The original documents are located in Box 58, folder "Refugees - Indochina General (4)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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THE WHITE HOUSE
WASHINGTON

May 3, 1975

FROM: General Scowcroft

DEPARTMENT OF JUSTICE VIEWS REGARDING PAROLE
OF ADDITIONAL VIETNAMESE AND CAMBODIAN REFUGEES

We have received a copy of Secretary Kissinger's memorandum on this subject and have the following comments:

(1) The Department of Justice agrees with the recommendation that those Vietnamese and Cambodians on the high seas be authorized entry into the United States. The Attorney General proposes to exercise his parole authority to do so.

(2) The Department of Justice believes that there are additional factors which should be considered before permitting Vietnamese or Cambodians now in third countries to be moved to U.S. territory. Once moved to U.S. territory such refugees are entitled to asylum in the U.S. Therefore, it is unlikely that many of them would be assisted by international organizations or seek residence and be accepted by other nations. In order to promote the internationalization effort which Congress believes is particularly important, we could require refugees in third countries to seek asylum there and if refused, seek assistance from the international organizations before being considered for entry to Guam and parole into the United States.

We are not aware of the total number of Vietnamese and Cambodians who have or are likely to flee to third countries, thus it may be inadvisable to accept those we are now aware of unless we are prepared to accept all who are similarly situatuated who follow them. If it is decided to accept all of those who can escape, we should make it clear that the 130,000 to 150,000 figure suggested by Secretary Kissinger may well be exceeded in order to reduce likely Congressional pressure to limit those accepted to this amount as the figure is approached.

Dictated by phone - 5/3/75
From: Mr. Mark Wolf
Attorney General's Office
Room 5123
Department of Justice

MW/feb

SEA EVACUATION CONCLUDED BY U.S.

May 5, 1975

Ford Terms It Complete—Schlesinger Speaks of Ire With U.S. Embassy

By JOHN W. FINNEY

Special to The New York Times

WASHINGTON, May 1—Defense Secretary James R. Schlesinger said today that United States Navy ships, which had been picking up refugees fleeing by small boats, had left the coast of South Vietnam.

While Mr. Schlesinger, who

THE WHITE HOUSE
WASHINGTON

May 16, 1975

To: Eva

From: Jay

This is a part of PWB's file on refugees.

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 93-461

IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1973

SEPTEMBER 11, 1973.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. EILBERG, from the Committee on the Judiciary, submitted the following

REPORT

Together with additional views

[To accompany H.R. 981]

The Committee on the Judiciary to whom was referred the bill (H.R. 981) having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Immigration and Nationality Act Amendments of 1973".

SEC. 2. Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is amended to read as follows: "(ii) who is coming temporarily to the United States for a period not in excess of one year to perform other services or labor if the Secretary of Labor has determined that there are not sufficient workers at the place to which the alien is destined to perform such services or labor who are able, willing, qualified, and available, and the employment of such aliens will not adversely affect the wages and working conditions of workers similarly employed: Provided, That the Attorney General may, in his discretion, extend the terms of such alien's admission for a period or periods not exceeding one year;".

SEC. 3. Section 201 of such Act (8 U.S.C. 1151) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) Exclusive of special immigrants defined in section 101(a)(27), and immediate relatives of United States citizens as specified in subsection (b) of this section, (1) the number of aliens born in any foreign state or dependent area located in the Eastern Hemisphere who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally, shall not in any of the first three quarters of any fiscal year exceed a total of forty-five thousand and shall not in any fiscal year exceed a total of one hundred seventy thousand; and (2) the number of aliens born in any foreign state of the Western Hemisphere or in the Canal Zone, or in a dependent area located in the Western Hemisphere, who may be issued immigrant visas or who may other-

99-006—73——1

wise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally, shall not in any of the first three quarters of any fiscal year exceed a total of thirty-two thousand and shall not in any fiscal year exceed a total of one hundred twenty thousand."; and

(2) by striking out subsections (c), (d), and (e).

SEC. 4. Section 202 of such Act (8 U.S.C. 1152) is amended—

(1) by striking out the last proviso contained in subsection (a) and inserting a period in lieu of the colon immediately preceding the proviso; and

(2) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state unless a special immigrant as provided in section 101(a)(27) or an immediate relative of a United States citizen, as specified in section 201(b), shall be chargeable for the purpose of the limitation set forth in section 201(a), to the hemisphere in which such colony or other component or dependent area is located, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed six hundred in any one fiscal year.".

SEC. 5. Section 203 of such Act (8 U.S.C. 1153) is amended—

(1) by striking out "201(a)(ii)" each place it appears in paragraphs (1) through (6) of subsection (a) and inserting in lieu thereof in each such place "201(a) (1) or (2)";

(2) by striking out paragraph (7) of such subsection (a) and inserting in lieu thereof the following:

"(7) Conditional entries shall next be made available by the Attorney General, pursuant to such regulations as he may prescribe and in an amount not to exceed 6 per centum of the limitation applicable under section 201(a) (1) or (2), to aliens who are outside the country of which they are nationals, or in the case of persons having no nationality, are outside the country in which they last habitually resided, who satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country that they (A) are unable or unwilling to return to the country of their nationality or last habitual residence because of persecution or well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group or political opinion, (B) are not nationals of the countries in which their application for conditional entry is made, and (C) are not firmly resettled in any country: Provided, That not not more than one-half of the visa numbers made available pursuant to this paragraph may be made available for use in connection with the adjustment of status to permanent residence of aliens who were inspected and admitted or paroled into the United States, who satisfy the Attorney General that they meet the qualifications set forth herein for conditional entrants, and who have been continuously physically present in the United States for a period of at least two years prior to application for adjustment of status.".

(3) by striking out the second sentence of subsection (e) and inserting in lieu thereof the following: "The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to him of the availability of such visa, unless the alien establishes within two years following notification of the availability of such visa that such failure to apply was due to circumstances beyond his control. Upon such termination the approval of any petition approved pursuant to section 204(b) shall be automatically revoked.".

SEC. 6. Section 212 of such Act (8 U.S.C. 1182) is amended as follows:

(1) Paragraph 14 of subsection (a) is amended to read:

"(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unksilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to preference immigrant aliens described in section 203(a)(3) and (6), and to nonpreference immigrant aliens described in section 203(a)(8). The Secretary of Labor shall submit quarterly to the Congress a report containing complete and detailed statements of facts pertinent to the labor certification procedures

including, but not limited to, lists of occupations in short supply or oversupply, regionally projected manpower needs, as well as up-to-date statistics on the number of labor certifications approved or denied;".

(2) A new paragraph (9) is added to subsection (d) to read as follows:

"(9)(A) If the Secretary of State shall find that it is in the national interest that all, or any portion, of the members of a group or class of persons who meet the qualifications set forth in section 203(a)(7) be paroled into the United States, he may recommend to the Attorney General that such aliens be so paroled.

"(B) Upon receipt of a recommendation pursuant to subparagraph (A) of this paragraph and after appropriate consultation with the Congress, the Attorney General may parole into the United States any alien who establishes to his satisfaction, in accordance with such regulations as he may prescribe, that he is a member of the group or class of persons with respect to whom the Secretary of State has made such recommendation and that he is not firmly resettled in any country. The conditions of such parole shall be the same as those which the Attorney General shall prescribe for the parole of aliens under paragraph (5) of this subsection.

"(C) Any alien paroled into the United States pursuant to this paragraph whose parole has not theretofore been terminated by the Attorney General and who has not otherwise acquired the status of an alien lawfully admitted for permanent residence shall, two years following the date of his parole into the United States, return or be returned to the custody of the Immigration and Naturalization Service and shall thereupon be inspected and examined for admission into the United States in accordance with the provisions of sections 235, 236, and 237 of this Act.

"(D) Notwithstanding the numerical limitations specified in this Act, any alien who, upon inspection and examination as provided in subparagraph (C) of this paragraph or after a hearing before a special inquiry officer, is found to be admissible as an immigrant as of the time of his inspection and examination except for the fact that he was not and is not in possession of the documents required by section 212(a)(20) shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival in the United States.".

SEC. 7. (a) Notwithstanding the provisions of section 245 of the Immigration and Nationality Act and without regard to the numerical limitations specified in that Act, any alien who, on or before the effective date of this Act (1) has been granted by the Secretary of Labor an indefinite certification for employment in the Virgin Islands of the United States which has not subsequently become invalid, (2) has been inspected and admitted to the Virgin Islands of the United States, and (3) has continuously resided in the Virgin Islands of the United States for a period of at least five years as of the date of enactment of this Act, and the spouse and minor unmarried children of any such alien, may have his status adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence, or may be issued an immigrant visa, if the alien (i) makes application for such adjustment of status or immigrant visa, (ii) is eligible to receive an immigrant visa, and (iii) is admissible to the United States.

(b) Upon approval of an application for adjustment of status under subsection (a) of this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date of the order of the Attorney General approving the application for adjustment of status.

(c) Applications for adjustment of status or for immigrant visas pursuant to the provisions of subsection (a) of this section may be initiated on or after the effective date of this Act, but not later than the last day of the third fiscal year beginning on or after the date of enactment of this Act. Applications for immigrant visas pursuant to the provisions of this section shall be considered in such order as the Secretary of State shall by regulations prescribe, except that not more than three thousand visas shall be issued in any one fiscal year.

(d) Except as otherwise provided herein, the definitions set forth in section 101 of the Immigration and Nationality Act shall be applicable.

SEC. 8. The Act entitled "An Act to adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes", approved November 2, 1966 (8 U.S.C. 1255, note), is amended by adding at the end thereof the following new section:

"SEC. 5. The approval of an application for adjustment of status to that of lawful permanent resident of the United States pursuant to the provisions of section 1 of this Act shall not require the Secretary of State to reduce the number of visas authorized to be issued in any class in the case of any alien who is physically

present in the United States on or before the effective date of the Immigration and Nationality Act Amendments of 1973.".

SEC. 9. (a) Section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)) is amended by striking out subparagraph (A) and by redesignating subparagraphs (B) through (E) as subparagraphs (A) through (D), respectively;

(b) Section 211(b) of such Act (8 U.S.C. 1181(b)) is amended by striking out "section 101(a)(27)(B)" and inserting in lieu thereof "section 101(a)(27)(A)".

(c) Section 212(a)(24) of such Act (8 U.S.C. 1182(a)(24)) is amended by striking out the language: "101(a)(27)(A) and (B)" and inserting in lieu thereof: "101(a)(27)(A) and aliens subject to the numerical limitation specified in section 201(a)(2)";

(d) Section 241(a)(10) of such Act (8 U.S.C. 1251(a)(10)) is amended by striking out the language in the parenthesis and inserting in lieu thereof the following: "other than an alien described in section 101(a)(27)(A) and aliens subject to the numerical limitation specified in section 201(a)(2)";

(e) Section 244(d) of such Act (8 U.S.C. 1254(d)) is amended by striking out the following language: "is entitled to a special immigrant classification under section 101(a)(27)(A), or"; and

(f) Section 349(a)(1) of such Act (8 U.S.C. 1481(a)(1)) is amended by striking out "section 101(a)(27)(E)" and inserting in lieu thereof: "section 101(a)(27)(D)"; and

(g) Section 21(e) of the Act of October 3, 1965 (Public Law 89-236; 79 Stat. 921) is repealed.

SEC. 10. (a) The amendments made by this Act shall not operate to affect the entitlement to immigrant status or the order of consideration for issuance of an immigrant visa of an alien entitled to a preference status, under section 203(a) of the Immigration and Nationality Act, as in effect on the day before the effective date of this Act, on the basis of a petition filed with the Attorney General prior to such effective date.

(b) An alien chargeable to the numerical limitation contained in section 21(e) of the Act of October 3, 1965 (79 Stat. 921) who established a priority date at a consular office on the basis of entitlement to immigrant status under statutory or regulatory provisions in existence on the day before the effective date of this Act shall be deemed to be entitled to immigrant status under section 203(a)(8) of the Immigration and Nationality Act and shall be accorded the priority date previously established by him. Nothing in this section shall be construed to preclude the acquisition by such an alien of a preference status under section 203(a) of the Immigration and Nationality Act, as amended by section 5 of this Act. The numerical limitation to which such an alien shall be chargeable shall be determined as provided in sections 201 and 202 of the Immigration and Nationality Act, as amended by this Act.

