

THE WHITE HOUSE  
WASHINGTON

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MEMORANDUM FOR THE VICE PRESIDENT

FROM DONSIA STRONG, DPC  
ERIC SCHWARTZ, NSC  
RANDY BEERS, NSC

SUBJECT Immigration issues

I. THE CURRENT PROBLEM

Generally, the U.S. has seen an upsurge in the number of undocumented or fraudulently documented aliens from around the world coming to the United States by air and sea. To be sure, the numbers of migrants entering at sea and air ports of entry is still only a fraction of the numbers of illegal aliens from Mexico. But the problem, which has received considerable media attention recently, is still serious and needs to be effectively addressed.

A. Aliens arriving by air

Undocumented or fraudulently documented aliens board carriers abroad with seemingly genuine documents. At some point during the voyage to the U.S., smugglers collect the documents or aliens destroy their own documents. Upon inspection by the Immigration and Naturalization Service (INS) at the airport, aliens request asylum in the U.S. claiming political persecution in their home country.

Estimates put the number of undocumented or fraudulently documented aliens arriving at airports at about 13,000 annually with 9,000 requesting asylum in the first instance.

B. Aliens arriving by sea

Over the past five months, the number of aliens being smuggled into the U.S. by sea has increased. These alien primarily come from the Peoples Republic of China by ship although a substantial number are being smuggled aboard commercial airlines.

Ships are refitted in Hong Kong or other parts of East/Southeast Asia to carry humans, travel to Chinese coastal areas where passengers are ferried out in smaller boats and then

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make the journey to the U.S. However, in at least two cases, ships have landed in Mexico from where arrangements were made to travel to the U.S. by land.

The smuggling activity is carried out by Chinese criminal gangs operating in the U.S. and China, according to intelligence gathered by the Immigration and Naturalization Service. The passengers make a down-payment of up to several thousand dollars or more with the expectation that they will pay off the remainder of the \$20,000 or \$30,000 fare through indentured servitude after arrival.

### C. Asylum abuse

Currently, the asylum process is being abused by aliens who claim asylum with no likelihood of succeeding on the merits. However, the lengthy process and procedures and lack of detention often acts as a magnet for newcomers. There are two separate and distinct asylum processes. The two processes are the INS "affirmative" process, and the EOIR "defensive" process. Defensive applicants use asylum as a defense against deportation or exclusion from the country. Fraudulent document holders and smuggled aliens all fall within the defensive category. Affirmative applicants apply of their volition, before any adverse immigration action is taken against them.

Each process has a backlog. Defensive: 125,000 cases -- Affirmative: 275,000 cases.

There are 150 asylum corp officers that adjudicate the affirmative asylum cases.

There are 86 EOIR immigration judges that handle defensive cases.

The summary exclusion legislation developed by the Border Security Working Group will deal solely with asylum claims made at ports of entry. There are about 10,000 of these claims presented every year.

Therefore, INS and EOIR will still be faced with an overwhelming backlog of claims and presumably, with no increase in resources.

## II. EXPLANATIONS FOR THE CURRENT UPSURGE IN ALIEN SMUGGLING

There are a number of theories about the emergence of this activity. First, as Third World economies grow rapidly (especially in Asia coastal areas where most of the migrants come), even those relatively poor can find enough money for the down-payment on a better life. Secondly, the prohibition in driftnet fishing in the region has resulted in a surplus of fishing vessels that have little intrinsic value but are valuable to the smugglers. Finally, some blame a Bush Administration asylum regulation that gives exceptionally sympathetic consideration to claims of persecution based on China's one-child policy.

### III. THE DIFFICULTY OF DEPORTING THOSE WHO ENTER U.S. TERRITORY

Once aliens enter the U.S. or U.S. territorial waters considerable due process rights are available to them. While these were designed to protect the human rights of refugees and other aliens, the nature of the procedures has encouraged abuses. For example, after entry aliens can take advantage of various legal procedures that can take up to 18 months depending on the venue before being deported from the U.S. While the law mandates that illegal aliens be held until their case is adjudicated, the Attorney General has discretion to release them. Most undocumented aliens are released from detention during this period (due largely to a lack of INS resources). We have, however, been detaining those who have been smuggled in on ships.

### IV. DEVELOPING AN IMMIGRATION POLICY

The DPC and the NSC, in coordination with the Justice, State, Labor and Defense Departments and the Coast Guard and the CIA (the Border Security Working Group), have been working for the past five months to coordinate immediate responses and to develop a long term policy for dealing with the alien smuggling issue. The Border Security Working Group developed the Plan of Action which is a multifaceted approach designed to preempt, interdict and deter alien smuggling. The Plan was announced by the President on June 18. Your copy of the plan is at Tab 1.

