvadorans and Guatemalans. The considerable pressure from Guatemalan and Salvadoran advocates suggest the latter; general principles of impartial adjudication favor the former.

B. Haitians. Failing a legislative solution, there is no viable, long-term administrative solution for the Haitians. In the short term, we recommend DED, though questions of scope, legality, and timing remain to be resolved. In light of the concerns expressed by OLC, however, we believe it is both unnecessary and imprudent to reach a decision today regarding the Haitians unless events in the Congress leave no alternative but to commit to this course. In that event, we will need an opinion from OLC that is sufficiently definitive that the AG can advise the President that DED is available here.

Immigrati - - ~~xxxx~~
deportatio

Leanne A. Shimabukuro 11/06/97 11:59:12 AM

Record Type: Record

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

cc: Jose Cerda III/OPD/EOP
Subject: Central Americans-- 5:00pm meeting today

I spoke with Peter-- he says that DC approps is supposed to come up this afternoon in the Senate and may get passed by the House as early as tonight.

Our chances of getting Haitians and NJB are still unclear but looking less than optimal. In addition, it looks like there will be report language which will ask the Justice Department to use its discretion to give Salvadorans and Guatamalans an easier standard in their suspension cases (apparently Abraham favors this too).

We need to decide our position on an easier standard for Salvadorans/Guatamalans and what kind of future commitment we want to make for Haitians who may get left out of this deal. The signing statement provides an opportunity for the President to say something on these fronts. Since he may be signing this as soon as tomorrow, Peter said we should meet late today to get these policy issues resolved.

I'm setting up something for 5:00pm today in room 231 and inviting the usual suspects.

Immigrati - -dequtati -

STATEMENT OF THE PRESIDENT

I was pleased to sign into law today H.R. 2607, the "District of Columbia Appropriations Act, 1998."

I am particularly pleased that the bill provides sufficient funding to implement the National Capital Revitalization and Self-Government Improvement Act of 1997 (Revitalization Act), which includes the main elements of the plan for the District of Columbia that I proposed in my 1998 budget in February. That plan, which was the most comprehensive plan that any Administration had ever proposed for the District, was designed to achieve two goals: to revitalize Washington, D.C. as the Nation's capital and to improve prospects for "home rule" to succeed. Congress adopted the Revitalization Act as part of the historic balanced budget agreement that I signed into law last summer. Now, with this 1998 appropriations bill, Congress has provided the funds to implement it.

The bill also drops several of the objectionable micromanagement and other provisions in the original House-passed version of the bill such as Federal funding for private school vouchers, the requirement to reopen Pennsylvania Avenue, the limitation on public assistance payments, the prohibition on Treasury borrowing authority for the District, and restrictions on the District's authority to make improvements in its financial management system.

The Act continues to contain abortion language that would prohibit the use of Federal and District funds to pay for abortions except in cases in which the life of the mother is endangered or in situations involving rape or incest. The continued prohibition on the use of local funds is an unwarranted intrusion into the affairs of the District.

In addition, the bill makes important changes to last year's immigration bill regarding its treatment of Central Americans. During my trip to Central America in May, I pledged to address the circumstances of Central Americans who were treated unfairly. In July, I sent Congress a legislative proposal that offered relief to these people. I am very pleased that this bill includes provisions that do just that.

Most Central Americans who sought refuge in the United States did so because of the civil war and human rights abuses that plagued that region for many years. As I noted during my trip, I believe that the United States has a particular obligation to help these people -- not only because they and their families have now established deep roots in our communities -- but also because sending them home at this time would very likely disrupt the important progress these countries have made towards peace, democracy, and economic reform.

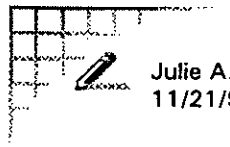
Nevertheless, I am concerned about several aspects of this legislation as passed by Congress. First, I am troubled by the fact that it treats similarly situated people differently. The Central Americans covered by this bill fled similar violence and persecution; they have established similarly strong connections to the United States; and their home countries are all fledgling democracies in need of our assistance. The relief made available to these people should be consistent as well.

I believe, however, that the differences in relief offered by the legislation can be minimized. I am asking the Attorney General to consider the history and circumstances of the people covered by this legislation and its ameliorative purposes in implementing its provisions.

I am also concerned about the plight of certain Haitians who are not covered by this legislation. Many Haitians were also forced to flee their country because of persecution and civil strife and they deserve the same treatment that this legislation makes possible for other groups. We will seek passage of legislation providing relief to these Haitians early in the next session of Congress, and take appropriate administrative action while we pursue this solution.

Finally, I believe that Congress should not have continued to permit the application of new, harsher immigration rules to other persons with pending cases. Changing the rules in the middle of the game is unfair, unnecessary, and contrary to our values. We intend to revisit this issue at the earliest opportunity.

Immigrati - -Deportati-



Julie A. Fernandes
11/21/97 07:05:04 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:
Subject: Haitians

Elena,

Peter talked to Alan (Leg. INS), but has not yet gotten in touch with Karen (Leg. DOJ). According to Peter, Alan is persuaded of Peter's assessment of the legislative chances of a bill to provide some kind of relief for Guantanamo + Haitians.