SEC. 11. The foregoing provisions of this Act, including the amendments made by such provisions, shall become effective on the first day of the first month which begins more than sixty days after the date of enactment of this Act.

PURPOSE OF THE BILL

The purpose of the bill is to extend to the Western Hemisphere the seven category preference system and the 20,000 per country limit on the number of immigrant visas available annually, which is currently in effect for the Eastern Hemisphere. The bill also amends the refugee section of current law, as well as the provisions relating to the admission of certain temporary workers.

HISTORICAL BACKGROUND

The Immigration and Nationality Act, as amended, provides for an annual ceiling of 120,000 "special immigrant" visas for natives of the independent countries of the Western Hemisphere and their alien spouses and children.[1] Unlike Eastern Hemisphere immigration, immigration in this Hemisphere is not regulated by a priority or preference system, and there is no per-country limitation. Eastern Hemisphere immigration, restricted to 170,000 visas per year, with a 20,000 per

[1] Immigration and Nationality Act of 1952, as amended, sec. 101(a)(27)(A), (8 U.S.C. 1101 (a)(27)(A); Act of Oct. 3, 1965 (Public Law 89-236), Sec. 21(e).

country limit, operates under a seven-point preference system designed to give top priority to reuniting families and to attracting aliens with needed skills to this country.

Western Hemisphere immigration, on the other hand, operates entirely on a first-come, first-served basis, without any per country limitation. The only restriction is that an alien entering the country to perform skilled or unskilled labor must obtain a certification from the Secretary of Labor indicating that his entry will not adversely affect the American labor market. Parents, spouses, and children of U.S. citizens or of aliens legally admitted for permanent residence are exempt from this requirement.

As a direct result of the imposition in 1968 of the Western Hemisphere ceiling of 120,000 without a preference system, all intending immigrants from this hemisphere who fall under the numerical ceiling are presently experiencing almost a 2-year wait for their visas. This backlog has been accumulating steadily, and the situation appears to be worsening each month.[2]

Beginning with the first permanent quota restrictions imposed on immigration to this country by the Immigration Act of 1924, and continuing through the Immigration and Nationality Act of 1952, the McCarran-Walter Act, immigration from other Western Hemisphere countries had been numerically unrestricted. The current numerical restriction on Western Hemisphere immigration is the result of the far-reaching 1965 amendments to the Immigration and Nationality Act.

To a considerable extent, passage of the provision for a ceiling on Western Hemisphere immigration came about because a sufficient number of those opposed to it agreed to accept it as the price that had to be paid in order to insure passage of legislation abolishing the national origins quota system which dated back to the 1920's. This latter goal was the primary purpose of the 1965 legislation since its inception, and this emphasis accounts in large part for the very limited consideration given to the actual mechanics of the Western Hemisphere ceiling during the 1965 debate.

A ceiling of 120,000 annually for Western Hemisphere immigration, to go into effect July 1, 1968, was incorporated in the bill as the result of an amendment adopted in the Senate.

The reasons for the establishment of the controversial quota on Western Hemisphere immigration were summarized in the Senate report on H.R. 2580 which became Public Law 89-236, as follows:

> The committee has become increasingly concerned with the unrestricted flow of immigration from the nonquota countries which has averaged approximately 110,000 admissions over the past 10 years. Last year the nonquota admissions from Western Hemisphere countries totaled 139,284, and the evidence is present that the increase will continue. Not only is the committee concerned with the volume of the immigration, but it has difficulty with reconciling its decision to eliminate the concept of an alien's place of birth determining the quota to which he is charged with the exemption from the numerical limitation extended to persons born in

[2] According to the Department of State bulletin, "Availability of Immigrant Visa Numbers for September 1973," visa numbers allocated for September issuance under the Western Hemisphere limitation were for applicants with priority dates earlier than October 15, 1971.

> the Western Hemisphere. To continue unrestricted immigration for persons born in Western Hemisphere countries is to place such aliens in a preferred status compared to aliens born in other parts of the world which the committee feels requires further study. (Senate Report 748, 89th Congress, 1st session, pp. 17–18.)

A study was conducted by the Select Commission on Western Hemisphere Immigration, established by the 1965 legislation. It recommended postponement of the effective date of the numerical restriction on Western Hemisphere immigration from July 1, 1968 to July 1, 1969. It was their hope that labor certification, rather than a fixed numerical ceiling, might "provide that measure of immigration control the Congress may deem needful," and they requested a year for further study of this possibility. However, legislation implementing this recommendation was not enacted, and the 120,000 ceiling went into effect on July 1, 1968.

In the ensuing years since the establishment of the Western Hemisphere immigration ceiling, there has been no concerted attempt or public pressure to abolish it. In this regard, the Committee notes the recommendation made in 1972 by the President's Commission on Population Growth and the American Future, that "immigration levels not be increased."[3] It is apparent from the estimated current Western Hemisphere backlog of 200,000 active cases that immigration would have risen above the current level without the ceiling. The total number of immigrants entering this country in fiscal year 1972 from all countries was 384,685; total annual immigration to this country has ranged between 200,000 and 400,000 since 1950.[4]

Attention is more appropriately focused on two aspects of the immigration law which received little discussion during the 1965 debate: the absence of a preference system and per-country limit for the Western Hemisphere. As previously noted, this is in contrast to the Eastern Hemisphere which, along with an overall annual numerical ceiling of 170,000, has a 20,000 per-country limitation and a seven-point preference system whereby certain categories of immigrants, most notably close relatives of U.S. citizens and permanent resident aliens, and those possessing talents and skills in short supply in this country are given preference over others.

However, because the Western Hemisphere has no preference system and no per-country limit, in effect, the United States has two different immigration laws for the two hemispheres. For example, under the provisions determining Eastern Hemisphere immigration, the 22-year-old British citizen daughter of a U.S. citizen or the Spanish wife of a permanent resident alien would receive preferential treatment compared to other intending immigrants whose relational ties were more distant, or who were entering under the occupational preferences. However, the 22-year-old Brazilian daughter of a U.S. citizen or the Canadian wife of permanent resident alien would be required to line up behind the other intending immivgrants from this hemisphere—now numbering close to 200,000—and to wait almost two years for a visa. In contrast, immigrant visas for the Eastern Hemisphere are immediately available under the relative preference categories for all countries except the Philippines.

[3] *Population and the American Future*, The Report of the Commission on Population Growth and the American Future, March 1972, p. 117.
[4] U.S. Department of Justice, Immigration and Naturalization Service, 1972 *Annual Report*, p. 23.

In short, when repealing the national origins quota system, the Eighty-ninth Congress did not provide an adequate mechanism for implementing the Western Hemisphere ceiling. The result, completely unforeseen and unintended, has been considerable hardship for intending immigrants from this hemisphere who until 1968 enjoyed the privilege of unrestricted immigration, and a concomitant adverse effect on our foreign relations in this hemisphere. It is the express purpose of this legislation to correct this situation. As the Chairman of the Judiciary Subcommittee on Immigration, Citizenship, and International Law (formerly Subcommittee No. I), commented during the hearings:

> It should be remembered that, with the abolition of the national quota system in 1965, Congress endorsed the principles of equity and family reunification as the basis of our immigration policy for the Eastern Hemisphere. It remains the unfinished business, therefore, of this subcommittee and the Congress to extend these principles to the natives of the Western Hemisphere.

Committee Action

The Subcommittee on Immigration, Citizenship, and International Law held seven days of hearings on H.R. 981, between March 28 and June 14, 1973. Testimony was received from Members of Congress, as well as from representatives of the Executive agencies involved (State, Justice, and Labor), organized labor, the Association of Immigration and Nationality Lawyers, the Commission on Population Growth and the American Future, voluntary agencies concerned with immigration problems, and expert and public witnesses. The hearings were followed in July by three mark-up sessions on the legislation, and by consideration by the full Committee of the Subcommittee amendment to H.R. 981. This amendment, in the nature of a substitute was approved unanimously by voice vote and ordered reported to the House on July 24, 1973.

The Administration's immigration revision bill, H.R. 9409, was introduced by request on July 19, 1973 and consequently the provisions of the Administration's bill were before the Subcommittee and considered by it during the mark-up of H.R. 981.

The primary focus of H.R. 981, as amended, is the application of a preference system to the Western Hemisphere. The Subcommittee on Immigration, Citizenship, and International Law, has been aware of the situation regarding Western Hemisphere immigration for a number of years. The problem was discussed as early as April, 1968 during a series of hearings subtitled "Review of the Operation of the Immigration and Nationality Act as Amended by the Act of October 3, 1965" (*Immigration*, 90th Congress, 2d Session, 1968, Serial No. 23).

In the Ninety-first Congress omnibus immigration bills concerning Western Hemisphere immigration reform were considered during five days of hearings in July and August, 1970. (*Immigration*, 91st Congress, 2d Session, 1970, Serial No. 32).

While the illegal alien issue was the primary focus of the extensive hearings conducted during the Ninety-second Congress, the Subcommittee was cognizant of that problem in the context of the broader

issue of the regulation of Western Hemisphere immigration, and much of the data developed during the course of the illegal alien hearings was of direct relevance to it. (*Illegal Aliens*, 92nd Congress, 1st and 2d Sessions, 1971–1972, Serial No. 13).

Need for Legislation

According to U.S. Department of State's Bureau of Security and Consular Affairs, numbers allocated for September 1973 issuance under the Western Hemisphere limitation are for applicants with priority dates earlier than October 15, 1971.

The current active Western Hemisphere waiting list was estimated by the State Department at 192,761 as of January 1973. Including inactive cases, there are 297,833 applicants. As noted above, this situation compares very unfavorably with the Eastern Hemisphere, where visas are current for relative preferences for all countries except the Philippines. In short, we are causing intending immigrants from this hemisphere considerable hardship in being reunited with members of their family, who are U.S. citizens or permanent resident aliens. In addition, the State Department reports serious concern about the adverse effect our current immigration law has had on our foreign relations in this hemisphere, particularly with Canada.

General Information and Analysis of Legislation as Amended

H.R. 981 is limited in scope and objective, in part because of the urgency of the situation in the Western Hemisphere which has prompted it. As originally introduced, H.R. 981 provided for a single worldwide ceiling and a unified and revised preference system. Chairman Rodino noted in his statement during the hearings on this legislation:

> In view of the hardships we are unintentionally causing would-be immigrants from this hemisphere, and the adverse diplomatic effects of the increasingly deteriorating situation . . . it seems possible that further reform of the immigration law will have to be a two-step operation, with the first step being immediate enactment of legislation supplementing the 1965 act by extending its Eastern Hemisphere provisions with only essential modifications to the Western Hemisphere.

This is the course the Committee is following, with H.R. 981, as amended, representing the first step in the two-step operation described by the Chairman.

A unified worldwide immigration system in some form is the ultimate goal after the Western Hemisphere situation has been resolved, and after there has been some opportunity to observe the operation of the preference system and per-country numerical restriction in that hemisphere. The State Department has consistently opposed legislation introduced in this and the previous two Congresses which would establish an immediate worldwide ceiling on the grounds that they are unable to predict its effect on either hemisphere. In recognition of the fact that we are engaged in a continuing experiment with respect to Western Hemisphere immigration, the bill retains separate hemispheric ceilings as an interim measure until we have had sufficient experience to proceed to the establishment of a worldwide ceiling. The ceilings under this proposed legislation are unchanged from the present law: 170,000 for the Eastern Hemisphere and 120,000 for the Western Hemisphere. The Committee is also attempting by this legislation to implement the recommendation of the President's Commission on Population Growth and the American Future, that "immigration levels not be increased."

The existing Eastern Hemisphere preference system, with one modification (described in detail below), relating to seventh preference refugees, is imposed upon the Western Hemisphere. The preference categories are as follows:

First preference (unmarried sons and daughters over 21 of U.S. citizens): 20% of the respective hemispheric limitation in any fiscal year;

Second preference (spouses and unmarried sons and daughters of aliens lawfully admitted for permanent residence): 20% of the limitation plus, any numbers not required for first preference;

Third preference (members of the professions or persons of exceptional ability in the sciences and arts): 10% of the limitation;

Fourth preference (married sons and daughters of U.S. citizens): 10% of the limitation, plus any numbers not required by the first three preference categories;

Fifth preference (brothers and sisters of U.S. citizens): 24% of the limitation, plus any numbers not required by the first four preference categories;

Sixth preference (skilled and unskilled workers in short supply): 10% of the limitation;

Seventh preference (refugees): 6% of the limitation;

Nonpreference (other immigrants): numbers not used by the seven preference categories.