Shortly after the announcement of the INS Commissioner-designate Doris Meissner and the Plan to combat criminal alien smuggling, we attended a meeting to discuss U.S. immigration policy. Also in attendance were Tony Lake, Carol Rasco, Bob Rubin, Secretary Reich, David Gergan, George Stephanopoulos, Rahm Emanuel, Doris Meissner, Justice and WH Legislative Affairs. We discussed immigration policy as it relates to terrorism, alien smuggling, illegal immigration generally, backlogs in case adjudication and undocumented or fraudulently documented aliens at U.S. airports.

Rahm Emanuel was directed to coordinate a short term Presidential initiative which would involve a Presidential press conference to introduce Administration legislation on expedited exclusion and enhanced penalties as well as other regulatory or operational reforms. The goal is to announce these measures upon the President's return from the summit. In addition, George Stephanopoulos was asked to look at longer-term immigration policy issues. In addition, DPC is reviewing illegal immigration generally to determine ways to increase the costs for those who are here illegally —

*Per Order  
of 4-10-95*

This memorandum sets forth measures and operational reforms which will combat terrorism, streamline asylum adjudications and attempt to address the problem of undocumented or fraudulently documented aliens at U.S. airports. Most of these measures were envisioned in the President's directive of June 19.

A. The first five initiatives are either currently in place or are ready for

### Implementation.

1. Expediting procedures for swifter repatriation of illegal aliens .

Legislation which will provide for expedited exclusion of undocumented or fraudulently documented aliens while maintaining U.S. concerns for human rights and refugee protection has been drafted and is ready for congressional introduction upon the President's return.

2. Enhanced penalties and strengthened criminal law enforcement for alien smuggling

Legislation which would provide for increased penalties for criminal alien smuggling - fines and imprisonment of up to 20 years; expanded seizure and forfeiture authority in the context of such offenses; and establishing criminal alien smuggling as a RICO predicate is also ready for introduction.

3. Expeditious adjudication of asylum claims of criminally smuggled aliens

DOJ has developed a plan to complete adjudication of asylum claims of smuggled aliens currently held in INS custody (1300) within 120 days. This details steps to assist in the expeditious and efficient handling of these cases, while preserving full due process protections for the aliens involved.

4. Use detention as a disincentive to illegal entry into the U.S.

As required in the Presidential Directive issued on June 19, INS is detaining all criminally smuggled aliens until their asylum claims are adjudicated. Therefore, the aliens are being denied work authorization which is a primary rationale for their undertaking the voyage to the U.S.

- B. The following are efforts which are continuing in development. Many of these have both anti-terrorism and immigration applicability.

**Employer Sanctions:** DOL and INS are setting up special workplace strike forces to step up employer sanctions in hot spots for smuggled aliens. Stepped up law enforcement leading to employer sanctions will deter employers from hiring and exploiting illegal aliens. This plan also could be expanded to address illegal immigration concerns on the west coast.

**Clamp Down on Non-Immigrant Visa Abuse:** Non-immigrant visas are being used for purposes other than that for which the visa was issued. Improper visa usage is a form of illegal immigration. We plan to tighten the regulations which govern business visas. This measure may be ready for announcement on July 19.

**FBI Rewards Program:** Establish a reward program for information leading to the arrest/conviction of terrorists inside the U.S. The FBI has authorization for a rewards program which is similar to State's reward program for terrorists outside the U.S. who attack U.S. citizens. There is no appropriation for funds. We are checking to see if funds could be made available for this program by reprogramming.

**Provide More INS Data at the Border:** State would share lists of issued visas with INS to more readily identify fraudulent visas. Justice is examining its ability to allow State to receive law enforcement data for the purpose of determining whether a visa should be issued.

**Tightening Visa Issuance:** State has a proposal to extend its electronic database to visa posts that do not now have that capability so that we can avoid issuing visas to individuals such as the "blind sheik" who was denied a visa in Cairo and granted one shortly thereafter in Khartoum. We have a no-added cost proposal and a \$6 million one. State and Customs may be asked to fund this initiative.

**APIS:** INS proposes to expand the Advance Passenger Information System. APIS allows INS to review passenger manifests while an aircraft is enroute to determine which passengers should undergo further interrogation.

**Carrier Consultant/Cooperation Program:** INS and State will expand a current program to place INS officers overseas at airline counters in high document fraud locations to aid airline officials in spotting false documents. INS will work with airlines worldwide to reduce the number of false/undocumented passengers through its current fine structure.

## V. FUNDING

As you experienced yesterday, the critical issue will be funding. Each of these initiatives will result in additional agency costs. A decision must be made at the outset to seek appropriations or structure the initiatives in ways that fees can be assessed.