

**ADMINISTRATION'S PROPOSALS ON IMMIGRATION
AND REFUGEE POLICY**

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JOINT HEARING

BEFORE THE

**SUBCOMMITTEE ON IMMIGRATION,
REFUGEES, AND INTERNATIONAL LAW**

OF THE

HOUSE COMMITTEE ON THE JUDICIARY

AND

**SUBCOMMITTEE ON IMMIGRATION
AND REFUGEE POLICY**

OF THE

SENATE COMMITTEE ON THE JUDICIARY

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

**ADMINISTRATION'S PROPOSALS ON IMMIGRATION AND
REFUGEE POLICY**

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JULY 30, 1981
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ADMINISTRATION'S PROPOSALS ON IMMIGRATION AND REFUGEE POLICY

THURSDAY, JULY 30, 1981

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY OF
THE SENATE JUDICIARY COMMITTEE, AND SUBCOMMITTEE
ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW OF
THE HOUSE JUDICIARY COMMITTEE,

Washington, D.C.

The subcommittees met at 9 a.m. in room 1318, Dirksen Senate Office Building, Hon. Alan Simpson (chairman of the Senate subcommittee) presiding.

Present: Senators Simpson (chairman of the Senate subcommittee), Grassley, Kennedy, Huddleston, and Hawkins. Representatives Mazzoli (chairman of the House subcommittee), Schroeder, Fish, Lungren, McCollum, and Shaw.

Senator SIMPSON. The hearing will come to order.

Mr. MAZZOLI. Mr. Chairman?

Senator SIMPSON. I recognize Chairman Mazzoli of the House subcommittee.

Mr. MAZZOLI. Thank you, Mr. Chairman. Mr. Chairman, I ask unanimous consent that the subcommittees permit coverage of this hearing in whole or in part by television broadcast, radio broadcast, or still photography.

Senator SIMPSON. That has been given by the House of Representatives as part of their procedure.

Well, I say good morning to you all. Mr. Attorney General, it is great to have you here. You have been more than kind to both of these chairmen.

I want to express my appreciation to you, Mr. Attorney General, for your cooperation and that of your staff as well as the opportunity for expression that you have afforded to each and every member of these two subcommittees. You really have been quite available to us in our deliberations.

I extend appreciation to Congressman Mazzoli for his continued patience and cooperation and the assistance of his fine staff in providing this joint hearing format. I really believe that the probability of enacting meaningful reform legislation is very much enhanced by the fine working relationship and the personal regard that I have for Ron Mazzoli, and by the professional relationship of the staffs of the subcommittees.

We are also assisted by the collegiality of our ranking members, Ted Kennedy and Hamilton Fish, and by our most cooperative and supportive full committee chairmen, Chairman Rodino and Chairman Thurmond.

It is these two subcommittees' tasks and the determination to develop legislation which is both substantively sound and politically feasible. That will be the tough one. But I think that this determination is exemplified by our willingness to utilize the joint hearing process.

I think the public should see that this is a bipartisan approach, a bipartisan emphasis for reform and revision of our immigration and refugee policies. We just do not have the luxury of partisanship on this issue. Democrats and Republicans must work closely together if our country is to fashion an immigration and refugee policy which will truly be in our national interest.

I consider it an extraordinary opportunity for us to reach basic understandings and work closely with the various forces of change that are stirring in our country on this issue.

This morning we will hear the views of the administration, and this forum will provide an opportunity for the members of the subcommittee to question and to inquire. I think the basic framework of our efforts might be along these lines.

First, let me say very clearly that I have a strong belief that the primary obligation of government, any government, indeed the very justification for its existence, is to promote the national interest; that being the long-term well-being of the majority of its people and their descendants. To me, that standard is absolutely fundamental in these discussions, and I will be measuring all things that we will do upon that standard.

In addition, I think it is important to remember that the interest of the American people on this issue is not merely economic. It is not merely to advance our share of goods and services, especially if that is only viewed from a short-term vantage point.

No, I think there are other and more fundamental interests, including the maintenance of freedom, the protection of our citizens from violence and fear and a responsive and stable political system. And even more basically, I think the national interest includes the preservation of the public cultural qualities and national institutions that make these specific benefits possible.

If legal immigration is continued at a high level and if we do not stop illegal immigration, we'll find that a substantial portion of the influx of new human beings into our land are not able to assimilate into our society and accept our public culture, and I make that clear distinction. We may thereby create in America some of the same social and economic problems which exist in the countries from which these immigrants have chosen to depart.

Furthermore, if cultural separatism should rise above a certain level, then I think the unity and political stability of our Nation could in time be seriously eroded.

Those are hot issues and we will put them all out on the table for discussion during this hearing process. Everyone will be heard. Immigrants have always benefited America. They will benefit America in the future, but only if they are limited to an appropriate number and admitted within that number on the basis of traits such as those expressed by many other countries of the world, traits that will truly benefit America. And that will be the America that we know today, and not as it was 100 years ago.

For today, the vast and growing world population means that we live in a world of limits, and tragically that may come to mean limits to compassion. It is tough for us as Americans to hurdle the national guilt that we feel when we repeat the beautiful sonnet of Emma Lazarus referred to as "The New Colossus," which she wrote in 1893. But the name of that statue in the harbor is actually "Liberty Enlightening the World," not America accepting all who come to our shores legally or illegally. We cannot enlighten the world if we in turn have been overburdened.

So if we politicians and officials in government are not able to bridle our own personal compassion for people of other countries sufficiently to protect the national interest, then not only will we have failed in our primary official duties, but there is an even greater risk that in the long run, the American people will be adversely affected to a degree that they would be unable or unwilling to respond at all.

I have referred to that potential unwillingness to respond to others as "compassion fatigue," and the signs I think are all around us that this is already happening. It would not be well for us as a nation if it were to continue.

I will be greatly looking forward to the testimony of the witnesses in this the second of our joint hearings and second of a series of hearings that will be held throughout this session of Congress. I recognize now my most capable colleague from the Third District of Kentucky, Chairman Ron Mazzoli of the House Subcommittee on Immigration, Refugees, and International Law.

Mr. MAZZOLI. Thank you very much, Senator. I appreciate your hospitality.

Let me make two notes before I make a short statement. One is the Attorney General's wife is here today, and we welcome Mrs. Smith and thank her for attending. As I look out in the audience, I notice one of Senator Simpson's colleagues, Senator Hawkins from Florida, is with us, and we certainly welcome her and say hello.

Mr. Chairman, I am extremely pleased to be meeting again with you and your colleagues for these further hearings on reforming our Nation's immigration and refugee policy. Today is an important step in our deliberations, for at the conclusion of this hearing we will have on the record a clear and detailed explanation of President Reagan's policy on immigration reform.

I would like to take this opportunity to commend the President for his willingness to tackle this very tough subject. While I may or may not agree with each of the provisions and recommendations in the plan, I think the President's willingness to address this issue will assist us greatly in our future deliberations to develop legislation.

Senator Simpson and I, and all the members of our subcommittees, have approached this nettlesome issue on immigration in truly bipartisan fashion. In this area there are, as I said in San Diego when Senator Simpson and I appeared there recently, no Democratic or Republican positions, no liberal or conservative positions. There are simply difficult issues dealing with domestic and international policy that have to be dealt with.

I would like to return the compliment that Chairman Simpson paid me this morning by saying that he and his staff have been extremely supportive through the entirety of the 6 or 7 months we have been

working with our committees. I think this kind of cooperation and collegiality is essential if we are to produce a bill, and I thank him for his work in that direction.

I think this cooperative spirit that has marked our work to this point will mark the work as we proceed into the deliberations on rewriting immigration and refugee policy.

I believe, as I said earlier, a consensus is developing. It is murky; it is not clearly defined, but it is there concerning the elements which have to appear in any reform legislation.

The consensus does not yet encompass all the issues nor bind all the groups, and indeed it may not ever, but we are closer, as the Senator said earlier to developing a general agreement of where we want to go and how we will get there.

After the administration's plan is explained to us this morning by the distinguished Attorney General, Congress will have before it many plans and programs for immigration reform. We have already considered in some detail in our earlier joint hearings the recommendations of the Select Commission, of which Senator Simpson was one of the distinguished members, chaired by my friend and the president of my alma mater, Father Theodore M. Hesburgh.

Today we received the administration's plan. There is also a plan announced by my friend and colleague from the Kentucky delegation, Senator Walter Huddleston. His plan also has been introduced in the House. Other plans will be advanced, and we will have hearings on those as well.

It is clear for the most part that the studying of the issues and the developing of alternatives is nearing completion. The time is fast approaching when Congress has to roll up its collective sleeves and get down to the tough task of making all the philosophical, legal, constitutional and humanitarian, and, need I say, political decisions which must necessarily be made in order to have strong support for a new policy.

Before concluding I would like to extend my welcome to the Attorney General, and also to compare him favorably to Job. He has exhibited extreme patience and forbearance under tough circumstances. I am sure that when you decided to leave your beautiful home State of California to take the job as Attorney General, you probably did not believe that sitting on your desk would be this subject. If you had known, you might still be in California.

Anyway, we want to thank everybody. Senator Simpson has thanked the two full committee chairmen, and I also thank them. I believe we have the elements now that can yield a final policy, and with that I extend again my welcome to the Attorney General.

I understand that Congressman Fish has some comments.

Senator SIMPSON. I would have recognized my ranking minority member, Senator Kennedy, who has been of great assistance to me. He of course chaired this subcommittee for some 15 years, and has a vital interest in immigration issues. He is not present at this moment, and when he comes I always try to insure that I can get him from his cigar.

We will go ahead at this point with Congressman Ham Fish, who, as a member of the Select Commission, did a tremendous amount of work, handled certain segments of the Commission report personally,

and has a great knowledge of this subject matter. I am pleased to welcome the ranking minority member of the House subcommittee.

Mr. FISH. Thank you, Mr. Chairman. You are very generous.

Mr. Attorney General, I extend my welcome to you. This represents a joint effort by the Immigration Subcommittees of the Senate and House to address the major immigration issues facing our country.

In May of this year, our two subcommittees met over the course of 3 days to review recommendations of the Select Commission on Immigration and Refugee Policy. That report, two accompanying volumes of proposed statutory language and commentary, an extensive staff report and nine appendix volumes, provided an important framework for congressional deliberations.

The recommendations of the administration, which both subcommittees have awaited, offer additional focus for legislative initiatives.

I would like to congratulate you, Mr. Attorney General. As you know, the Select Commission was in operation over 2 years, with a large staff and a single focus. I think that the attention that your Cabinet has given to this issue, immersing itself in it in the last 7 months, at a time when obviously the priority issues of the nation were economic—that the way you and the Reagan Cabinet have come to deal with this issue, has been splendid work, and I thank you for that.

The history of our country in large measure is a chronicle of the experiences of the numerous ethnic groups that have settled here. Immigration will continue to play an important role in our national and international life, by facilitating the reunification of families, providing opportunities for needed workers, and offering refuge to the oppressed from other lands.

The solution to the problem of continued illegal migration and a policy to deal with it are precious and terribly evasive, but are prerequisites to American acceptance of a generous and humane legal immigration policy. I am optimistic that we can arrive at a consensus, from this hearing and hearings to come, on the need for effective and enforceable measures to curb uncontrolled, but uncontrollable, flows of undocumented migrants in the future.

Thank you.

Senator SIMPSON. Thank you very much, Ham.

Mr. Attorney General, we will proceed. I want to thank you so much for being present this morning at this joint hearing, which is rather unprecedented. This is the second joint hearing held by this committee in 30 years. I want to thank you for your sensibility. I have found the Attorney General to be a most capable and stable lawyer, a lawyer's lawyer, and one who fits well within this rather rambunctious arena. I thank you very much for the work you have done to assist us and to keep us well advised as to the administration's position. You may feel free to proceed.

TESTIMONY OF HON. WILLIAM FRENCH SMITH, ATTORNEY GENERAL OF THE UNITED STATES

Attorney General SMITH. Thank you Chairman Simpson and Chairman Mazzoli. I certainly appreciate this warm welcome.

We all know, as you have indicated, that this overall subject is not only highly complicated, it is also highly controversial, despite the fact that it is really not a partisan matter at all.

Before getting to my statement, I want to express great appreciation for the extraordinary cooperation we have had from both of you and both of your committees and your staffs in coming up with this program. As you have indicated, it is a very difficult subject, and it's a hard one to come to grips with at best, but it certainly is much easier when we have the great privilege and pleasure of dealing with the people that we have dealt with on these committees over these last months.

It is not just a matter of cooperation, but we have borrowed heavily upon your great expertise and knowledge in this area, which has been really invaluable, and it certainly has been very influential in formulating the policy that I will give to you now.

I want to thank both committees and certainly the staffs of both committees for this very fine effort.

It is a pleasure to appear before these distinguished subcommittees of the Senate and the House in a unique and important joint session. Like all of you, this administration is committed to a major overhauling and strengthening of this Nation's immigration and refugee policies. This morning the President proposed that kind of major change.

The history of America has been in large part the history of immigrants. Our Nation has been overwhelmingly enriched by the 50 million immigrants who have come here since the first colonists. For nearly our first century and one-half as a nation, the Congress recognized our need for new arrivals by imposing no quantitative restrictions on immigration. Since 1921, however, the Government and our people have recognized the need to control the numbers of immigrants and the process by which they enter our country.

In recent years our policies intended to effect that necessary control of our borders have failed. Last year, the number of immigrants legally and illegally entering the United States reached a total possibly greater than any year in our history, including the era of unrestricted immigration.

We have lost control of our borders. We have pursued unrealistic policies. We have failed to enforce our laws effectively.

No great nation, and especially a great democratic nation, can long countenance ineffective and unenforced laws. That is especially true when the unsettling results are so apparent to our people.

We must more effectively deter illegal immigration to the United States—whether across our expansive borders or by sea. The proposals announced this morning by the President would have that result. They represent a comprehensive and intergrated approach. They recognize the realities we face and the fact that no policy will be enforceable if it ignores the true facts. Those basic facts are: The presence of from 3 to 6 million illegal aliens in this country; and the continuing growth of their numbers by from one-quarter to one-half million each year.

The overriding purpose of the President's proposals is to make our laws and policies more realistic, and then to enforce those laws effectively. He believes that we must modestly expand the opportunities for legal employment to reflect the reality of America's attractiveness to much of the world. He believes that we must squarely recognize the

existence of a hidden class of illegal aliens who work and live within our society but are beyond its sanctions and protections. And he believes we must develop new enforcement techniques that would allow us to enforce fully laws and policies that reflect those realities.

The proposals announced today are the result of wide consultations both within this country and internationally. They are the result of many months work by the President's Task Force on Immigration and Refugee Policy, which I had the privilege of chairing. They represent the administration's best ideas on how to regain control of our national borders without closing the doors to this unique land of opportunity.

The President this morning stated the essential purposes of a workable immigration policy:

We must ensure adequate legal authority to establish control over immigration; to enable us, when sudden influxes of foreigners occur, to decide to whom we grant the status of refugee or asylee; to improve our border control; to expedite, consistent with fair procedures and our Constitution, return of those coming here illegally; to strengthen enforcement of our fair labor standards and law; and to penalize those who would knowingly encourage violations of our laws. The steps we take to further these objectives, however, must also be consistent with our values of individual privacy and freedom.

The administration's policy proposals will fulfill these purposes. They may be divided, for discussion, into four areas: Illegal immigration, mass arrivals of undocumented aliens, legal immigrant and refugee admissions, and benefits for refugees and persons granted asylum.

Illegal immigration to the United States has increased drastically in recent years, to a point where it likely equals or exceeds legal admissions. In 1964, approximately 50,000 illegal aliens were apprehended in the United States. By 1979, the number of apprehensions had risen to more than 1 million. Although estimates vary considerably, most fix the illegal alien population of the United States at between 3 and 6 million, perhaps one-half of whom are Mexican nationals; and the illegal population grows by 250,000 to 500,000 persons each year.

While illegal immigrants once were concentrated in agricultural employment in the Southwestern States, they now reside in all regions of the country. Only 15 percent of the illegals are estimated to work in agriculture; 50 percent are employed in service industries; and 30 percent are in blue collar jobs.

The American people correctly perceive this as a major national problem. In a recent poll, 9 of 10 Americans said they favored "an all out effort" to stop illegal immigration. Americans justifiably want their Government to take steps to bring immigration within effective regulation.

The administration proposes five related initiatives to curtail illegal immigration: (1) increased enforcement of existing immigration and fair labor standards laws; (2) a law imposing penalties against employers who knowingly hire illegal aliens; (3) a new experimental temporary worker program for up to 50,000 Mexican nationals annually; (4) legal status for qualifying illegal aliens currently residing in the United States; and (5) international cooperation within the Western Hemisphere to enforce immigration laws and discourage illegal migration.

Together, the five elements of the President's strategy should reduce substantially illegal immigration by expanding opportunities to work lawfully in the United States, through the experimental temporary

worker program and legalization, and by prohibiting employment of those outside of these programs.

The first element is a long-needed strengthening of enforcement of existing legal authorities. We will communicate to you and the Appropriations Committee our support for the addition to the President's fiscal year 1982 budget for INS of \$40 million in fiscal year 1982 to provide for more effective interior and border enforcement and \$35 million to detain those who come here illegally pending their exclusion.

Those funds will provide the INS with 564 additional positions, including 236 more Border Patrol. The additional funds will also provide for the operations of helicopters and other needed equipment; an improved nonimmigrant document control system; and improved control of alien records. We expect that the additional funds for border and area control operations should result in substantially increased apprehensions annually. Moreover, by targeting resources in priority locations, such as Chula Vista, El Paso, Miami, New York, Los Angeles, and Chicago, the INS will further enhance the results of its enforcement program.

Expanded compliance visits by officers of the Wage and Hour Division of the Department of Labor will discourage employment of illegal aliens, as well as others, in violation of the Fair Labor Standards Act. We will seek an additional \$6 million for this purpose in fiscal year 1982, which would permit us to identify significantly increased numbers of workers employed in violation of fair labor standards.

Second, the administration will propose that it be made unlawful to hire illegal aliens. We cannot depend solely upon deterrence or interception at the border. The availability of employment in this country at relatively high wages without regard to legal status will continue to pull illegal migration. We cannot seal the border, and efforts to apprehend and deport illegal aliens in the interior is a costly and, at best, partial solution. The only credible enforcement measure remaining is a prohibition on hiring illegal aliens.

The administration will therefore propose legislation prohibiting employers of four or more employees from knowingly hiring illegal aliens. Civil fines of \$500 to \$1,000 would be assessed for each illegal alien hired. The Department of Justice would be authorized to seek injunctions against employers who follow a "pattern or practice" of hiring illegal aliens.

The administration is opposed to the creation of a national identity card. But, to make employer sanctions a workable deterrent, the administration recognizes the need for a means of compliance with the law that would provide an employer with a good faith defense if he examines documentary proof of eligibility to work. Acceptable proof of eligibility to work would be documentation issued by the INS, such as a permanent resident alien card or temporary worker visa; or any two of the following: birth certificate, driver's license, social security card, and registration certificate issued by the Selective Service System.

In addition, the new hire and the employer would sign a form certifying, respectively, that the new hire is eligible to work in the United States, and that the employer has examined the specified identifiers and has no reason to believe the employee is not eligible to work. The form stating the citizen or alien status of the individual and the documenta-

tion presented would be retained by the employer and be available for inspection by INS and Labor Department compliance officers.

We believe that this new law can and will be enforced without discrimination and without burdensome regulation. Since employers may rely on existing documents and will not be required to make judgments about the authenticity of the documents, they would have no occasion to make subjective and possibly discriminatory judgments about persons who may appear to be foreign. We believe, too, that a system which relies on existing forms of documentation will effectively screen out illegal aliens, who will not ordinarily have the necessary documents.

Third, the administration will seek legislation to establish an experimental temporary worker program for Mexican nationals. The hiring of some illegal aliens may be attributed to an insufficient supply of American workers for certain categories of jobs in some localities. Historically, many of these jobs have been filled by foreign workers, employed in the United States on a temporary basis, frequently without having been legally admitted for that purpose. Where American workers have in fact not been available to fill these jobs, the presence of foreign workers has been enormously beneficial both to the United States and to Mexico.

Under our proposal, during a 2-year trial period, up to 50,000 workers would be admitted annually for stays of from 9 to 12 months. The program would be targeted to specific areas and categories of jobs. Certain job categories would be excluded from this program in States where it was certified that there was an adequate supply of American workers. The Department of Labor would allocate the national ceiling among affected States.

Workers would be free to change employers during their stay here. Normal wage and working standards laws would apply to them, and employers would be required to pay social security taxes and unemployment insurance contributions. Workers would not be permitted to bring in spouses and children; would not have access to welfare or food stamp assistance, or be eligible for unemployment compensation.

During the trial period, the program would be evaluated for its impact on American workers, the feasibility of enforcing the program's restrictions, and the benefits to the United States and Mexico.

Fourth, we must find some practical way of dealing with the illegal aliens now residing in the United States. We have neither the resources, the capability, nor the motivation to uproot and deport millions of illegal aliens, many of whom have become, in effect, members of the community. By granting limited legal status to the productive and law-abiding members of this shadow population, we will recognize reality and devote our enforcement resources to deterring future illegal arrivals. Our purpose is to deter illegal immigration and to prevent the recurrence of the circumstances we are now facing.

We therefore propose to permit illegal aliens, who were present in the United States prior to January 1, 1980, and are not otherwise excludable, to apply for the new status of "renewable term temporary resident." The status would be renewable after every 3 years, and after a total of 10 years continuous residence, those residents would be eligi-

ble to apply for permanent resident status if they were not otherwise excludable, and could demonstrate English language capability.

These temporary residents would pay social security, income, and other taxes; but would be ineligible for welfare, federally assisted housings, food stamps or unemployment compensation. They would not be able to bring in spouses and children, but could leave the country for visits to their homeland without losing their status unless they interrupted their continuous residence for a substantial period of time.

We intend the proposed enhanced enforcement measures to precede the implementation of this legalization program to assure that illegal immigration is curtailed in the future. Those aliens who do not qualify for legalization or choose not to apply would either leave the country or be subject to deportation if apprehended.

Finally, the administration recognizes that the causes of illegal immigration are international in scope and require international solutions. Accordingly, we plan to pursue negotiations with Mexico on two important matters. First, we will explore measures to prevent third country nationals crossing Mexico to enter the United States illegally; and second, we will seek increased cooperation in regulating immigration in the border areas, emphasizing measures directed against alien smuggling.

In addition, Secretary of State Haig had already met with the Foreign Ministers of Mexico, Venezuela, and Canada to consider a hemispheric development plan. Further discussions are scheduled regarding the establishment of development projects that would alleviate the factors encouraging illegal migration within the hemisphere.

Mass migrations of undocumented aliens to the United States are a recent phenomenon. They are also a phenomenon for which the Nation was woefully ill prepared, and the consequences of our readiness have been disastrous.

The 1980 Mariel boatlift brought a wave of 125,000 Cubans to the beaches of south Florida. Among those persons were criminals and mentally ill, some of whom were forcibly expelled by Castro. Most of the Cubans have been resettled through the efforts of public and private agencies. But 1,800 criminals remain in a Federal penitentiary in Atlanta, and nearly 1,000 mentally ill and maladjusted remain at Fort Chaffee, Ark. Cuba has thus far refused to accept back these law.

There is also a continuing migration to Florida of undocumented aliens from Haiti and elsewhere. Although the Government of Haiti is willing to accept the return of Haitians deported by the United States, exclusion proceedings have been blocked by time-consuming judicial challenges to INS proceedings. To be sure, the foreign policy character of the Cuban and Haitian migrations differs, but the domestic impact on our local communities and on the administration of our immigration laws is the same.