The Committee feels that the problems with the present preference system have not been so severe as to make its extensive revision a top priority issue at this time. This view was expressed by Administration witnesses who again cited the difficulty in predicting developments in the Western Hemisphere as a reason for not instituting major changes at this time.

H.R. 981, as amended, establishes a 20,000 per-country limit on the number of immigrant visas available annually, applicable to all countries. A 20,000 per-country limit is currently in effect for all countries in the Eastern Hemisphere, while there is no Western Hemisphere per-country limit.

The application of this 20,000 limit to Canada and Mexico was the single most controversial issue during the Committee's processing of H.R. 981. As originally introduced, H.R. 981 provided for unlimited immigration from the two contiguous countries (with labor certification required in some cases), as compared to a 25,000 per-country limit for all other countries. The Administration's immigration bill, H.R. 9409, provides for 35,000 visas each for Canada and Mexico, to be distributed under separate preference systems, as compared to 20,000 visas for all other countries.

The decision by the Committee to limit all countries to 20,000 was based primarily on the desire that this legislation mark the final end of an immigration quota system based on nationality, whether the

rationale behind it be the alleged national origins of our citizenry, as it was in the past, or geographical proximity—the argument for preferential treatment of Canada and Mexico. The proposed legislation rejects the concept of a "special relationship" between this country and certain other countries as a basis for our immigration law, in favor of a uniform treatment for all countries.

Canadian immigration in recent years has been running considerably below 20,000. Mexico, however, led all other countries in fiscal year 1972 with a total of 64,040 immigrants.[5] Of these, 22,333 were exempt from numerical limitation and would be unaffected by the provisions of this bill. A total of 41,694 Mexicans entered under the Western Hemisphere ceiling of 120,000. It should be noted, however, that Mexico has one of the lowest naturalization rates of all countries. This bears out the theory, based in large part on experience during the extensive illegal alien hearings held by Subcommittee No. 1 during the 92nd Congress, that a considerable number of Mexicans enter this country solely for the purpose of employment, frequently for a limited period of time, and that a large number have no intention of moving here permanently. If this is the case, the proposed amendment in this bill to Section 101(a)(15)(H)(ii) to allow nonimmigrant H–2 workers to enter temporarily for jobs which are permanent in nature, should meet the needs of any who now enter from Mexico with immigrant visas because of the present restriction on the H–2 provision to employment which is temporary in nature. Similarly, this provision is designed to meet the needs of employers who, despite diligent efforts, are unable to locate U.S. workers to fill such jobs. The admission of these temporary alien workers is authorized only upon a certification by the Secretary of Labor that such admission will not adversely affect American workers and local labor market conditions.

In addition, in recent hearings held by a special imimgration study group on Guam, it was found that the restriction on the admission of H–2 workers (i.e. to employment which is temporary in nature) has had a severe impact on Guam's economy. There was a consensus of opinion among the witnesses who appeared before the study group that a liberalization of the H–2 provision would substantially assist the tourist and fishing industries of Guam. The current restriction on the admission of temporary workers to Guam has had the effect of placing Japanese and other foreign investors in a better competitive economic position than American businessmen. The Committee believes this to be patently unfair and feels that the removal of the temporary worker restriction will enable American employers in Guam to compete on a more equal basis.

REFUGEE PROVISIONS

H.R. 981, as amended, significantly amends the refugee provisions of the Immigration and Nationalty Act in an attempt to correct an inadequacy of current law. The bill amends both the seventh preference refugee category (Sec. 203(a)(7)), and the parole provision (Sec. 212(d)(5)).

Section 5 of the bill modifies the preference system by expanding the present refugee category to include conditional entry for political

[5] Immigration and Naturalization Service, 1972 *Annual Report*, p. 28.

refugees from any country in the world. Current law, on the other hand, restricts refugees to those who have fled from communism or from certain defined areas of the Middle East. Further, since the preference system only applies to the Eastern Hemisphere, under the present law an alien cannot qualify as a refugee if he is a native of a Western Hemisphere country. H.R. 981 would remove these ideological and geographical limitations of the present law, and create a program which is worldwide in application. The definition of "refugee" in the bill conforms with the definition of the term in the United Nations Protocol Relating to the Status of Refugees, to which the United States acceded, effective Nov. 1, 1968. The present seventh preference allocation of 6% of the total number of immigrant visas would be retained, providing a maximum of 10,200 conditional entries for the Eastern Hemisphere, and 7,200 for the Western Hemisphere.

In addition, Section 6 of H.R. 981, as amended, provides specific authority for the parole of groups or classes of alien refugees into the United States by the Attorney General under exceptional or emergency circumstances. If the refugees in question meet the definition of "refugee" contained in Section 203 (a)(7), the Attorney General may, pursuant to a recommendation by the Secretary of State, parole groups or classes of refugees into this country after appropriate consultation with the Congress. Such consultation is intended to mean, at a minimum, consultation with the House and Senate Judiciary subcommittees with jurisdiction over immigration and nationality legislation. The refugees so paroled would be permitted to apply for an adjustment of status to that of permanent resident alien two years after their parole into the United States.

The present parole authority granted the Attorney General is simultaneously ambiguous and far too broad. While the term "refugee" is not specifically mentioned in Section 212(d)(5), the Attorney General is given blanket authority at his discretion to parole "for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States." This has been broadly interpreted to include groups of refugees, with and without consultation with the Congress, and at times in contravention of the following statement of Congressional intent contained in the House Report on the 1965 amendments:

> * * * Inasmuch as definite provision has now been made for refugees, it is the express intent of the committee that the parole provisions of the Immigration and Nationality Act, which remain unchanged by this bill, be administered in accordance with the original intention of the drafters of that legislation. The parole provisions were designed to authorize the Attorney General to act only in emergent, individual, and isolated situations, such as the case of an alien who requires immediate medical attention, and not for the immigration of classes or groups outside of the limit of the law.[6]

The reaction of the State Department to a specific delineation of the Attorney General's authority, as well as some of the past history of the use of the parole provision were discussed during the hearings by Hon. Francis L. Kellogg, Special Assistant to the Secretary of State for Refugee and Migration Affairs:

[6] House Report No. 745, 89th Cong., 1st Sess., pp. 15-16.

Attorneys General have used the parole authority contained in existing Section 212(d)(5) to admit aliens for many purposes. For example, aliens have been paroled into this country to receive medical treatment, to prevent inhumane separation of families, and to enable entry for witnesses in judicial proceedings. Parole has been utilized in lieu of detention when the admissibility of an arriving alien cannot be immediately determined. Prior to 1965, the Section 212(d)(5) parole authority was the sole means of assisting the entry of homeless refugees. For example, more than 31,000 refugees from the 1956 Hungarian revolt have been paroled into the United States. In 1956, the parole authority was used to benefit more than 15,000 Chinese refugees then situated in Hong Kong.

The 1965 amendments enacted Section 203(a)(7) which authorized a limited number of conditional entries for aliens * * *

Because the 10,200 annual available conditional entries have been absorbed by the need to deal with refugees from many Eastern Hemisphere countries, the Attorney General, in consultation with the Department of State, has resorted to the 212(d)(5) authority when confronted with emergency situations requiring assistance to large numbers of homeless persons. This situation occurred during 1969 and 1970 when the 10,200 annual conditional entries were inadequate to deal with the humanitarian needs of large numbers of Czechoslovakian refugees.

The Section 212(d)(5) parole authority has also been used to admit as a humanitarian measure refugees who could not qualify as conditional extrants under Section 203(a)(7). The most recent example of this situation occurred on September 30, 1972, when the Attorney General authorized parole into the United States of up to 1,000 stateless Ugandan Asians who had been summarily stripped of their Ugandan citizenship by the Ugandan Government. Because the Ugandans were not fleeing from the "general area of the Middle East" or a Communist dominated country, they were ineligible under the statute for Section 203(a)(7) conditional entry consideration.

As noted previously, the parole authority contained in this bill is granted the Attorney General *only* "after appropriate consultation with the Congress". The Committee emphasizes the importance it places upon this consultation in the administration of the parole function. The Congress is charged by the Constitution with responsibility for the regulation of immigration, and this responsibility does not cease in the presence of an emergency refugee situation. We reiterate that such consultation is intended to mean, at a minimum, consultation by the Departments of State and Justice with the appropriate Judiciary subcommittees. In the event that the Congress is in recess, the chairmen and ranking minority members of these subcommittees should be consulted.

LABOR CERTIFICATION

The labor certification provision, intended to provide protection for U.S. labor, is contained in Section 212(a)(14) of the Immigration and Nationality Act. That section provides for the excludability of certain categories of aliens unless the Secretary of Labor issues a certification indicating (1) that there are not sufficient U.S. workers who are "able, willing, qualified, and available" in the alien's occupational category and (2) that the alien's employment will not adversely affect the wages and working conditions of similarly-situated American workers.

Under the current law, the labor certification provision is applicable to Eastern Hemisphere third and sixth preference immigrants, and to those nonpreference immigrants who are coming here "for the purpose of performing skilled or unskilled labor". It is presently applicable to all immigrants coming here to work who enter under the Western Hemisphere numerical limitation except for the parents, spouses, or children of U.S. citizens or of aliens lawfully admitted to the United States for permanent residence. H.R. 981, as amended, retains the labor certification provision in a slightly amended form, and extends it equally to third, sixth, and nonpreference applicants from both hemispheres.

In addition, Section 6 of H.R. 981 adds a new language requiring the Secretary of Labor to submit quarterly reports to the Congress "containing complete and detailed statements of facts pertinent to the labor certification procedures including, but not limited to, lists of occupations in short supply or oversupply, regionally projected manpower needs, as well as up-to-date statistics on the number of labor certifications approved or denied". This information is not presently forthcoming from the Labor Department. However, the information that has been received from independent sources indicates a considerable and disturbing lack of uniformity in the program's administration in different parts of the country.

In general, the Committee is of the opinion that the current administration of this provision by the Department of Labor has not been satisfactory. The labor certification program is a complex one—partly because of the complexity of the immigration law itself, but partly because of the failure of the Department of Labor to explain adequately the program to the public or even to the Congress, with whom it has been generally uncooperative. As a result, the program is operating with little in the way of public understanding, and the Department of Labor's efforts to implement this program have been attacked by courts and commentators alike as being arbitrary, unfair and violative of the Freedom of Information Act.

In this regard, the Committee notes that in May 1973, the Administrative Conference of the United States approved fairly extensive recommendations aimed at correcting procedural deficiencies in the labor certification of immigrant aliens. The Department of Labor has informed the Committee that they are taking action to implement these recommendations.

At present, to quote the Subcommittee Chairman:

> The scarcity of information certainly makes evaluation of the program's impact extremely difficult and the program appears to have engendered a disproportionate

number of problems when compared to the number of people involved. In fiscal 1972, 10 percent to 15 percent of the visas issued by the State Department involved labor certification. Further, studies show that the occupational mix since enactment of the more restrictive 1965 provision is very similar to the occupational mix prior to the amendment. This, of course, raises the question of whether it would be feasible to return to the pre-1965 provision, which caused many fewer problems; and whether that provision could be administered in such a way as to guarantee adequate protection for American workers.

The Subcommittee on Immigration, Citizenship, and International Law plans to return to this issue when more information is available; the continuation of the provision in its present form is intended only as an interim step until that time.

In a related amendment, H.R. 981 amends Section 101(a)(15)(H)(ii) to allow nonimmigrant H-2 workers to enter temporarily to fill jobs which may be permanent in nature. At present, the H–2 provision is restricted to employment which is temporary in nature. The amendments further require such aliens to obtain a labor certification as a precondition for entry, and limit their period of stay to a maximum of two years.