Scott and I then spoke with John Morton (DAG) and let him know of Peter's legislative assessment, and that our judgment was that prosecutorial discretion was the appropriate strategy for us to pursue at this time. We also told him of Peter's judgment that we could possibly move this on the must-pass Bosnia legislation in the Spring, and the statement by Smith's staffer that this leg. could be a possible off-set (indication of at least some willingness to deal). Morton said that he sent an options memo to the AG recommending DED, but that he would share this new information with her. He also indicated that if the WH wants to pursue prosecutorial discretion, they would likely go along. We will know their definitive view on Monday.

Julie

Immigration - Legislation

TO BE INSERTED IN DC APPROPRIATIONS SIGNING STATEMENT

During my trip to Central America in May, I pledged to address the circumstances of Central Americans who were treated unfairly by last year's immigration bill. In July, I transmitted to the Congress a legislative proposal that offered relief to these people. I am very pleased that this bill includes provisions that do just that.

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Immigration - Deportation
and
Immigration - 245;

Leanne A. Shimabukuro 11/05/97 07:06:13 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Jose Cerda III/OPD/EOP, Julie A. Fernandes/OPD/EOP
Subject: immigration legislative update

As of this evening:

Central Americans-- Looks like this is back on DC Approps, which the Senate has yet to pass. Kennedy is holding the Central Americans piece to add Haitians and NJB. He is also trying to get a relaxed suspension standard (from "extreme hardship" to "hardship") for the ABC class, but will probably pull back on this. Peter is hoping yesterday's letter will give us some leverage with the CBC and Hispanic Caucus when the House votes on the DC bill. Timing on DC still unclear.

245(i)-- The CJS conference is meeting tomorrow at 9:00am. The Senate (Gregg) is suuuposedly still holding firm on a permanent extension. Despite the strong House vote on motion to instruct last week, House conferees will be looking to compromise through some sort of grandfather provision. The current thinking is that a limited clean extension (2-5 years) of 245(i) is preferable to a grandfathering provision-- which we might be able to get after the extension expires. INS has been working with Abraham to get numbers on how much revenue would be lost through grandfathering.

Immigration - deportation

During my trip to Central America in May, I pledged to address the circumstances of Central Americans and others who were treated unfairly by last year's immigration bill. I am very pleased that this bill includes provisions that do just that.

Most Central Americans who sought refuge in the United States did so because of the civil war and human rights abuses that plagued that region for many years. As I noted during my trip, I believe that the United States has a particular obligation to help these people -- not only because they have now established deep roots in our communities -- but also because sending them home at this time would very likely impede the important progress these countries have made towards peace, democracy, and economic reform. In July, I transmitted to the Congress a legislative proposal that offered relief to these people. I am pleased that the Congress responded to my call for legislative action.

Nevertheless, I am concerned about several aspects of this legislation as passed by the Congress. First, I am troubled by the fact that it treats similarly situated people differently. The Central Americans covered by this bill fled similar violence and persecution; they have established similarly strong connections to the United States; and their home countries are all fledgling democracies in need of our assistance. The relief made available to these people should be consistent as well.

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Finally, I believe that Congress should not have continued to permit the application of new, harsher immigration rules to other persons with pending cases. Changing the rules in the middle of the game is unfair, unnecessary, and contrary to our

tradition. We intend to revisit this issue as well at the earliest opportunity.

Immigration – ~~Central Amer~~
Deportation

10-23 Immigration

House deal – Smith/Diaz Balart
amnesty Nicar.
Guar/Salv – pre-April 1
adopt our class delinition
Elims unskilled whrs
grandfather – approved visa petition – 7 yrs.
clear our pipeline 70,000
Bad on NTB –
Maintain our 4000 yr cap. > Impact on non-Cuban Amers – current law
Sends the language tomorrow morning – technical input

Senate – more fluid.
Mack-Ken-Graham-Abrams unified
share concerns abt. NTB/4000
to lesser extent-elim of unskilled whrs
to even lesser – amnesty

Linger in mind
maybe – 18-mo ~~moratorium~~ lifespan for our bill
prob will fall out of favor
could serve as ~~a~~ placeholder

Al. has drafted up simple
D-B/Smith – also
could serve as placeholder

Phil G + Lott – may be willing
to take Rist DB/Smith deal –

Left out in cold – Mexicans – no activity on this score
Haitians – still very much an issue
Carrie Meek/CBC
Split equities in their favor
10,000 – 15,000

Need to get done in next 2 weeks
Final lang - mid next wk
Both chambers - next wk
Conf - wk after

Issues

(?)

1. Nicaraguans - very broad & anything to do?
2. ES/Guat - Everything is fine.
3. Everyone else -

Don't change. No icing. —

Best we might get: NTB neutral

NTB — clear-cut pos
Cap — clear-cut pos

(?)

NSC — Do NTB now?
Has potential for blowing up whole thing.

(LS) Unskilled whers —

- grandfathering - do we support? broaden opt-in - go to labor cert - just a few more than now
- moratorium - on new applics until further notice Ab. may be able to accept.

Breakdown on nationality.

INS opposed generally to cutting of category unless legal/illegal

if cut ⇒ moratorium

trade-off w/ unskilled

State a bit worried as it mostly Mexicans

Unclear where folks are on Hill — 10,000-15,000

Haitians - have same foreign policy rationale as for CAT

Cleanest way - This gp can adjust status. (ES/Guat fix doesn't work)

- DED for Haitians - temp solution - create headaches
- Do nothing.

only concern - how to do fruitfully and blow up.