The administration is determined not to permit another Mariel. In addition, we must act to curtail the ongoing arrivals of undocumented aliens to our shores in violation of our laws. Finally, we must deal with the recent legacy of those Cubans and Haitians who are already here.

To provide adequate legal authorities to deal with future migration situations, the administration has developed a seven-part program.

(1) We will seek legislation to prohibit bringing undocumented aliens to the United States, and to strengthen existing legal authority for the interdiction, seizure, and forfeiture of vessels used in violation of the law.

(2) We will seek legislation to authorize the President to direct the Coast Guard to interdict unregistered vessels and to assist foreign governments that request such assistance to interdict on the high seas their flag vessels, which are suspected of attempted to violate U.S. law.

(3) We will request increased resources for the development of additional permanent facilities in which to detain temporarily illegal aliens upon arrival pending exclusion or granting of asylum. We are now considering sites for these facilities. We will be requesting that \$35 million be made available for this purpose in fiscal year 1982.

(4) We will propose legislation to reform and expedite exclusion proceedings. Applications for asylum would be heard before newly established asylum officers within INS, with discretionary review by the Attorney General.

(5) We will propose legislation to provide the President with special authority, in a Presidentially declared emergency, to prohibit U.S. residents and U.S.-registered vessels from traveling to undesignated foreign countries for the suspected purpose of transporting illegal aliens to the United States; to direct Federal agencies to take necessary actions, including the establishment of holding centers; to reimburse State and local governments for authorized expenditures resulting from an emergency; and to expend funds for those purposes from a newly established immigration emergency funds of \$35 million and to reprogram existing funds.

(6) We will propose international measures to secure the return to Cuba of those Cubans, currently detained at Fort Chaffee, Ark., the Atlanta Federal Penitentiary, and certain other facilities, who would be excludable under U.S. laws; to seek additional resettlement opportunities for Haitians in other Western Hemisphere countries; and to increase cooperation with the Government of Haiti in restraining illegal migration of its nationals to the United States.

(7) We will submit legislation to repeal the Cuban Refugee Adjustment Act of 1966, but to permit Cubans and Haitians who were in the country and known to INS before January 1, 1981, to apply for a "renewable term entrant" status. The status could be renewed after 3 years, and after 5 years these residents could apply for permanent resident status, providing they were not otherwise excludable and could demonstrate English language capability.

The existence of these new legal authorities, and our commitment to their use, if necessary, should avert another Mariel. To assure immediate and effective Government action in such an event, the administration has prepared a contingency plan detailing the responsibilities of relevant Government agencies.

Other representatives of the administration will be pleased to discuss these proposed authorities in detail. I wish, however, briefly to explain two elemental changes of current practice embodied in the proposed policy: the reform of exclusion proceedings, and the necessity of detaining illegal aliens pending exclusion.

In the past, the United States has always screened and processed prospective immigrants, including refugees, overseas. Thus, those individuals actually arriving on our shores have been adjudged eligible for admission prior to arrival. Applications for asylum by persons already in the United States have been relatively few and the cases generally clearcut.

As recently as fiscal year 1978 fewer than 3,800 asylum applications were received. But in fiscal year 1980, 19,485 applications for asylum were received, and the number of pending applications will reach 60,000 during the current fiscal year, not including the approximately 140,000 applications filed by Cubans and Haitians.

In the face of these circumstances, our policies and procedures for dealing with asylum applicants, which have been generous and deliberate, have crumbled under the burden of overwhelming numbers. Our procedures should be adequate to secure the national interest. The procedural reforms we propose are fair. Moreover, they are the only rational and workable way to preserve the framework that Congress has established to govern the inspection and admission of persons seeking asylum.

Second, the administration will seek additional resources for the construction of permanent facilities in which to house undocumented aliens temporarily until their eligibility for admission can be determined. By treating those who arrive by sea in the same way we have long treated those who arrive over our land borders, our policy will be evenhanded, and we can avoid the severe community disruptions that result from large-scale migrations.

The basic framework governing immigrant admissions to the United States was established by the 1965 amendments to the Immigration and Nationality Act. These amendments retained the policy of numerically restricting certain preference categories of immigration. For the first time in our history, immigration from Western Hemisphere countries was limited, to 120,000 annually. Annual per country ceilings of 20,000 were extended to the Western Hemisphere in 1976.

With regard to refugee admissions, the Congress first dealt comprehensively with the question only recently. In the Refugee Act of 1980, Congress prescribed a uniform definition of "refugee" without geographic or ideological limitation, and established a process for the annual determination of refugee admissions by the President, after consultations with Congress.

The administration believes that these authorities in general provide a sensible and workable structure for legal immigration. There are, however, two aspects of the present system that need reform: The existing unrealistic limitations on immigration from Mexico and Canada; and the procedures required to certify need for the labor of nonfamily immigrants.

Imposition of country ceilings of 20,000 annually, in conjunction with the new preference system and labor certification requirements added by the 1965 amendments, resulted in a drastic reduction in immigration from Canada and Mexico. President Reagan has recognized that the ceiling on immigration from our two closest neighbors should be increased.

The administration will therefore submit legislation to create separate annual ceilings for numerically restricted immigration from

Mexico and Canada raising the totals from the present 20,000 to 40,000 for each country. The unused portion of either country's allotment would be available to citizens of the other nation. The numerically restricted immigration from other countries of the world would be adjusted so as not to be affected by this change.

The proposed change recognizes the special relationship the United States has with its closest neighbors, the fact of common borders, and the need to find realistic alternatives to illegal immigration.

The administration also will submit legislation to streamline the procedure for admitting independent or nonfamily immigrants with needed skills. Instead of the time-consuming and costly process of individual labor certification, the Department of Labor would annually publish a list of occupations for which adequate domestic workers were not available. Foreign workers in these occupations with a verified job offer would apply to the consular offices overseas for visas. This procedure would continue to provide protection for American workers while simplifying the procedure for both employers and prospective immigrants.

The Refugee Act of 1980 established financial assistance and social service benefits for refugees and those seeking and receiving asylum. Many require assistance during a period of adjustment. Since they are admitted as a matter of national policy, the Federal Government has assumed a special responsibility for them. Assistance is provided through grants to voluntary agencies and on a reimbursable basis to States and localities which fund local social service programs.

The administration has reviewed these programs to assess the fairness of the present pattern of funding and to find ways to encourage self-sufficiency and to accomplish savings.

To assure effective and efficient use of refugee benefit funding, the administration will continue the present categorical programs for fiscal year 1982 and 1983, but the level of cash assistance payments will be reduced to those refugees who do not qualify for the normal welfare programs. It is believed that prudent economies can be achieved without imposing hardships on recipients. In addition, the Department of Health and Human Services will explore possible options for impact aid for those localities disproportionately affected by refugee admissions.

The administration has reviewed the refugee program, including the interpretation of the definition of refugee as adopted in the Refugee Act of 1980, and we do not recommend any other changes at this time.

The dilemmas of immigration and refugee policy require the prompt attention of the Congress and the diligent efforts of the executive branch in order to regain control of our borders. I am confident that working together we can present to the Nation an effective program of vigorous and fair enforcement of our immigration laws.

At the same time, we will continue to be a nation that is open to immigration and that does its share to assist and resettle the refugee.

As President Ronald Reagan has said many times, quoting John Winthrop, "we shall be a city upon a hill. The eyes of all people are upon us." Like a beacon, our freedom still blazes forth in a world filled with too much darkness. That beacon beckons the immigrant and the refugee to our shores, seemingly in ever greater numbers.

I believe that the proposals the President has offered are in keeping with our modern and historic appeal to the citizens of other lands. Yet they are also fair and realistic in their consideration for the citizens of this land. Only a realistic policy of the type outlined by the President can fully provide for the well-being of our people while welcoming from throughout the world others who truly do desire to contribute to this Nation's continuing experiment in liberty.

I would be glad to answer any questions you have about the President's proposals. [See appendix 1 for the prepared statement of Attorney General Smith.]

Senator SIMPSON. Thank you, Mr. Attorney General.

Before we proceed with questions, which will be directed to you by various members of the two subcommittees, under a limited time format, let me recognize for an opening statement, the ranking member of this subcommittee, Senator Ted Kennedy. Senator Kennedy, who has had a prime interest in this area for many years, since he first came to the U.S. Senate. He chaired this subcommittee for over 13 years and took such an interest in it that when he became chairman of the Judiciary Committee, he took unto himself the full effort of immigration and refugee policy. He served with me and Ham Fish, as a member of the Select Commission. He knows the problems we have been through as we originally rejected most of the initial proposals and finally came back, after 2½ years, to largely the same position.

So I now recognize Senator Kennedy. Thank you.

Senator KENNEDY. Thank you very much, Mr. Chairman. I'm not going to take but a moment of the committee's time, expressing my appreciation to the Attorney General for being with us here this morning and to welcome him here before this committee.

As the chairman pointed out, immigration policy has been an area of very considerable interest of mine. As one who has been active, with other members of the committee since passage of the 1955 act, the problems we are facing today are very much different from the problems we were facing then, when we were trying to eliminate some of the discriminatory aspects of our immigration law—the Asian Pacific triangle, the national origins quota system—discrimination which had crept into our laws over a long period of time. So the problems are very much different now from the ones we faced at that time.

I think that the American people are demanding changes in immigration policy. I think the Select Commission, which was established in 1978, and on which a number of the members of this committee served, provides an important departure point for the work of the administration as well as the Congress.

I welcome the opportunity to work with the chairman of this committee, Senator Simpson, who was one of the most active members of the Select Commission, as well as other members of both Immigration Subcommittees of the House and the Senate.

I commend the administration and the President for the statement of principles which have been outlined in today's presentation and release. I do have questions about specific recommendations and how they conform with the President's statement of principles, particularly in the area of the temporary worker program, as well as the status of the new class of immigrants, which are the temporary workers.

We will have an opportunity to inquire of the Attorney General and the Justice Department as to the exact meaning of their recommendations and whether they indeed respond to what I think is an excellent statement by the administration and the President on this program.

I welcome the opportunity to join with the administration and my colleagues in fashioning and shaping a fair and humane policy and one that is readily enforceable. I think the American people want us to devote ourselves, our attention and interest to this issue in a way which is humane and in the tradition of our country, but also one that is going to be realistic in meeting a number of their very real concerns.

I thank the Chair for indulging me these few moments for that observation.

Senator SIMPSON. I thank the Senator from Massachusetts very much.

We will each take 5 minutes for questioning, and observe the limitation here of the timing light before me. So I will proceed, and we will recognize the members of the subcommittees who may have short statements to make in connection with the questioning.

I would ask you, Mr. Attorney General, if you could share with us how the administration's employer sanctions plan would assist in reducing the economic incentive for illegal immigration in the United States, and where does it fit in the administration's plan, for the increased resources for IRS interior investigations?

Attorney General SMITH. The essence of the plan, of course, is to first deter further illegal immigration and second, to recognize the situation as it exists, the fact that we do have 3 to 6 million by best estimates, people who are living here and who are going to stay here.

It has seemed to us, in reviewing all of the alternatives, that the only additional effective tool that we have left to add to an effective immigration policy is employer sanctions. In other words, if you will note the elements of our plan, it provides for expanding somewhat the opportunities for legal employment in this country, and then to provide that employment which is illegal and which is outside that program will be just that, illegal.

With that additional enforcement device, we think that we can, coupled with the other elements of the program, establish a deterrent for further illegal immigration. In other words, if potential immigrants are aware of the fact that if they come into this country illegally, that it will be difficult for them to obtain employment, and that if they do obtain employment it will be in violation of the law, we think that that provides a substantial deterrent and that that really is an important element of his program, and an essential one if we are really to come to grips with this program overall.

Senator SIMPSON. I must say that I have felt that sending out that signal would be important to do. I noted very clearly the remarks about some kind of a verification or identifier system. We grappled with that in the Select Commission and finally came out with a narrow majority favoring a secure identifier system.

Can you tell me why the administration is opposed to a tamper- and counterfeit-resistant social security card or some other secure work authorization card, identifier or verifier, to be shown only at the time of hiring, which would not need to be carried upon the person except at that time, and would not be then a national identification card or

considered as such? Could you share with us the reason for that opposition?

Attorney General SMITH. Mr. Chairman, as you indicated, you struggled with it and we struggled with it. We struggled with it in earnest. And as you might expect, there were widely divergent viewpoints on this subject.

However, there was an element, which doesn't go to the question of a national identification card as a philosophical concept, you might call it, and that has to do with effective use of in resources. We looked into this subject at great length and we determined that to upgrade, let's say, the social security card alone, not a new card but upgrade the existing card, would cost, according to various estimates, anywhere from \$850 million to \$2 billion.

Further, we had the question of how to upgrade, in the sense of not making it counterfeitable, if that is a word? For example, you can have the fanciest card, which you might not be able to duplicate, but if it is based upon the same original documentation that the present social security card is based upon, namely birth certificates and other documents which are easily counterfeited themselves, really what have you gotten? You've spent all that money and it may be based upon a foundation of sand.

So we considered a host of practical aspects, of having what has been referred to as a more secure card, and the net of it all was that first, we didn't think that the resources that would be required could be approximately expended at this time. And second, we just had some questions about how secure the card would actually be in the first place.

Senator SIMPSON. Thank you. My time has expired. I recognize Congressman Mazzoli.

Mr. MAZZOLI. Thank you very much, Mr. Chairman.

Five minutes is a very short time to get into questions, but before I do, let me make two more notices here. I think the Senator from Wyoming is too modest to mention that his bride of 27 years, I believe it is, is in the room with us, too. We welcome her.

Also, in the room the gentleman we talked with in Mexico City, who is soon going to Tokyo to be our consul general there, Mr. Franklin Stevens. He is currently the consular chief in Juarez, and very experienced in these areas.

Mr. Attorney General, we thank you very much. You, as I said, have been extremely patient and very helpful. And I think that the policies that the President has submitted through you today will be very helpful. But without the proper administration, any policy is perhaps a futility.

I wondered, in that regard, what is the status of the Commissioner of Immigration and Naturalization Service?

Attorney General SMITH. The status of the appointment to that?

Mr. MAZZOLI. Yes.

Attorney General SMITH. We have sent a name to the President and we would expect that that name would be announced and sent up here for confirmation very soon. The process, as we all well know, seems to be endless. But we have filled out, as a matter of fact, the top three positions in INS and we have people who have substantial business experience, experience in organizing and running a business, and INS,

we think, requires that kind of attention now perhaps more than anything else.

So happily, I think I can report at this point that we not only have a policy to present to the Congress today, but we also have a management team to present who will be taking over, if confirmed, very quickly.

Mr. MAZZOLI. Thank you.

Attorney General SMITH. I might add, that it is a relief.

Mr. MAZZOLI. Another one of these many nettlesome subjects that we have is trying to get a person confirmed, but we are into July, almost August. We have this treading of water, in a sense, because no one has ever been really in charge.

Let me just say one thing. As I believe I mentioned in San Diego when Senator Simpson and I were there, I think there is no question that INS or any Government agency needs the benefit of the insight of business people who understand how things are managed. But in this situation, we need a little bit more because here you are managing people, human beings, not just dollars and not just vehicles.

I would hope that whoever's name is submitted for confirmation, it is made very clear that the policies are affecting human beings and should be looked at in that fashion.

Mr. Attorney General, in your statement you talk about the additional money which you would add for border patrol and detention facilities. Let me be sure I clarify this for the record.

In the House I was very proud of being a part of the effort to raise the administration's proposed budget for the INS. We raised it in the House by \$25 million. We added some 973 positions back, which had been sought to be cut; 160 of them were border patrol positions. Your \$40 million addition proposed, then, would be added to the President's March budget proposal, not to the bill that passed the House. Is that correct? The \$40 million is added to the President's submittal for fiscal 1982?

Attorney General SMITH. You are referring now just to the augmentation of border patrol?

Mr. MAZZOLI. Yes.

Attorney General SMITH. Actually, in fiscal 1982 we are asking for \$40 million. For 1982 and 1983 we estimate that perhaps the total cost there would be somewhere between \$50 and \$60 million.

Mr. MAZZOLI. Maybe I'm not making myself clear. That \$40 million is an addition to the President's proposal?

Attorney General SMITH. That's right.

Mr. MAZZOLI. And of course we have added already \$25 million in the House, so in a sense that would be \$15 million in addition.

Attorney General SMITH. Depending upon where that is to be used. Our thrust here, of course, is on enforcement. It is true that the President's original budget called for cuts in certain areas, but those cuts were intended to be in what we call soft areas, and therefore we would not want our effort at enforcement here confused with areas where we think that we can sustain cuts without damaging—

Mr. MAZZOLI. With great respect to you, sir, I think the people at OMB misunderstood your directions, because we did find in analyzing the President's earlier budget proposal that it did in fact impede enforcement. That is why we added more money in the House, and I

understand in the Senate also. But I congratulate you today for adding more money to enforcement.

Our subcommittee went out to Chula Vista, Calif., and went to the border at San Ysidro and we were very much impressed by the work of the INS and border patrol. We think it is money well spent.

Thank you, Mr. Chairman.

Senator SIMPSON. I recognize Senator Kennedy for 5 minutes of questioning.

Senator KENNEDY. Thank you, Mr. Chairman.

On page 8 of your testimony, you say: "Under our proposal, during a two-year period, up to 50,000 workers will be admitted annually for stays of 9 to 12 months."

What is the basis for that figure, and would you provide for us information that would justify that kind of number?

Attorney General SMITH. It is a figure which we think is a manageable figure. In other words, this is an experimental program. It is a figure that we think we can manage with modest resources. We can determine the degree to which we can provide an across-the-border work program which can be run and we can learn from it. We can determine, for example, whether or not the figure should be larger.

I know that there is a strong feeling among some that this is a far too small figure, that it should be larger.

Senator KENNEDY. Maybe I did not make myself clear. I would like to know what is the administration's findings that would suggest that we need 50,000 more workers? What is the information—

Attorney General SMITH. I do not want to create the impression that the 50,000 is directly related to job need. In other words, this does not represent a determination in our view that there are 50,000 jobs to be filled by Mexican workers.

Senator KENNEDY. What does it represent?

Attorney General SMITH. The odds are that there are more than that. What it represents is a figure that we thought was an appropriate figure to use to establish an experimental program, but it was not so large that it could not be managed and that we could not learn from it.

Senator KENNEDY. What is the justification for 50,000? Where are the needs? What is the basis for it? Where is the Department of Labor information for justifying 50,000 temporary workers on a trial basis? The Select Commission reviewed this in some detail, and we could not find adequate justification for it. I know you have given a great deal of time and attention to it. There have been interagency meetings that have been set up to study it.

What I would like to know is what information is available to you and to the Department of Labor and to the administration that would justify 50,000 additional temporary workers coming in?

Attorney General SMITH. Well, unfortunately, this whole area does not lend itself to black and white statistics.

Senator KENNEDY. Well, it does, Mr. Attorney General, under the existing law, because in my own State if we want to justify apple pickers, for example, coming in from Canada, there has to be a justification for that from employers, and establish a certain area of need. And employers in my part of the country have to justify it.

I am just asking now, what is the basis for the information that permitted you to reach the figure of 50,000. We didn't see it in the Select

Commission report. Yet, you have it in your recommendation, and I would like to just find out why?

Attorney General SMITH. Well, as a matter of fact, we have had estimates that range across the map as to the availability of jobs and positions in the Southwest and Western States and elsewhere, which will vary from almost zero to 1 million. And I would not want to hold out here or contend that this figure is a figure based upon any mathematical formula or based upon any statistics that we have been able to produce which would show that in this country there are 50,000 positions plus or minus available to Mexican workers.

I don't think there are any such figures. This area is an area that does not lend itself to certainty.

So, what we do know from our various efforts here is that there is a very large demand for Mexican workers, and what we have done is to pick a figure, and it is not the easiest figure to justify. We have really done it more, not on the basis of job need, but more on the basis of a figure that as an experimental program in effect for 2 years, will teach us something, and we think it will.

Now, it could be 100,000; it could be 150,000. We do know, based upon the information that we have, that there is certainly a demand for Mexican workers in the neighborhood at least 50,000, and undoubtedly much more.

Senator KENNEDY. Well, being paid at what level? None of us question that there can be a demand for individuals being paid at a sub-minimal wage rate or even at minimum wage rates.

Attorney General SMITH. We contemplate that these workers would be paid upon exactly the same basis as American citizens.

Senator KENNEDY. Seven percent unemployment level in those areas?

Attorney General SMITH. As I recall, it is in the area of 7 percent, I believe.

Senator KENNEDY. Seven percent unemployment level in those areas?

Attorney General SMITH. I think that is about right.

Senator SIMPSON. Thank you. Now Congressman Ham Fish is recognized for 5 minutes.

Mr. FISH. Thank you, Mr. Chairman.

Mr. Attorney General, I thank you for a most comprehensive document here. I would like to address my questions to the legalization of the undocumented or illegal aliens.

On page 9 of your testimony, you properly call for a one-time legalization. You do not want a reoccurrence of this circumstance, so you use the cutoff date of January 1, 1980, and propose a status of renewable-term temporary resident for those who are here today in undocumented status. It would be renewable for 3 years, and after a total of 10 years continuous residency, these individuals would be eligible for permanent residence.

Do I understand the 10 years to be entirely prospective, that you wouldn't count past residence in the United States even if it amounted to 7 years?

Attorney General SMITH. No; it would not be prospective. It would be 10 years of continuous residence, however long. In other words,

if someone on January 1, 1980, had been here for 10 years at that point, then that person would now be eligible.

Mr. FISH. That person would be eligible immediately for permanent residency?

Attorney General SMITH. That's correct.

Mr. FISH. I see.

The Cabinet Task Force must have had before it as a policy option permanent residence for undocumented aliens here as of January 1, 1980. Why was that not adopted, and the renewable-term temporary resident status adopted instead?

Attorney General SMITH. I'm sorry, sir. I'm not sure I understood that question.

Mr. FISH. As a policy option, why did your task force not move directly to permanent resident status rather than this renewable-term temporary resident?

Attorney General SMITH. The reason is, again going back to the overall purpose of this program, is to deter future illegal immigration. And if we were to provide immediate permanent alien status, this would not be a deterrent at all. As a matter of fact, on the contrary, it would be an invitation to illegal immigration.

We think that we have to have a longer period before that status is achieved, and in order to provide a deterrent, because if we made it easy, in other words, to come across the border and become a citizen, then we are not deterring anything. We are inviting illegal immigration. The reason we adopted the long period of 10 years is for that purpose.

We think that this is a happy balance between recognizing the fact that we have these people here and we cannot uproot them and deport them; we have to recognize the fact that they are here and they are going to stay; and at the same time on a one-time basis give them a status which recognizes the fact that they are here but which does not constitute an invitation to further illegal immigration.

Mr. FISH. I certainly agree with you there. I just wondered, why the 10-year figure when after 7 years they could petition for suspension of deportation.

Attorney General SMITH. After 7 years they could do what?

Mr. FISH. Petition for suspension of deportation. I wondered why the 10-year figure. The philosophy is certainly that you don't want to encourage others to come in.

Now further, there seems to be a difference between the provisions relating to time spent here by Cuban and Haitian entrants and other undocumented aliens. As I recall the renewable term entrant status for Cubans and Haitians could be renewed after 3 years, and after 5 years they could apply for permanent resident status.

I wondered why the proposals specify 5 years for them and 10 years for everybody else?