COLONIES AND DEPENDENCIES

Under the present provisions of the Immigration and Nationality Act, natives of colonies or dependent areas, with the exception of immediate relatives of U.S. citizens, are subject to subquotas derived from their mother country. The subquotas are limited to 1% (or 200) of the maximum number of 20,000 visas available to any foreign state in the Eastern Hemisphere. Backlogs have developed in approximately half of the dependencies as of January 1973.

In a provision aimed at providing a more reasonable allocation of visas, H.R. 981 would raise the annual allotment for the dependencies to 600. According to the Committee's computations, this would make visas current through the 6th preference for all areas except Hong Kong and Cape Verde.

Section 4 of H.R. 981 provides further that the visas made available to the dependencies would be charged only to the ceiling of the hemisphere in which they were located, and not to the mother country as is currently the case. This amendment is made at the recommendation of the Department of State, due primarily to the fact that Great Britain has 25 dependencies, ten of which are oversubscribed.

It should be emphasized that this provision in no way increases the total number of immigrant visas available under the law.

CUBAN ADJUSTMENTS

Section 8 of H.R. 981 provides that Cuban refugees who are present in the United States on the date of enactment of this legislation and who thereafter adjust their status to that of permanent residents shall not be charged to the 120,000 Western Hemisphere ceiling.

As background, legislation was enacted in 1966 [7] in direct response to the problem posed by the legal status of a growing number of Cuban refugees who, under the provisions of the immigration law, were unable to adjust their status to that of aliens admitted for permanent residence without first leaving the country and applying for readmission on an immigrant basis. The 1966 Act authorized the Attorney General to adjust the status of a Cuban refugee who arrived here after January 1, 1959 to that of permanent resident alien after he has been physically present in this country for two years. Refugees who adjust their status under the provisions of this Act are presently counted against the overall annual 120,000 ceiling on Western Hemisphere immigration. Both the majority of the Select Commission on Western Hemisphere Immigration and the State Department have recommended that the Cuban adjustees not be charged to the ceiling, primarily on the grounds that this special humanitarian program of the United States Government should not be conducted at the expense of other Western Hemisphere countries, as is presently the case.

While the numbers of Cuban refugees now eligible to adjust their status are sufficient to reduce significantly the immigrant visas available to other countries under the Western Hemisphere ceiling, they are not of a magnitude to cause alarm regarding the overall level of immigration into this country; nor is this number increasing. The Cuban airlift was formerly terminated on April 6, 1973, at the request of the Cuban Government, and the Department of Health, Education, and Welfare is in the process of phasing out the Federal Cuban Refugee Program reimbursements to the States, under the Migration and Refugee Assistance Act of 1962 (PL 87–510). The program will phase down beginning July 1973, and terminating by June 30, 1977.[8]

VIRGIN ISLANDS

Section 7 of H.R. 981 would establish a three-year program under which certain aliens now in the Virgin Islands in a temporary nonimmigrant status would be afforded an opportunity to acquire permanent resident status. Beneficiaries of this provision would include only aliens who had received indefinite labor certifications valid for employment in the Virgin Islands under a special procedure undertaken by the Department of Labor several years ago, and the spouses and children of such aliens. The legislation includes requirements that beneficiaries must have resided continuously in the Virgin Islands for at least five years; and that a total of not more than 3,000 visas may be issued to, and adjustments made for, such aliens in any fiscal year.

The Committee views this provision as essentially a housekeeping measure, intended to regularize the status of certain temporary alien laborers in the American Virgin Islands. This special foreign labor program was begun in 1956 as a result of recommendations made in 1955 by a special subcommittee of the House Committee on the Judiciary. It is anticipated that the Immigration and Naturalization Service and the Department of Labor will work closely with the Government of the Virgin Islands in implementing this section of the bill.

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[7] Act of November 2, 1966; PL 89–732; 80 Stat. 1161.

[8] *Federal Register*, April 10, 1973 (38 F R 9103). The final notice is published without change, effective July 1, 1973.

Section-by-Section Analysis of H.R. 981, as Amended

SECTION 1

The short title of the Act is the "Immigration and Nationality Act Amendments of 1973."

SECTION 2

Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act is amended to permit entry of aliens into the United States for a temporary period of time to perform services or labor which may be either temporary or permanent in nature. Under the present law, nonimmigrant "H–2" workers may be admitted only to perform temporary labor or services which are not of a permanent, ongoing nature. The period of stay of an alien classified as an H–2 nonimmigrant worker is limited to an initial period of one year, and may be extended by the Attorney General for up to one additional year. The present law contains no specific time limit on the period of stay.

A determination by the Secretary of Labor regarding the unavailability of U.S. workers is required as a precondition for the entry of H–2 workers, as it is currently for certain categories of immigrants.

SECTION 3

The present separate hemispheric ceilings of 170,000 for the Eastern Hemisphere and 120,000 for the Western Hemisphere are retained. Provision for both ceilings is incorporated into section 201(a) of the Immigration and Nationality Act, which currently provides only for the Eastern Hemisphere ceiling.

The amended section 201(a)(1) sets forth the Eastern Hemisphere ceiling, from which are exempted, as under the present law, both special immigrants defined in the amended section 101(a)(27) and immediate relatives of U.S. citizens defined in section 201(b). Added to those aliens chargeable to the Eastern Hemisphere ceiling are "aliens born in any . . . dependent area located in the Eastern Hemisphere." Immigrants from the dependencies are currently chargeable to the mother country.

Section 201(a)(2) incorporates the Western Hemisphere ceiling of 120,000 now contained in section 21(e) of the Act of Oct. 3, 1965 (79 Stat. 921). The categories of exemptions and inclusions under this ceiling are identical to those specified under section 201(a)(1) for the Eastern Hemisphere. To facilitate administration, not more than 32,000 aliens subject to this numerical ceiling may be admitted in each of the first three quarters of any fiscal year. This corresponds to the per-quarter restriction of 45,000 on aliens entering under the Eastern Hemisphere ceiling, retained from the present law.

The inclusion of the Western Hemisphere ceiling in section 201, in conjunction with language in the amended sections 202 and 203, has the twofold effect of extending equally to both hemispheres the 20,000 per-country limitation contained in section 202 and the preference system set forth in section 203. No separate treatment is provided for Canada and Mexico.

This section also repeals obsolete subsections 201(c)–(e) of the present law, which relate to the 1965–1968 transition period provided by the 1965 amendments (79 Stat. 911) to the Immigration and Nationality Act.

SECTION 4

Section 202(c) is amended to increase the numerical limitation on immigration from dependent areas of foreign states to 600 a year, and to provide that such visas shall be chargeable only to the hemisphere ceiling in which the dependent areas are located. Under the present law, the dependencies are limited to 1% of the maximum annual foreign state allotment of 20,000, or to 200 visas. These visas are chargeable against both the subquota of the mother country and the total ceiling of the hemisphere in which the mother country is located.

Section 202(a) is amended by the deletion of an obsolete proviso relating to the 1965–1968 transition period provided by the 1965 amendments (79 Stat. 912) to the Immigration and Nationality Act.

SECTION 5

Section 203(a) is amended to apply the existing preference system for the Eastern Hemisphere to natives of the Western Hemisphere. The preference system in the present law is retained, except for the redefinition of the term refugee in section 203(a)(7).

To be eligible for seventh preference refugee status under the amended definition, aliens must be outside the country of which they are nationals or if they have no country of nationality, outside the country in which they have habitually resided. They must satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country that they are unable or unwilling to return home because of persecution or well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion; that they are not nationals of the country in which they are making their application; and that they are not firmly resettled in any country.

The defintion of "refugee" has been amended to conform with the the U.N. Protocol Relating to the Status of Refugees, to which the U.S. has acceded. This definition differs from the definition contained in the present law in its extension of eligibility to refugees from any country. Seventh preference refugee status based on persecution is now specifically limited to refugees from Communist or Communist-dominated countries, and from countries in the Middle East. The amended language also broadens the definition of persecution, and eliminates catastrophic natural calamity as a basis for eligibility.

The distinction between the immigrant visas granted aliens under the other preference categories, and conditional entry for refugees is retained. The amended section 203(a)(7) contains a proviso similar to the one in the existing law, authorizing the use of not more than one half of the visa numbers made available for refugees (i.e., one half of 6% of the respective hemisphere ceilings) to adjust the status of aliens admitted conditionally or paroled into the United States. The inclusion of paroled aliens is an amendment to the present law. To be

eligible, aliens must meet the definition of refugee contained in this subsection, and have been physically present in the United States for two years.

Section 203(e) is amended to require the Secretary of State to terminate the registration of any alien who fails to apply for an immigrant visa within one year after notification of availability of the visa. Such aliens are permitted one additional year to acquire a visa if they can demonstrate that their failure to apply within the prescribed time was due to circumstances beyond their control. Under the present law, the Secretary of State is authorized, as his discretion and according to prescribed regulations, to terminate the registration on a waiting list of any alien who fails to evidence his continued intention to apply for a visa, but such discretionary authority has been exercised very infrequently.

SECTION 6

1. Labor certification

Section 212(a)(14) of the Immigration and Nationality Act, the labor certification requirement, is amended by the addition of a new reporting requirement. The Secretary of Labor is required to submit quarterly reports to the Congress including, but not limited to, lists of occupations in short supply or oversupply, regionally projected manpower needs, and up-to-date statistics on the number of labor certifications approved or denied.

Section 212(a)(14) is also amended to reflect the extension of the preference system to natives of the Western Hemisphere under sections 3 and 5 of this Act. Reference to Western Hemisphere natives as "special immigrants" is deleted, as is the exemption from labor certification currently granted natives of the Western Hemisphere who are close relatives of U.S. citizens and permanent residents. Under the amended law, labor certification is required of immigrant aliens from both hemispheres entering under the two occupational preferences (203(a) (3) and (6)), and under the nonpreference category (203(a)(8)).

Part (A) of the labor certification requirement is amended by the deletion of the phrase "in the United States" following reference to "sufficient workers", to emphasize the intent that the Secretary of Labor certify on the basis of whether there are sufficient workers "at the place" where the alien is going, rather than in the United States as a whole. A second change in the wording of part (A) is of an editorial nature.

2. Parole of refugees

A new paragraph (9) is added to section 212(d) of the Immigration and Nationality Act, providing specific authority for the parole of alien refugees by the Attorney General. Subparagraph (9) is in addition to subparagraph (5) of section 212(d), retained from the present law, which authorizes the Attorney General, at his discretion, to temporarily parole in aliens "for emergent reasons or for reasons deemed strictly in the public interest." Consequently, section 212(d)(5) is restored to its original purpose and intent, that is, the admission of aliens in emergent, individual and isolated situations.

Section 212(d)(9) provides that the Secretary of State, if he finds it in the national interest, may recommend to the Attorney General that groups or classes of individuals who qualify for conditional entry under the definition of "refugee" contained in section 203(a)(7) be

paroled into the United States. After receiving such a recommendation, the Attorney General is required to consult with Congress prior to paroling such aliens into the country.

Aliens so paroled may retroactively adjust their status to that of permanent residents two years after their entry, provided they are found admissible upon inspection and examination by an Immigration and Naturalization Service officer. Under the terms of section 203(a)(7), these aliens may be charged to the seventh preference allotment for refugees who adjust their status. However, their adjustment is not contingent upon the availability of visa numbers under this preference. The law states that refugees paroled in under section 212(d)(9) may adjust their status "notwithstanding the numerical limitations specified in this Act" (sec. 212(d)(9)(D)).

SECTION 7

This section, which does not amend the Immigration and Nationality Act, establishes a program under which certain aliens now in the U.S. Virgin Islands may adjust their status to that of permanent resident aliens. Eligibility is limited to nonimmigrant aliens (H–2 workers) in possession of indefinite labor certifications valid for employment in the U.S. Virgin Islands, and their spouses and minor unmarried children. Beneficiaries must have resided in the U.S. Virgin Islands for at least five years. Applications for adjustment of status may be filed for a period of three years. The number of visas issued and adjustments made is restricted to 3,000 during any one fiscal year. Visas are to be issued and adjustment made without regard to any numerical limitations contained in the Immigration and Nationality Act, and irrespective of section 245(c) of that Act, which prohibits aliens who are natives of countries of the Western Hemisphere and the adjacent islands to adjust their status.