← State/NSC OK - include Haitians

INS - no position yet - favorably inclined assuming clean/tight

Best op to work in - before trade vote

2nd print is conference

Maria - greater visibility - letter to Lamar Smith??
Pete - wh it really/
when you read etc

Cuts in Emg Affs / Pub Affs
PA apps. 9 → 4 (incl commissioner)

Pete — included in OMB letter
Can I do what this has
Not turned around

On OMB shortlist -
end same negotiating.

Mollohan pissed off at NS
He doesn't get There's a little good here

Wh w/ approps / rainy msg
Billings / Mollohan

Immigration -
deportation issue

Leanne A. Shimabukuro 10/28/97 07:22:12 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Jose Cerda III/OPD/EOP

cc:

Subject: Central Americans

An update for tomorrow's 2:00pm meeting: INS was supposed to finally see the House language today, so we should have a sense of whether they stayed true to their original principles at tomorrow's meeting. The House Republican leadership is set to meet to discuss the bill this Thursday. Peter Jacoby seemed fairly certain that Haitians will be closed out of the Republican deal. Presumably, the leaders will also decide which bill to stick this on-- DC or CJS approps. CJS is a more problematic bill from our perspective, and would be further complicated if 245(i) doesn't get extended (House votes tomorrow).

- Haitians: INS is preparing some options on can be done to assist the Haitians for discussion at our meeting. We should probably get a sense from leg affairs on how far we can push any legislative fix for this group at this juncture. FYI: the Hill meeting on the Haitian issue is now set for tomorrow at 5:00pm.

- Unskilled workers: It sounds like the Republican deal on this is a moratorium of the category and grandfathering certain individuals. At our last meeting, State was asked to report back on the Mexico implications and INS was to find out which countries these applicants are coming from. We should find out how generous the grandfather provision is.

- Communications: The President will be in Florida this weekend. Maria or others may ask whether he should say anything about any of this while he's down there.

Thanks.

Immigration - deportation

CC Elena Kagan
Leanne
Shimabukuro

UNITE!

A MERGER OF THE AMALGAMATED CLOTHING & TEXTILE WORKERS UNION & THE INTERNATIONAL LADIES' GARMENT WORKERS' UNION

October 29, 1997

FYI
From M Echaveste

The Honorable William Jefferson Clinton
The White House
Washington, D.C. 20500

Dear Mr. President

I am writing to express the support of UNITE, the Union of Needletrades, Industrial and Textile Employees, for current efforts to address the extraordinary circumstances of certain Central American refugees, but to state our concern about some elements of the proposed resolution. I hope you will keep our views in mind as you consider legislation on this issue.

As you know, many Central Americans fled long civil wars in their homelands and were given safe haven in the United States under various temporary protected statuses. Most of these refugees have made new lives for themselves, raised families here and become contributing members of communities all across the country. Many have joined the ranks of our union and other unions. Under the provisions of the 1996 immigration law, most of these refugees face imminent deportation. Because of their unique situation, that would be unjust. We have strongly supported special legislation to address their plight. The legislative package that is currently under consideration, however, includes some measures that we find unacceptable.

We are deeply concerned about the inclusion of a provision that would eliminate the "other worker" category of employment-based immigrant. In addition to our belief that this is substantively poor policy, it also bears no relationship to the plight of Central American refugees. It represents a change in our legal immigration system specifically rejected in the 1996 immigration law debate. And using a carefully crafted bill designed to solve a particular immigration problem as a vehicle for major change in our legal immigration system would set a regrettable precedent.

For the same reasons, we oppose the retroactive application of the "cancellation of removal" provisions in the 1996 law.

Thank you very much for your consideration.

Sincerely,

Jay Mazur, President

CC: Maria Echaveste, Assistant to the President and Director of Public Liaison

1710 Broadway
New York, NY 10019-5299
Tel 212 265-7000
Fax 212 265-3415

Immigration - deportation

Leanne A. Shimabukuro 10/10/97 01:21:22 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Jose Cerda III/OPD/EOP
Subject: immigration

Ugh- I didn't finish that last email before I sent it. It must be Friday. Sorry.

To continue... Jose' and I generally thought we could live with the House Republican proposal since it serves our main purposes, even though it isn't perfect. There are two red flags: amnesty for all Nicaraguans (including those who have never had a case in the pipeline) and elimination of the unskilled workers category (10,000 visas).

Amnesty. This administration has never supported amnesty, and there doesn't appear to be a strong substantive argument to give it to Nicaraguans over any other Central American group. However, the main person who would beat us up on this is Lamar Smith-- and he's supporting the proposal. We can expect to hear members from the Hispanic Caucus and CBC complain that amnesty for this group is inequitable.

Legal Immigration #s. The elimination of the unskilled workers category is another issue we need to feel out. Sen. Abraham is not too happy about this part of the proposal, but he may not oppose the bill on these grounds. This visa category doesn't tend to have strong support, but some will probably oppose its elimination.

Another concern is that the House plan would subject the old standards for suspension and the 4,000 cap retroactively to all **non**-Central Americans/Nicaraguans who had cases in the pipeline (our bill would have covered them). However, this group is only a fraction of the total and the administrative remedy we were considering would not have covered them.

The Republicans are really going out on a limb for some fairly transparent political reasons-- but as long as they are the ones making the case for greater leniency, it makes things easier on us. The general consensus seems to be that we stay away from endorsing amnesty and the proposal for now. We may end up signing it, but we should hold out to see if they will make more improvements to their plan.