Attorney General SMITH. Primarily history. The Cuban Refugee Act of 1966 provided that the Cuban entrants could obtain permanent status after he had been here first 2 years and then 1 year. So that now a Cuban can obtain permanent status after 1 year's residence here.

During 1980 and the Mariel boatlift, when a host of Cubans arrived and a host of Haitians arrived, Congress, through the Fassel-Stone amendment, designated all of these people, gave them special status,

which was close to refugee status, namely as a Cuban-Haitian entrant, with all of the benefits that flowed from that categorization.

So that group has been treated separately, and it appeared to us that under those circumstances, the fact that they were not really illegal immigrants in that sense, they had been designated not as refugees but almost as refugees by Congress, they had been treated separately, and the fact that under present law a Cuban could achieve permanent status after 1 year, which of course is not true with any other illegal immigrant, that that difference called for a different result for this particular fixed group.

So I suppose the short answer to the question is it is history, and circumstances that apply to that particular group which have caused them to be treated differently.

Mr. FISH. Thank you, Mr. Chairman.

Senator SIMPSON. Thank you. I next recognize Senator Grassley, a member of this subcommittee and a very interested member.

Senator GRASSLEY. I would like to make an observation for the benefit of any business, employer, or trade associations that may be interested in this hearing and the subject matter that is before us.

It has been my observation in the years I have been in Congress that one of the reasons we haven't been able to move legislation making it illegal to knowingly hire undocumented aliens is the opposition of those groups, due to an unwillingness to impose the burden on them for making that determination.

I hope that they will get behind the administration's efforts to prevent the hiring of illegal aliens. I know that these groups were very active in helping the President yesterday get his program, his tax program and economic reform program, through the House and Senate. Obviously, there was an interest in economic recovery and tax advantages for the business community in that bill, so they worked hard for that.

I hope that those same groups will support the President's program in this effort because there is more at stake here. It is blindness to observation at the law, and we can no longer tolerate this blindness. That is what is at issue here as much as anything else, Whether or not the immigration laws in this country are going to be abided by.

I think that they have a social responsibility to help the administration as much in this effort, for something that they heretofore opposed, as they did in the economic reform effort.

Along that line, Mr. Attorney General, Mr. French—Mr. Smith, I mean. I'm sorry.

Attorney General SMITH. I get called a little of everything.

Senator GRASSLEY. I don't know whether to blame you or your mother. [Laughter.]

My mother calls me Charles.

You talked about, in answer to the chairman's question, the cost of the counterfeitproof work permit, and I just wondered, is it really the cost that you are trying to avoid, or is it the controversy that is connected with that?

The controversy is this, many groups are opposed to the permit for civil liberties reasons, and it is probably one of the most controversial of the Select Commission proposals, even though they were very specific in regard to it.

Can I ask your honest assessment? Is it because of the cost or because of the controversy?

Attorney General SMITH. I would say, Senator, that it is not any one item. Cost was certainly an item. The whole question of national identity card was always hovering around. Practicality and giving the employer a clean bill of health, in other words, making it very specific as to what he had to do in order to avoid prosecution.

I just don't think it was any one item. It was a combination of those things, plus the fact that we think that the program we have proposed here certainly should work. If it doesn't work, we can change it, but it seems to us a good way to start. At least we ought to find out whether or not we can do it in this relatively simple way before we go to the tremendous expense of trying to do it some other way.

Now, true, this may not be quite as effective as if we had a national identity card, whatever that is, but it seems to us we ought to try the simple way first and see whether or not it works, and if it doesn't work, then go on to something else.

Senator GRASSLEY. I only asked that because that was the answer you gave to the chairman, emphasizing the cost.

Attorney General SMITH. I didn't mean to say that that was the reason. That was a reason.

Senator GRASSLEY. I've had some conversations with some people in the administration, both in your department and outside of your department about this very issue. I have gotten the feeling that the people in the administration aren't really sure this is going to work, but it is something that we ought to try before going to the work permit or work authorization card.

I just wondered, if that is the basis for the decision and, if we have given enough consideration to it.

Attorney General SMITH. I can assure you, we have given maximum consideration to it. This is an area that you might suspect generated a great deal of discussion and differences of opinion, and what we have come up with is a result of a very lengthy, intense process, and we think it is one which, under all the circumstances, is the best one at this point.

We think that it provides the employer simplicity. He knows what he can do and what he cannot do. We think that it keeps down the expense. It is not a costly program. It may have the liability of perhaps more fraud than might otherwise be the case if we had some other kind of program, but we are satisfied that it is a good one, that we should give it a try, and we think as of now that it will work.

I might also say one other thing about employer sanctions. You mentioned earlier the need for employers to get behind this program. It is interesting, one's thought processes. I have discussed this with Chairman Simpson, and I think you maybe went through the same process. My initial reaction to all of this was against employer sanctions on the basis that we should not add one more burden on the employing entities.

As I got more into the process and the program and learned more about it, I changed my position on it, and I am now completely satisfied that this is really the only effective way that we have, combined with the other elements of the program, to meet this problem and meet

it head on. I am satisfied that this is the way that we have to go, contrary to my original instincts.

Senator GRASSLEY. In regard to increasing the immigration from Canada and Mexico by 20,000, which I assume would raise the 270,000 up to 310,000—

Attorney General SMITH. That's right.

Senator GRASSLEY. Have you thought about increasing the limits for Mexico and Canada, within the 270,000?

Attorney General SMITH. Well, of course that would involve cutting down immigration elsewhere.

Senator GRASSLEY. Yes.

Attorney General SMITH. I guess the answer is "No," and one of the reasons is that it is only very recently that there was any country limit imposed upon either Canada or Mexico. It is true that we had the 120,000 Western Hemisphere limit, but the limit on Canada and Mexico is only very recent.

Getting back to Senator Kennedy's question, if we have 20,000, is that a good figure or a bad figure? Nobody knows whether it's good or bad or whether it meets the needs, but it is a figure, and it is there, and we think that in view of the special circumstances of those two countries, it is desirable to recognize reality and increase the legal immigration there.

Senator SIMPSON. I must observe that 5-minute time limit because we have three members who are certainly entitled to their time.

I recognize Congresswoman Pat Schroeder, my neighbor from Colorado.

Mrs. SCHROEDER. Thank you, Senator, and thank you, Mr. Attorney General, for being here.

I guess one of the things that bothered me the most was a directive that was issued May 20 by Doris Meissner, the acting Commissioner of INS, stating that all persons coming out of Vietnam, Laos, and Cambodia and processed by the Department of State and voluntary agency employees were to be presumed to be refugees.

Now, as I read your testimony, you are saying that you have reviewed the refugee program and the interpretation of the definition of refugees, and you don't recommend any changes. Is that your position? Many of the studies that have been done show that a very high percentage of the people coming out of those three Southeast Asian countries are really much more like economic refugees right at the moment, rather than the refugee definition in the Refugee Act of 1980.

Attorney General SMITH. Well, the use of the word "presume" there may have not been the best of terms. The refugee situation in that area is a highly complicated one, and we did determine during that time that for some reason we were applying a slightly different, more rigid standard, than we had been applying in the past, in the field. And this had an effect upon a certain number, not a large number but a certain number of people coming from those countries.

We also had consultations with the State Department, and of course when it comes to what is going on internally within countries, and particularly in an area such as that, we have to rely heavily on the evaluation and analysis of the State Department.

We also had in-depth consultations with them as to how the definition of refugee should be applied under those particular circum-

stances, and we did conclude that we probably had been more rigid in handling individual cases than perhaps we should have been under all of the circumstances, and we changed that. However, the change would not have a substantial effect on numbers.

Mrs. SCHROEDER. It worries me, when you say that you decided that maybe you had been applying the definition too rigidly or you listened to the State Department. There are some people claiming the State Department is playing little political games here. That worries me. I think the definition of refugee should be the same world-wide. You shouldn't change the definition depending on the State Department's analysis of the region.

Attorney General SMITH. Well, I would heartily agree with you, but unfortunately it is not that simple. For example, let's say that somebody left Vietnam because he didn't want to be conscripted into the army there, and there happen to be quite a few of these, and he leaves the country for that reason. He doesn't want to be conscripted.

Now the law of the country says he should be conscripted. He ends up as a member of one of these groups. And he tells us if he goes back, and the State Department tells us that if he goes back, or whatever agency has knowledge tells us that if he goes back, he'll be executed.

Well now, is that a refugee or not? We think he is.

Mrs. SCHROEDER. I think if we had people leaving our own country trying to avoid conscription, and some other country defining them as refugees, we might get a little bit distressed. I do not think that was the intent of the act.

Let me add one more—

Attorney General SMITH. Let me pursue that. These questions are very, very difficult. Now we have to recognize, for example, that the United States is the most generous country in the world when it comes to immigration and dealing with refugees. The Refugee Act of 1980 was a humanitarian act, and it provides a definition and the definition sounds simple, "well-founded fear of persecution" and so on.

But when it comes to applying that to specific situations, it is an extremely difficult job.

Mrs. SCHROEDER. I think Congress intent in defining refugee was very clear: Fear of persecution before you left. If the act of leaving and running away from something then made you subject to persecution, then you make yourself a refugee and everybody would be able to make themselves a refugee. We have seen that with Haitians claiming persecution when they return.

Attorney General SMITH. Can I just say there that I don't think that is the way the act reads. It seems to me that it says that wherever one is located, if he has a well-founded fear of persecution if he returns.

Mrs. SCHROEDER. But that was when he was located, and part of why he was fleeing. Maybe we need to make the law clearer if it isn't. We shouldn't get in a situation where we do not apply the law uniformly.

Attorney General SMITH. Believe it or not, I think we are saying the same thing.

Mrs. SCHROEDER. That is hard to believe.

Attorney General SMITH. Because I heartily agree with you that we should have, as simple as is possible to have, a definition of what a

refugee is, and I think we should certainly live with that and apply it as evenhandedly as we can. Of course we have to confer with Congress on this subject anyway and want to and will, and this is certainly an area we would be most happy to discuss.

Mrs. SCHROEDER. I just want to add one other concern before that red light goes on. I am very worried about the employer sanctions from my part of the country. I am afraid what will happen is that employers will then hesitate to hire groups that might not look like they're citizens, for fear that would be considered a presumption that they should have known better and they should have checked everything out.

I see a great potential for discrimination against especially the Hispanics of the Southwest and many others, and that worries.

Attorney General SMITH. Actually, this program was designed specifically to avoid that because all the applicant has to do is to present two of these identifiers, as they're called, and the employer has a defense. All he has to do is see those identifiers and the signed statement, and if that is done he has a defense and therefore, whether somebody is a Hispanic or looks foreign or what have you is irrelevant to the consideration. If he sees those identifiers, and if that statement is signed, he has a defense.

This program is designed to prevent exactly that situation.

Mrs. SCHROEDER. I have just found that small employers tend to think they don't want the Federal Government coming in and looking around if anything look suspicious, and that may be the law and that's terrific if they totally understand it, but they tend not to have good corporate—

Attorney General SMITH. Small employers are exempt. Employers of three or less are exempt.

Mrs. SCHROEDER. That's really small.

Senator SIMPSON. Well, the Attorney General has been gracious enough to extend his time a bit and maybe we can get back to that, but for now I do want to recognize the other members of the subcommittee. I recognize now Dan Lungren, who is a very important voice and represents the vital interest of his area of California.

Mr. LUNGREN. Thank you, Mr. Chairman.

Mr. Attorney General, I would like to congratulate you and the administration for coming forward with a comprehensive plan. Yesterday we saw that certain ideas in the area of economics, particularly tax cuts, took 2 years gestation from thoughts that were kind of laughed at to being accepted as the conventional wisdom of the day. And immigration, the whole area of immigration has been something along those lines, although with a longer gestation period.

I don't think there is any doubt that previous administrations, Republican and Democrat, have basically not wanted to deal with it. This is the first administration that has had the guts to come forward with a comprehensive plan, and for that I congratulate you and I hope that we can try to work together to work out a very, very controversial subject.

I would say that you are a man of your word. When you appeared before our Judiciary Committee earlier this year and we were asking you why there were certain shortcomings we thought in the financing of INS and so forth, you said that you wanted to have a full plan, and once you had a plan and a policy, you would be willing to come back to

the administration and ask for more funds. I wish you had come back a couple of days earlier because we had the State—Justice bill on the floor today and it's a little late for amendments. I guess we will have to handle that in supplementals.

I also would like to say that I think the administration is reasonable in recognizing reality when they suggest that we ought to have at least an experimental guest worker program. I know that was rejected by the Commission. In my judgment that was a shortcoming of the Commission. Having been on the border and sat on the border and talked to people as they came across, I just have the very strong feeling that with everything we do, we have to recognize that there is still going to be some labor movement from Mexico to the United States, which every study I have seen suggests has occurred since at least 1880 on a continuous basis. And I think that although it may not be as large as envisioned by legislation, I think it does give us something that is workable.

I am concerned about the idea of employer sanctions unless there is meaningful identification. I, like you, did not much like the idea of employer sanctions. I had some of the same concerns that the gentleman from Colorado has. I don't want to see the Hispanic people in my area or the other parts of the Southwest discriminated against because employers find that the easiest way is not to hire them, and therefore not worry about whether they are following the law.

But I would just ask you in that regard, do you really think that is an additional means of identification to require a prospective employee to offer any two of the following: birth certificate, driver's license, social security card, and registration certificate issued by the Selective Service System?

We just had a question on the floor last week as to whether the Selective Service can use social security cards as one means of identifying individuals they have. In many cases you present your social security card to get a driver's license or vice versa. In other words, there seems to be a redundancy which really doesn't go toward establishing the identity of the individual.

Can you give us some idea of why the administration feels that two of those documents, sometimes one depending on the other, is going to be any better than what we have now?

Attorney General SMITH. Well, there are two documents plus the signed statement, any two. I think you have to consider this in terms of alternatives. In other words, if it is not this, then what? If you have what has been referred to as a beefed up social security card, what does that in fact mean? Does it mean that the card itself becomes more difficult to counterfeit? Or does it mean that, somewhat, the underlying data upon which it is based is more secure? And if it is more secure, what is it?

In other words, if you go to get—I suppose this applies even to a national identity card—what is it that makes it authentic? If you go back to a birth certificate or driver's license or whatever, the card is only as good as that underlying data. This happens to be, I guess, what you would consider more underlying than anything else. This is the traditional means of identification.

But if you go beyond that, where do you go? If you go beyond the birth certificate, does that mean you go back to the town or city or registrar or wherever the thing was originally issued and confirm it?

What do you in fact do to make sure that that card is what it purports to be?

It seemed to us that the question of identity is not our primary goal here. Our primary goal is to have an effective employer sanction program. And we think that with this approach, we can have that, recognizing that it may not be as solid as some other form.

But it is important, when you are talking about another form of identification, what exactly do you mean by that?

Mr. LUNGREN. I guess my question is really toward the second part, as you broke it down, not the underlying proof necessary to get it but the counterfeitability of the card. Any 18-year-old, I suppose, in a State that requires you to be 21 to drink knows where to get a driver's license and a social security card pretty cheaply that is done pretty well.

And I just think we have to do something. If there is an expense involved, one of the arguments that we are using about cleaning up the immigration nonsystem—the mess that we have—is in some ways it impacts on employment opportunities of Americans and residents who are here legally. It seems to me it would be a small cost if an identification card or a beefing up of something we have now were added as one of the crucial elements in that program, if there is going to be a benefit in terms of the employment opportunities for Americans.

Attorney General SMITH. Well, we went into, as you might suspect, we went into this subject in great detail, and we discussed, for example, with Secretary Schweiker, who has the responsibility for social security cards, what it would entail to make it a little bit more secure. As I say, we came out with estimates, and I don't know how accurate they are, but we came out with estimates of from \$850 million to \$2 billion to do that, just that.

Then you talk about the possibility of having it secure but making it prospective. And that has certain virtues but it would take a long time before, if it were made prospective, you would cover all those that need to be covered.

Senator SIMPSON. Thank you very much. I recognize Congressman Bill McCollum from Florida, a new member of the subcommittee, a new Member of Congress who takes a vital interest in this; I've found that to be very clear. Thank you.

Mr. McCOLLUM. Thank you, Mr. Chairman.

Mr. Attorney General, I have questions, which I have many of, but I wish to first of all commend you and the administration for the general thrust of what you presented today because I think overall the policies are excellent.

I do however—

Attorney General SMITH. That's the nicest compliment I have had from anybody out of Florida in quite some time. [Laughter.]

Mr. McCOLLUM. I'm going to get to the more ticklish ones now. Those were my true feelings, and I think many other Floridians will agree.

On page 13, you say :

We will pursue international measures to secure the return to Cuba of those Cubans currently detained at Fort Chaffee, Arkansas, the Atlanta Federal Penitentiary and certain other facilities who would be excludable under U.S. laws.

It seems to me, Mr. Attorney General, that as a realistic matter, that is if any of us are realistic, Mr. Castro is not going to accept normal international means of returning these folks to Cuba, that without sanctions either imposed on him somehow by the United States or without the threat of sanctions in some way against Cuba, we are not going to see that return in the foreseeable future.

It occurs to me, as it has occurred over a long period of time to many others, that we ought to be pursuing as a national policy plans and preparations either for the forceable return of those Cubans against the wishes of Mr. Castro if necessary, or at least sending a signal to him in certain fashion that is clear enough that he is going to have to accept the realistic possibility that that will occur, and then perhaps negotiate their return.

Has that occurred to the administration, to you? If so, is that likely to come about, or is this something that you simply can't discuss with us today?

Attorney General SMITH. Well, I can say we certainly discussed every possibility. I cannot tell you for the simple reason that I don't know the degree to which these negotiations have been going on.

This is a very, very difficult situation, and the cost, I might add, is overwhelming, just to maintain these people, and without any end in sight. As we have seen from the newspapers recently, trying to locate them is an incredible undertaking.

We are certainly going to do everything we can do to handle it on a negotiated basis if at all possible. And of course in the area of international relations, one never knows what is going to happen at any given time. I can't say we are optimistic about it, but we are certainly not going to stop there. We are going to pursue it.

Mr. McCOLLUM. Well, I think I speak for those in Florida when I say that we encourage you to seek those sanctions and those stronger methods as soon as possible, and also encourage you to do what you have just done more into the future in finding locations for those who are coming over here, such as the Haitians, outside the State of Florida, which is overwhelmed with the burden.

But we commend you for the Puerto Rican policy, taking those down there and taking those international steps, actually a national step in this case.

I have a question about interdiction. You have proposed some policies there which I agree with, but I fear that perhaps the interdiction policies may prove illusory unless there are steps taken to beef up the Coast Guard, or perhaps the Navy might be involved. You make no mention of the Armed Services involvement in interdiction, and there is no mention of additional funding for the Coast Guard, which is just about as underfunded as INS right now.

What are the administration's views with respect to this idea?

Attorney General SMITH. Well, we are looking very carefully into the funding of the Coast Guard. That is a matter under review right now, but there is some thinking that this task could be undertaken within current resources without unduly handicapping other operations that the Coast Guard is involved in.

Now of course in the event of another Mariel, not only the Coast Guard could be utilized but the Navy could be utilized as well, under of course the direction of the President. So that is certainly a possi-

bility, and we are very conscious of the consequences of what happened last time and we certainly have every intention that it will not happen again.

Mr. McCOLLUM. Well, I am pleased with the interdiction idea right now with respect to the Haitians particularly. It has come to my attention from documentation very recently from the Coast Guard that as recently as the last year or two, we have been actually receiving Haitians who have been intercepted on the open seas as far as south of Cuba and within 20 miles of the coast of Haiti. It is absurd in my judgment, as I am sure it is in yours, for us to be returning those to the United States instead of directly to Haiti.

So I assume this means the policy is about to change forthwith on that score. Am I correct?

Attorney General SMITH. Well, this is one of our recommendations.

Mr. McCOLLUM. Do you think the rest of the administration will go along with that immediately to pursue their return directly to Haiti?

Attorney General SMITH. You're talking about—

Mr. McCOLLUM. Interdiction of particularly the Haitian vessels that are out there in the open waters. That doesn't seem to me to require an act of Congress to return those boats to Haiti if Haiti is willing to accept them, rather than bringing them directly into the United States.

Attorney General SMITH. This is certainly part of administration policy and we will do whatever current law permits us to do in that respect.

Mr. McCOLLUM. Thank you. I have one last question. I noted that you have suggested asylum officers, and I think that is a well-intended suggestion. I also note that there is no mention in your report and recommendations of the article I court or an immigration court, which was suggested by the Select Commission.

Is the administration opposed to the establishment of such a court?

Attorney General SMITH. We are very much in favor of making that procedure as simple as possible, and as expeditious as possible. We think the asylum officers is the way to do it, and in the case of serious asylum questions, to have an appeal procedure. We think that that approach is certainly adequate from the standpoint of—

Mr. McCOLLUM. You don't think a court is necessary, or have you considered that? I am very serious about—

Attorney General SMITH. We have not considered a court for this purpose, no. As a matter of fact, right now we think there are too many forums which can be utilized. We think the procedure needs to be simplified and streamlined, very much so.

Senator SIMPSON. I think that this committee is going to have several hearings on that issue. The problem we find is that there is one quasi-judicial procedure and three other procedures and when the petitioner is through with that, he can ask for deportation, and nobody is missing all those opportunities.

Let me just exercise the prerogative of the chair, even though I know that Senator Hawkins is present and she will be testifying tomorrow, and Congressman Shaw has just left.

I do want to recognize though Senator Huddleston, of Kentucky, who has chosen, among all the Senators, to become very well informed

and active on this issue and active, while the rest of us were necessarily inactive because of our participation on the Select Commission. He has presented the first piece of comprehensive immigration reform legislation, which will be considered by this committee, as will other bills.

I would recognize Senator Huddleston if you would care to inquire of the Attorney General.

Senator HUDDLESTON. Thank you very much, Mr. Chairman. I came only as a spectator and didn't intend to participate, but I appreciate you and the committee giving me just a very brief opportunity.

Like Senator Kennedy, I certainly applaud the objectives and the policies that have been outlined in your statement. I have not had a chance, of course, to take an in-depth look at all the specifics, but a cursory glance at it leads me to believe that we once again have marched right up to the problem and turned right around and marched away again. There have been no hard decisions made about reasonable limitations on the number of immigrants and refugees who come into the country. We have pretty well evaded the question of how to put any meaningful program of employer sanctions into the bill.

Last year we took 800,000 immigrants into this country legally. How many millions more came illegally, nobody knows.

I think the question the American people want answered is what is a reasonable limit in the interest of the United States and in the interest of our traditions and in the interest of our world positions? That has not reasonably been addressed by the administration.

The bottom line of the administration's program is that we are going to have a vastly increased immigration program, from both numbers of people who come into the country, and in cost to the American people. We are spending now about \$2.5 billion for refugee assistance. Before this week is over, we will take action to cut \$1.5 billion or more out of the food stamp program. We will cut over \$1 billion out of the child nutrition program. We are cutting back on job training programs. We are cutting back on health for the elderly. We are going to cut back on social security benefits. We have a high unemployment rate in this country.

Somewhere, with these facts, there is a reasonable position for the United States to take. I don't think we are approaching that in the presentations that have been made up to this time. Those are the hard questions. Your task force did a better job than the people in the White House who advise the President, in my judgment. They rejected some of the proposals that were made.

I am very encouraged that these two committees are going to take a very hard look at the program you are proposing.

I was curious about a couple of things. First of all, of course, the issue raised by the Congresswoman from Colorado, Mrs. Schroeder. I know that you are content with the description of refugee, that in fact your ruling, and I know you were sledgehammered into it by the Department of State says that anybody is a refugee. I think we ought to understand the difference between being an immigrant and a refugee. Once a person achieves refugee status, he has available to him tremendous benefits at the expense of the American taxpayer.