SECTION 8

This section amends the Act of Nov. 2, 1966, "An act to adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes" (P.L. 89–732; 80 Stat. 1161; 8 U.S.C. 1255, note). A new section 5 is added to that Act to provide that Cuban refugees who adjust their status to that of permanent resident alien pursuant to its provisions will not be charged to any numercial limitation, provided they were physically present in the United States on or before the effective date of the Immigration and Nationality Act Amendments of 1973. At present, refugees who adjust their status to that of permanent resident alien, pursuant to the Act of Nov. 2, 1966, are classified as "special immigrants" under the terms of the Immigration and Nationality Act (sec. 101(a)(27)(A)), and as such are chargeable to the 120,000 annual ceiling on Western Hemisphere immigration (Act of Oct. 3, 1965, sec. 21(e)).

SECTION 9

This section makes technical and conforming changes in the Immigration and Nationality Act. Specifically, it deletes the classification of Western Hemisphere immigrants as "special immigrants" under section 101(a)(27)(A) of that Act, as well as all cross-references to that

classification; and it repeals section 21(e) of the Act of Oct. 3, 1965 (P.L. 89–236; 79 Stat. 921), which is rendered obsolete by section 3 of this Act.

SECTION 10

Section 10(a) contains a savings clause aimed at preserving the entitlement to immigrant status and order of consideration of aliens from the Eastern Hemisphere who have filed a petition with the Attorney General prior to the effective date of this legislation. Section 10(b) provides that Western Hemisphere aliens who filed prior to the effective date of this legislation are deemed entitled to nonpreference immigrant status under section 203(a)(8), and accorded their previously established priority date. They are further entitled, if eligible, to preference status under section 203(a) of the Immigration and Nationality Act, as amended by section 5 of this Act. The numerical limitation to which such aliens are to be charged will be determined by sections 201 and 202 of the Immigration and Nationality Act, as amended by this Act.

SECTION 11

The effective date of this legislation is established, which is on the first day of the first month after the expiration of 60 days following the date of enactment.

ESTIMATE OF COST

Pursuant to the requirements of clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee estimates that the execution of the provisions of this bill will result in an increased Federal cost of $1,368,000 for each fiscal year following enactment of this Act.

COMMITTEE RECOMMENDATION

The Committee, after careful and detailed consideration of all the facts and circumstances involved in this legislation, is of the opinion that this bill should be enacted and accordingly recommends that H.R. 981, as amended, do pass.

DEPARTMENTAL REPORTS

Two separate reports have been submitted from the Acting Assistant Secretary for Congressional Relations, Department of State. These reports which are based on the provisions of H.R. 981, as introduced, are as follows:

DEPARTMENT OF STATE,
Washington, D.C., March 29, 1973.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives

DEAR MR. CHAIRMAN: Secretary Rogers has asked me to reply to your letter of February 8, 1973, enclosing for the Department's study and report a copy of H.R. 981, "A bill to amend the Immigration and Nationality Act, and for other purposes."

Section 1 of the bill would amend the definition of "special immigrant" contained in section 101(a)(27) by deleting the present subparagraph (A) of that section, by inserting as a new subparagraph (A) a broadened definition of "immediate relative," and by inserting as a new subparagraph (B) "native of any country contiguous to the United States" and the spouse or child of such an alien. The present subparagraphs (B), (C), (D), and (E), would be redesignated (C) through (F). The Department has no objection to the inclusion of unmarried sons and daughters of United States citizens in the class of close relatives whose immigration is not numerically limited.

The Department also favors defining as "special immigrants" only those classes of aliens whose immigration is not numerically limited and including in the definition all such classes of aliens. In this connection, it is noted that in section 5 of this bill the proposed new section 203(a)(6) would include a proviso according "special immigrant" status derivatively to an alien who is the spouse or child of an alien classified under section 101(a)(27)(A) and who is not otherwise entitled to an immigrant classification and to immediate visa issuance.

The Department supports this proposal, but believes that, for purposes of clarity, it would be preferable to incorporate the provision into proposed section 101(a)(27)(A) itself rather than to have it appear in a section which otherwise treats the classification of aliens whose immigration is numerically limited.

Because of the special relationships which exist between the United States and those countries (Canada and Mexico) which are contiguous to us, the Department favors special provisions for immigration from those two countries. On the other hand, the Department believes that a total exemption from all numerical limitations is inconsistent with our general immigration policy and that it could well have undesirable foreign policy implications vis-a-vis other countries. The Department would, therefore, propose a separate numerical limitation of 35,000 on immigration from each contiguous country. The Department would further recommend that the preference system, whatever form it may take, be applied to these limitations. If such a limitation were to be imposed, the Department would then recommend that natives of contiguous territory not be included among the classes of aliens defined as "special immigrants" and that the special provision relating to these two countries be included in section 201.

If it is determined that no numerical limitation should be imposed upon immigration from Canada and Mexico the Department would suggest that the proposed subparagraph of section 101(a)(27) be designated (F) rather than (B) in order to avoid the procedural difficulties connected with the redesignation of present subparagraphs (B) through (E).

Section 2 would amend section 201 of the Act to establish a single worldwide numerical limitation of 250,000 for all countries and other territories except Canada and Mexico. Because section 5 of the bill, which is discussed in detail below, would significantly amend the preference system now applicable to the Eastern Hemisphere and would apply that amended system to the Western Hemisphere as well, the Department would favor retaining separate hemispheric limitations, at least until the effect of imposing a preference system on the Western Hemisphere can be observed and evaluated. The Department is, however, in favor of establishing a preference system for the Western Hemisphere in order that such an evaluation can be made.

We would suggest that the proposed 250,000 world-wide numerical limitation be divided between the two hemispheres: the Eastern Hemisphere to retain its current 170,000 limitation and the remaining 80,000 to be established as the limitation for the Western Hemisphere less Mexico and Canada.

It is also noted that no quarterly limitation on visa issuance is provided in the revised section 201. This limitation has been helpful in providing a statutory basis for the issuance of visas on an equal monthly basis.

Section 3 would amend section 202(a) of the Act to increase the annual foreign state limitation from 20,000 to 25,000 and would have the effect of extending this limitation to all countries of the Western Hemisphere except Canada and Mexico. While we favor the establishment of a foreign state limitation for countries of the Western Hemisphere, we do not favor the proposed increase from 20,000 to 25,000. It appears that such an increase would serve to increase immigration by natives of those countries already receiving the greatest number of immigrant visas, thereby reducing the amount of visa numbers available to natives of other countries.

Section 4 would amend section 202(c) to increase from 1 percent to 3 percent the percentage of the foreign state limitation available to a dependent area. This would have the effect of raising the amount of visa numbers available to dependent areas from 200 to 750 per annum. The Department supports the objective of this amendment, but wishes to point out that, as long as immigration from dependent areas is charged to the numerical limitation of the governing country, such an amendment might be prejudicial to immigrants who are natives of Great Britain, which has 25 dependencies of which 10 are oversubscribed. It would therefore appear that this amendment would permit British dependencies to take from 7,500 to 9,000 (with a possible potential of 18,750) numbers annually from the 25,000 limitation for Great Britain generally.

The Department would therefore recommend that, instead of charging dependent area immigrants to the governing country's foreign state limitation, the numerical limitation for each dependent area to be established within the hemispheric ceiling for the hemisphere in which the dependent area is located. This would avoid penalizing those few countries which still have dependent areas. It would, however, place an additional strain on the Western Hemisphere limitation since most of the dependent areas are located in this hemisphere.

Section 5 would revise the preference system in the following ways:

(1) It would combine several present preference categories based on relationship into a new first preference category, for which 25%, or 62,500 immigrant visas, would be reserved. The present equivalent categories are: second preference (spouses, unmarried sons and daughters of permanent residents); fourth preference (married sons and daughters of United States citizens); and that portion of the present fifth preference category consisting of unmarried brothers and sisters of United States citizens.

In addition, this proposed preference category would include the parents of a permanent resident at least twenty-one years of age. The Department strongly supports the principle of according a preference status to the parents of an adult permanent resident.

Married brothers and sisters of United States citizens, who are presently included in the fifth preference category, would not be included in this or any other proposed preference category. The Department recognizes that the inclusion of married siblings in a preference category can lead to a continual broadening of demand in that category and is, therefore, sympathetic to this amendment. It should be pointed out, however, that distinguishing between siblings on a basis as transitory as marital status could lead to fraud.

While the Department supports, of course, the concept of preferential treatment for close relatives of United States citizens and permanent residents, we believe that the establishment of a single preference category for all such aliens would create difficulties. Although accurate data are not available concerning the numbers of Western Hemisphere-born aliens who might seek this proposed first preference classification, indications are that there would be a heavy demand upon the available numbers. Such a demand, together with a level of demand by Eastern Hemisphere-born aliens equal to that of the last several years, could well cause this category to become oversubscribed. Should this occur, all first preference aliens would face an equal waiting period, without regard to the nature of their respective relationships. The Department believes that this would be an undesirable result and therefore recommends that separate preference categories be retained for distinct classes of relatives.

(2) It would raise the present third preference category (members of the professions, scientists and artists) to second preference and would reserve 25 percent (62,500) of the numerical limitation for this category. It would, in addition, add two provisos; the first, that no more than 10 percent of the second preference visas per year could be made available to natives of any single foreign state; the second that no alien qualified for second preference would be entitled to third or fourth preference (see discussion of these two categories below) or to nonpreference.

It is extremely difficult to foresee the effect of this change, especially as the entire pattern of issuance of visas to members of the professions would be modified by the revision of the preference system. The Philippines, for example, whose nationals presently receive over 50 percent of the third preference immigrant visas issued would apparently be directly affected by the 10 percent limitation. It is possible, however, that Philippine relatives entitled to the proposed first preference classification might use so much of the proposed 25,000 foreign state limitation that philippine second preference applicants could not be issued as many as 6,250 immigrant visas in any event, rendering the proviso unnecessary for this purpose. On the basis of recent immigration patterns, it would not appear that the 10% limitation would be reached for most other countries.

The practical effect of the second proviso is equally difficult to foresee. Currently an alien entitled to third preference classification may seek sixth preference classification also if he is able to obtain prearranged employment in this country. He may also be considered for issuance of a nonpreference visa, either with or without prearranged employment. The second proposed proviso would prevent such an alien from seeking the new third preference classification on the basis of prearranged employment or from being documented as

a nonpreference applicant. While it cannot be predicted what, if any, effect this proviso would have from an operational standpoint, it appears contradictory not to allow an alien who possesses qualifications needed in this country possibly to expedite his immigration by arranging for specific employment here.

In connection with the second proviso to proposed section 203(a)(2), it is presumed that the phrase "qualified for admission" in line 11 of page 4 is intended to refer only to beneficiaries of approved petitions under this new second preference rather than to all aliens potentially eligible for second preference status.

(3) It would reserve 25 percent (62,500 visas) of the numerical limitation, plus visa numbers not required by higher preferences, for a new third preference category consisting of skilled workers in whose occupational field there is a shortage of employable and willing persons in the United States. Since it appears that an unskilled worker with certified prearranged employment would be entitled to nonpreference classification under proposed section 203(a)(5), the Department perceives no objection to treating skilled and unskilled workers separately.

(4) It would establish a new forth preference category for which 15 percent (37,500) of the numerical limitation, plus visa numbers not required by higher preferences, would be reserved for the following classes of aliens:

(a) Religious workers who had been engaged in such work for two years and who were coming to perform such tasks for a bona fide religious organization;

(b) Aliens who do not intend, or need, to seek employment in the United States; and

(c) Aliens seeking to invest a substantial portion of the capital, commodities, services, patents, processes or techniques in an agricultural or commercial enterprise in this country.

A petition would be required for the religious workers, whereas the other two classes would presumably acquire fourth preference status simply by presentation of appropriate evidence to a consular officer and without the submission of a petition. While the Department favors the petition requirement for religious workers, we feel that it is unwise to include in a single preference category a class of aliens for whom a petition is required with two classes for whom no such requirement exists.

The Department believes it would be preferable to expand the definition of present section 101(a)(27)(D) to include these religious workers as well as "ministers of religion" and to require approval of a petition for classification under this expanded section 101(a)(27)(D).