Immigration scapegoats

Washington Times
10/28/97

It is an encouraging sight to see members of Congress willing to face up to an unintended legislative mistake and work to ensure that fairness is restored. That's what appears to be happening in the case of the 300,000 Latin American refugees who have been in this country since the 1980s and who found themselves squeezed by certain provisions of the 1996 Immigration Reform Act. These are people who have not only been through some very difficult times, as civil war ravaged their countries, but also people the vast majority of whom have become productive members of this society.

An arrangement brokered by House Speaker Newt Gingrich is now in the works to allow the refugees what they have always asked for — not permission to stay, but simply a hearing before an immigration judge who will decide who gets to stay and who has to leave. While the 1986 Immigration act allowed them temporary refugee status and the prospect of a hearing after seven years of good behavior, the law passed last year capped the number of cases at 4,000 each year and upped the number of years to 10. Problem: Once the refugees had submitted their paperwork and their application process had been started, they stopped "accumulating" years (as far as the Immigration and Naturalization Service was concerned, at least). This meant that many got trapped at seven years, Kafkaesquely unable to reach the now-needed 10. As has been pointed out in editorials in this space, that is absolutely not the way the American system is meant to work.

Some hard work by Rep. Lincoln Diaz-Balart in the House and Sens. Connie Mack and Spencer Abraham appears to have paid off. Rep. Lamar Smith, who chairs the subcommittee responsible for the 1996 legislation, has agreed to a solution as far as the Central Americans are concerned. While Mr. Smith rejects any notion that the there is a question of retroactivity involved here, he has offered to give Nicaraguans who arrived in the United States before Dec. 1, 1995 green cards. Salvadoreans and Guatemalans will get a hearing according to the 1986 rules.

That's the good news. The bad news is Mr. Smith's price is some 30,000 other people caught in much the same bind but who do not have the same political clout and high profile as the Central Americans. These are people from Eastern Europe, Ireland, Cuba, Haiti, Mexico and elsewhere. And in addition, he's demanding the elimination of a category of legal immigrants, so-called "other workers," meaning about 10,000 nannies, gardeners and other unskilled, but certainly highly useful, laborers.

One would hope that the congressional leadership, while welcoming Mr. Smith's change of heart on the Central Americans, would stand up for all people unfairly caught by a heedless change in rules in the middle of the game. Let new cases be tried according to the new and tougher rules. And let those who have put their trust in the fairness of the American system know that our political leaders take that faith seriously.

To Maria Echaveste
Peter Jacoby
FYI

Sent to Elena Kagan
Jose Cerda
FYI

Immigration - Haitian

Leanne A. Shimabukuro 11/03/97 05:16:17 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP

cc:

Subject: MORE CHANGES PROPOSED

I just got called from Maria, Scott B. and Rob W. who want to further tweak the letter. I've bolded their suggested changes.

We've just seen language to expand Nicaraguan-like amnesty to Cubans, so I agree that we should change the reference to distiguishing among nationals to be broader, as proposed. However, their other changes make the tone more negative. I told them about your and Peter's concerns about being too negative when the deal is so close to being finalized. However, they seem to think the deal is not in any danger of exploding at this point, so we should be on the record for strongly advocating for equitable treatment.

I'm trying to reach Peter to get his read on these changes-- I'll let you know what he thinks.

HAITIANS.L

RICK SWARTZ & ASSOCIATES, INC.
1869 Park Road, N.W., Washington, D.C. 20010
Telephone:(202)328-1313 Fax:(202)797-9856
Email: RickSwartz@aol.com

FAX

DATE: 10/27/97

TO: María Echaveste, Peter Jacoby
Amb. León, Amb. Lamport

OF:

FAX #:

FROM: Rick Swartz

RE: SAVN/Gutierrez rally + press conference

Immediate Response Requested: Yes No

TOTAL NUMBER OF PAGES, INCLUDING THIS COVER PAGE: 2

MESSAGE:

fax to Elena Kagan
→ we may need
to revisit the
"extreme" hardship
issue.

PRESS RELEASE

THE SALVADORAN-AMERICAN NATIONAL NETWORK

FOR MORE INFORMATION, CONTACT:
Pedro Avilés
Oscar Chacón
202-234-7009
FOR IMMEDIATE RELEASE

Salvadoran and Guatemalan Immigrants Demand Equal Treatment from the Republican Congress

Washington, DC, October 26, 1997— The Salvadoran-American National Network (SANN) and Congressman Luis Gutierrez (D-Ill) will hold a rally and press conference on Tuesday, October 28, 1997 at 12:30 p.m. in the east steps of the U.S. Capitol to demand equal and fair treatment for approximately 250,00 Salvadoran and Guatemalan immigrants facing uncertain immigration status. The mobilization comes after Congressmen Lincoln Diaz-Balart (R-FL) and Lamar Smith (R-TX) agreed to introduce legislation that would grant amnesty to Nicaraguans in this country before December 1, 1995. SANN leaders demand that if amnesty is to be made available to Nicaraguans , it should also be made available to Guatemalans and Salvadoran Immigrants . " We call upon Congressmen Diaz-Balart and Smith to rectify the agreement and be fair to one group without being unfair to another. Salvadoran and Guatemalans find themselves in the same situation as the Nicaraguans. We demand to be treated equally" said Oscar Chacón, a spokesperson for SANN. The language of the proposed legislation, which is still in draft form, grants Nicaraguans amnesty. In turn Salvadoran immigrants and Guatemalans who entered the country before 1990 would be allowed to pursue permanent residency through case-by-case suspension of deportation hearings. Other local mobilization will take place in Houston, Los Angeles, the San Francisco Bay Area, Boston and New York, cities with the largest concentrations of Central American immigrants. SANN is a umbrella organization of 20 grass-root organizations that provide social and advocacy services to Central Americans living in the United States.