There is no question in my mind, and this is agreed to by officials of the United Nations, by officials of the other countries that are inter-

ested in the resettlement program in Southeast Asia, that our policies now are contributing to the problems there and are not to the solution. We have an international incident that is brewing, and if we don't change our position there, we are going to have a lot of difficulty with our allies and our friends because we are causing the continued flow of refugees in that part of the country. I don't think there is any question about that.

Our quota for next year exceeds the number of people in those camps today who are resettlement candidates. So that means we have to go out and recruit all throughout next year so we can fill those quotas. An I assume that is what we are going to do.

I was curious too about the Canadian and Mexican increase. Canada has never exceeded the 20,000 quota they are entitled to now. So if we want to increase the allotment for Mexico, why don't we do that? Maybe we should. But why go through a charade of saying we are going to increase both quotas and let one country take those that aren't used by the other? It simply means that the increase for Mexico will be substantial.

As I just look cursorily, Mr. Chairman, at what the administration has suggested, we will go from admitting 800,000 new citizens into this country legally to an average of about 1.8 million and possibly 2 million in the next few years. I am not sure that is what the American people want.

Senator SIMPSON. What did you think of that for a question?
[Laughter.]

Attorney General SMITH. I will try to take them seriatim.

Senator SIMPSON. I regret that we haven't time. I am going to take the remaining 5 minutes that you have generously given us and split that between Senator Kennedy and myself because of a question I have about temporary workers, but you can see the great interest that Senator Huddleston has.

Attorney General SMITH. I am well aware of his position. I sympathize with it, I might say.

Senator SIMPSON. I know you do. You and I have talked about it. He will be very much part of it and will serve as an official ex officio member of this operation.

I will take 2 minutes and yield the other three, which is a most generous thing, to the Senator from Massachusetts.

That is one that I have to listen to a lot to be totally convinced that that will be best. In your mind, would each temporary worker be restricted to a particular industry, namely one that might have demonstrated a need? Do you have that in mind?

Attorney General SMITH. No. Of course as distinguished from the bracero program and so on, of contract workers, the expectation here would be that they would not be so limited.

Senator SIMPSON. I think that as I see it, if the worker is not restricted in that way, it seems to me that the worker may well then seek a job in an industry which could well obtain sufficient American workers, and thereby displace those American workers and adversely affect working and wage conditions.

Attorney General SMITH. As a matter of fact, Senator, I think it is very important to recognize the other part of that program, which is that any State can determine that its employment situation is such

that they don't want any part of the guest worker program. Now, they can either do that on the basis of the entire State, just say we don't want to participate in the guest worker program, in which case they are through, or they can say we don't want anybody in this classification, this classification and this classification, in which case they would not be eligible to work in those classifications.

So there is ample protection against situations where unemployment otherwise might be a problem.

Senator SIMPSON. I was interested in your presented remarks. I think you indicate in the other remarks that I have seen a certification by State.

Attorney General SMITH. Yes.

Senator SIMPSON. And in your written remarks, I don't know if that is as clear. I think that is important that you have that on the record now.

My only concern, my real concern about temporary worker programs is this: each time we speak about it we quickly come to the phrase that we do not want to go back to a bracero program, and I would not. That was an offensive program and I lived in the midst of it.

But I do say this, that unless we have the other three aspects of what I have been striving for and will strive for as now the arena switches to the legislative branch, is increased enforcement at our borders and internally, the employer sanction against those who would persist in the pattern and practice of exploitation, and some kind of a counterfeit-resistant or verifier system.

The illegal migrant is confronted with the many restrictions of the temporary worker program, while we have done nothing on the other end to control illegal immigration, he is going to say why do I have to go through that stuff? I can go back to business as usual. It is a critical point with temporary worker programs.

I yield to Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

Just on the issue of amnesty, I note that you have rejected the recommendations of the Select Commission. Could you tell us why those recommendations were rejected? We felt that the amnesty program was to try to deal with an issue which the country is faced, and which other countries have faced, and they have found that historically the amnesties that have been successful have been the ones that have been generous and flexible. I think the recommendations that were made by the Select Commission, whether it was 2 or 3 years of continuous residence using the cutoff date of January 1980, was such a program.

Now you rejected that and made the recommendation of the administration for 10 years. Could you give us briefly the reasons why?

Attorney General SMITH. Well, as I understand, the Commission report provided for 7 years, and the status of those in between was a little uncertain.

Our program is quite clear as to the status from the beginning. The only question really is residency for 10 years, and the status during the entire period and the benefits and the protections that are available are all specified, and we think more so than was true with the Commission recommendations.

Senator KENNEDY. Well, I think in the various straw polls of the Commission, the majority recommended either 2 or 3 years continuous

residence. I guess there was no formal recommendation, but the straw polls indicated that a majority, a significant majority of the members themselves favored 2 or 3 years.

Attorney General SMITH. That would be 2 or 3 years for permanent alien status.

Senator KENNEDY. Well, 2 or 3 years of continuous residence and gainful employment prior to the time of the amnesty itself. I don't think it was 2 or 3 years of official status.

But let me get into the point that I really am most interested in the time that is available. The President indicates that these undocumented aliens will be recognized and accorded full protection of the law, but the fact is that during the 10-year period you propose they would not be able to bring their wives or their children or their husbands, whatever might be the case here, which of course is different from a permanent resident alien who is permitted to have his family with him.

What do you think would be the effect upon those individuals? Do you really think that either a husband or a wife is going to be separated from their children during a period of 10 years and doesn't that really cast a doubt as to how effective this amnesty program is going to be, whether the people are really going to come out and get identified and have their name on a list, when they will be carefully observed, yet their wife or their children are going to be separated from them? Why do you think this program will be effective?

Attorney General SMITH. It is not a separation. We are talking, Senator, about people who are already here, and in most cases people who have been here for a minimum of 1½ years. By the time this program goes through it will be 2 years, and in a good many cases, more than that. So that any family situation probably would have long since been taken care of. In other words, these people are here and they will have been here for a minimum of 2 years.

Therefore, if there was a family problem, presumably those family members would be here right now, to the extent that they were eligible.

Senator KENNEDY. Well, you have a significant backlog even with regard to reunifications of families in any event presently with regard to Mexico.

Attorney General SMITH. Legal, legal.

Senator KENNEDY. That's right. So they can't get a reunification of their family even at the present time under existing laws. I just wonder what you think would be the incentive for individuals to come forward now, under this particular proposal, when they know that they cannot legally be reunified with their families under the administration's program.

Why don't you just say, then, that they can be reunified, that they will have the same rights for reunification as other permanent residents?

Attorney General SMITH. I think that would be self-defeating. In other words, the purpose here is to deter illegal immigration. If we were to say that during this period these people could bring in their families, and then when they were once here, they could bring in their families—

Senator KENNEDY. But you can't have it both ways. You can't say that they are not here and if they are not here, they are going to bring them in, aren't they?

Attorney General SMITH. Well, if they do, they would be doing so illegally.

Senator SIMPSON. I think the Senator's time has expired. Mr. Attorney General you have been generous. Senator Kennedy, I can assure you that we are going to have substantial hearings in September and October and I think, without being presumptuous, that the Attorney General could be available again in those months for a hearing where we can direct ourselves to these issues again. Hopefully, you could, Mr. Attorney General. I know you have been more than cooperative.

We have just one question that would like to be addressed by a member of the Senate, and that is Senator Paula Hawkins. Can you take that for us? We would be most appreciative. I know you told me that you had to leave by 11.

Attorney General SMITH. I am always delighted to discuss with Senator Hawkins.

Senator SIMPSON. You have visited with her before, have you not?

Attorney General SMITH. I think I have.

Senator HAWKINS. I appreciate your cooperation. We really have a friend in you as the Attorney General, and I am so relieved to read your testimony today. It has been awaited in Florida. I am also relieved that if there is going to be a city on the hill, obviously it won't be in Florida because we don't have any hills.

Mr. Attorney General, what happens between now and the time the interdiction policy is enacted—especially if the lengthy process of passing legislation in order to permit interdiction is required? What happens between now and the time that law is passed if word spreads to the Caribbean that we had better hurry up and get there before those laws are enacted?

Are there any plans or discussions—

Attorney General SMITH. We have discussed at length contingency plans, and we have determined that our foreign policy is going to be made here and not elsewhere. I can certainly assure you that we will do whatever we can do to prevent any such reoccurrence. I can't get into specifics with you on that subject, but we certainly would intend to do everything possible to prevent a reoccurrence.

Senator SIMPSON. Attorney General Smith, I really appreciate your being here. Congressman Mazzoli has perhaps two questions, since he has just returned from the rollcall, and we will recognize him for that.

Mr. MAZZOLI. Thank you very much, Senator, and thank you for your patience, Mr. Attorney General.

I did want to follow up just momentarily on what my colleague, Mrs. Schroeder, began, and Senator Huddleston pursued. That involves Southeast Asia and the question of the distinction between economic migrant and political refugees.

If you haven't already done so, I would ask you to read in yesterday's Wall Street Journal in the B section, they had an interesting article which outlined the response of the Royal Thai government to the situation in Southeast Asia. They are of the opinion, and it may well be political, that the great flow of people coming out of Vietnam and Cambodia are economic migrants. They are starting a whole new campaign of being much more stern, of detaining them rather than permitting them to resettle in third countries.

I have talked to you already about what happened this spring, when the INS people, your employees in Southeast Asia, came to the conclusion that applying the law correctly, many people were economic migrants and not entitled to the type of help to get to America. I am sure that you engaged in good faith discussions with Secretary Haig and people at the State Department, but I had the impression that they had the drop on you.

Attorney General SMITH. They what?

Mr. MAZZOLI. I had the impression that they had the drop on you because they have been around longer and you had just come into office.

Let me encourage you that you have friends on the Hill who are of the opinion that you are right in saying that the question ought to come up constantly as to whether or not these are economic migrants, as against political refugees.

Let me refer to your statement in which you say the 1980 Refugee Act needs no clarification. I think it does. I think that the use of the terminology can lead to this kind of blanket acceptance of great groups of people as political refugees. So I would perhaps think in terms of revamping that.

Mrs. Schroeder and other members of our subcommittee intend to go to Southeast Asia to pursue that very point. I think it is important.

Attorney General SMITH. Can I comment on that? I agree with you completely on this subject. As a matter of fact, whether the definition is correct or not, and so far as I can tell if we are going to do it, it probably is as close to a definition as we can get. The question is really not the definition of a refugee. The question is the fact question as to whether or not a given situation comes within that definition or does not. And that is a fact question and it really turns on whatever information is available to whoever has to make the decision at the time.

Whether or not the State Department should or should not have a heavy input into that is something that is subject to a good deal of debate. I do think also that the whole question of refugees is going to come up for consultation with the Congress anyway next year, and I would think that this whole subject at that time could be gone into at some depth and we would be most happy to participate because I don't really think that our positions are different on this. The question is how do we apply it?

Mr. MAZZOLI. I think the consultations really come up prior to fiscal year 1982, in September. We both have hearings, both of our committees.

I thank you, Mr. Attorney General. Thank you, Senator.

Senator SIMPSON. Thank you very much. I want to again express my deep appreciation. You have been most attentive and gracious and patient, and I want to also add that since you came here and since I first met you before confirmation, I can see the tremendous research and gathering unto yourself of knowledge and information in this area, and that makes me feel very good about our working relationship in the future. I think you are going to be a real spokesman for responsible reform, and I thank you very much.

Attorney General SMITH. Thank you.

Senator SIMPSON. We will have a 5-minute recess and then we will proceed with the next panel of David Swoap, Diego Asencio, Robert

Searby, and Doris Meissner. We will take that up again in 5 minutes.
[A brief recess was taken.]

Senator SIMPSON. I thank you all, members of the panel, for your patience. It is nice to see you this morning, Mr. Swoap, Bob, Diego, and Doris.

So, if we could have the attention and courtesy of those in attendance so we can get on with our panel. This is the second portion of the joint Senate-House hearing on the administration's policy on immigration and refugee policy. At the witness table we have David B. Swoap, the Under Secretary of Health and Human Services. It is a pleasure to have you here, sir. And Diego Ascencio, Assistant Secretary of State for Consular Affairs. It is always good to serve with you again. We have had many fine sessions together on the Select Commission, as you subbed first for former Secretary of State Ed Muskie and then—let's see, was it Ascencio for Muskie?

And Robert Searby, Deputy Under Secretary of Labor for International Affairs, and Doris Meissner, who I came to highly regard and respect as we worked together on the Select Commission activities, who is now the Acting Commissioner of the Immigration and Naturalization Service.

So each of you, we would proceed with Under Secretary Swoap and if you will present your testimony, we will just take that in order. Next, Diego and then Mr. Searby and then Doris Meissner. You each have I think been instructed that there will be a 5-minute presentation and then questions from the legislators.

So, if you would please proceed.

**TESTIMONY OF DAVID B. SWOAP, UNDER SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES; HON. DIEGO C. ASEN-
CIO, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, DEPART-
MENT OF STATE, ACCOMPANIED BY GEORGE JONES, OFFICE
DIRECTOR, REGIONAL POLITICAL AFFAIRS OF THE LATIN AMER-
ICAN BUREAU, DEPARTMENT OF STATE; ROBERT W. SEARBY,
DEPUTY UNDER SECRETARY FOR INTERNATIONAL LABOR AF-
FAIRS, DEPARTMENT OF LABOR; DORIS M. MEISSNER, ACTING
COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE**

Mr. SWOAP. Thank you, Senator Simpson and Congressman Maz-
zoli and members of the subcommittees. I am pleased to have the op-
portunity to come before you today to discuss the refugee resettlement
programs of the Department of Health and Human Services and the
relationship of the recommendations made by the administration
today to the programs which our department administers.

Last year, as you know, the Congress enacted the Refugee Act of
1980, which for the first time established a permanent U.S. policy to-
ward refugees and a program of resettlement assistance. This law, with
regard to our own department, established the Office of Refugee Re-
settlement, and authorized it to establish programs which would en-
courage and enable refugees to become economically self-sufficient as
quickly as possible.

Based on this legislation, the Federal Government has a significant
role during the refugee's initial transition into life in the United

States in insuring that programs are available which will provide needed assistance and promote refugee self-sufficiency, and of course in offsetting major costs for assistance and services that would otherwise fall on States and localities.

Before addressing the decisions on refugee resettlement which the administration announced today, I would like to simply provide a quick overview and some background information on current Federal refugee programs which may be helpful to the committee.

First of all, as you know, with regard to cash assistance, we do administer programs which cover all refugees who are AFDC eligible. Our department reimburses States for their share of this program. All refugees who are not categorically eligible for AFDC benefits but who meet income eligibility requirements are, under current policy, eligible for refugee cash assistance or entrant cash assistance, generally at the Aid to Families with Dependent Children, the AFDC rate.

With regard to medical assistance, HHS covers the State share of medicaid costs for refugees and entrants who are AFDC eligible, and reimburses States fully for medical assistance provided to refugees and entrants who are on refugee-entrant cash assistance programs. Reimbursement is generally based on the State's medicaid rates.

Third, with regard to unaccompanied minors, HHS reimburses States for 100 percent of the cost of the care and maintenance of unaccompanied minors, assuming that the State provides for the legal responsibility of these minors.

Fourth, in the area of social services, the Department provides States funds for support services to refugees and entrants. These support or social services include title XX services as well as special services required by refugees who may not be covered by title XX, but which are necessary for the social and economic integration of refugees and entrants into American life—for example, English as a second language, employment-related services, interpreters, and orientation and acculturation services, as well as information and referral services.

Next, in a broader area of health care, the Department supports health assessment services, which are targeted to areas heavily impacted by refugees. These services assist local communities in meeting what often are the special health needs of refugees. For example, \$4.8 million in project grants have been provided in this fiscal year.

The Department supports through matching grants to national voluntary refugee resettlement agencies the resettlement of certain groups of refugees, principally Soviet Jews, Eastern European, and certain African refugees who do not traditionally access state public assistance programs supported by HHS funding. The Department also administers resettlement grants for Cuban and Haitian entrants, as you know.

Finally, in the area of education assistance, through a series of separate authorizations, funds have been provided to fund school districts in assisting them to meet the special educational needs of refugee and entrant children. The focus of this assistance is English language training. Although a part of the HHS refugee and entrant budgets, these funds are actually administered by the Department of Education on behalf of HHS.

In summary, then, over 212,000 refugees were accepted in 1980 and 180,000 are expected in 1981. The arrival of these large numbers of

refugees and the large numbers who have arrived over the past 5 years has in some respects strained the ability of the public and private voluntary sectors to foster effective resettlement.

Moreover, the unexpected arrival of 125,000 undocumented aliens from Cuba and over 35,000 from Haiti who entered the United States in recent years has, as you know, compounded the difficulties that are present in these programs.

The impact of 500,000 refugees and entrants, which is the total figure since mid-1979, resettling or being temporarily placed within the United States in such a short period of time, has been felt in many ways. For example, communities must address issues such as English language training for adults, housing, employment orientation, and job training and placement.

To help offset the major resettlement impacts, the Refugee Act of 1980 authorizes, as I have explained, Federal funding for refugee cash assistance and medical assistance during the refugees' first 3 years in the United States, and for social services and education.

Significantly, the Refugee Act also identifies a major role for States in the planning and coordinating of programs on behalf of refugees. Under the act, for example, States are required as a condition of receiving Federal funds to plan for effective resettlement and promote economic self-sufficiency as quickly as possible.

That is just a brief overview, Mr. Chairman, of the impact of these issues on the programs administered by our Department. I will certainly be open to questions after the other witnesses have completed their statements.

Senator SIMPSON. Thank you very much. Of course your full statement will be entered into the record.

[The prepared statement of Mr. Swoap follows:]

STATEMENT OF DAVID B. SWOAP, UNDER SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. Chairman, Members of the Subcommittees, I am pleased to have the opportunity today to discuss the refugee resettlement programs of the Department of Health and Human Services.

Last year the Congress enacted the Refugee Act of 1980, which for the first time established a permanent U.S. policy toward refugees and a program of resettlement assistance. This law established the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services and authorized it to establish programs which would encourage and enable refugees to become economically self-sufficient as quickly as possible.

Based on this legislation, the Federal government has a significant role during a refugee's initial transition into life in the United States in insuring that programs are available which will provide needed assistance and promote refugee self-sufficiency, and in offsetting major costs for assistance and services that would otherwise fall on States and localities.

Before addressing the decisions on refugee resettlement which the Administration announced today, I want to provide background on current Federal refugee programs.

Over 212,000 refugees were accepted in 1980 and 180,000 are expected in 1981. The arrival of these large numbers of refugees, and the large numbers who have arrived over the past five years, has strained the ability of the public and the private voluntary sectors to foster effective resettlement. Moreover, the unexpected arrival of 125,000 undocumented aliens from Cuba and over 35,000 from Haiti who entered the United States in recent years has compounded the difficulties. Despite the difficulties inherent in assisting these large numbers of refugees and other entrants, States, localities and voluntary resettlement agen-

cies have worked with great dedication and determination to effect the resettlement or initial placement of over 500,000 people since mid-1979. The Administration applauds their efforts.

The impact of 500,000 refugees and entrants resettling or being temporarily placed in the United States in such a short period of time has been felt in many ways. For example, communities must address such issues as English language training for adults, housing, employment orientation, and job training and placement. By virtue of current resettlement and migration patterns, these impacts are distributed unequally within the U.S. To help offset the major resettlement impacts, the Refugee Act of 1980 authorizes Federal funding for refugee cash assistance, medical assistance, and education aid during the refugees' first three years in the United States.

Significantly, the Refugee Act also identifies a major role for States in planning and coordinating programs on behalf of refugees. Under the Act, States are required, as a condition for receiving Federal funds, to plan for effective resettlement and promote economic self-sufficiency as quickly as possible. Also, a State must designate a State Coordinator with broad responsibilities to oversee the program within its jurisdiction. To carry out the intent of these provisions, HHS projects have made States the focal point for planning and implementing refugee service programs within the State and, to maximize state decision making, HHS has discontinued its direct funding of local service projects. In addition, we have been working to increase the communication and consultation among the many public and voluntary participants in refugee resettlement. In summary, there have been dramatic changes in Federal, State and local efforts to resettle refugees in the last few years. We believe we must nurture the resettlement mechanisms and relationships which have proven to be effective, foster partnership between the Federal government, States and localities, and voluntary agencies which at the same time exploring new approaches to resettlement. Therefore, as the Attorney General testified today, the Administration has decided to continue the present categorical program approach for fiscal year 1982 and 1983, but to reduce the level of cash assistance payments to those refugees who do not qualify for the regular Federal match programs. We believe this promotes equity between refugees and non-refugees and achieves prudent economies. However, HHS will explore possible impact aid options for those localities disproportionately affected by refugee admission.

Thank you for this opportunity to address the Subcommittees. I am prepared to respond to any questions that you may have at this time.

Senator SIMPSON. In order of the witness list presented to me, Diego Asencio, please.

Mr. Asencio. Mr. Chairman, with your permission I would like my statement presented for the record and then I will review it.

Senator SIMPSON. Without objection, so ordered.

[The prepared statement of Mr. Asencio follows:]

STATEMENT OF AMBASSADOR DIEGO C. ASENSIO, ASSISTANT SECRETARY FOR
CONSULAR AFFAIRS, DEPARTMENT OF STATE

Mr. Chairmen, I am pleased to appear here today to respond to your questions regarding the administration's policy that was announced this morning. We believe the principles set forth in the President's statement match current realities, our future national interests and the historic considerations which have guided our immigration policies in the past.

The announcement also represents welcome and early recognition by this administration that immigration and refugee issues or, if you will, the basic question of foreign entry into the United States—by whom and for what purposes—are one of the major policy concerns facing the Nation. It needs informed, thoughtful and decisive executive and congressional action. This is the first time in many years when we together have the opportunity to look at these issues as a cohesive whole from national and international perspectives.

Immigration has always been an area of great interaction between domestic and foreign affairs. Some have called it a "seamless web." Sometimes it has been events abroad prompting the desire to migrate here. Sometimes it is a matter of impacts abroad caused by changes in our laws permitting more

or less migration. Sometimes it is long-term global trends combined with our own unique American qualities that have created the need for new patterns. Whatever the perspective, we realize that this essentially domestic but national concern also affects our national interests abroad.

The administration has decided on a package approach to policy which we believe will serve both domestic and foreign policy interests:

It recognizes this is basically a global problem and gives appropriate emphasis to the need to work with friendly governments toward its resolution;

It acknowledges the unique character of ties to our contiguous neighbors;

It is both traditionally humane and contemporaneously firm in its approach to the "illegals" problem by proposing a legal status for most of those here coupled with enforcement mechanisms—notably making it illegal to employ those not authorized to work—to reduce significantly future inflows;

It proposes a trial period for a modestly-scaled temporary worker program to cushion the adverse effects on both sides of our southern border of the enhanced enforcement measures;

Paradoxically, it will reduce the overall entries into the United States by increasing nominally those who can enter legally—as either immigrants or non-immigrants—because the latter, coupled with increased enforcement and the other parts of the package, will inhibit the volume of illegal entries we have experienced in recent years.

We believe these proposals will not only be in our domestic interest but that they will be accepted abroad with the same good will in which they are offered.

Mr. ASENSIO. Basically, gentlemen, I think we are at a historic moment. This committee is at an historic moment. I think we have the opportunity presented by the immigration problems we are considering to do something major in reforming the prevailing system and there is an enormous amount of responsibility attached to the actions that this committee will take.