In addition, it is noted that proposed section 203(a)(4)(C) refers to the investment of commodities, services, patents, processes or techniques, as well as the investment of capital. It is our opinion that such a provision is too broad and would be very difficult to administer, and we would thus recommend that any such provision be restricted to the investment of capital or patents only.

(5) It would reserve the remaining 10%, plus any visa numbers not required by the preference categories, for nonpreference applicants. Of the total available to nonpreference applicants, one-fourth would be set aside for use by aliens under twenty-five years of age and such aliens would not be subject to the provisions of section 212(a)(14) of the Act. It would appear that two classes of aliens would compete

for the 18,750 plus visa numbers available to nonpreference applicants generally, i.e., aliens seeking to perform unskilled labor for whom offers of employment had been certified by the Department of Labor, and aliens registered on third or fourth preference waiting lists whenever those categories became oversubscribed. This would be the case because a preference category would be provided for all other classes of aliens who, under the present preference system, can qualify only for nonpreference.

The Department believes that setting aside one-fourth of the available nonpreference numbers for aliens under 25 who would not be required to meet the requirement of section 212(a)(14) might create procedural problems. In the first place, because of the provision for "fall-down" to the nonpreference category, the exact number to be set aside for this specific purpose in any fiscal year would not be specifically determinable until after the fiscal year had ended. Further, the elimination of section 212(a)(14) as an applicable ground of ineligibility would also eliminate it as a qualifying test, which function it serves elsewhere throughout the sytem. A different test would have to be established for qualification under this provision. Also, since it would be provided that section 212(a)(14) would be inapplicable to eligible aliens, it may be anticipated that even aliens who could qualify under that section would seek to make use of this provision simply because of the eased requirement.

It is thus foreseeable that this proposed category will become oversubscribed and that a waiting period for issuance of an immigrant visa will thereby result. Should this occur, there may well be cases in which the alien is under 25 when he initiates his application, but will have reached that age before final action can be taken in his case. This not only would disappoint and inconvenience the alien but would also complicate the administration of this section.

Finally, aliens applying under this provision could well face difficulties in meeting the requirements of section 212(a)(15)—the public charge provision—at the time of visa application.

For these reasons, the Department is opposed to the enactment of such a proviso.

In summary, the Department believes that (1) the present system of separate hemispheric limitations should be retained; (2) certain adjustments should be made in the present order and definition of preferences; (3) the preference system and foreign state limitations should be applied to countries of the Western Hemisphere other than Canada and Mexico; and (4) special provision outside the hemispheric limitations should be made for Canada and Mexico. This view results from our observation of several unintended side-effects of the revision of the preference system in 1965 and our belief that, because some of the 1965 amendments did not come into force until mid-1968, there has not yet been a sufficient opportunity to fully evaluate all of their effects. For this reason, we feel that it would not be desirable to undertake more major revisions than these at this time.

Finally, *section 5* would make technical amendments to sections 203(b), (c), and (d), to conform to the revised preference system, and would omit present sections 203(f), (g), and (h) relating to refugees, for whom this bill would make other provision. It should be noted that, in section 203(c), the language "visas shall be made available" in a specified order is preferable to "visas shall be issued," since we

have no control over the order in which aliens who have been invited to apply for visas will actually come forward to do so.

Section 6 would amend section 204(a) to conform to the revised preference system and would also add to that section a provision allowing an alien to seek the proposed third preference status without an offer of employment, on the basis of a determination by the Secretary of Labor that there was a shortage of workers in the United States qualified in the occupation in which the alien was qualified. The Department will defer to the comments of the Departments of Labor and Justice with respect to this proposal, but questions whether it is appropriate to consider such a proposal at this time.

In the absence of an employer requirement for this preference category, the certification required under section 212(a)(14) could be made only on the basis of a finding by the Secretary of Labor that there was a general shortage in the United States of workers possessing the skills possessed by an alien who filed a petition in his own behalf. Since no such findings are presently in effect, skilled workers must seek prearranged employment in order to apply for labor certification. Thus, at the present time, such a provision would serve no useful purpose.

In addition, when the economic situation in the United States becomes such that such findings would be warranted in one or more skilled occupations, aliens who acquired this status on that basis would remain subject to loss of status, as a class, should a further change in economic conditions warrant the withdrawal of one or more of the findings.

Section 6 would also amend section 204(b) to provide for the transmission of approved petitions directly to the consular office at which the alien will apply for a visa. The Department favors this proposal.

Finally, this section would make technical amendments to section 204 (b) and (c), would delete section 204(d) and would make technical amendments to section 204(e) and redesignate it as section 204(d).

Section 7 would amend section 211 by adding a new subsection (c) similar in effect to that which existed prior to the Act of October 3, 1965. It would provide statutory authority for the admission of an alien who was determined, at the time of application for admission as an immigrant, to be inadmissible because he had been charged to the wrong foreign state, or had been accorded a special immigrant or preference status to which he was not entitled. The alien's admission would be conditioned on a finding that he neither knew of nor could reasonably have ascertained the defect. The Department will defer to the comments of the Department of Justice, but feels that such a provision is both equitable and appropriate.

Section 8 would amend the second sentence of section 212(a)(14), regarding the classes of aliens to whom the provisions of that section shall be applicable, to conform with the changes in the preference system. It should be noted that there is an apparent conflict between this proposed amendment and the proviso to the proposed new section 203(a)(5) which provides that certain aliens classifiable under section 203(a)(5) shall not be subject to the provisions of section 212(a)(14).

Section 9 of the bill would establish a new procedure under which all refugees admitted to the United States would be processed under a parole procedure provided in an amended form of present section 212(d)(5). The Department will submit comments on this provision separately.

Section 10 would amend section 212(g) to add ineligibility because of affliction with a psychopathic personality, sexual deviation or a mental defect to those grounds for which that section provides relief in certain cases. Since this proposed amendment involves a granting of relief from ineligibility on medical grounds, the Department will defer to the comments of the United States Public Health Service.

Section 11 would repeal section 21 of the Act of October 3, 1965 which would be superseded by sections 1, 2, and 5 of this bill.

The Department wishes to point out that there are certain classes of Western Hemisphere-born aliens now entitled to immigrant classification who would no longer be so entitled under this bill—the parents of minor United States citizens and of minor permanent resident aliens. Many such aliens have already made their entitlement to classification a matter of record and are registered on consular waiting lists. The Department therefore recommends that provision be made for preserving such entitlement for aliens who had been registered on a waiting list by a consular officer prior to the effective date of this bill. This could be accomplished by including in the bill a provision under which any such alien would be deemed to be entitled to nonpreference status under proposed section 203(a)(5) as of the date he established his entitlement to immigrant classification.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely yours,

MARSHALL WRIGHT,
Acting Assistant Secretary for Congressional Relations.

DEPARTMENT OF STATE,
Washington, D.C., April 3, 1973.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In my letter of March 29, 1973, concerning H.R. 981, I stated that the Department would submit separately its comments on section 9 of the bill which deals with the admission of refugees into the United States. I am pleased to submit at this time the Department's comments on this section.

Section 9 of the bill would amend section 212(d)(5) of the Act to redesignate the present text as subparagraph (A) thereof and to add as subparagraphs (B) through (F) thereof provisions for the parole of alien refugees into the United States and for the granting of permanent resident status to such aliens after two years. Proposed subparagraphs 203(a)(7), 203(g) and 203(h) and would be the only provisions in the Act for the admission of alien refugees.

The proposed changes would have three principal effects. First, they would clarify the use of the parole authority with respect to refugees. The present authority for parole in section 212(d)(5) does not specifically mention refugees, and it is couched in terms of individuals. The appropriateness of its use for classes of individuals has been a troublesome issue. The Department welcomes legislation dealing explicitly with the parole of refugees, and designed to make it clear that the parole authority may be exercised in favor of classes of refugees as well as in individual cases.

We are not certain, however, that the bill clearly accomplished the latter objective. Proposed sections 212(d)(5)(B) through (F) are phrased so as to apply to individual aliens whose cases would be examined and judged on their individual merits. On the other hand, both the requirement of subparagraph (B) for consultation between the Attorney General and the Secretary of State and the provision in subparagraph (D) for Congressional review of the Attorney General's exercise of the parole authority appear to be designed to operate in terms of classes of alien refugees—as, for example, the Hungarian refugees of 1956—rather than with respect to individual cases. We foresee that this dichotomy could complicate the administration of this proposed section.

The second principal effect of this proposal would be to facilitate the acquisition of permanent resident status be refugees paroled into the United States by providing for their acquisition of permanent resident status after two years' physical presence in the United States without numerical limitation. The Department believes that the limitations on immigration should not affect the ability of such aliens to acquire permanent resident status both because the general system of numerically limited immigration does not lend itself well to the needs of refugees and because normal immigration could be disrupted by applications for permanent residence by a large number of refugees. Accordingly, the Department favors this concept as embodied in section 9 of the bill.

Thirdly, enactment of this proposal would establish the parole procedure as the sole mechanism for admission of refugees as such, and, would end the present procedure for conditional entry and adjustment of status of refugees under present section 203(a)(7) of the Act. The Department believes, however, that a provision such as section 203(a)(7) also serves a useful purpose in that it provides a known, regular and orderly means of allowing the United States to provide haven to refugees who have fled situations which they find intolerable. There is a continuous flow of such persons out of, for example, the countries of Eastern Europe and the existence of a fixed allocation of visa numbers for refugees serves as a permanent visible indication of United States concern for such persons. On the other hand, proposed sections 212(d)(5)(B) through (F) would enable this country to respond to sudden emergency situations such as the Hungarian Revolution of 1956.

As a technical matter, the Department would prefer that the words "fled or shall flee from" appearing in lines 5 and 10 of page 12 of the bill be changed to read "left or shall leave." Also, it would appear that the word "therefore" in line 7 of page 13 should be changed to read "theretofore".

The Department, while it supports the concept of continuing to accord refugee status to victims of catastrophic natural calamity, believes that the word "unwilling" which appears at line 15 on page 12 of the bill should be changed to read "unable".

Finally, the Department would prefer that the provision for consultation by the Attorney General with the Secretary of State be modified to allow for a recommendation by the Secretary of State to the Attorney General as well as consultation. This would confirm the Secretary's authority to take the initiative in an emergent refugee situation. Also the Department believes that proposed subparagraph (B) should also be modified to eliminate the restriction making it

impossible for an alien to seek parole while still physically present in a Communist, Communist dominated or Communist occupied country. Had such a provision existed in 1956, the United States would have been unable to assist the numerous Hungarian Freedom Fighters who fled to Yugoslavia rather than to Australia.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely yours,

MARSALL WRIGHT,
Acting Assistant Secretary for Congressional Relations.

A formal report on H.R. 981 has not been received from the Department of Justice. However, the views of the Department of Justice on H.R. 981 as introduced are contained in the prepared statement of the Honorable James D. (Mike) McKevitt, Assistant Attorney General, Office of Legislative Affairs, which was submitted to the Subcommittee on Immigration, Citizenship, and International Law on April 12, 1973. This statement is as follows:

STATEMENT OF MIKE MCKEVITT, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS

Mr. Chairman, it is a pleasure to return to Subcommittee Number One to present the views of the Department of Justice on H.R. 981, a bill "To amend the Immigration and Nationality Act, and for other purposes."

Because this is comprehensive legislation, proposing many changes in the immigration and nationality laws, I will discuss each section of the bill separately.

Section 1 amends section 101(a)(27) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(27), by redefining the categories of aliens to be included within the classification of "special immigrant" under subsections (A) and (B).

Subsection (A), as amended, would embrace an immigrant who is the spouse, unmarried son or daughter, or parent of a citizen of the United States provided that in the case of the parent, the citizen must be at least twenty-one years of age. By this amendment, "immediate relatives" defined under existing law in section 201(b) of the Immigration and Nationality Act, 8 U.S.C. 1151(b), and the unmarried sons and daughters of United States citizens presently accorded first preference classification in section 203(a)(1) of the Act, 8 U.S.C. 1153(a)(1), are made "special immigrants".