###

END

Immigration –
deportation

Leanne A. Shimabukuro 10/10/97 10:21:55 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP
cc: Elena Kagan/OPD/EOP, Jose Cerda III/OPD/EOP
bcc:
Subject: Re: immigration

I heard about the bill yesterday-- my understanding is that it gives amnesty to Nicaraguans and gives the case-by-case process under the old rules to the rest of the Central Americans.

Bruce N. Reed

Bruce N. Reed
10/10/97 10:18:34 AM

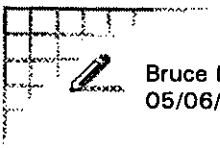
Record Type: Record

To: Leanne A. Shimabukuro/OPD/EOP, Jose Cerda III/OPD/EOP, Elena Kagan/OPD/EOP

cc:
Subject: immigration

Congress Daily reports this a.m. that Smith and Diaz-Balart have reached agreement on legislation to give legal permanent residency to Nicaraguans, and Guatamalans and Salvadorans to apply on a case-by-case basis under the old rules. Is this true? Are we satisfied?

Immigration — Nicaragua issue



Bruce N. Reed
05/06/97 01:49:39 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP, Jose Cerda III/OPD/EOP

cc:
Subject: Immigration

Sylvia is out of the country, but not out of reach. She called to say the President wants to aggressively pursue solving our Nicaraguan problem. He's not going to say anything about it on this trip, but he would like us to look into how we might try letting 100,000 illegals in for the next 3 yrs. Sylvia said members on the trip were pressing him in this direction.

Can we set in place a process to advise the President on this and any other ideas he might come up with over the course of this expedition? Sylvia thought we should give him advice next week if possible.

cc: Tom / Leanne

FYI.

Elena

Immigration - deportation

THE PRESIDENT HAS SEEN
07-14-97

THE WHITE HOUSE

WASHINGTON

July 8, 1997

Copied to
Berger
Echaveste
Hilley
Reed
Ruff
COS

MEMORANDUM FOR THE PRESIDENT

FROM: PHIL CAPLAN

SUBJECT: Central American Migrants

Sandy Berger, Maria Echaveste, John Hilley, Bruce Reed and Chuck Ruff recommend in the attached memo that you approve a course of action to provide relief to Central American migrants affected by the new immigration law. The strategy includes administrative action to be taken by the Attorney General and proposed legislation. Executive action by you would be held in reserve in case the legislative effort is unsuccessful. **Sandy et. al. seek your approval as soon as possible so as to permit Hill briefings on the legislation to move forward.**

Background. As you know, the immigration law severely restricts the government's ability to suspend deportation for aliens who have resided in the U.S. for considerable periods of time. This greatly affects Central Americans who entered here in the 1980s. Two groups are most at risk who had been authorized to stay: 1) roughly 40,000 Nicaraguans who the Reagan Administration protected from deportation while DOJ reviewed their asylum applications -- the program ended in June 1995; 2) roughly 190,000 Salvadorans and 50,000 Guatemalans who were protected from deportation under a court settlement. Under the old rules, roughly 120,000 in these groups qualified for suspension. Under the new rules, only a fraction will be eligible.

Course of action. Any long-term solution to the problem will require legislation, but there are some administrative actions we can take now. ***Administrative:*** the Attorney General will: (i) announce temporary steps to ensure that any migrant who would have qualified for suspension under the old rules would not be deported; (ii) announce her review of the "stop-time" decision by the Board of Immigration Appeals -- a provision in the new law said that time spent in deportation proceedings did not count towards the residency requirement and the Board ruled that the provision applied retroactively. The AG's review of the decision will be applauded. ***Legislation***: Our proposal, which will very likely receive bipartisan support, will restore qualified migrants to the status they had before the new law. ***Executive action (to be held in reserve):*** you have available to you a presidential grant of deferred enforced departure (DED). DED would protect qualified migrants from deportation, but it is only a temporary solution (18 months) and does not offer naturalization or permanent resident status and could be revoked by a future President. In 1993, you used DED for a portion of the Salvadorans, in the hope that many would eventually qualify for a change in status, but the new law changed the landscape.

Your advisors recommend that you authorize the administrative steps and legislative effort, but hold DED in reserve to see if the legislation moves by the August recess. DED will be mentioned privately to some Members. Rahm concurs with the recommended course of action.

____ Agree ____ Disagree ____ Discuss

Immigration - deportation

DRAFT
7/9/97 10:15pm

The Honorable Newt Gingrich
Speaker
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I am pleased to submit for your immediate consideration and enactment the "Immigration Reform Transition Act of 1997." This legislative proposal is designed to ensure that the complete transition to the new cancellation of removal provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) can be accomplished in a fair and equitable manner consistent with our law enforcement needs and national security interests.

This legislation provides a better transition to the new rules applicable to immigration relief formerly known as suspension of deportation. In particular, it avoids any unfairness that could come from applying new rules to pending cases involving individuals who have long ties to the United States. Also, it recognizes the continuing effects of special legal measures taken by my predecessors over the last decade with regard to those Central Americans who entered the United States in the 1980s in response to civil war and political persecution.