I share the general perception that immigration is out of control, and I, as you know, favor a number of measures presented by this administration, to bring them under control.

What I am concerned about is that because of those general perceptions of lack of control, that perhaps we will act contrary to our basic traditions. I think that would be a mistake, and I would hope that this is viewed very carefully with that in mind.

I am convinced that immigration can be brought under control without affecting our historic traditions.

Another point I would like to make, and I think it was made by the Attorney General, but in the general discussion perhaps was lost sight of, and that is the question of the package approach with regard to illegal aliens. That is, there are a number of factors that are being proposed. None of them by themselves will solve the problem, although they have varying effectiveness. I happen to think that the employer sanctions program is the heart of the program, but by itself, again I don't think it would solve the entire problem. But in combination with other elements of the program, it might just bring it within manageable control.

And I see the temporary worker program not as designed to promote the availability of workers for the market, but as part of the package to bring the illegal alien problem under control. That is, we start with enhanced enforcement, better enforcement, at the border, in the interior and at the ports of entry. We go to the question of employer sanctions, to eliminate the pull factors. We go to legalization because it is absolutely essential that we do so.

Obviously, there is still going to be some pressure for illegal immigration and I think this experimental program is designed essen-

tially to try to soak up that pressure. Otherwise, you will have a continuation of the illegal alien problem and you will not have solved anything.

The other point I would like to address is the seeming paradox, and I think Senator Huddleston presented a very eloquent view of the question of numbers, which is obviously one of the great issues here. And it is apparent that in the presentation of the administration's program, that we are asking for a larger number of legal immigrants. And this is a paradox. There is no question.

But the point is that in asking for those additional numbers, the entire program, the package is addressed to cutting severely the overall numbers of all immigrants, both legal and illegal. And if the program works, the total numbers coming into the United States will be reduced drastically.

Then there is the other question, of course, of how the refugees fit in this. Obviously, refugees are not my basic responsibility, but I would hate to see anything that would limit legal immigration in an uncontrollable and unpredictable manner. A refugee emergency that would limit the possibility of legal immigration would contribute enormously to the illegal alien problem, which is what we dearly would wish to avoid.

Having said that, I also would be delighted to answer any questions. Senator SIMPSON. Very provocative. Robert Searby, please.

Mr. SEARBY. Mr. Chairman, I am going to orally excerpt the labor-relations aspects from my testimony.

Control over the entry of foreign nationals into our Nation and its labor market is an integral part of our national sovereignty. The Department of Labor believes that the package approach set out in the President's policy statement and described this morning by the Attorney General serves the national interest by responding in an organic way to the complex domestic and foreign policy demands that we Americans place upon our immigration and refugee policy.

The well-being of American workers will especially be affected, of course, by those proposals aimed at curtailing the now more than decade-long, large-scale flow of undocumented foreign workers across our borders. Aggressive labor law enforcement is an essential element in reducing the exploitation, substandard working conditions and unfair labor competition often associated with illegal immigration.

The Department strongly supports the President's proposal to increase our enforcement of the Fair Labor Standards Act through the proposed increase in personnel and financial resources. We have estimated that the addition of \$6 million for an additional 197 positions will enable us to identify more than 130,000 workers employed in violation of fair labor standards.

Although enforcement of labor standards is a vital part of the proposed strategy, the proposal for employer sanctions is the cornerstone for gaining control over our borders and regulating the entry of foreign nationals into our labor market. Labor law enforcement cannot address situations where employment conditions meet minimal standards.

As the Attorney General has stated in his testimony, a workable solution to the problem of continuing large-scale illegal immigration must also provide employers with a means of complying with a pro-

hibition against the employment of illegal aliens. This means that employers must be provided with a practical and nondiscriminatory means of determining the work eligibility of all job applicants.

In addition, enactment of employer sanctions must be accompanied by a legalization program for the large number of undocumented aliens who have been living and working in this country, often for significant periods of time. Massive roundups or the continued clandestine residence of a large number of workers in this country would not only be impractical and inhumane, they would also be an unhealthy source of tension in our labor market and between this Nation and their homelands.

A large-scale legalization program and the experimental small-scale foreign worker program for Mexican nationals will help facilitate labor market adjustments, both at home and abroad, to the substantial reduction in the number of employment opportunities now available to undocumented workers in the United States, which employer sanctions and increased enforcement efforts will produce.

I turn briefly to the labor certification aspects of the administration's proposed reforms in legal immigrant and refugee admissions. The Department believes that the administration's proposal to alter the process of individual labor certification by providing a schedule of occupational shortages would streamline labor certification procedures for admitting immigrants as third or sixth preference workers. The current procedure is both time consuming and administratively expensive. The proposal will ease the burdens that case-by-case determinations now impose on the Department and on employers and prospective immigrant workers.

In sum, we believe that the time has come for the administration and the Congress to work closely together to resolve the long-festering and complex problem of illegal immigration and to construct and implement a rational, effective, and equitable immigration and refugee policy, one which at once protects the American ideals of freedom and opportunity, upon which this Nation was founded and to which this administration is dedicated, as well as the interests of American workers and the job standards that have become a fundamental part of the promise of American life.

[The prepared statement of Mr. Searby follows:]

STATEMENT OF ROBERT W. SEARBY, DEPUTY UNDER SECRETARY FOR INTERNATIONAL LABOR AFFAIRS, DEPARTMENT OF LABOR

Mr. Chairmen and Members of the Subcommittees: I appreciate the opportunity to appear before you today to discuss the Administration's proposed immigration and refugee policy reform package. As the work of the President's Task Force and these joint immigration subcommittee hearings clearly attest, immigration is a particularly important part of U.S. public policy.

Our immigration and refugee policies are important for many reasons. In part, they are important because our policies regarding the admission into this country of aliens from abroad are a matter of both domestic and of foreign policy. In no other area of public policy are the linkages between these two aspects of U.S. policy so obvious and so inseparable.

Our immigration and refugee policies are also important to us because they link our present to our future, and our future to our past. As Americans, we are proud of our heritage as a nation of immigrants. We recognize its historic connection with the democratic principles of human dignity and of freedom and opportunity upon which this nation was founded.

At the same time, however, we also recognize the need to maintain, as well as to set, limits. We are, and we must remain, a nation of laws, as well as a nation of immigrants. Our freedom and our prosperity as a nation—the very factors that have attracted so many foreigners to our shores—depend upon those limits and upon our laws.

The need for reform of our immigration law is pressing and long overdue. Control over the entry of foreign nationals into our nation and its labor market is an integral part of our national sovereignty. The Department of Labor believes that the package approach set out in the President's policy statement and described by the Attorney General serves the national interest by responding, in an integrated way, to the complex domestic and foreign policy demands that we Americans place upon our immigration and refugee policy.

The well-being of American workers will especially be affected, of course, by those proposals aimed at curtailing the now more than decade-long, large-scale flow of undocumented workers across our borders. Aggressive labor law enforcement is an essential element in reducing the exploitation, substandard working conditions, and unfair labor competition often associated with illegal immigration. The Department strongly supports the President's proposal to increase our enforcement of the Fair Labor Standards Act through the proposed increase in personnel and financial resources. We have estimated that the addition of \$6 million for an additional 197 positions will enable us to identify more than 130,000 workers employed in violation of fair labor standards. Although enforcement of labor standards is a vital part of the proposed strategy, the proposal for employer sanctions is the cornerstone for gaining control over our borders and regulating the entry of foreign nationals into our labor market. Labor law enforcement cannot address situations where employment conditions meet minimal standards.

As the Attorney General has stated in his testimony, a workable solution to the problem of continuing large-scale illegal immigration must also provide employers with a means of complying with a prohibition against the employment of illegal aliens. This means that employers must be provided with a practical and nondiscriminatory means of determining the work eligibility of all job applicants.

In addition, enactment of employer sanctions must be accompanied by a legalization program for the large number of undocumented aliens who have been living and working in this country, often for significant periods of time. Massive round-ups or the continued clandestine residence of a large number of workers in this country would not only be impracticable and inhumane, they would also be an unhealthy source of tension in our labor market and between this nation and their homelands. A large-scale legalization program and the experimental small-scale foreign worker program for Mexican nationals will help facilitate labor-market adjustments, both at home and abroad, to the substantial reduction in the number of employment opportunities now available to undocumented workers in the U.S., which employer sanctions and increased enforcement efforts will produce.

I turn briefly to the labor certification aspects of the Administration's proposed reforms in legal immigrant and refugee admissions. The Department believes that the Administration's proposal to alter the process of individual labor certification by providing a schedule of occupational shortages would streamline labor certification procedures for admitting immigrants as third or sixth preference workers. The current procedure is both time-consuming and administratively expensive. The proposal will thereby ease the burdens that case-by-case determinations now impose on the Department and on employers and prospective immigrant workers.

In sum, we believe that the time has come for the Administration and the Congress to work closely together to resolve the long-festering and complex problem of illegal immigration and to construct and implement a rational, effective, and equitable immigration and refugee policy, which at once protects the American ideals of freedom and opportunity upon which this Nation was founded and to which this Administration is dedicated, as well as the interests of American workers and the job standards that have become a fundamental part of the promise of American life.

Thank you, Mr. Chairman. I would be glad to answer any questions you may have.

Senator SIMPSON. Thank you very much. Doris Meissner, please.
Ms. MEISSNER. Thank you, Mr. Chairman.

The policy outlined this morning by the Attorney General provides an intelligent and necessary framework for the work of the Immigration and Naturalization Service. As you know, the Immigration Service has an awesome responsibility to discharge in the administration of our Nation's immigration laws.

In recent years, we have been overwhelmed by changing circumstances, and have found that task to be very difficult. The policy presented by the administration gives the Immigration Service the guidance and the tools, if enacted by the Congress, to array our priorities productively and target our resources effectively.

Before us now as an agency is the task of implementation and planning for significant new responsibilities and duties. We know you will have detailed questions on implementation, and we look forward to developing our plans in discussion with you at the hearings this week and in the fall. Thank you.

Senator SIMPSON. I think we will just proceed with our 5-minute limitation on questions from members of the panel, and just go around. If we get to a second round, we will do that, too.

Chairman's prerogative, first. What was the figure that the Health and Human Services or the Labor Department put on an increase in budget for labor certification? I remember the Attorney General's comment was that he was seeking an additional \$6 million to assist in this process, but do you have the figures on what the Health and Human Services is doing in that area, and the budget figure?

Mr. SWOAP. The only place I believe, Mr. Chairman, where the figures become relevant to our department is in the possible cost of a tamper-proof social security card, and I think you are interested more in the labor certification, which would be in the Department of Labor's area.

Senator SIMPSON. That is what I was asking about. What is that figure? Do you have that budgetary figure, where you can furnish it to the subcommittee?

Mr. SEARBY. You are now referring to the fair labor standards increase, the \$6 million for additional investigators?

Senator SIMPSON. Yes, but I understood from the Attorney General's remarks that that was what he said we are asking, and I assume that meant the Justice Department. I am wondering, what increase is there in Health and Human Services to increase enforcement of labor certification and so on.

Ms. MEISSNER. My understanding is that there would be a \$6 million increase for fair labor standards enforcement.

Senator SIMPSON. Yes, I have that, and that is given and it says "we," and I assumed that meant the Justice Department was somehow assisting in asking for that.

What I am asking is what is Health and Human Services or Labor, what are they asking in budgetary assistance on labor certification?

Mr. SEARBY. For the whole package if you will, the increase is \$6 million for additional labor law enforcement.

Senator SIMPSON. That is what you get from staying far away. Enough. I give up.

As I perceive the administration's proposal, an employer would be subject to sanctions, penalties. Now even if he were to check the required documents and obtain the job applicant's signature on the required form, if he had reason to believe that the applicant was not authorized to work.

Could you expand on that a bit? Specifically how certain would the employer have to be before he could safely hire the applicant? If the Government would not need to show that the employer was "certain" that the applicant was illegal, is there not a risk that he might seek to avoid the possibility of sanctions in cases where there was any question whatsoever, simply then discriminating against those who might have a foreign appearance or by color of skin or lack of English ability? Where are we on that one?

Ms. MEISSNER. The requirement applies to all hiring, so the potential for discrimination should be mitigated to some extent by the fact that employers are required across the board to assure themselves that they have seen documentation.

This employer-sanctions proposal is very similar to the proposal passed twice in the House of Representatives. It reverifies the conventional wisdom that under present circumstances we can ask employers to make this kind of query, can be satisfied that they keep a record, and that the query was honestly made.

It cannot prevent everyone from violating the law. It is perfectly clear that an employer could write something down that says that he saw documents when in fact he didn't. The burden would then be on the Government to prove that there has been a violation.

We believe that we are in a strong position to make cases with aggravated offenders because we would most likely be operating on other information than that the employer has in his own files.

Given the documentation systems presently in use in this country, we believe we are proposing a safe system and a very good start.

Senator SIMPSON. Well, the issue of reason to believe and the degree of certainty cause me some concern. Of course we know that the quickest way to galvanize a constituency would be if we make any kind of onerous demands upon an employer through employer sanctions. That would be tough if we were to do that.

So I think the Attorney General, the task force, and the administration are on the right track when we relieve as much of the burden from the employer as possible and just say look, when you accepted those documents and they looked valid, and you did not knowingly deal with illegals, then you are not subject to sanctions or penalties. So, we will have several hearings on that.

Now the issue of temporary workers has come up again and again. Would not allowing temporary workers to remain for most or all of the year make it more likely that they would establish their roots here? Would it not increase the likelihood they would bring their families, even if illegally, which would then further increase their ties? Isn't it true that the greater the ties which are established, the more likely it is the temporary workers may remain, just as they have done in all the guest-worker programs in other countries of the world?

Mr. SEARBY. I will field that one. I think that is why we have the adjective "experimental" in front of it, for one, in the 2-year period to try to track it and see the effects of it. That is an aspect of the pro-

gram—and the program's aspects have not been fully developed yet—which would have to be watched as much as the number is. The aspects are not conclusions from an empirical data base. Certainly 50,000 isn't, as the Attorney General noted.

The temporary worker program that we now run has different kinds of controls on it, but we do have some experience in the question of whether they will return or not.

Senator SIMPSON. Well, as you say, experimental is the key. That is true.

Congressman Fish.

Mr. FISH. Thank you, Mr. Chairman.

Ambassador Asencio, welcome back before us.

The Attorney General, in his prepared remarks this morning, told of the proposal to permit illegal aliens present in the United States prior to January 1, 1980, to apply for the new status of renewable term temporary residents.

You recall in 1977, I believe, President Carter made a proposal in which he came up with a new category called "temporary resident," and it really didn't fly in the Congress for the simple reason that it wasn't thought that there was any incentive for illegal undocumented aliens to come forward, expose themselves and apply for this status, that there wasn't any reward in it.

Can you explain why we are not going that same path, why the renewable-term temporary resident does offer some incentives for people to come forward?

Mr. ASENCIO. I think it is more of an incentive versus also the possibly onerous effects of the other part of the program. That is, if you eliminate the pull factors or not being able to hire out as an illegal, you then have several options. You can leave or you can legalize your status, or I guess you could become a member of the underworld.

But I would think that the attraction is to be able to legalize one's status with an eventual possibility of becoming a permanent resident.

The other aspect would be if the rest of the program works, the inability to continue in a semi-clandestine status in our society.

Mr. FISH. I guess what I am concerned about is the person who has been here a few years, has a car and a driver's license, a social security card, a good job. He has really forgotten he is an illegal alien. He has a family here. His children are born here. It has no longer occurred to him. Perhaps he even has the supreme badge of honor, a voter registration card, which someone can also get him, along with these other documents.

What is in it for him?

Mr. ASENCIO. The other aspect I of course neglected to mention, Congressman Fish, was increased enforcement. If the effect of the proposed program is such that the problem becomes more manageable than it has been heretofore, the effectiveness of enforcement would also impact on people of that sort.

Obviously, anybody getting the appropriate documents, and these documents are not difficult to get, as we know, can construct a new existence for himself anywhere. I would suspect that having done that, it would be difficult for a person to forget that he was illegal, and that this way at least he would have an opportunity—after all, it is a form of amnesty—an opportunity to regularize his status.

Mr. FISH. Speaking of enforcement, I thought I understood the Attorney General to say that the legalization program would free up interior enforcement personnel and they could then concentrate not on finding people in Los Angeles but on the border.

Mr. ASENCIO. Well, maybe Doris can answer that best but—

Mr. FISH. I just want to ask you one other question. Why a total of 10 years continuous residence?

Mr. ASENCIO. Well of course, this was debated at some length by the group considering these matters. The feeling was that in effect these people had violated the law, that it was necessary as a deterrent to further violations of the law not to reward illegal behavior, and that nevertheless the practical problem of what to do with the substantial numbers involved required some means by which they could regularize their status, so the figure was arrived at as an amalgam of these various points of view; the practical necessity to regularize substantial numbers of people versus the idea that it should not be seen as some sort of prize for having been able to sneak across the border.

Senator SIMPSON. The rollcall vote took away the inquisitor.

Mr. ASENCIO. Just in time.

Senator SIMPSON. But you are still the inquisitor. [Laughter.]

I would go back then to some questions that I had. I might ask Mr. Searby, or anyone on the panel, how will we, in this temporary worker program, and you can see that that is an interest of mine, because I want to do something. I favor the experimental program, let me just say that, but I have been a little spooked because some people who are sponsoring legislation in this area are saying that this pilot program is true tokenism and that we need 600,000 or 1 million temporary workers. I fail to see how that could be helpful until we truly do something about curtailing the illegal flow.

How will we monitor the temporary workers who are in the country under the proposed plan? I realize it is experimental but I would like your thoughts.

Mr. SEARBY. As I said, some of the aspects are not yet developed, but the way the program would be designed to work, it would concentrate on job categories, certain job categories in certain areas. It wouldn't be considered to be across the board. We would expect the demand to come from certain Southwest States.

There is a temporary worker program now available being used in the East.

Senator SIMPSON. In the East, did you say?

Mr. SEARBY. Yes, primarily in the East, the H-2.

Senator SIMPSON. The H-2, which is about 32,000; is that not correct?

Mr. SEARBY. 47,000 last year.

Senator SIMPSON. New figures.

Mr. SEARBY. The certification would be done by the States that wish to request a certain amount of workers. They would certify their own job market situation, on where there is a surplus or shortage of workers. Within the annual 50,000 numerical ceiling, the Labor Department would allocate proportionately to the States, when the total number of requests come in, the quantity of workers that can come in to each State, and visas would then be given to them. That is as far as we have gone on that right now.

Senator SIMPSON. Well, we will be having many more hearings on that issue.

I would ask any member of the panel your response to what I see as the serious issue of amnesty or legalization, which is going to be difficult enough to address as I visit with others and hear what the public is saying. The public has trouble with amnesty and legalization. They do, especially those who are immigrants, who have come to this Nation and had to stand in line and wait, and are waiting now in the fifth preference category, some 570,000. They say we are legal and we are waiting and then with the sweep of a hand or an executive order you are then going to legalize these others who came here illegally.

I have always felt that amnesty should never be really addressed or presented as a solution until the implementation or the actual conditions are in force that would stop or at least clearly restrict the illegal alien flow.

I would like your thoughts on how amnesty can possibly work until we have in place the enforcement mechanisms, the employer sanctions and my third step, some type of identifier or verification? How would it work?

Mr. ASENSIO. Mr. Chairman, just one point that I think I was trying to address before, but you raise it from a different angle and I would like to reiterate my remarks in the sense that I was trying to show that in terms of the legalization program, the conditions established are such that it is obviously not a prize or premium for illegal behavior, but I guess something akin to probationary status.

So therefore, I think the legalization program we have in mind was designed to take into account the fact that we don't want to reward what in effect is illegal behavior, but that nevertheless because of the nature of the problem, and the practicalities, the numbers involved, something along these lines is absolutely necessary.

Now my understanding of our approach is also that certainly as far as the enforcement mechanisms are concerned, these should be in place before other elements of the program become operative. So I think that would meet that aspect.

Senator SIMPSON. I think that the American people, except that these issues will be addressed through their elected representatives, because now the scene is so much changed and we now come into the political arena. I mean all the Select Commission work and the task force work and white papers and theories now end as we get down to the mud wrestling in this arena.

I guess I have come to a conclusion about amnesty, and I like your reasons and those are very valid and very humane, but I have another one even more practical. If we couldn't find them coming in, how are we going to find them to get them out? So we waste tremendous resources if we try to do something of that nature and that is why I think that is a feckless cause.

But again, the other political part of it is many people agree with the need for amnesty, but want to be sure it doesn't happen again. And the only way it won't happen again is if we then become restrictive.

So any comment on that?

Mr. ASENSIO. One aspect, and then I'll turn it over to Doris. Mr. Chairman, I think that if the package works, we won't have to go find

them. They will come and find us. I think that is the only hope. You are perfectly right. Going to find them is not practical.

Ms. MEISSNER. I think it is terribly important to stress the interrelatedness of the proposals. Inevitably in the hearing process and in looking at any particular set of proposals, we dissect them piece by piece and try to figure out how each piece would work. Any piece of the proposals standing alone is probably insufficient and politically unacceptable.

Amnesty, for instance, does raise exactly the questions that you ask. So do employer sanctions. So do increased enforcement of present statutes.

The answer to the question, "Isn't amnesty a reward for illegality?" is to say, "Yes, it is." The presence of a large illegal population is a pragmatic fact we face. We must do it, however, in conjunction with A, B, C, D, E, and F in order to attack the problem illegal immigration wholesically.

Senator SIMPSON. Well, I do believe that there is a totality and that we must have the interrelation. For if we pass only one or two of these things, people will think we have gotten something done, and really we will not have.

I wanted to share with you, not for high drama, but just out of interest, something that was presented to me by an unknown source. Actually it was a former INS officer. You, Diego, just mentioned the phrase that we see these people constructing a new existence. And I show you this. It is a most fascinating little array of documents.

This is like the Biblical "begat." This is a fake green card and from that it begat an official social security, an official AFL-CIO card, an official food stamp authorization, an official medicare, an official driver's license and an official unemployment insurance policy.

And when people say to me "Well, I know, but what does that do to the system? Nothing, really. They are paying social security * * *," and all the other arguments. But it seems to me that there is something else. Our system is diminished and something is awry in the United States when that happens.

Oh, I'm sure we will hear the arguments that you could go to any kind of an identifier and people will gimmick it. Well, if they only gimmicked it 50 percent as bad as they do now, we will be ahead of the present situation.

So I think that is kind of where I am looking. I will take a crumb if I can't get a loaf. And now it is your turn, Mr. Mazzoli.

Mr. MAZZOLI. Thank you very much, Mr. Chairman.

I apologize, and I am glad that our witnesses today, Mr. Chairman, are professional witnesses. They understand all of this helter-skelter and people coming and going and the confusion that is part of our game. But we thank you for being with us.

Let me start off with Ms. Meissner, and just work across the table for a few minutes. Do you think that you people can spend that extra \$40 million?

Ms. MEISSNER. Yes. [Laughter.]

Mr. MAZZOLI. I asked that intentionally as one of those fast balls right across the center of the plate, and any decent batter should have knocked that one out of the park.

Is the spread and split of the money to your satisfaction, basically?

Ms. MEISSNER. The spread and split is one that we put together within the Immigration Service. It is a carefully crafted program that is a mix of enforcement resources. It doesn't just put people on the border or give us antismuggling agents. It gives us the support—the equipment, training, and so forth—that is necessary to make them effective and it does not require other dislocations in the budget.