Subsection (B), as amended, would encompass an immigrant who is a native of any contiguous country and his accompanying or following to join spouse and children. Thus, with the foregoing exception, all natives of Western Hemisphere countries and the Canal Zone who are included under existing law in the classification of "special immigrant" would be removed from this category. They are provided for in section 2 of the bill. Under the bill any native of Canada and Mexico and his accompanying or following to join spouse and children would not be subject to any numerical limitation.

Present sections 101(a)(27) (B), (C), (D) and (E) are redesignated as (C), (D), (E) and (F).

We perceive no objection to the redesignating of immediate relatives as special immigrants and we support the broadening of this category to include unmarried sons and daughters of United States citizens. It is also appropriate to remove from the special immigrant category Western Hemisphere immigrants who are no longer exempt from numerical limitations.

Section 2 of the bill amends section 201 of the Immigration and Nationality Act, 8 U.S.C. 1151, by establishing a world-wide numerical limitation on the number of aliens who may be issued immigrant visas at 250,000 exclusive of "special immigrants."

Under existing law section 201 of the Act provides for a limitation of 170,000 in the issuance of immigrant visas tc natives of the Eastern Hemisphere and section 21(e) of the Act of October 3, 1965, 79 Stat. 911, provides for a numerical limitation of 120,000 for the Western Hemisphere. These numbers are exclusive of special immigrants and immediate relatives.

Whether a single world-wide numerical limitation is desirable is a matter which lies within the expertise of the Department of State.

Section 3 of H.R. 981 amends section 202(a) of the Act, 8 U.S.C. 1152(a), by providing for an annual limitation on immigrant visas which may be issued to natives of any single foreign state to 25,000. This limitation relates to natives of both hemispheres except natives of contiguous countries.

Under existing law the annual issuance of immigrant visas to natives of any single foreign country in the Eastern Hemisphere, exclusive of special i nmigrants and immediate relatives, is limited to 20,000. The present law does not impose any limit on the number of natives of any independent country of the Western Hemisphere who may be issued immigrant visas. There is, however, an overall Western Hemisphere limitation of 120,000.

If a world-wide numerical limitation is to be established as provided in section 2 of this bill, it is appropriate that there likewise be established an annual limitation on immigrant visas issued to natives of any single country which should be applied to the Western Hemisphere as well as the Eastern Hemisphere. What the number should be is a matter of legislative policy.

Section 4 of the bill amends section 202(c) of the Act, 8 U.S.C. 1152(c), by increasing the number of visas which may be issued to immigrants born in dependent areas of foreign states (colony, component, etc.) from one percent to three percent of the maximum number of immigrant visas available to each foreign state.

An increase in the number of immigrant visas which may be made available to natives of dependent areas is desirable. Whether the number should be increased to three percent of the maximum number of immigrant visas available to each foreign state and whether the numbers should be charged against a foreign state limitation of the governing state is a matter which lies within the expertise of the Department of State.

As technical matters, on line 25 of page 2, "(8 U.S.C. 152)" should undoubtedly read "(8 U.S.C. 1152)" and on line 3 of page 3, "section 11(a)(27)" should read "section 101(a)(27)".

Section 5 of H.R. 981 amends section 203 of the Act, 8 U.S.C. 1153, by completely revising the preference categories. It sets up four preference categories within the annual numerical limitation of 250,000 on visa issuance and specifies the percentage of those 250,000 visas

which may be allocated to each of the four preferences, exempts nonpreference immigrants, who are under the age of twenty-five, from the labor certification requirement and gives them a priority of 25 percent in the issuance of nonpreference immigrant visas.

The First Preference.—Spouses and unmarried sons or daughters or parents of lawful permanent resident aliens, provided that in the case of a parent such alien lawfully admitted for permanent residence must be at least twenty-one years of age; married sons or daughters of United States citizens; and unmarried brothers or sisters of United States citizens. (25 percent)

The Second Preference.—Qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States. Commencing July 1, 1973 the total number of such immigrant visas made available to natives of any single foreign state cannot exceed 10 percent in any fiscal year. Also, persons qualified for admission under this paragraph are ineligible for any other preference or priority except by reason of relationship to a United States citizen or to an alien lawfully admitted to the United States for permanent residence or as a nonpreference immigrant. (25 percent) There is no fall-down from the first preference to the second preference.

The Third Preference.—Qualified immigrants who are capable of performing specified skilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States. (25 percent) There is an additional fall-down from the first two preferences to this preference classification.

The Fourth Preference.—Without any priority among these classes, this new fourth preference classification may be granted to certain employees of religious denominations, aliens who establish that they will not seek employment in this country, and investors in commercial or agricultural enterprises. (15 percent) There is an additional fall-down from the first three preferences to this preference category.

With respect to the investors who would be granted a fourth preference, it is noted that the language of proposed section 203(a)(4)(C) does not require a substantial investment but merely that the investment made by the alien comprise a "substantial portion of the capital, commodities, services, patents, processes or techniques invested in such enterprise". Thus if the total capitalization of the enterprise is $1,000 and the alien invested $600, he could be deemed to qualify. Also, it would be most difficult to assess whether the "services, patents, processes or techniques invested" by the alien comprise a "substantial portion" qualifying the alien for the preference. It would appear that every sole investor of capital, commodities, services, patents, processes or techniques would qualify no matter how small the investment, since if he is supplying 100 percent of the investment he would meet the statutory requirement of investing "a substantial portion".

The Committee may wish to consider substituting the following language for the language in proposed section 203(a)(4)(C): "aliens seeking to enter the United States for the purpose of engaging in a commercial or agricultural enterprise in which they have invested or actively in the process of investing capital totalling at least $10,000 and who establish that they have had at least one year's experience or training qualifying them to engage in such enterprise."

Visas left unused by the four new preference categories would descend to the nonpreference category. Whereas existing law permits 100 percent of the visas to be allocated to the preference categories, this bill allocates a maximum of 90 percent of the 250,000 visas to the four preference categories, reserving at least 10 percent for the nonpreference category. Within the nonpreference category, a priority of up to 25 percent of the available immigrant visas is given to qualified immigrants who are under twenty-five years of age at the time of application for a visa and for admission to the United States and such qualified immigrants within this priority are exempt from the labor certification requirement of section 212(a)(14) of the Act, 8 U.S.C. 1182(a)(14).

The proposed section 203(a)(6) provides that an accompanying spouse or child (other than an orphan as defined in section 101(b)(1)(F) of the Act, 8 U.S.C. 1101(b)(1)(F)), shall be entitled to the preference or nonpreference classification of the spouse or parent or to be classified as a special immigrant, if a visa is not otherwise available.

Other conforming changes are made in section 203.

The Department of Justice defers to the expertise of the Department of State on the problem of preferences and visa allocation. However, the Committee may wish to consider the enactment of a savings clause to protect those beneficiaries of the present sixth preference petitions who may not qualify for an occupational preference under the proposed new preference system (e.g. unskilled workers) and to protect the classification of married brothers or sisters of United States citizens. The Committee may also wish to consider enactment of a savings clause for those admitted to this country as "conditional entrants" prior to the effective date of the bill, if enacted, so that they will be able to perfect their status in the United States in fulfillment of their expectations at the time of arrival.

As a technical matter, on line 16 of page 6, the word "is" should be changed to "if".

Section 6 of H.R. 981 amends section 204 of the Act, 8 U.S.C. 1154, by redefining who may petition to accord a special immigrant or preference classification upon an alien; eliminates the requirement that the petition be executed under oath; and deletes the requirement for reports to Congress on approved petitions according an occupational preference to the beneficiary.

Similar to the current law, provision is made for a United States citizen or lawful permanent resident to file a petition when seeking to confer special immigrant or preference classification upon an alien on the basis of a prescribed relationship. However, the bill would also permit an alien to file a petition in his own behalf, as well as any other person on behalf of such alien, if he is seeking a second or third preference classification based upon his occupation. Furthermore, any person, institution, or organization would be permitted to file a fourth preference petition on behalf of an alien who is coming to the United States to perform religious work.

Under current law, the only aliens who may file visa petitions on their own behalf are those who are members of the professions or who have exceptional ability in the arts or sciences.

The provisions of the bill permitting the professional immigrant to file a visa petition on his own behalf for a status under the proposed second preference are similar to the comparable provisions of existing law with respect to the present similar third preference category of

aliens. However, the bill makes significant change in existing law by permitting the skilled laborer claiming a status under the proposed third preference category to file a visa petition on his own behalf. It is believed that this would add tremendously to the administrative difficulties implicit in applying the law, since many thousands of aliens would be motivated to file visa petitions on their own behalf in the hope that they might qualify for the proposed third preference status. The Department of Justice believes that such aliens should be required to be petitioned for by a definite employer. Otherwise there appears to be little basis upon which the Department may determine the skill of a worker abroad.

As technical matters, on line 16 of page 8, the word "preference" is misspelled and on line 8 of page 9, the word "or" should be substituted for "and" after "(3)".

Section 7 of the bill amends section 211 of the Act, 8 U.S.C. 1181, by making provision for the admission, in the discretion of the Attorney General, of an immigrant without regard to the numerical limitation, where the immigrant is inadmissible solely because he was not entitled to the visa classification exempting him from the numerical limitation on visa issuance or the preference classification specified in the immigrant visa presented at the time of application for admission, or because he was not charged to the proper foreign state in such visa. Such an immigrant is also exempted from the requirement of presenting a labor certification.

The current law makes no provision for the admission of such immigrants. However, section 13(d) of the Immigration Act of 1924, 43 Stat. 153, did contain a prototype of the instant provision. Also as originally enacted, section 211(c) of the Immigration and Nationality Act of 1952 contained a similar provision. However, this provision was repealed by section 9 of the Act of October 3, 1965, 79 Stat. 911.

This provision would apply only to an alien who has an immigrant visa containing a technical defect through no fault of his own. The experience under former section 211(c) and its prececessor, section 13(d) of the Immigration Act of 1924, emphasizes the need for discretionary authority to deal with the cases of worthy immigrants in a humanitarian manner. The Department of Justice favors the enactment of this section.

Section 8 of H.R. 981 amends section 212(a)(14) of the Act, 8 U.S.C. 1182(a)(14), to make its provisions conform with the other amendments proposed by the bill.

Thus, the proposed legislation would make the labor certification requirements of section 212(a)(14) applicable to immigrants who are members of the professions and aliens who have exceptional ability in the arts or sciences, immigrants who by training or experience are capable of performing skilled labor "not of a seasonal or temporary nature" and nonpreference aliens, except for those aliens who are under twenty-five years of age at time of application for visa and admission to the United States, and to immigrant natives of contiguous countries who, if they were chargeable to the numerical limitation, would be eligible for admission as immigrants under the above classifications.

This is a matter which lies within the expertise of the Department of Labor and the Department of Justice defers to that Department in this matter.

As a technical matter, line 2 on page 11 of the bill should read "section 101(a)(27)" instead of "section 101(2)(27)".

Although section 9 of the bill would amend section 212(d)(5) of the Act, 8 U.S.C. 1182(d)(5), the first subparagraph carries forward precisely the language of existing section 212(d)(5) concerning the general authority of the Attorney General to parole aliens into the United States.

Subparagraphs (B) and (C) would authorize the Attorney General to parole alien refugees, not firmly resettled, into the United States if the alien applies for parole while physically present in any country which is not Communist, Communist-dominated or Communist occupied. The term refugee is defined as one who has fled or shall flee from and is unwilling to return to any Communist, Communist-dominated country or Communist occupied area owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or one who has fled or shall flee from and is unwilling to return to any country owing to a well-founded fear of being persecuted by reason of race, religion, nationality, membership of a particular social group or political opinion; or one who has been uprooted by natural calamity or military operations and who is unwilling to return to his usual place of abode.

Mr. Chairman, the Department of Justice would welcome this statutory confirmation of the Attorney General's authority to parole groups of alien refugees into the United States. Without in any way implying that the Attorney General does not presently have such authority, candor does compel me to state that its existence has not always been clear.

Attorneys General have used the parole authority contained in existing section 212(d)(5) to admit aliens for many purposes. For example, aliens have been paroled into this country to receive medical treatment, to prevent inhumane separation of families, and to enable entry for witnesses in judicial proceedings. Parole has been utilized in lieu of detention when the admissibility of an arriving alien cannot be immediately determined. Prior to 1965, the section 212(d)(5) parole authority was the sole means of assisting the entry of homeless refugees. For example, more than 31,000 refugees from the 1956 Hungarian revolt have been paroled into the United States. In 1965 the parole authority was used to benefit more than 15,000 Chinese refugees then situated in Hong Kong.