These measures -- the Nicaraguan Review Program which, under successive administrations from 1985 to 1995, protected roughly 40,000 Nicaraguans from deportation while their cases were under review and the American Baptist Church v. Reno litigation which resulted in a 1990 court settlement protecting roughly 190,000 Salvadorans and 50,000 Guatemalans -- would be effectively nullified under the unduly restrictive rules of IIRIRA. Such a result would come at great cost to families, our communities at home, and our international interests throughout the Americas.

This legislation will delay the effective date of IIRIRA's new provisions so that pending immigration cases will continue to be considered and decided under the old suspension of deportation rules as they were long known prior to April 1, 1997 while the new law would apply fully to cases commenced after that date. This legislation, of course, dictates no particular outcome of any case. Every application for suspension of deportation or

cancellation of removal must still be considered on a case-by-case basis by an immigration judge. It simply restores a fair opportunity for those whose cases have long been in the system or have other demonstrable equities.

Under the old suspension of deportation rules, immigration relief could be granted, in the discretion of an immigration judge, to an individual who had been present in the United States for seven years, showed good moral character, and demonstrated that deportation would cause extreme hardship to the individual or to a spouse, parent or child who was a United States citizen or a lawful permanent resident. Under the new law, the grounds for relief were significantly narrowed in two ways. First, the individual must show continuous physical presence for ten years. Second, the hardship that must be demonstrated must be "exceptional and extremely unusual." No longer is hardship to the individual alone relevant. This legislation will apply these new standards only to new cases.

In addition to continuing to apply the old standards to old cases, it exempts these cases from the new 4,000 annual cap on the number of suspensions of deportations (renamed cancellations of removals). It also exempts from the cap cases of battered spouses and children who receive cancellation. Finally, the legislation extends to <u>all</u> individuals included in the 1990 <u>ABC</u> settlement the substantive standards (e.g., seven years continuous physical presence, extreme hardship) previously available to suspension applicants whether or not they were formally placed in proceedings prior to April 1, 1997. Those individuals whose time to move to reopen their case following a removal order may have otherwise elapsed are granted 180 days in which to do so.

My Administration is committed to working with you for its enactment. If, however, we are unsuccessful in the goal you and I share of just and proper action, I am prepared to use my inherent foreign policy authority to take additional available administrative steps, including [considering] a grant of Deferred Enforced Departure which would provide time-limited protections from deportation for qualified individuals. Enactment of this legislation ensures a smooth transition to the full implementation of IIRIRA and prevents harsh and avoidable results.

I urge the prompt and favorable consideration of this legislative proposal by the Congress.

William J. Clinton

The White House, July, __, 1997

DRAFT

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release
July xx, 1997

"Immigration Reform Transition Act of 1997"

FACT SHEET

The President today transmitted to the Congress a legislative proposal entitled the "Immigration Reform Transition Act of 1997." This legislation provides a needed transition for certain persons with immigration proceedings begun before the 1996 immigration law took effect but still not yet finally adjudicated. This proposal will eliminate application of the new rules, effective April 1, 1997, to persons requesting suspension of deportation before the new law took effect. It will avoid the unfairness of applying certain new rules to pending immigration cases, and it recognizes the continuing effects of special legal measures taken over the last decade concerning Central American countries that were then mired in civil war.

Under this legislation, applicants for suspension of deportation who were in the administrative pipeline before April 1, 1997, will be required to meet the standards that applied prior to the effective date of the new law. The new law significantly tightens the criteria for suspension eligibility, which is appropriate for newly-filed requests, but unduly harsh for cases filed prior to April 1. This legislation will fulfill the President's promise he made during his May, 1997, trip to Central America to correct that inequity.

Under the new immigration law, immigration judges only may award a total of 4,000 grants of suspension per year. That ceiling only should be applied to requests filed after the new law took effect. The "Immigration Reform Transition Act of 1997" will ensure that deserving requests for suspension -- including those by certain battered spouses and children -- filed before April 1 will not be denied because of the cap.

In addition, the legislation will:

Clarify that the provision of the 1996 immigration law requiring a suspension applicant to have satisfied the physical presence requirement before INS instituted deportation proceedings against that individual only applies to cases filed after April 1, 1997. Persons who requested suspension before April 1 will be able to count their physical presence in the United States after INS began deportation proceedings against them.

Specify that all members of the longstanding class action case American Baptist Churches v. Thornburgh (the ABC class, which the Federal government settled in 1991) who request suspension of deportation will be judged by the pre-April 1 standards.

Give persons with final orders of deportation 180 days to file a motion to reopen their proceedings to request suspension. (Currently, such motions generally must be filed within 90 days of the date an order of deportation becomes final.)

This legislative proposal will help ensure that the 1996 immigration law will not have an unduly harsh effect on those individuals who have made vital contributions to their local communities here in the United States, while putting down deep roots in our Nation and abiding by our laws. We must continue to combat illegal immigration while facilitating legal immigration. But we must do so with laws that are humane and compassionate. The "Immigration Reform Transition Act of 1997" will fine-tune the 1996 law so that it achieves both goals appropriately and clearly.

Immigration-Deportation

Ingrid M. Schroeder
07/10/97 11:54:56 AM

Record Type: Record

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

cc: James J. Jukes/OMB/EOP, James C. Murr/OMB/EOP, Peter G. Jacoby/WHO/EOP
Subject: DRAFT BILL - RE: Suspension of Deportation (for Presidential Transmittal)

By now you should have received for review a draft bill related to applicants for suspension of deportation.