Mr. MAZZOLI. My memory is very bad and I can't remember whether it was you or perhaps Mr. Crosland or someone else from at INS at the time the administration's budget came up in the spring, in which the budget was basically defended, albeit without great vigor, where some 973 positions were cut.

I know the situation. You felt disposed that that was, given a bad situation, the very best you could develop. But I do think that you have friends on the Hill, in the person of me and other members of our two committees, because you know we in the House restored \$25 million.

The problems that INS has encountered of having too few people for the tremendous workload has come to everyone's attention. We are trying to do something about it. I congratulate the administration for seeing that and for having now decided to go with this extra money.

Let me ask one other question which perhaps interests the people from Florida. What has happened to all those boats from the Mariel boatlift? Are they still bobbing around down in Miami, the ones you confiscated?

Ms. MEISSNER. Yes; they are. We are working our way through the civil fine procedures against the boat owners. Most of those cases are being settled. We do have quite a large number of boats in our possession.

Mr. MAZZOLI. Is it that nothing much has happened, and the issue is grinding on? Is there any break in the legal process?

Ms. MEISSNER. We are unable to bring criminal charges against the boatowners under the present law. One of the proposals contained in the administration's new policy is to amend the current statute so that that would not occur in the future.

Mr. MAZZOLI. What the Attorney General talked about today would cure one of your problems in dealing with these confiscated boats?

Ms. MEISSNER. That is correct. We do have the fallback position of civil procedures, and we are working our way through that process now.

Mr. MAZZOLI. If some kind of a Mariel were to reoccur, at this time, we are not prepared legally to take care of it, are we?

Ms. MEISSNER. No, we are not, not without legislation.

Mr. MAZZOLI. Let me mention a related matter. We went to southern California in the spring, and found a problem that the border patrol was having in storing cars they had impounded involved in smuggling illegal aliens. They couldn't get permission from GSA to sell them quickly. Has that problem been pretty much resolved?

Ms. MEISSNER. Yes, it has. As a matter of fact, quite recently we furnished the subcommittee a report on that matter.

Mr. MAZZOLI. The movement of those cars is important, because the INS, from December, I believe, through spring, when we got there, until probably early summer, were confiscating no cars even those fitted

out for illegal human trafficking. Those cars are now being impounded. Is that correct?

Ms. MEISSNER. That is correct.

Mr. MAZZOLI. Mr. Ambassador I welcome you again. I want to just state for the record, Mr. Chairman, that the Ambassador was our host in Mexico City as recently as 3 or 4 weeks ago at a consular meeting at which Mr. Stevens, of course, was present, too. It was at that time that for the benefit of his colleagues in the State Department's Consular Service, Ambassador Asencio did unveil what was then the basic plan of the administration.

I would think it would be interesting additional information for the State Department employees around the world. This plan does, of course, affect the visa people and other officers.

I wonder, is there any kind of a program that you could undertake within the bounds of your budget that could promulgate this program?

Mr. ASENSIO. Mr. Chairman, we are of course communicating all this data to our posts, in fact today. And we also keep a full stream of commentary going between my office and consular posts. In addition to that, obviously we are going to be having a number of meetings somewhat akin to the one that you attended in Mexico City in which these issues will be debated fully, and the impacts on our posts will be considered and discussed. So we have that very much in mind.

We do consider that as far as the Consular Service is concerned, we are talking about a new ballgame, and it is important for them to be aware of this.

Mr. MAZZOLI. Exactly. I know we talked about a lot of things, such as various border crossing cards and other kinds of identification paraphernalia. The State Department is working with the INS in some cases in developing rational and compatible systems.

Is there any updating you can give us on anything that has occurred since Mexico City?

Mr. ASENSIO. Yes, sir. The aspect you are referring to is the fact that we also have problems in our consular establishment with regard to legal travelers from Mexico. Just the very numbers themselves are horrendous. We would expect within the next year to be issuing 1 million visas a year in Mexico, and we will be issuing that many in Mexico City alone in a couple of years.

Our basic problem in the Consular Service is that if you continue to handle things in traditional ways, I mean use the goose quill because that is the way it's always been done, when you are facing numbers of that sort, you are really up against the wall, and you have to do something. You have to look at it in new ways.

Since Mexico is our largest consular establishment, taking something like 20 percent of my resources, what we want to do is that since we are really facing tomorrow's problems today in Mexico, is establish our consular establishment there as a model, automate as much as we can, bring into account new procedures, shuffle our posts, prepare new ways of doing things and try it out, to solve the immediate problem in Mexico. Then if it works and it works well, we use it as a laboratory, use that as a model for the rest of the world.

Mr. MAZZOLI. I appreciate that very much and I can state for the record, Mr. Chairman, that we watched the process which involves

people wrapping themselves around the Embassy in rows of two twice around. It is an amazing amount of traffic.

I did make a comment there and I will make it again, that I didn't feel that there was as much coordination in automating systems among the Federal agencies dealing with immigration as I thought there should be.

Let me encourage you from the State Department side, to be sure to follow up on these matters. Unless it is a coordinated system, it is really not going to work very well.

Let me shift for the remainder of my few seconds to the gentleman from HHS, Mr. Swoap. I am very much concerned about the situation that my subcommittee encountered in California in the spring when we went out there and talked with people in Orange County and San Diego County and Los Angeles County about the financial drain on their communities and other social strains caused by the presence of Indochinese refugees.

Are you aware of the Lungren-Danielson bill which would have the Federal Government continue to pay 100 percent of cash and medical costs for refugees? Have you some data that you might be able to share with us today about the effect of the April 1 cutoff of that 100 percent reimbursement? What you have seen as a result of the end of that period?

Mr. SWOAP. We have only limited data that addresses that specific question, Mr. Mazzoli. We do have data from the State of California, as I recall, that covers the period from April through June, and I think it suggests—

[Pause.]

Mr. SWOAP. The number, I think, is in the range of 20,000 that were in the category of people who have been here longer than 3 years, but we will certainly furnish that number to you for the record.

[Subsequent to the hearing, the Department of Health and Human Services submitted the following:]

REFUGEES IN CALIFORNIA OVER 3 YEARS

The California Department of Social Services reported that as of June 30, 1981, 20,279 refugee assistance recipients had reached the eligibility limit of 3 years in the U.S. Of this total, 14,721 were receiving assistance and 5,558 were ineligible for assistance. The 14,721 who continued to be eligible for aid were being assisted under the following programs: AFDC, 11,999; SSI State supplementary payments, 884; county general relief, 1,878.

Mr. SWOAP. We do, with all due respect to Congressman Lungren, continue to oppose that legislation, even as amended, largely on two bases. One, the additional cost that would be incurred, and depending upon the premises that you use and the bases against which you are comparing them, there would be a total additional cost ranging we think between \$74 million and \$171 million for that bill, even as amended.

Mr. MAZZOLI. I'm sorry, my time has expired, but I will return to it when we come back. Thank you very much, Mr. Swoap.

Senator SIMPSON. Congressman Fish, you have about 2 minutes left if you wish to utilize that.

Mr. FISH. Could I save that for the second round? My two colleagues haven't had a first round.

Senator SIMPSON. You may. Congressman Lungren.

Mr. LUNGREN. Thank you, Mr. Chairman.

I would like to direct a question on the subject of support for refugee services. The Attorney General made an eloquent statement here about recognizing the Federal responsibility once refugees are here, and my office in California has been besieged in the last week with suggestions that the word is coming from someone out of HHS that funding for part of the support of the refugee services is to be suspended at the present time because of the fear that they are going to run out of money for the program before the end of the fiscal year.

Could you clear that up a bit? We did have the rescission that we voted on in the Congress about 1½ months ago based on statements made by the administration that because the numbers of refugees were down, the funding that we had earlier anticipated was no longer necessary, and we went along with it on that basis and I did not object to it. But now I hear within a month that there is a suspension of some support programs.

Mr. SWOAP. I think that fear is ill-founded, Congressman Lungren. We do expect to continue the level of requisite funding through the end of this fiscal year. There was a period of time shortly before the end of June when it appeared that we might in fact be in a position of running out of funds through the end of the last quarter. But through a series of items, the one that you mentioned and also some reprogramming and deferral of funds in other areas, we have rearranged the funding so that we can make the commitment that we will get through the end of this fiscal year, and then of course be on a new basis in fiscal year 1982.

Mr. LUNGREN. May I ask if that is fairly recent? I was approached on the floor at the beginning of this week by Mr. Vento, of Minnesota, having been informed by some of the authorities in his State dealing with this that they had been notified that there was a suspension taking place.

Mr. LUNGREN. I appreciate that. I apologize if I am repeating something that has been gone over before, but this is extremely important.

I wonder if there is going to be a heightened degree of cooperation among the different agencies of the administration—HHS, State Department, and INS—in terms of realizing that decisions are made as to how many people are coming in which evidently are made basically by the State Department, but it is HHS which picks up the cost. We do have a major concern about that and I would hope there would be a heightened interest.

The last thing I would like to say I will direct again to you, Mr. Swoap. I realize that the position of the administration is against my particular bill, but can you tell me what the justification for it is? In the State of California we have secondary migration to a far greater extent than anyplace else in the United States. Indochinese refugees who come to this country and are unsuccessful for whatever reason in getting off welfare in other parts of the country then come to California, having used up a good portion of the 3-year of time. In some cases they are there less than a year, less than a half a year, and then we in California are told that we are responsible for their failure to get off welfare and we are to pick up the tab for it and the Federal Government does not want to do it because it costs money.

That same understanding, you could probably perceive, is felt by the taxpayers of the State of California, the County of Los Angeles, and the County of Orange.

Is the position of the administration that secondary migration doesn't exist or that it should not be taken into account in these calculations?

Mr. SWOAP. No, sir, it is not our position that secondary migration should not be taken into account. I think the basis for our opposition to the legislation is generally founded on three things. First of course is the cost element that I mentioned at the outset.

Secondly and probably more importantly is that we think a line must be drawn between a wholesale and generally broad coverage on both the eligibility and the benefit side of incoming refugees and the time when they are assimilated into society, either as self-productive, self-sustaining citizens, or as needy individuals.

So I would point out that even though these people may be continuing in economic need, they continue to qualify for the basic programs in which the Federal Government shares a substantial portion. They would continue to be eligible for AFDC or for medicaid if they met the standards of need.

What we object to is continuing for a period beyond 3 years the kind of wholesale eligibility, where the financial need standards are met but the family composition requirements and the other eligibility criteria are waived.

What we are talking about really is just a narrowing of the focus so that after the 3-year period, which is the period that the Congress determined last year as part of a very extensive deliberation by I think many members of these committees, in enacting the Refugee Act of 1980, we think it is appropriate that we continue to provide public assistance if they are in need and if they meet the normal eligibility criteria.

Mr. LUNGREN. I guess in response to my question, the answer is secondary migration doesn't change the circumstance.

Mr. SWOAP. We think it doesn't change the circumstance that affects the basic question of what shall be public policy, relative to the provision of public assistance on a broader scale than is present in the normal programs.

Mr. LUNGREN. The reason I bring it up, it is obviously very important in my State. You mention the figure of 20,000 people that have gone off since April 1. I have figures from the State of California that from April 1 to June 1 we had in excess of 20,000 people.

Mr. SWOAP. I was referring only to the State of California.

Mr. LUNGREN. OK, and of which 5,599, something like that, no longer qualify for the basic assistance, but the rest do.

I have a concern, the same as you. I share the concern that in the way we have geared these programs, they may create a welfare dependency. But frankly, that was a decision we made here. The fact that we made a decision that may not have fashioned the best programs, seems to me should not adversely affect States and localities that are heavily impacted, and I hope the administration will look at the suggestion of impact aid type assistance that was mentioned in the Attorney General's statement, but not detailed.

Mr. SWOAP. Yes, we are, Congressman Lungren, going to be looking at the impact aid question and determining whether in the overall mix of funds we can provide some targeting of impact aid funds to areas such as your district and your State.

Mr. LUNGREN. Thank you.

Senator SIMPSON. Thank you. Congressman McCollum.

Mr. MCCOLLUM. Thank you, Mr. Chairman.

I would like to follow up, Mr. Swoap, because being from Florida, we have some similarities but not the same problems as California with the Cuban-Haitian entrants.

I would like to quote from a recent statement of a paper in Florida. "South Florida school systems are struggling to meet the educational needs of over 16,000 new Cuban and Haitian children, nearly 14,000 in Dade County alone. Dade County's public hospital facility now assists in the births of over 100 Haitian children per month. Jobs and housing are scarce in south Florida and the area's crime rate is high," much of that due to the influx of the Cubans and Haitians. I think we all recognize that.

You have mentioned impact aid and it is in the statement and it is kind of brushed over, that you are going to explore it.

What I am concerned about is that the patience of people in my State, particularly those in south Florida, is running thin with seeing some activity more than the suggestion of exploration, much as there was impatience with getting through the immigration policy itself, which we now have today after many months of I know, due deliberation, but nonetheless, deliberation which sometimes is not that understood.

When can we anticipate a report from you or others in authority on this impact aid, and what can we anticipate?

Mr. SWOAP. I think as we move into the start of the new fiscal year, Congressman, we will be in a position to give you some definitive answers on impact aid. I would want to point out, however, at the same time that there is a substantial body of funds that is being targeted now to areas of south Florida. Roughly we have a total expenditure nationally, as I recall, of about \$643 million in the current fiscal year. It would be about \$580 million in the next fiscal year. Of that, about \$440 is cash and medical assistance but the remainder, the roughly \$140 million that is the difference, is our targeted funds that either go for social services or for education or some other kind of direct assistance to local areas that is very much in the nature of impact aid.

Mr. MCCOLLUM. While the Cubans may be absorbed and Spanish-speaking people can be more readily than sometimes others, the Haitians speak Creole. The Indochinese, as you know, do not speak the English language or anything similar to it, or the Spanish language for that matter. And we have a problem that I have seen on my trip to California that is similar to the Haitian problem in Florida or simply having groups of Indochinese and Haitians who are preliterate and don't understand things in their own language, let alone in ours, don't have any basic skills that are comparable to those needed in our society today, and the system for placing these people and training them seems to be in a total shambles, even though there are dollars out there.

The States of California and Florida, in my judgment, neither one

have viable systems going themselves, and I don't see where the Federal Government's system is any better in directing the money there.

Do you have an ongoing study of the problem of both the voluntary agencies and their placement and the particular problem with respect to the teaching of the English language and the training of skills and improving the quality of where our money is going and the programs it is being used for to retrain these people, or to train them in the first place?

Mr. SWOAP. Yes, we do, Congressman McCollum. We have ongoing technical assistance that we are providing not only to the voluntary agencies but also to local school districts and local social service agencies to improve the delivery system, the kind of thing that you are referring to, and English as a second language is right at the top of the priority list for both adults and for children.

Mr. MCCOLLUM. Of course we are seeing a shortage of teachers altogether that can even speak the language. Is there something being done to remedy that?

Mr. SWOAP. I believe there is. I don't have the details. We are assessing some possible alternatives to improve that situation. I am personally familiar with that, having been involved in refugee programs in Arlington, where I live.

Mr. MCCOLLUM. I see it as a long-term problem. I know it is difficult, but it is one that I am really very interested in.

I want to skip for the last moment or two to the problem that concerns me about the new program of the administration outlined in the Attorney General's statement today, with respect to the taking on of the folks that we are going to grant some degree of amnesty, to the illegal aliens in this case.

One of the statements that was made by the Attorney General on page 10 says that "these temporary residents would pay social security, income, and other taxes"—this is the new status we are going to grant to these folks—"but would be ineligible for welfare, federally assisted housing, food stamps, or unemployment compensation. They would not be able to bring in spouses and children, but could leave the country for visits to their homeland", and so forth.

I don't see how we can expect a viable system of absorbing these people or expect many of them to come in and raise their hands and say they want to get this new status if they aren't going to be able to have their children and spouses.

However, I can see and understand why we might want a program where we would prohibit any of those who did come in who eventually became citizens from having relatives, such as brothers and sisters, in the future being eligible for special status under the immigration laws because of the extrapolation, the population growth that we would get into.

But I really don't understand this particular proposal that addresses one problem in a way that may create more problems than it solves, and does not even mention the issue of changing the immigration laws with respect to the future when these folks may become citizens.

Can you explain that, or have you considered that?

Ms. MEISSNER. It is an issue that was debated for quite some time. The present program is clearly an effort to strike a balance between competing concerns—the concern that you express on the one hand,

and the concern that Senator Simpson expressed about how one convinces the American people to grant amnesty to people who have allegedly broken the law when others are patiently waiting outside the country to enter legally.

So the balance is one of giving a limited right to the people who are here in recognition of the pragmatic fact that they are here and that we are unable to deport them. At the same time, we do not want to open up the possibility of additional numbers when we really don't have a precise idea of how many people may be out there, and whether that population has families with them or has families outside of the country which, if admitted, could multiply the original estimates by two, three, or fourfold.

In addition, we want to avoid any additional social service burdens on State and local governments.

Mr. McCOLLUM. My time has expired, but would you favor the restriction that I suggested with respect to bringing in relatives when these folks eventually become citizens?

Mr. MEISSNER. If we are to offer citizenship, then citizenship is what it is. It is full rights to be a U.S. citizen and to bring in relatives as the law allows.

Congress can, of course, adjust or limit the immigration benefits at different points. One can adjust it once citizenship is conferred, as you suggest. The proposal we have made is to restrict these benefits beforehand.

Mr. McCOLLUM. But the preference is not for citizenship. That is the only point I want to make. That seems to be expanding the opportunity—

Senator SIMPSON. Excuse me.. We have a rollcall vote and Chairman Mazzoli will take over.

Mr. MAZZOLI. Thank you very much, Mr. Chairman.

Because we are making another sweep of questions, maybe I could start the second round. I would just like to make one comment to my friend from California, with whom I have a good-faith dispute about the Lungren-Danielson bill. I agree that there is a problem of secondary migration. It is one that we can't solve until you take the sunshine and surf away from California, and we wouldn't want that to happen very soon.

We did see in our trip out to California, that even when we are dealing with the Hmong people, people who came from areas where they had no written language of their own, they are often being moved into jobs much quicker than this 3-year period.

So I don't think it is so much the absolute number of dollars spent, but it is the way they are spent and the kind of leadership of the programs. That is where I would hope that if targeting is done, and I can see some value to it, that it is done correctly. You don't just give money to everyone who wants to set up a program. They may waste the money, and help create a welfare mentality, pure and simple.

Let me continue with you, Mr. Swoap. Mr. Lungren, the gentleman from California, talked about the number of dollars. I am told it is \$70 million for fiscal year 1982 for social services. Is that the total money for social services as a part of refugee resettlement? That includes English as a second language, job training, and that sort of thing, as I understand it.

Mr. SWOAP. Yes; that figure is for the whole host of social services.

Mr. MAZZOLI. Do you think that is going to be sufficient? Have you checked with the State Department to see what numbers they are talking about for refugee admissions?

Mr. SWOAP. We have been working in concert with the State Department and with Justice to assess the likely flow of refugees, and we believe that that figure is going to be sufficient in the coming fiscal year because of a slight expected downturn in the total number.

Mr. MAZZOLI. You don't have any numbers you might be talking about?

Mr. SWOAP. Yes, if you would bear with me just a moment, Mr. Chairman.

[Pause.]

Mr. SWOAP. For all refugees, there is an fiscal year 1980 estimate of 215,000; fiscal year 1981 full year of 160,000; and fiscal year 1982, a preliminary 173,500, but that last figure is subject to consultations with the Congress under the Refugee Act. And I would point out that does exclude the Cuban-Haitian entrants.

Mr. MAZZOLI. You say 173,000?

Mr. SWOAP. Right.

Mr. MAZZOLI. Is it 14,000 a month now for Southeast Asia? Is that the ceiling, 14,000?

Mr. SWOAP. That is the Indochinese part.

Mr. MAZZOLI. The money that you have budgeted would sufficiently take care of the 170,000 or 173,000 that you talked about?

Mr. SWOAP. Well, not all of them of course require social services, and we are trying to do exactly as you describe, and that is to target the funds to the types of programs that have proven to be the most cost-beneficial in getting people out on their own.

Mr. MAZZOLI. Does HHS have a representative on the group headed by Ambassador Green, which is now going through Southeast Asia?

Mr. SWOAP. No, we do not.

Mr. MAZZOLI. Ambassador Green came to talk to us before he left, but he and his group are in Southeast Asia now trying to determine what should be the numbers.

My problem, and I expressed it to him, was that I think a lot of times these numbers are looked at in isolation, not with respect to money that HHS can provide or whether there are enough teachers. The gentleman from Florida brings up the point that you may have money, but you don't have teachers.

I would hope that there is a high degree of cooperation among the agencies of government because otherwise, I think chaos will result.

Mr. SWOAP. If I might respond briefly to that, Congressman Mazzoli, as you might expect, we at HHS do have a deep interest in making sure that when the numbers are established and determined in the other departments in the administration that we have a very strong voice in the determination of those numbers, and we have been assured by our colleagues in the other departments and by the White House that this will be a joint determination, so that we will not simply be left with the results of determinations made by others.

Mr. MAZZOLI. I think one of the critical issues that this subcommittee is going to deal with is the consultation process, which will come up in September in a formal sense. The gentleman from New York, Mr.

Fish, our ranking member, has been a consultative member in the past, and I think it is clear that he and the other members have not been satisfied that there has been a consultative process. It has been more or less that the numbers have all been agreed upon in the administration, and presented to us. Congress has then just signed off on it.

I don't think that will happen this year. Unless we are sure that you have had a chance to say what is the impact on the United States, what is the impact on California, Florida, and other States, and those have all been factored in, then I think you will find us, perhaps in an inelegant fashion, making those judgments instead.

This is outside your field, but to what extent has the failure of the administration to appoint and have confirmed the Commissioner of the INS and a refugee coordinator impeded your work?

Mr. SWOAP. With regard to the programs—

Mr. MAZZOLI. The HHS programs.

Mr. SWOAP. We do not see a severe impact as a result of that, Mr. Chairman. We had been working with the previous coordinator at the State Department, Mrs. Taft, before her departure, and certainly are working with the very capable officials at Justice and the Acting Commissioner. Insofar as the delivery—

Mr. MAZZOLI. In looking at this prospectively, for the last few seconds of my time, would it not be advantageous to have in place these people for fiscal year 1982 in order for you to make the most efficient use of whatever money comes your way?

Mr. SWOAP. Well again, so much of our particular activity is derived and takes place in another context. It takes place once the people are here and in meeting their income maintenance needs and their medical needs.

Mr. MAZZOLI. Let me answer the question for you. I think it is essential that these positions are filled. I appreciate your constraints, and I acknowledge them, but I don't have them myself. I can tell you I think the administration has been painfully slow, and I think they have been very derelict in not appointing these people and having them confirmed so that they can start. We can't really have an efficient operation of the Nation's laws without these people in place.

The gentleman from New York is recognized for 5 minutes.

Mr. FISH. Mr. Chairman, I believe I am recognized for 5 minutes.

Mr. MAZZOLI. Yes, the 2 minutes previously, plus 5.

Mr. FISH. Thank you.

I have several questions and I hope the panel members I address them to can be brief.

Mr. Ambassador, when I was called away to vote, you were in the process of responding to why the 10-year period for the renewable term temporary resident had been fixed, and that of course is in the record, although I didn't have the benefit of being able to reply.

My next question is why not 7 years, to correspond with the suspension of deportation provisions?

Mr. ASENSIO. Certainly that is something to consider. I don't think there is any magic in making it 10 years or 7 years. I think the idea, the basic idea was that we are not in effect rewarding illegal behavior. What we are doing is because we have a practical situation that we have to handle and because, having a permanent underclass of citizens

is not good for the Republic, we want to allow people who have engaged in illegal behavior to work their way back into respectability.

