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April 20, 1983

MEMORANDUM FOR: Cabinet Council on Legal Policy

FROM: William French Smith *WFS*  
Attorney General

SUBJECT: Background Paper on Current Status  
of the Immigration Reform Legislation

This memorandum sets forth the current status of immigration reform legislation in the 98th Congress.

Historical Overview

Following receipt of the Final Report of the Select Commission on Immigration and Refugee Policy in March of 1981, the President established a Cabinet Task Force, chaired by the Attorney General, to study the Commission's recommendations for comprehensive immigration reform. Based on that review the Administration submitted a legislative package of immigration reform proposals to the Congress in October of 1981 which embodied the most important recommendations of the Select Commission.

The principal provisions of the Administration bill were (1) penalties on employers who knowingly hire illegal aliens, (2) legal status for illegal aliens who were in the U.S. before January 1, 1980, (3) an expanded temporary foreign worker program where domestic workers are unavailable, (4) reform of our procedures to return persons who enter the U.S. illegally, (5) expanded legal authorities to deal with mass arrivals of undocumented aliens, and (6) increased legal immigrant admissions for Canada and Mexico.

After extensive hearings on the Administration bill, Senator Simpson and Congressman Mazzoli, the Chairmen of the Senate and House Immigration Subcommittees, respectively, in March of 1982 introduced their own immigration reform legislation which incorporated most of the Administration's proposals. The most significant exception to that incorporation was the deletion of the Administration's mass immigration emergency plan. At the Cabinet Council meeting on April 16, 1982, it was decided that the Simpson-Mazzoli bill would become the Administration's vehicle for immigration reform.

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Thereafter, on August 17, 1982 the U.S. Senate passed a substantially unchanged Simpson-Mazzoli bill on an overwhelming, bipartisan vote of 80-19. The following month the House Committee on the Judiciary reported its amended version of the legislation to the House floor where it became stalled during the post-election "lame duck" session.

### Current Status

On February 17, 1983 Senator Simpson introduced the Immigration Reform and Control Act of 1983, S. 529, an identical bill to the legislation which passed the Senate in the 97th Congress. On the same date Congressman Mazzoli introduced H.R. 1510, identical in all major respects to the reform legislation reported by the House Committee on the Judiciary.

Expedited hearing schedules were established by both the Senate and House Immigration Subcommittees. The Senate hearings commenced on February 24th and lasted four days. Several Administration witnesses testified in support of the legislation including the Attorney General and Diego Asencio of the Department of State. On the House side three weeks of hearings began on March 1 ultimately accumulating 26 hours of testimony, including generally supportive statements, from an expanded list of Administration witnesses.

During the week of April 4, 1983 both the Senate and House Immigration Subcommittees completed mark-up on their respective bills. The Senate bill was reported to full Committee on a voice vote and House Subcommittee passage was accomplished on a gratifying 7-1 vote.

Most recently, on April 19th, the Senate Committee on the Judiciary completed its consideration of S. 529 and reported it favorably to the full Senate on a 13-4 vote. Floor action has tentatively been scheduled for April 28 but other scheduling priorities and bill report printing requirements could easily cause that date to slip. The dates for full Committee and floor action in the House are unknown at this time although the former could occur as early as the first week in May.

### Significant Remaining Issues

The immigration reform issues which remain problematic principally reflect the differences between the Senate and House bills. One of the most significant of those issues is the appropriate mechanism for assisting state and local governments with the costs which arise as the newly legalized residents access welfare programs. The Senate bill takes the

strongly preferred approach of establishing a block grant/ impact aid program by which the Administration would be committed to fund at \$1.1 billion for four years. The House bill authorizes the Federal government to reimburse 100% of all State and local welfare programs for those legalized including educational expenses. OMB has estimated that the four year cost of this approach would be \$4.8 billion for welfare expenditures and \$2.5 billion for educational program support.

A corollary to this issue is whether to advance the legalization eligibility date in light of the fact the immigration reform effort is one year older. The House Immigration Subcommittee has already brought this issue into sharp focus by adopting a 1981 "one tier" legalization program with a four year federal benefit ineligibility. The Senate bill maintains last year's Administration supported "Grassley compromise" which provides permanent resident status for eligible aliens who continuously resided in the United States since before 1/1/77 and temporary resident status for such aliens who arrived here before 1980 with adjustment to permanent status after three years. In the Senate ineligibility for federal benefits would extend for three years from the time permanent resident status was obtained.

To date we have consistently opposed advancing the eligibility date both on equity grounds and from the point of view of limiting federal outlays. Our argument has been that legalization is not intended to give legal status to all illegal aliens but only to those who have demonstrated a commitment to this country by long term continuous residence as contributing, self-sufficient members of their community. Any other standard would be unfair to our legal residents and to legal immigrants waiting patiently in line, often for years, to obtain immigrant visas. Every effort will be made ultimately to obtain the legalization program outlined in the Senate bill.

Another contentious issue is the appropriate mechanism for assisting agricultural employers who have become dependent on an illegal migratory workforce. Both the Senate and House bills establish a more streamlined statutory H-2 program for agricultural workers. Following Subcommittee mark-up the House bill also contains a supplementary program permitting agricultural employers to hire "undocumented" workers, subject to numerical limitations established by the Attorney General, for a three-year "transition" period. The Senate has also expressed interest in this proposal and it is certain to be considered as a floor amendment.

The Administration's position has been that the "compromise" package of H-2 "streamlining" amendments, ratified by the April 16, 1982 Cabinet Council meeting, would provide sufficient statutory assurance of a workable program for obtaining foreign workers where domestic workers are unavailable. However, we will closely monitor the discussions which are ongoing between agricultural and labor interests on the transition program concept to insure that our operational concerns are addressed.

Two other important, though less problematic, differences between the Senate and House bills should be mentioned. The first is the changes in our current system for legal immigration contained in the Senate bill principally the "overall cap" of 425,000 on legal immigration including immediate relatives. The House bill, at the insistence of Chairman Rodino, specifically rejects changes in our current preference system. The Administration has likewise argued that changes in our legal immigration system should be deferred until after we have addressed the more urgent problem of uncontrolled illegal migration. Indications are that that view will prevail in conference and significant other portions of the Senate bill may well be obtained in exchange.

The second "second tier" issue concerns the Senate and House treatment of our current overburdened adjudication and asylum system. The Senate bill provides for more streamlined procedures which promise some finality in judgments while the House procedures are in several particulars even more cumbersome than current law. Attempts will be made to narrow the gap by amending the House bill and strong efforts will be made to have our preference for the Senate procedures prevail.

### Prospects

The introduction of bills already considered by both Houses and the early mark-up schedules have brightened considerably the prospects for final enactment of a comprehensive immigration reform bill. Likewise nationwide editorial support and public opinion as evidenced in opinion polls will encourage Congressional action. Nevertheless, it is generally agreed that enactment will need to take place during the first session of the 98th Congress as the second session will in all probability be dominated by Presidential politics.