Background

Prior to the enactment of the 1996 immigration bill, suspension of deportation could be granted at the discretion of an immigration judge to aliens who had been present in the U.S. for seven years, have a good moral character and demonstrate that deportation would cause "extreme hardship" to the alien, or spouse, parent, or child who is a lawful permanent resident or U.S. citizen. The 1996 immigration bill tightens the standards for relief from deportation by requiring the alien to show continuous physical presence and good moral character for ten years and to demonstrate that removal would cause "exceptional and extremely unusual hardship" to a lawful permanent resident or U.S. citizen spouse, parent, or child. In addition, immigration judges are only permitted to grant relief from deportation in 4,000 cases per year. The new standards for suspension of deportation became effective on April, 1, 1997.

Summary of Draft Bill

The draft bill would apply the old standards (pre 1996 immigration bill) for suspension of deportation to cases that were in the administrative pipeline prior to April 1, 1997. In addition, the cap of 4,000 cases per year for deportation relief would not apply to cases in the pipeline prior to April 1, 1997, or to battered spouses and children.

Status

LR will be preparing the draft bill for Presidential transmittal early next week. We therefore will need your comments on the draft bill package today.

According to WHLA and Justice the Attorney General will announce the draft bill in press briefings being held today and tomorrow.

WHLA has also notified LR that Justice is preparing a letter (for expedited OMB clearance and transmittal today) from the Attorney General to Speaker Gingrich laying out the different types of administrative relief and an explanation of legislative alternative that the Department is pursuing or considering with regard to suspension of deportation cases.

Will keep you posted on any further developments.

Immigratic - deportation

DRAFT

Proposed Amendments Regarding Suspension of Deportation

Background

This legislation provides a better transition to the new rules applicable to relief formerly known as suspension of deportation. In particular, it avoids any unfairness that could come from applying new rules to pending cases, and it recognizes the continuing effects of special legal measures taken over the last decade with regard to Central American countries then mired in civil war. On the other hand, it does not provide for an amnesty — instead it merely provides that applicants for suspension of deportation who were in the administrative pipeline, as herein described, must continue to meet the standards that applied before the 1996 immigration reform law took effect.

Under previous law (former Immigration and Nationality Act [INA] § 244), suspension could be granted, in the discretion of the immigration judge, to an alien who has been present in the United States for seven years, shows good moral character, and demonstrates that deportation would cause "extreme hardship" to the alien or to a spouse, parent, or child who is a lawful permanent resident or a U.S. citizen. Under amendments adopted by the Illegal Immigration Reform and Immigrant Responsibility Act [IIRIRA], the substantive standards are considerably tightened for this relief, now called "cancellation of removal," INA § 240A(b)(1). The alien must show ten years of continuous physical presence and good moral character, and must demonstrate that removal would cause "exceptional and extremely unusual hardship" to a lawfully resident or U.S. citizen spouse, parent, or child. Hardship to the alien alone is no longer relevant. Those tighter standards apply, however, only to removal cases initiated on or after the effective date of Title III-A of IIRIRA, April 1, 1997. Cases initiated earlier may still be decided under the previous seven-year suspension standard.

IIRIRA also imposed two other restrictions on this general form of relief, however, and both have been applied to pending suspension cases as well:

(1) "Stop-time" rule. Under pre-IIRIRA suspension rules, an individual could continue accruing time toward the needed seven years after deportation proceedings had commenced. INA § 240A(d), added by IIRIRA, adopts a new "stop-time" rule, which requires that the requisite period be achieved before the charging document is served. The Board of Immigration Appeals construed IIRIRA § 309(c)(5) as making this rule applicable as well to all cases where the grant of suspension was not final on the date of enactment. *Matter of NJB*, Int. Dec. # 3309 (BIA February 20, 1997).

(2) Annual cap. INA § 240A(e) and IIRIRA § 309(c)(7) impose an annual cap of 4000 on the total of suspensions and adjustments plus cancellations and adjustments in any given fiscal year, beginning with FY 97, which began on October 1, 1996, one day after IIRIRA's enactment. This immediate application to cases in the pipeline, which are still adjudicated

under the previous suspension rules in most respects, has caused disruption in normal case processing in the immigration courts because it suddenly imposed a quantitative limit on what had previously been a purely qualitative determination, inescapably administered in decentralized fashion by over 200 immigration judges. The problem has been particularly acute because the imposition of the cap coincided with a higher volume of suspension applications, owing, *inter alia*, to developments in long-standing class-action litigation, especially *American Baptist Churches v. Thornburgh*, [*ABC*] (settlement agreement reached in 1991) and to the phasing out of the Nicaraguan Review Program initiated by the Reagan Administration.

General description of the amendments

The proposed amendments are meant to eliminate any arguably retroactive application of the new rules governing suspension-type relief. Cases in the pipeline would continue to be decided under the old suspension rules in all respects (this includes all cases previously covered by the Nicaraguan Review Program), while new, post-April 1, 1997, cases would be governed by the new standards adopted in IIRIRA § 240A(b), including the stop-time rule and the annual cap. Also, in recognition of the special circumstance of the persons covered by the Bush Administration's settlement of the *ABC* litigation in 1991, the proposed amendments apply to such persons the pre-April 1 rules. These are, in effect, "pipeline" cases, and the amendment specifically mandates that their relief applications be judged under the earlier substantive standards. None of the amendments, however, dictates that any of the affected persons shall be granted relief. Every application for suspension or cancellation must still be considered, case-by-case, by an immigration judge.