Now, the 10-year period is a completely arbitrary one. It could be any range of—

Mr. FISH. I hate to hear you say that. I was hoping there was some firm basis for it. You say people could apply for suspension of deportation if they could show hardship, such as several American-born children, and it seems to me that would be a more reasonable time.

Second, why didn't the task force opt for permanent residence, as the Select Commission recommended?

Mr. ASENSIO. Why it did not opt for it? For the very basic reason, that we thought that would be seen by a number of people, by large numbers of people, as rewarding illegal behavior, and that some sort of interim period was necessary to allow them to earn permanent residence status.

Mr. FISH. But the interim period would be the number of years, either 7 or 8 or 10.

Mr. ASENSIO. Well, I think the principle is what we were trying to establish. What I am saying is that the mechanics of it is—we came up with 10 years but—

Mr. FISH. Switch gears to your principal responsibility. Who abroad in your consulates, who should be responsible overseas for refugee screening to determine status?

Mr. ASENSIO. Well, that is out of my area of responsibility.

Mr. FISH. I thought that was in your area of responsibility, consular service.

Mr. ASENSIO. No; we do assist the Refugee Bureau with processing in some areas where that is necessary, but refugees are not my area of responsibility.

Mr. FISH. You're not recommending the transfer of refugee screening to the Department of State?

Mr. ASENSIO. As I say, you have me in an area that is not my ballpark. I will be happy to take the question.

[Subsequent to the hearing, the State Department submitted the following:]

DEPARTMENT OF STATE,
Washington, D.C., August 3, 1981.

HON. HAMILTON FISH,
House of Representatives.

DEAR MR. FISH: During Assistant Secretary Asencio's testimony on July 30, before the joint Senate-House Immigration Sub-Committee hearings on the Administration's Immigration and Refugee policy, you asked him for the Department's views on how refugees should be processed overseas. Since refugees are outside his area of competence he could not answer fully at that time. I am therefore writing to give you the Department's views on this matter.

Traditionally, American based private voluntary agencies handle most of the processing of refugees applying for admission to the United States, using eligibility criteria developed by the Department of State and under the general supervision of State Department consular officers or refugee officers (where there are unusually large concentrations of refugees). Final authority to adjudicate eligibility for admission, according to law, rests with the Immigration and Naturalization Service (INS).

We handle refugees this way because the nature of refugee work requires prompt responses to situations that often arise unexpectedly and unfold rapidly. Reliance on voluntary agencies provides administrative flexibility and obviates the need for the U.S. Government to maintain a stand-by capability of trained

officers and staff support personnel to deal with the sudden development of refugee flows.

Furthermore, the private voluntary agencies have networks of domestic organizations and contacts which the Department lacks and which facilitate the refugees' resettlement in this country. In contrast to regular immigrants who are either joining relatives or have guaranteed job offers, refugees usually come to the U.S. totally lacking such personal contacts which facilitate adjustment. For this reason some agency must provide both orientation and support for the refugees until they are able to function independently as normal residents of the U.S. The voluntary agencies which process the refugees overseas also perform this service, working closely with the Department of Health and Human Services and state and local authorities.

As to the INS role in making final determinations of eligibility, the Congress has insisted upon this division of responsibility in the past to insure that domestic concerns are sufficiently taken into account in admitting refugees. The White House, as part of a general review of immigration and refugee management issues, is currently studying whether this function should be transferred to the Department or retained by INS. If it were transferred to the Department of State, the Department would need additional positions to carry out the function.

I hope this answer is responsive to your question. If I may be of any further assistance to you please do not hesitate to contact me.

Yours sincerely,

RICHARD FAIRBANKS,
Assistant Secretary
for Congressional Relations.

Mr. FISH. OK. Doris, if I could turn to you, is the Border Patrol being strengthened, even as we write legislation to enact employer sanctions?

Ms. MEISSNER. Yes; the proposal contains additional resources for the Immigration Service under current authorities, including increased border enforcement resources.

Mr. FISH. As you know, the administration proposed this morning to up the per country ceiling for Canada and Mexico from 20,000 to 40,000, with unused numbers from either country being transferred to the other country.

As we know, for the past several years the flow from Canada has been running about 5,000. Are we not in effect saying that the quota for Mexico will be 75,000?

Mr. ASENCIO. Unfortunately I didn't hear the first part of your question, but I think what you are saying is that since the Canadian numbers would revert to Mexico, in effect we are giving Mexico more than a double ceiling?

Mr. FISH. Yes, a per country ceiling of 75,000.

Mr. ASENCIO. That potential is certainly there. However, my people tell me that they consider that Canada has the potential for larger immigration, and they don't think that that would be a permanent condition, but right now certainly it would be.

Mr. FISH. Going back to you, Doris, in the evidence required for employment, whatever happened to the Immigration and Naturalization Service's proposal—I imagine now about 5 years ago—for a modified W-4 form for an employer to have filled out and returned to the Service for a spot check?

Ms. MEISSNER. That came up again in the present discussions. It was rejected because of the problem of spot checking and the extra paper that would flow into the Government. This proposal seeks to minimize the paperwork, consistent with keeping some records that

would be available to the Immigration Service and the Department of Labor.

Mr. FISH. As part of this new plan, is it being contemplated combining the Border Patrol and Customs Control?

Ms. MEISSNER. No.

Mr. FISH. Mr. Swoap, I believe, why would you require the employers of these temporary workers, the guest workers, to deduct social security, for someone who is only going to be here for 9 or 12 months?

Mr. SWOAP. Well, they may be here for only 9 to 12 months in that category, but there is certainly the possibility in the future that they will be here in some other category, and just as any other person who works in the United States is subject to the social security deduction requirements, we think it is appropriate that it be done for this group.

Mr. FISH. Mr. Searby, the Attorney General dwelled very lightly on the question of labor certification changes, and then I was looking through your testimony and I found your paragraph that says, "I turn briefly to the labor certification aspects", so I am still ignorant. Could you tell us what you have in mind?

Mr. SEARBY. Most certifications for third and sixth preference immigrants are now made on a case-by-case basis. The administration's proposal is to change that to a labor certification system in which the Department of Labor would prepare a schedule of categories of jobs for which American workers are not available.

Then the different consular offices throughout the world would have that schedule of occupations in short supply provided to them, and if an employer requested employment of an immigrant in the third and sixth preference, they would turn to that list of occupations certified by the Labor Department to be in short supply.

Mr. FISH. So it is positive identification of categories of jobs which are in short supply?

Mr. SEARBY. Yes; where American workers are not available.

Mr. FISH. You mentioned the preferences. We didn't dwell, I don't think, in the presentations so far, on any new admission system. Do you contemplate the continuation of those preferences?

Mr. SEARBY. Third and sixth preference; yes.

Mr. FISH. So you do not accept the recommendations of the Select Commission as far as restricting the numerically limited preferences to family reunification?

Mr. ASENSIO. That is right.

Mr. FISH. Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you very much. The gentleman from California is recognized for 5 minutes.

Mr. LUNGREN. Thank you.

Ms. Meissner, Mr. Fish asked you whether it is contemplated to combine the border patrol and customs and you said "No." Can you tell me whether that was part of the consideration of this overall review of our immigration and refugee policy?

Ms. MEISSNER. There was some discussion of the proposal early on, and it was rejected.

Mr. LUNGREN. Can you tell me whether it was rejected because—how can I put this politely? Was it rejected because there was consideration of the effectiveness of it or because in past efforts, the politics of it have been so great that it seems to me the proposal has

never been fully thought out. It has sort of been abandoned before there has been a real conclusion as to whether it would increase effectiveness of both agencies.

Ms. MEISSNER. The view was that the most important task for the administration is to make a very clear policy statement on what kind of new statutes are needed, not what kinds of organizational changes might evolve as a result of the new policy.

As you know, there is increased concern within the Department of Justice and the Federal Government in general about drug enforcement and other problems that have to do with violent crime. In order to focus on drug enforcement, as well as on immigration, it is most effective to keep the agencies the way they are at the present time.

Mr. LUNGREN. It just strikes me on occasion that when we look at the situation with customs officials and border patrol officials, we are always talking about not having enough of them, and oftentimes they are standing at the same station and they are cross-deputized to do the same things. It just seems in some ways obvious that maybe we ought to consider that.

Ms. MEISSNER. Both the Customs Service and the Immigration Service are committed to expanding the present cross-designation and cooperation to the greatest extent possible. These steps are all the more necessary given the limited resources that we will have over the next several years.

I think there will be a gradual merging of functions without going through the pain of changing the identity of the agencies.

Mr. LUNGREN. There was a question brought up to me by a representative of an Hispanic group recently when they had an advanced copy of the text that I was unable to get as a member of this subcommittee. One of the things that they were upset about or concerned about, let me put it that way, was the requirement of a certain English proficiency by those people who would be here under the legalization program in order to be granted permanent resident status.

I wonder if you could comment, both Mr. Ambassador and the Commissioner, as to why that was an element of the program. I have my own reasons why I think it was, but I would just like to hear it from you.

Ms. MEISSNER. The view has been that we are committed to a pluralistic society and that we intend to continue that commitment in this country. But a pluralistic society only works to the extent that there are some common features among people, and language is one of the major common features.

The language requirement, as we would actually implement it, would be minimal English ability, an ability to communicate in terms of basic commerce and jobs, not sophisticated writing or speaking skills.

Mr. LUNGREN. I happen to think that is something we ought to really focus on because I think I can speak for members of the subcommittee in the House that one of the things that we saw just absolutely crystal clear on our trip to California was that the toughest nut to crack in getting refugees assimilated in society is the language barrier. And that has to do with refugees, which is not what we are talking about here, but I think there is a lesson to be learned out of that.

We found that a lot of things follow: Getting off welfare, an ability

to work, to get a job, to be able to function in society, and to be fully assimilated once the language barrier is overcome. If the language barrier is not overcome, then the individual could have the equivalent of a Ph. D. in a particular specified area and still not be able to function.

So I think that you are on the right track in that and I hope that we would fully articulate the reasons for it so that we can get some acceptance of that part of the proposal.

I will yield back the balance of my time.

Senator SIMPSON. That issue will be the subject of some very interesting hearings here. I only mention that. I don't want to divert the committee from the essential elements, but it is very real, what you say, because in the political world, consciously and often unconsciously, we vote for things that lead to bilingualism and biculturalism because we don't like to be labeled as uncaring or unloving or short in our thinking capacities. So it is very easy to go that way.

Yet, when we do that I think we imperil ourselves, and our future in some way, and that is a statement which then can also be taken as a racist statement. So it is an interesting issue, and we will deal with that like we deal with every single one of the ones that come before us. Tough ones; really tough ones.

I have said, and I say again, that there is one group in America that the chairman of the House committee and this chairman are committed to protecting in this issue, and that is the Hispanics because they have the most to lose and the most to fear in any immigration and refugee policy at work. We will be dealing with that, perhaps with separate hearing on that, with some of their very capable national leaders, and it is our intention to visit with all 80 of these Hispanic groups in the United States that have constituencies.

So, have you each had the second round?

Doris, do you have a commitment of time?

Ms. MEISSNER. Yes; I do.

Senator SIMPSON. Thank you, very much.

Mr. McCOLLUM. I would like to ask a couple of questions on political asylum. I think that is essential. If I might direct it to you, Mr. Ambassador.

Mr. ASENSIO. OK. I have a couple of State Department officers peppered through the audience, and if they haven't snuck out, I think if necessary I could refer the question back. Please go ahead, Mr. McCollum.

Mr. McCOLLUM. I have heard recently that the Government of Haiti, and it seems to be the findings in part of Judge King in the Federal court of Miami, has been undertaking some degree of persecution of those Haitians who are returned, politically persecuting them, on the basis that they have somehow committed some act that is perhaps traitorous to the country of Haiti simply by leaving, and thereby come under our standards for political asylum.

I would like to know if there is any truth to this and to what extent we have a problem in the definition perhaps of political asylum or how we might be administering it by this process, perhaps even intentional on the part of some country, whether it be Haiti or another, to give that impression, true or not.

Mr. ASENSIO. Mr. McCullom, I have with me here Mr. George Jones, who is the Office Director of Regional Political Affairs of the Latin

American Bureau. With your permission could I turn that question over to him?

Mr. McCOLLUM. Most assuredly.

Mr. JONES. Mr. Congressman, I am not aware and my bureau is not aware of any instances of persecution of Haitians who have returned to Haiti, and we are certainly not aware of any attitude of the Government of Haiti of intending to persecute or intending to create a situation in which we might be forced to take Haitians as political asylees in this country.

On the contrary, the attitude that we have found in our preliminary discussions with the Government of Haiti toward the administration's new policy has been a very helpful and cooperative one.

Mr. McCOLLUM. The Coast Guard has informed me, and I think others have supported that in the Immigration and Naturalization Service offices in south Florida, that most of the Haitians coming over are coming over presently by fairly well-equipped vessels, and that undoubtedly the operations are smuggling, rather than simply the old-fashioned way of getting aboard any vessel that floated and coming over, although with the tired and the tattered there may still be a few of those.

Is that generally true? Does anyone want to answer that?

Mr. JONES. Yes, sir. That is also the report that we get from the Coast Guard. We had in fact a technical team of Coast Guard and INS people in Haiti last week. We had a meeting at which they conveyed their report to us on Monday of this week, and that was precisely their finding, that the trade is increasingly commercialized, increasingly in sizable boats, run by people who are trafficking in human beings for profit.

Mr. McCOLLUM. Where is the money coming from? Is it coming from the Government of Haiti which wants to get rid of these people? Is it coming from business employers in the United States who find some need for the Haitians to come over? Is it coming from what I have heard somewhere it might be coming from, and that is organizations of the church or volunteer groups that have organized themselves out of New York or elsewhere in the country to promote Haitians coming over here for political reasons?

Where is the source of the funding for this smuggling? Obviously the Haitians that are coming over don't have the resources to pay for it.

Mr. JONES. They do have to have the resources in most cases to pay for it. The whole point is to make money out of the operation, and unless the intending migrant is able to scrape up the money, he often does so, I understand, by obtaining a loan from loan sharks, professional loan sharks that have established themselves in Haiti, and set up business for that purpose. Then they repay the loans, I am told, after they reach the United States, so it becomes almost a form of peonage or slavery. But they do have to find the money in order to pay their passage.

We have absolutely no indication whatever that the Government of Haiti is in any way involved in this. These are a variety of private groups who are doing this for private.

Mr. McCOLLUM. Are there any private groups funding it that you have any evidence of, such as what I am hearing rumors of, out

of our own internal United States political or social or whatever organizations that may exist over here privately?

Mr. JONES. I am not aware and not really fully informed of what ramifications there may be within the United States.

Mr. McCOLLUM. Let me ask one last question as my time runs out. Political asylum itself seems to me to be a very difficult thing to deal with.

Would it not be better for us to have a country by country determination on the part of the State Department in advance as to whether or not those coming from that country are eligible for political asylum at all, whether the conditions there merit it and then allow, once that determination has been made, for the individual asylum officer, if that is what we create, or special inquiry officer or whoever right now, to determine from those countries already announced as candidates for political asylum, the individuals who in fact merit the determination?

Mr. ASENSIO. I am informed that there is a hearing on mass asylum tomorrow where this issue will be discussed. I would be delighted to give you my own views on this, but I am not sure they conform with the views of the people who work on this subject.

So I would be happy to take the question and get you an official response, if you would like.

Mr. McCOLLUM. I would very much appreciate it if you would. Thank you.

[Subsequent to the hearing, the State Department submitted the following:]

DEPARTMENT OF STATE,
Washington, D.C., August 27, 1981.

HON. ALAN K. SIMPSON,
Chairman, Subcommittee on Immigration, and Refugee Policy,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: During Assistant Secretary Asencio's testimony on July 30, before the joint Senate-House Immigration Sub-Committee hearings on Immigration and Refugee policy, you asked if it would not be better for the State Department to make country by country determinations and then grant asylum to individuals on the basis of the country from which they came. Ambassador Asencio could not answer fully at that time because asylum is outside his area of responsibility. I am therefore writing to give you the Department's views on this matter.

The system which you suggest is similar to that which existed under U.S. law before the passage of the 1980 Refugee Act. At that time the law granted refugee status (a person claiming asylum must meet the definition of a refugee) only to individuals fleeing from a communist country or certain areas of the Middle East. In passing the Refugee Act, Congress brought United States law into conformity with established international practice. That practice, and now U.S. law, do not limit the legal definition of refugee to persons from certain areas or from countries with certain types of government. Instead, in the interest of addressing the real plight of genuine refugees everywhere (i.e. persons with a well-founded fear of persecution) the law requires that determinations of status be made on a case by case basis without regard to country of origin.

Thus, under current U.S. law, in order to qualify for asylum, a person must demonstrate on an individual basis a well-founded fear of persecution regardless of nationality or country of origin. The Department believes that, in addition to conforming with United Nations practice and our international treaty obligations, current U.S. law and procedures permit us to respond to the plight of genuine refugees or asylees in a manner that is not only consistent with our national principles but which serves our international interests as well.

The Department presently provides advisory opinions to the Immigration and Naturalization Service (INS) on the merits of asylum requests in order to aid

INS officers in making individual determinations of eligibility. Under the improved adjudication process proposed by the administration, which includes the appointment of specially trained INS Asylum Officers, the Department expects to continue to cooperate closely with the Service in order to further expedite the granting or denying of asylum.

I hope this answer is responsive to your question. If I may be of any further assistance to you please do not hesitate to contact me.

Yours sincerely,

RICHARD FAIRBANKS,
Assistant Secretary For Congressional Relations.

My time has expired, Mr. Chairman. Thank you.

Senator SIMPSON. Thank you. Certainly you have taken a great interest in this issue and been very helpful to the joint hearing process and I know to Chairman Mazzoli.

I have some questions but I think I will save some of those until tomorrow. They do have to do with the mass asylum issues and we are going to have a hearing tomorrow on Haitian-Cuban issues and mass asylum. But that is certainly very intriguing and interesting, what you share with us.

I might ask, what flag are those vessels flying, if you are able to determine if they are a flag vessel?

Mr. JONES. It is my understanding, sir, that these are primarily Haitian-flag vessels, although I believe that some third-flag vessels have also been used.

Senator SIMPSON. One of the interesting things in the President's proposal which will be worthy of addressing in hearings is the issue of assisting another nation when that nation asks us to assist in interdicting its vessels coming here. That will be interesting.

Mr. ASENCIO. Actually, there is precedent for that, Mr. Chairman, in the narcotics interdiction efforts that have gone on for many years, so it is not a brandnew idea. It works.

Senator SIMPSON. I would think it would. I think I will take just a couple of minutes for a State Department foreign policy issue that would be directed to you, Mr. Ambassador.

What response or reaction—it would be more of a reaction than a response—would we get from other countries when we establish these higher quotas for Mexico and Canada?

Mr. ASENCIO. I think there are two areas we would have to consider there. One, obviously the argument that these people are neighbors, we have contiguous borders, and therefore it is a special situation. I think generally it would be understood that to be certain, we also designed the raising of the ceiling in such a way that it would impact minimally on everybody else. So in fact we are not taking away something from anyone else.

So I think that would cover both sides of the street.

Senator SIMPSON. Then I think my last question will be directed to Under Secretary Swoap, and I am not sharpshooting but I would like to know because it has to do with immigration issues over there as they relate to the Department.

Can you tell me the rationale for the relocation of the Office of Refugee Resettlement from the Office of the Secretary, then on to the Social Security Administration? Can you tell me the reason for that? I have a real concern that reorganization is going to set the director of

that program far away from the policymakers and from the coordination system that is required of all of us.

Mr. SWOAP. I can go into that subject, Senator Simpson, but let me say at the outset, we believe it will not have that effect because the Secretary and I have both a direct and personal commitment to this program and a commitment to the White House so that he will continue to have direct access to our respective offices in order to deal with many of the very critical policy issues that arise.

Generally speaking, the reason is twofold. One is that under current configurations, the Social Security Administration is the principal agency in our department that has responsibility for income maintenance, and we want to underscore that that is the primary aspect of our involvement in the refugee business, that of capable delivery of income maintenance and the associated programs that go with it—medicaid and social services and all the rest.

Within the Department, social security now has not only the trust fund programs, but also AFDC and SSI, and because so many of these programs interrelate with one another, with AFDC and SSI, and because our role is primarily income maintenance and delivery of cash assistance and the related services that go with it, we think that is where it logically belongs.

Now there is also a secondary reason that is perhaps unique with this administration and the current commissioner of the Social Security Administration: Mr. Svahn formerly was heading the HHS refugee effort in the early 1970's and he has a great deal of personal competence, background, and experience as it relates to the refugee program.

For those two reasons, we felt that it made sense.

Senator SIMPSON. That is helpful because I would certainly hope that it would not be to insulate in any way the Secretary from the troublesome issue. I hope that is not the case, and that helps allay my fears.

Mr. SWOAP. I assure you that it is not.

Senator SIMPSON. Congressman Mazzoli.

Mr. MAZZOLI. Thank you very much.

Very briefly, Mr. Swoap, I understand that only two of the three reports which are due from the HHS Office of Refugee Resettlement were filed with the Congress, as required by the 1980 Refugee Act. Are you aware of that fact, and can you give me some idea of when those reports will be filed?

Mr. SWOAP. I am aware of that, Mr. Mazzoli, and let me check my notes. I believe that the remaining report will be available to the Congress by October 1.

Mr. MAZZOLI. That is very late, I guess.

Mr. SWOAP. I am advised that this report has been held up because of some of the decisions that are under discussion today, and because they impinge on the content of that report, but it would follow soon thereafter.

Mr. MAZZOLI. The consultations occur in September, prior to October 1, and I think it would be important, if not absolutely essential, to have those reports, whatever the preliminary nature of them, well before we have our final consultations.

I understand the gentleman from Florida had a chance to go through the Krome North detention facility in Miami some weeks ago and is concerned about the fact that apparently there are tubercular cases, people who have tuberculosis, who are not segregated in any definable fashion in that camp.

I wonder if you tell me what the situation is in the Public Health Service? I understand that there are some type A active noninfectious cases of tuberculosis which are in those camps, but some people in that condition are being released into the community. If I understand correctly, those type A cases can be controlled, but there has got to be a medication program. And sometimes these people are not on medication programs.

Mr. SWOAP. The information that I have, Mr. Chairman, is that those who are identified as having infectious diseases are treated and rendered noninfectious before they can be resettled. For those who have infectious tuberculosis, we are undertaking a treatment program consisting of a combination of two drugs, neither of which I think I can pronounce very well. It is isoniazid and rifampin, two drugs that are used for the treatment of infectious tuberculosis.

I am told that the Haitians in particular that are at the Krome North site are being admitted to the State tuberculosis hospital in Lanana, Fla.

Mr. MAZZOLI. They are being moved to a tuberculosis hospital?

Mr. SWOAP. Yes.

Mr. MAZZOLI. I can also speak for the gentleman from California. We went there in the spring, and they are concerned in California about the nature of the health problems that are being brought in by some of the Indochinese refugees, such as parasites, and also tuberculosis.

It is one thing to ask the people in Florida and California, in any of the United States, to take these burdens, but it is another thing when there is a health problem.

Mr. Chairman, thank you.

Senator SIMPSON. I thank you all. The consultation process is coming up early for us in our new duties, and we appreciate the important assistance of all of you because at this time it is not just going to be a formality. The House and Senate are actually going to participate rather fully.

Thank you very much, and we appreciate such a fine representation from the administration.

This will conclude our joint hearings.

[Whereupon, at 1:10 p.m., the joint hearing recessed, to reconvene at 9 a.m. Friday, July 31, 1981.]

APPENDIXES

APPENDIX 1

PREPARED STATEMENT OF HON. WILLIAM FRENCH SMITH, ATTORNEY GENERAL OF THE UNITED STATES

It is a pleasure to appear before these distinguished subcommittees of the Senate and the House in a unique and important joint session. Like all of you, this Administration is committed to a major overhauling and strengthening of this nation's immigration and refugee policies. This morning, the President proposed that kind of a major change.

The history of America has been in large part the history of immigrants. Our nation has been overwhelmingly enriched by the fifty million immigrants who have come here since the first colonists. For nearly our first century and one-half as a nation, the Congress recognized our need for new arrivals by imposing no quantitative restrictions on immigration. Since 1921, however, the government and our people have recognized the need to control the numbers of immigrants and the process by which they enter our country.

In recent years our policies intended to effect that necessary control of our borders have failed. Last year, the number of immigrants legally and illegally entering the United States reached a total possibly greater than any year in history, including the era of unrestricted immigration.

We have lost control of our borders. We have pursued unrealistic policies. We have failed to enforce our laws effectively.

No great nation—and especially a great democratic nation—can long countenance ineffective and unenforced laws. That is especially true when the unsettling results are so apparent to our people.

We must more effectively deter illegal immigration to the United States—whether across our expansive borders or by sea. The proposals announced this morning by the President would have that result. They represent a comprehensive and integrated approach. They recognize the realities we face and the fact that no policy will be enforceable if it ignores the true facts. Those basic facts are:

The presence of from three to six million illegal aliens in this country; and

The continuing growth of their numbers by from one-quarter to one-half million each year.

The overriding purpose of the President's proposals is to make our laws and policies more realistic—and then to enforce those laws effectively. He believes that we must modestly expand the opportunities for legal employment to reflect the reality of America's attractiveness to much of the world. He believes that we must squarely recognize the existence of a hidden class of illegal aliens who work and live within our society but are beyond its sanctions and protections. And he believes we must develop new enforcement techniques that would allow us to enforce fully laws and policies that reflect those realities.

The proposals announced today are the result of wide consultations both within this country and internationally. They are the result of many months work by the President's Task Force on Immigration and Refugee Policy, which I had the privilege of chairing. They represent the Administration's best ideas on how to regain control of our national borders without closing the doors to this unique land of opportunity.

The President this morning stated the essential purposes of a workable immigration policy.

"We must ensure adequate legal authority to establish control over immigration; to enable us, when sudden influxes of foreigners occur, to decide to whom we grant the status of refugee or asylee; to improve our border control; to expedite (consistent with fair procedures and our Constitution) return of those

coming here illegally; to strengthen enforcement of our fair labor standards and law; and to penalize those who would knowingly encourage violations of our laws. The steps we take to further these objectives, however, must also be consistent with our values of individual privacy and freedom."

The Administration's policy proposals will fulfill these purposes. They may be divided, for discussion, into four areas: Illegal immigration; Mass arrivals of undocumented aliens; Legal immigrant and refugee admissions; and Benefits for refugees and persons granted asylum.

ILLEGAL IMMIGRATION

Illegal immigration to the United States has increased drastically in recent years, to a point where it likely equals or exceeds legal admissions. In 1964, approximately 50,000 illegal aliens were apprehended in the United States. By 1979, the number of apprehensions had risen to more than 1 million. Although estimates vary considerably, most fix the illegal alien population of the U.S. at between three and six million, perhaps one half of whom are Mexican nationals; and the illegal population grows by 250,000 to 500,000 persons each year.

While illegal immigrants once were concentrated in agricultural employment in the southwestern states, they now reside in all regions of the country. Only 15 percent of the illegals are estimated to work in agriculture; 50 percent are employed in service industries; and 30 percent are in blue collar jobs.

The American people correctly perceive this as a major national problem. In a recent poll, nine of ten Americans said they favored "an all out effort" to stop illegal immigration. Americans justifiably want their government to take steps to bring immigration within effective regulation.

The Administration proposes five related initiatives to curtail illegal immigration: (1) increased enforcement of existing immigration and fair labor standard laws; (2) a law imposing penalties against employers who knowingly hire illegal aliens; (3) a new experimental temporary worker program for up to 50,000 Mexican nationals annually; (4) legal status for qualifying illegal aliens currently residing in the United States; and (5) international cooperation within the western hemisphere to enforce immigration laws and discourage illegal migration.

Together, the five elements of the President's strategy should reduce substantially illegal immigration by expanding opportunities to work lawfully in the United States—through the experimental temporary worker program and legalization—and by prohibiting employment of those outside of these programs.

The first element is a long-needed strengthening of enforcement of existing legal authorities. We will communicate to you and the Appropriations Committee our support for the addition to the President's fiscal year 1982 budget for INS of \$40 million in Fiscal Year 1982 to provide for more effective interior and border enforcement and \$35 million to detain those who come here illegally pending their exclusion. Those funds will provide the INS with 564 additional positions, including 236 more Border Patrol. The additional funds will also provide for the operations of helicopters and other needed equipment; an expanded program of vehicle seizure in smuggling cases; an improved Nonimmigrant Document Control System; and improved control of alien records. We expect that the additional funds for border and area control operations should result in substantially increased apprehensions annually. Moreover, by targeting resources in priority locations, such as Chula Vista, El Paso, Miami, New York, Los Angeles, and Chicago, the INS will further enhance the results of its enforcement program.

Expanded compliance visits by officers of the Wage and Hour Division of the Department of Labor will discourage employment of illegal aliens as well as others, in violation of the Fair Labor Standards Act. Additional funding and resource requirements are currently under review. We will seek an additional \$6 million for this purpose in Fiscal Year 1982, which would permit us to identify significantly increased numbers of workers employed in violation of fair labor standards.

Second, the Administration will propose that it be made unlawful to hire illegal aliens. We cannot depend solely upon deterrence or interception at the border. The availability of employment in this country at relatively high wages without regard to legal status will continue to "pull" illegal migration. We cannot seal the border, and efforts to apprehend and deport illegal aliens in the interior is a costly and, at best, partial solution. The only creditable enforcement measure remaining is a prohibition on hiring illegal aliens. The Adminis-

tration will therefore propose legislation prohibiting employers of four or more employees from knowingly hiring illegal aliens. Civil fines of \$500 to \$1,000 would be assessed for each illegal alien hired. The Department of Justice would be authorized to seek injunctions against employers who follow a "pattern or practice" of hiring illegal aliens.

The Administration is opposed to the creation of a national identity card. But, to make employer sanctions a workable deterrent, the Administration recognizes the need for a means of compliance with the law that would provide an employer with a good faith defense if he examines documentary proof of eligibility to work. Acceptable proof of eligibility to work would be (a) documentation issued by the INS, such as a permanent resident alien card or temporary worker visa; or any two of the following: (b) birth certificate, (c) driver's license, (d) Social Security card, and (e) registration certificate issued by the Selective Service System. In addition, the new hire and the employer would sign a form certifying, respectively, that (i) the new hire is eligible to work in the United States, and (ii) the employer has examined the specified identifiers and has no reason to believe the employee is not eligible to work. The form stating the citizen or alien status of the individual and the documentation presented would be retained by the employer and be available for inspection by INS and Labor Department compliance officers.

We believe that this new law can and will be enforced without discrimination and without burdensome regulation. Since employers may rely on existing documents and will not be required to make judgments about the authenticity and will not be required to make judgments about the authenticity of the documents, they would have no occasion to make subjective and possibly discriminatory judgments about persons who may appear to be foreign. We believe, too, that a system which relies on existing forms of documentation will effectively screen out illegal aliens, who will not ordinarily have the necessary documents.

Third, the Administration will seek legislation to establish an experimental temporary worker program for Mexican nationals. The hiring of some illegal aliens may be attributed to an insufficient supply of American workers for certain categories of jobs in some localities. Historically, many of these jobs have been filled by foreign workers employed in the United States on a temporary basis—frequently without having been legally admitted for that purpose. Where American workers have in fact not been available to fill these jobs, the presence of foreign workers has been enormously beneficial both to the United States and to Mexico.

Under our proposal, during a two-year trial period, up to 50,000 workers would be admitted annually for stays of from 9 to 12 months. The program would be targeted to specific areas and categories of jobs. Certain job categories would be excluded from this program in States where it was certified that there was an adequate supply of American workers. The Department of Labor would allocate the national ceiling among affected States.

Workers would be free to change employers during their stay here. Normal wage and working standards laws would apply to them, and employers would be required to pay Social Security taxes and unemployment insurance contributions. Workers would not be permitted to bring in spouses and children; would not have access to welfare or food stamps assistance, or be eligible for unemployment compensation.

During the trial period, the program would be evaluated for its impact on American workers, the feasibility of enforcing the program's restrictions, and the benefits to the United States and Mexico.

Fourth, we must find some practical way of dealing with the illegal aliens now residing in the United States. We have neither the resources, the capability, nor the motivation to uproot and deport millions of illegal aliens, many of whom have become, in effect, members of the community. By granting limited legal status to the productive and law-abiding members of this shadow population, we will recognize reality and devote our enforcement resources to deterring future illegal arrivals. Our purpose is to deter illegal immigration and to prevent the recurrence of the circumstances we are now facing.

We therefore propose to permit illegal aliens, who were present in the United States prior to January 1, 1980, and are not otherwise excludable, to apply for the new status of "renewable term temporary resident." The status would be renewable after every three years, and after a total of ten years continuous residence, those residents would be eligible to apply for permanent resident status if they were not otherwise excludable, and could demonstrate English language capability.

These temporary residents would pay Social Security, income, and other taxes; but would be ineligible for welfare, federally assisted housing, food stamps or unemployment compensation. They would not be able to bring in spouses and children, but could leave the country for visits to their homeland without losing their status unless they interrupted their continuous residence for a substantial period of time.

We intend the proposed enhanced enforcement measures to precede the implementation of this legalization program to assure that illegal immigration is curtailed in the future. Those aliens who do not qualify for legalization or choose not to apply would either leave the country or be subject to deportation if apprehended.

Finally, the Administration recognizes that the causes of illegal immigration are international in scope and require international solutions. Accordingly, we plan to pursue negotiations with Mexico on two important matters. First, we will explore joint measures to prevent third country nationals crossing Mexico to enter the United States illegally; and second, we will seek increased cooperation in regulating immigration in the border areas, emphasizing measures directed against alien smuggling.

In addition, Secretary of State Haig has already met with the Foreign Ministers of Mexico, Venezuela and Canada to consider a hemispheric development plan. Further discussions are scheduled regarding the establishment of development projects that would alleviate the factors encouraging illegal migration within the hemisphere.

MASS ARRIVALS OF ILLEGAL ALIENS

Mass migrations of undocumented aliens to the United States are a recent phenomenon. They are also a phenomenon for which the nation was woefully ill-prepared, and the consequences of our unreadiness have been disastrous.

The 1980 Mariel boatlift brought a wave of 125,000 Cubans to the beaches of south Florida. Among those persons were criminals and mentally ill, some of whom were forcibly expelled by Castro. Most of the Cubans have been resettled through the efforts of public and private agencies. But 1800 criminals remain in a federal penitentiary in Atlanta, and nearly 1,000 mentally ill and maladjusted remain at Fort Chaffee, Arkansas. Cuba has thus far refused to accept back these persons, notwithstanding its obligation to do so under international law.

There is also a continuing migration to Florida of undocumented aliens from Haiti and elsewhere. Although the Government of Haiti is willing to accept the return of Haitians deported by the United States, exclusion proceedings have been blocked by time-consuming judicial challenges to INS proceedings. To be sure, the foreign policy character of the Cuban and Haitian migrations differs, but the domestic impact on our local communities and on the administration of our immigration laws is the same.

The Administration is determined not to permit another Mariel. In addition, we must act to curtail the ongoing arrivals of undocumented aliens to our shores in violation of our laws. Finally, we must deal with the recent legacy of those Cubans and Haitians who are already here.

To provide adequate legal authorities to deal with future migration situations, the Administration has developed a seven-part program.

1. We will seek legislation (a) to prohibit bringing undocumented aliens to the United States; and (b) to strengthen existing legal authority for the interdiction, seizure, and forfeiture of vessels used in violation of our laws.

2. We will seek legislation to authorize the President to direct the Coast Guard to interdict unregistered vessels and to assist foreign governments that request such assistance to interdict on the high seas their flag vessels, which are suspected of attempting to violate U.S. law.

3. We will request increased resources for the development of additional permanent facilities in which to detain temporarily illegal aliens upon arrival pending exclusion or granting of asylum. We are now considering sites for these facilities; we will be requesting that \$35 million be made available for this purpose in fiscal year 1982.

4. We will propose legislation to reform and expedite exclusion proceedings. Applications for asylum would be heard before newly established asylum officers within INS, with discretionary review by the Attorney General.

5. We will propose legislation to provide the President with special authority, in a Presidentially declared emergency, to prohibit U.S. residents and U.S. registered vessels from traveling to designated foreign countries for the suspected purpose of transporting illegal aliens to the U.S.; to direct Federal agencies

to take necessary actions, including the establishment of holding centers; to reimburse state and local governments for authorized expenditures resulting from an emergency; and to expend funds for those purposes from a newly established immigration emergency fund of \$35 million to reprogram existing funds.

6. We will pursue international measures to secure the return to Cuba of those Cubans (currently detained at Fort Chaffee, Arkansas, the Atlanta Federal Penitentiary, and certain other facilities) who would be excludable under U.S. laws; to seek additional resettlement opportunities for Haitians in other Western Hemisphere countries; and to increase cooperation with the Government of Haiti in restraining illegal migration of its nationals to the U.S.

7. We will submit legislation to repeal the Cuban Refugee Adjustment Act of 1966, but to permit Cubans and Haitians who were in the country and known to INS before January 1, 1981, to apply for a "renewable term entrant" status. The status could be renewed after three years, and after five years these residents could apply for permanent resident status, providing they were not otherwise excludable and could demonstrate English language capability.

The existence of these new legal authorities, and our commitment to their use, if necessary, should avert another Mariel. To assure immediate and effective government action in such an event, the Administration has prepared a contingency plan detailing the responsibilities of relevant government agencies.

Other representatives of the Administration will be pleased to discuss these proposed authorities in detail. I wish, however, briefly to explain two elemental changes of current practice embodied in the proposed policy: the reform of exclusion proceedings, and the necessity of detaining illegal aliens pending exclusion.

In the past, the United States has always screened and processed prospective immigrants, including refugees, overseas. Thus, those individuals actually arriving on our shores have been adjudged eligible for admission prior to arrival. Applications for asylum by persons already in the United States have been relatively few and the cases generally clear-cut. As recently as Fiscal Year 1978 fewer than 3,800 asylum applications were received. But in Fiscal Year 1980, 19,485 applications for asylum were received, and the number of pending applications will reach 60,000 during the current fiscal year, not including the approximately 140,000 applications filed by Cubans and Haitians.

In the face of these circumstances, our policies and procedures for dealing with asylum applicants, which have been generous and deliberate, have crumbled under the burden of overwhelming numbers. Our procedures should be adequate to secure the national interest. The procedural reforms we propose are fair. Moreover, they are the only rational and workable way to preserve the framework that Congress has established to govern the inspection and admission of persons seeking asylum.

Second, the Administration will seek additional resources for the construction of permanent facilities in which to house undocumented aliens temporarily until their eligibility for admission can be determined. By treating those who arrive by sea in the same way we have long treated those who arrive over our land borders, our policy will be evenhanded, and we can avoid the severe community disruptions that result from large-scale migrations.

LEGAL IMMIGRATION

The basic legal framework governing immigrant admissions to the United States was established by the 1965 amendments to the Immigration and Nationality Act. These amendments retained the policy of numerically restricting certain preference categories of immigration. For the first time in our history, immigration from Western Hemisphere countries was limited, to 120,000 annually. Annual per country ceilings of 20,000 were extended to the Western Hemisphere in 1976.

With regard to refugee admissions, the Congress first dealt comprehensively with the question only recently. In the Refugee Act of 1980, Congress prescribed a uniform definition of "refugee" without geographic or ideological limitation, and established a process for the annual determination of refugee admissions by the President, after consultations with Congress.

The Administration believes that these authorities in general provide a sensible and workable structure for legal immigration. There are, however, two aspects of the present system that need reform: (1) the existing unrealistic limitations on immigration from Mexico and Canada, and (2) the procedures required to certify need for the labor of non-family immigrants.

Imposition of country ceilings of 20,000 annually, in conjunction with the new preference system and labor certification requirements added by the 1965 amendments, resulted in a drastic reduction in immigration from Canada and Mexico. President Reagan has recognized that the ceiling on immigration from our two closest neighbors should be increased. The Administration will therefore submit legislation to create separate annual ceilings for numerically restricted immigration from Mexico and Canada raising the totals from the present 20,000 to 40,000 for each country. The unused portion of either country's allotment would be available to citizens of the other nation. The numerically restricted immigration from other countries of the world would be adjusted so as not to be affected by this change.

The proposed change recognizes the special relationship the United States has with its closest neighbors, the fact of common borders, and the need to find realistic alternatives to illegal immigration.

The Administration also will submit legislation to streamline the procedures for admitting "independent" or non-family immigrants with needed skills. Instead of the time-consuming and costly process of individual labor certification, the Department of Labor would annually publish a list of occupations for which adequate domestic workers were not available. Foreign workers in these occupations with a verified job offer would apply to the consular offices overseas for visas. This procedure would continue to provide protection for American workers while simplifying the procedure for both employers and prospective immigrants.

REFUGEE AND ASYLEE BENEFITS

The Refugee Act of 1980 established financial assistance and social service benefits for refugees and those seeking and receiving asylum. Many require assistance during a period of adjustment. Since they are admitted as a matter of national policy, the federal government has assumed a special responsibility for them. Assistance is provided through grants to voluntary agencies and on a reimbursable basis to States and localities which fund local social service programs.

The Administration has reviewed these programs to assess the fairness of the present pattern of funding and to find ways to encourage self-sufficiency and to accomplish savings.

To assure effective and efficient use of refugee benefit funding, the Administration will continue the present categorical programs for fiscal year 1982 and 1983, but the level of cash assistance payments will be reduced to those refugees who do not qualify for the normal welfare programs. It is believed that prudent economies can be achieved without imposing hardships on recipients. In addition, the Department of Health and Human Services (HHS) will explore possible options for impact aid for those localities disproportionately affected by refugee admissions.

The Administration has reviewed the refugee program, including the interpretation of the definition of refugee as adopted in the Refugee Act of 1980, and we do not recommend any other changes at this time.

CONCLUSION

The dilemmas of immigration and refugee policy require the prompt attention of the Congress and the diligent efforts of the Executive Branch in order to regain control of our borders. I am confident that, working together, we can present to the nation an effective program of vigorous and fair enforcement of our immigration laws.

At the same time, we will continue to be a nation that is open to immigration and that does its share to assist and resettle the refugee.

As President Ronald Reagan has said many times, quoting John Winthrop, "we shall be a city upon a hill. The eyes of all people are upon us. . . ." Like a beacon, our freedom still blazes forth in a world filled with too much darkness. That beacon beckons the immigrant and the refugee to our shores—seemingly in ever greater numbers.

I believe that the proposals the President has offered are in keeping with our modern and historic appeal to the citizens of other lands. Yet they are also fair and realistic in their consideration for the citizens of this land. Only a realistic policy of the type outlined by the President can fully provide for the well-being of our people while welcoming from throughout the world others who truly do desire to contribute to this nation's continuing experiment in liberty.

I would be glad to answer any questions you have about the President's proposals.

APPENDIX 2

PREPARED STATEMENT OF FRANCIS X. RILEY, DIRECTOR, CENTRO DE ASUNTOS MIGRATORIOS

As director of Centro de Asuntos Migratorios, an ecumenically-sponsored Center for Immigration Affairs, I would like to submit this written testimony regarding the proposed immigration reform recommendations being submitted by the Reagan Administration.

Since our center has been active in immigration services and promoting immigration reform for some time, I feel I have sufficient experience to draw from in making my comments.

First, of all, I support, and so do the directors of Centro de Asuntos Migratorios, the granting of amnesty for undocumented immigrants presently residing in the United States. While the intent of the Administration proposal to make this amnesty broad is laudable, the two class system used should be rejected. By making ten years the time requirement, virtually all of the undocumented could be excluded. Although some may have the required time, it is almost certain that they will not be able to produce the required proof of residence. By calling for temporary categories for those with less time, the criticism that arose when the Carter administration proposed his will be reheard. This criticism centers on the government creating a subclass of residents vulnerable to shifting political winds and economic situations. Although, unlike the Carter temporary resident proposal, President Reagan's plan sets permanent residency as a possibility with a set amount of time. This however, is still not a favorable proposal. Arguments for temporary residency rather than the granting of permanent status are rather weak as one looks to the perceived benefits for both the alien and the country.

These benefits are rather obvious for undocumented immigrants, mainly: no deportation. This would be available to them even under the temporary program if they maintain certain criteria. Evidently in order to protect the general public, temporary status is preferred because it allows for the possibility of deporting those who fail to maintain certain criteria. There are existing grounds of deportability which have the same purpose. These can be applied to permanent residents. Consequently, the main purpose of a controversial temporary status seems unclear. Certainly if temporary status was the only alternative to the deporting of undocumented immigrants, it would be reluctantly accepted. However broad amnesty granting permanent resident status is certainly more favorable. Requirements for continuous residence bring the cumbersome burden to prove this for the alien and the equally burdensome need for a structure to examine evidence of proof by the government. A more favorable system for both the immigrants and the government would be a liberal cutoff date say January 1, 1981 with a simplified process of the documentation needed to prove residence as of that time. This is the alternative our center favors. It is my hope that Congress will enact legislation with a broad amnesty as a central feature.

I support the Administration's recommendations to raise the overall world ceilings by allowing special quota consideration for Mexico and Canada. The recommendation of 100,000 visas for the next five years to relieve the backlogs is also a good beginning which should become law. However, the ceilings proposed are still very low given those waiting to immigrate.

Regarding the recommendation for employer sanctions, I join with others in their opposition. A system of employer sanctions will not be cost effective, nor drastically reduce illegal immigration. The enforcement system needed would be too large and costly. Furthermore, it seems unrealistic to see this truly happen given the present low level of enforcement of existing labor laws. Rather than employer sanctions, I favor broader and stricter enforcement of labor laws and health and safety protections. This would achieve the same result as a system of employer sanctions, namely: reducing the incentive for employers to exploit workers to illegally enter this country.

While the recommendation for a pilot temporary worker program is small in proportion to what some advocate, it still should be rejected. The main reason should be the lessons learned from the Bracero and H-2 programs. The domestic labor force needs to be protected, labor organizing needs to be given the freedom to function and needless migratory flows fostering future migration either legal or illegal should not be put in place. Consequently, I favor the rejection of temporary worker programs and an acceptance of more permanent resident workers.

The main point as has been repeated throughout the hearing of the Select Commission on Immigration and Refugee Policy is that Congress must look at the causes of increased immigration pressures in the U.S. The displacement of large groups of unskilled workers by foreign investment originating in the U.S. must be examined and dealt with. Other causes of needless migration should be dealt with by bilateral committees and the appropriate Congressional committees.

By way of conclusion, I support the Reagan Administration effort to continue the process of reform begun by previous Administrations. Now is the time for Congress to act. It is my hope that the new law will be on balance less restrictive and unfair than our present law and policy.