Section-by-section analysis

Section 1(a). This subsection amends INA § 240A(e) so that the annual cap set forth there applies only to cases commenced after April 1, 1997 (where the applicable relief is cancellation of removal, with its 10 year and higher hardship requirements, rather than suspension of deportation). The amendment exempts from the cap pre-April 1 cases (suspension cases) as well as battered spouses and children who receive cancellation under the special rules of 240A(b)(2).

Section 1(b). The repeal of IIRIRA § 309(c)(7) simply makes that section consistent with section 1(a)'s removal of the cap from pre-April 1 cases (because a cap that covers suspension cases was set forth both there and in INA § 240A(e)). The repeal of IIRIRA § 309(c)(5) makes it clear that the stop-time rule applies only to "cancellation of removal" relief (initiated on or after April 1, 1997), and does not apply to suspension cases already in the pipeline on IIRIRA's effective date.

Section 1(c). This subsection adds a new special rule for *ABC* class members. *ABC* class members who were not in proceedings as of April 1, 1997, will still be subject to most of the *procedural* changes adopted by IIRIRA. For example, removal proceedings would be commenced by filing a notice to appear in accordance with INA § 239. If *ABC* class members wish to seek suspension-type relief, however, they will file for cancellation under the new 240A(b)(3) added by paragraph (c)(6) of these amendments. Although this is "cancellation of removal," it is governed by the same substantive standards (seven years, extreme hardship) applicable to the former suspension relief under former INA § 244. (Class members who were formerly placed in proceedings before April 1, 1997, do not need a special rule; their cases will already be governed by the earlier suspension rules in all respects under the amendments in sections 1(a) and (b).)

Section 1(d). This subsection sets forth the effective date of the preceding subsections, applying them as of September 30, 1996, as if included in the original IIRIRA.

Section 2. EOIR regulations (8 C.F.R. §§ 3.2(c)(2) and 3.23(b)(1)) and INA § 240(c)(6), added by IIRIRA, require that motions to reopen be filed within 90 days after a removal order becomes final, with highly limited exceptions. Some of the intended beneficiaries of section 1 will have passed this time limit by the time these amendments are enacted. This section specifically authorizes a 180 day period during which such persons may file one motion to reopen for these purposes, notwithstanding the normal statutory and regulatory limits on the timing or number of motions to reopen.

DRAFT

Proposed Legislation

SEC. 1.

(a) Section 240A, subsection (c), of the Immigration and Nationality Act is amended—

(1) in the first sentence by striking "this section" and inserting in lieu thereof "section 240A(b)(1)";

(2) by striking ", nor suspend the deportation and adjust the status under section 244(a) (as in effect before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996),";

(3) by striking the last sentence in the subsection and inserting in lieu thereof "The previous sentence shall apply only to removal cases commenced on or after April 1, 1997.".

(b) Section 309, subsection (c), of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208, Division C, 110 Stat. 3009) is amended by striking paragraphs (5) and (7).

(c) Section 240A of the Immigration and Nationality Act is amended—

(1) in subsection (b), paragraph (3), by striking "(1) or (2)" in the first and third sentences of that paragraph and inserting in lieu thereof "(1), (2) or (3)";

(2) in subsection (b), paragraph (3), by striking the second sentence and inserting in lieu thereof "The number of adjustments of aliens granted cancellation under paragraph (1) shall not exceed 4,000 for any fiscal year.";

(3) in subsection (b), by redesignating paragraph (3) as paragraph (4);

(4) in subsection (d), paragraph (1), by striking "this section" and inserting in lieu thereof "subsections (a), (b)(1), and (b)(2).";

(5) in subsection (d), paragraph (2), by striking "(b)(1) and (b)(2)" and inserting in lieu thereof "(b)(1), (b)(2), and (b)(3)";

(6) in subsection (b) by adding after paragraph (2) the following new paragraph—

"(3) SPECIAL RULE FOR *ABC* CLASS MEMBERS.— The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien demonstrates that—

(A) the alien is a member of the class of persons designated as a plaintiff and covered by the settlement agreement in *American Baptist Churches, Inc. v. Thornburgh*, 760 F.Supp. 796 (N.D. Cal. 1991), at the time the application is filed and when it is adjudicated;

(B) the alien has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application;

(C) the alien has been a person of good moral character during such period;

(D) the removal would result in extreme hardship to the alien, or to the spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence; and

(E) the alien is not inadmissible under paragraph (2) or (3) of section 212(a), is not deportable under paragraph (1)(G) or (2) through (4) of section 237(a), and has not been convicted of an aggravated felony.".

(d) The amendments made by this section shall be effective September 30, 1996, as if included in Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208, Division C, 110 Stat. 3009).

SEC. 2.

Any alien who was in deportation proceedings prior to April 1, 1997, who was deemed ineligible for suspension of deportation solely on the basis of Section 309(c)(5) of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208, Division C, 110 Stat. 3009), or who claims eligibility for suspension of deportation as a result of the amendments made by section 1, may, notwithstanding any other limitations on motions to reopen imposed by the Immigration and Nationality Act or by regulation, file one motion to reopen for suspension of deportation. The Attorney General shall designate a specific time period in which all such motions to reopen must be filed. The period must begin no later than 120 days after the date of enactment of this Act and shall extend for a period of 180 days.