The 1962 amendments enacted section 203(a)(7) which authorized a limited number of conditional entries for aliens who (1) have fled from a Communist or Communist-dominated country or area or from any country within the general area of the Middle East and (2) are unable or unwilling to return to such country on account of race, religion, or political opinion, and (3) are not nationals of the countries or areas in which their application for conditional entry is made. Section 203(a)(7) conditional entries are also available to persons uprooted by catastrophic natural calamity who are unable to return to their usual place of abode.

Because the 10,200 annual available conditional entries have been absorbed by the need to deal with refugees from many Eastern Hemisphere Countries, the Attorney General, in consultation with the Department of State, has resorted to the 212(d)(5) authority when confronted with emergency situations requiring assistance to large numbers of homeless persons. This situation occurred during 1969 and 1970 when the 10,200 annual conditional entries were inadequate to deal with the humanitarian needs of large numbers of Czechoslovakian refugees.

The section 212(d)(5) parole authority has also been used to admit as a humanitarian measure refugees who could not qualify as conditional entrants under section 203(a)(7). The most recent example of this situation occurred on September 30, 1972 when the Attorney General authorized parole into the United States of up to 1000 stateless Ugandan Asians who had been summarily stripped of their Ugandan citizenship by the Ugandan government. Because the Ugandans were not fleeing from the "general area of the Middle East" or a Communist-dominated country, they were ineligible for section 203(a)(7) conditional entry consideration.

The Committee may wish to give consideration to making some changes in proposed subparagraph (C). It is believed that the "well-founded fear of being persecuted" should be limited by providing that it be a "well-founded fear in the opinion of the Attorney General." Failure to add "in the opinion of the Attorney General" would make it extremely difficult to administer this section since it would be entirely subjective with the alien claiming refugee status whether his fear of being persecuted was well-founded. It is also believed that the provision which would make a refugee of an alien uprooted by natural calamity or military operations and unwilling to return to his usual place of abode is too broad. It is believed that the word "unable" should be substituted for the word "unwilling", so that only those who cannot, rather than those who desire not to return to the usual place of abode, will be included within the ambit of the definition. Because a refugee eligible under subparagraph (C)(i) would apparently also be eligible under subparagraph (C)(ii), the Committee may wish to delete the (C)(i) definition. Such a redundancy creates an ambiguity. The Department also recommends that the prohibition on parole applications from Communist-dominated countries in proposed subparagraph (B) be deleted. Had such a provision existed in 1956, it would have prevented assistance to Hungarian refugees who had fled to Yugoslavia rather than Austria.

Subparagraph (D) requires the Attorney General to submit to Congress regular reports on the parole of alien refugees into the United States, with complete and detailed statements of facts in the case of each alien paroled. If either the Senate or House of Representatives passes a resolution within 90 days following the submission of such a report, calling for the termination of this parole authority, the Attorney General is required, within 60 days, to discontinue the paroling of such refugees into the United States.

The Department of Justice opposes subparagraph (D) for several reasons. First, in the context of this bill, the "One-House Veto" technique appears to be constitutionally defective in that it precludes the President from exercising an essential aspect of his functions under Article 1, § 7 of the Constitution—the authority to veto legislation passed by the Congress.

If enacted by both Houses and either approved by the President or passed by two-thirds of each House over the President's veto, subparagraph (B) would authorize the President to parole into the United States certain refugees. Subparagraph (D), however, by authorizing

one House to terminate this authority, would abridge the constitutionally-mandated legislative process and thereby deprive the President of his veto prerogative. Occasional statutes which utilize the one-house veto mechanism, such as the Reorganization Act, 5 U.S.C. 901 *et seq*, and the compensation for Federal officials statutes, 2 U.S.C. 359 and 5 U.S.C. 5305, authorize Congressional review of a Presidential decision rather than the actual withdrawal of an Executive power. Such is the case with existing section 244(c)(3) of the Act, which authorizes both Houses, through passage of a concurrent resolution, to disapprove of a decision by the Attorney General to conduct certain deportation proceedings. Of course this disapproval, which requires action by both Houses, does not terminate a power lawfully delegated to the Executive.

Subparagraph (D) is also defective in that it fails to define the status of parolees admitted prior to the One-House termination of the Attorney General's authority. The antecedent for "such refugees" on line 3 of page 13 is ambiguous.

Subparagraphs (E) and (F) set out a procedure for converting the status of refugee parolees to that of permanent residents, notwithstanding the numerical limitations specified elsewhere in the Act. Such a parolee who has been in the United States for two years, whose parole has not been terminated, and who has not acquired permanent residence, is to be returned to the custody of the Service and inspected and examined for admission into the United States in accordance with the applicable provisions of the basic law. Any alien who is found upon inspection or hearing to be admissible as an immigrant at the time of such inspection and examination, except for the fact that he is not in possession of the documents (visa and passport, etc.) ordinarily required of immigrants, shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival.

By repealing the present section 203(a)(7) and confirming, in the new section 212(d)(5), the Attorney General's authority to parole in groups of refugees, the bill would replace the existing conditional-entry-plus-parole method of admitting groups of refugees with a single legislatively-confirmed parole authority applicable to Western Hemisphere as well as Eastern Hemisphere refugees. It would also eliminate the section 203(a)(7)(A)(iii) requirement that the conditional entries be admitted from a third country. The explicit debarment of alien refugees who have been firmly resettled in third countries is favored and will clarify legislative intent. See *Rosenberg* v. *Yee Chien Woo*, 402 U.S. 49 (1971).

The present program relating to Cuban refugees presumably will not be affected by this legislation. The program for paroling Cuban refugees has been in effect for a number of years and has had specific Congressional approval since the Act of November 2, 1966, 80 Stat. 1161, authorizing adjustment of status for such refugees. Unless Congress directs otherwise, the parole of Cuban refugees will continue as a separate program.

Section 10 of H.R. 981 amends section 212(g) of the Immigration and Nationality Act, 8 U.S.C. 1182(g), to permit the admission of aliens who are afflicted with psychopathic personality, sexual deviation, or a mental defect if closely related to a permanent resident alien or a United States citizen. This is a humanitarian measure and the Department of Justice favors the enactment of this section.

Section 11 repeals section 21 of the Act of October 3, 1965, 79 Stat. 911, which established the Select Commission on Western Hemisphere. The life of the Commission has expired under the provisions of this section. Subsection (e), which prescribes a limitation on Western Hemisphere immigration, is the only subsection now effective and the new limitation on Western Hemisphere immigration, to be incorporated into the Immigration and Nationality Act itself, would render that subsection obsolete.

Since this bill would make extensive changes in existing law, and would affect many inchoate rights, I believe it essential that the bill include provisions for a delayed effective date and a savings clause. We made a similar recommendation in connection with the bill establishing sanctions for knowing employment of illegal aliens (now H.R. 982), which was adopted by the Committee.

Changes in Existing Law

In compliance with paragraph 2 of clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (new matter is printed in italic, matter proposed to be omitted is printed in black brackets, existing law in which no change is proposed is printed in roman).

Section 101 (a)(15)(H) of the Immigration and Nationality Act

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability; or (ii) who is coming temporarily to the United States *for a period not in excess of one year* to perform [temporary] *other* services or labor [, if unemployed persons capable of performing such service or labor cannot be found in this country] *if the Secretary of Labor has determined that there are not sufficient workers at the place to which the alien is destined to perform such services or labor who are able, willing, qualified, and available, and the employment of such aliens will not adversely affect the wages and working conditions of workers similarly employed: Provided, That the Attorney General may, in his discretion, extend the terms of such alien's admission for a period or periods not exceeding one year;* or (iii) who is coming temporarily to the United States as a trainee; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him.

Section 101(a)(27) of the Immigration and Nationality Act

Sec. 101(a)(27) The term "special immigrant" means—

[(A) an immigrant who was born in any independent foreign country of the Western Hemisphere or in the Canal Zone and the spouse and children of any such immigrant, if accompanying, or following to join him: *Provided,* That no immigrant visa shall be issued pursuant to this clause until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14);]

"[(B)] (*A*) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

"[(C)] (*B*) an immigrant who was a citizen of the United States and may, under section 324(a) or 327 of Title III, apply for reacquisition of citizenship;

"[(D)] (*C*)(i) an immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the vocation of minister of a religious denomination, and whose services are needed by such religious denomination having a bona fide organization in the United States; and (ii) the spouse or the child of any such immigrant, if accompanying or following to join him; or

"[(E)] (*D*) an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: *Provided*, That the principal officer of a Foreign Service establishment, in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status."

SECTION 201 OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 201. (a) Exclusive of special immigrants defined in section 101(a)(27), and [of the] immediate relatives of United States citizens *as* specified in subsection (b) of this section, (*1*) the number of aliens *born in any foreign state or dependent area located in the Eastern Hemisphere* who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally, [(i)] shall not in any of the first three quarters of any fiscal year exceed a total of [45,000] *forty-five thousand* and [(ii)] shall not in any fiscal year exceed a total of [170,000] *one hundred seventy thousand* [.]*; and (2) the number of aliens born in any foreign state of the Western Hemisphere or in the Canal Zone, or in a dependent area located in the Western Hemisphere, who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally, shall not in any of the first three quarters of any fiscal year exceed a total of thirty-two thousand and shall not in any fiscal year exceed a total of one hundred twenty thousand.*

(b) The "immediate relatives" referred to in subsection (a) of this section shall mean the children, spouses, and parents of a citizen of the United States: *Provided*, That in the case of parents, such citizen must be at least twenty-one years of age. The immediate relatives specified in this subsection who are otherwise qualified for admission as immigrants shall be admitted as such, without regard to the numerical limitations in this Act.

[(c) During the period from July 1, 1965, through June 30, 1968, the annual quota of any quota area shall be the same as that which existed for that area on June 30, 1965. The Secretary of State shall,

not later than on the sixtieth day immediately following the date of enactment of this subsection and again on or before September 1, 1966, and September 1, 1967, determine and proclaim the amount of quota numbers which remain unused at the end of the fiscal year ending on June 30, 1965, June 30, 1966, and June 30, 1967, respectively, and are available for distribution pursuant to subsection (d) of this section.

[(d) Quota numbers not issued or otherwise used during the previous fiscal year, as determined in accordance with subsection (c) hereof, shall be transferred to an immigration pool. Allocation of numbers from the pool and from national quotas shall not together exceed in any fiscal year the numerical limitations in subsection (a) of this section. The immigration pool shall be made available to immigrants otherwise admissible under the provisions of this Act who are unable to obtain prompt issuance of a preference visa due to oversubscription of their quotas, or subquotas as determined by the Secretary of State. Visas and conditional entries shall be allocated from the immigration pool within the percentage limitations and in the order of priority specified in section 203 without regard to the quota to which the alien is chargeable.

[(e) The immigration pool and the quotas of quota areas shall terminate June 30, 1968. Thereafter immigrants admissible under the provisions of this Act who are subject to the numerical limitations of subsection (a) of this section shall be admitted in accordance with the percentage limitations and in the order of priority specified in section 203.]

SECTION 202 OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 202. (a) No person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence, except as specifically provided in section 101(a)(27), section 201(b), and section 203: *Provided*, That the total number of immigrant visas and the number of conditional entries made available to natives of any single foreign state under paragraphs (1) through (8) of section 203(a) shall not exceed 20,000 in any fiscal year [:] . [*Provided further*, That the foregoing proviso shall not operate to reduce the number of immigrants who may be admitted under the quota of any quota area before June 30, 1968.]

(b) Each independent country, self-governing dominion, mandated territory, and territory under the international trusteeship system of the United Nations, other than the United States and its outlying possessions shall be treated as a separate foreign state for the purposes of the numerical limitation set forth in the proviso to subsection (a) of this section when approved by the Secretary of State. All other inhabited lands shall be attributed to a foreign state specified by the Secretary of State. For the purposes of this Act the foreign state to which an immigrant is chargeable shall be determined by birth within such foreign state except that (1) an alien child, when accompanied by his alien parent or parents, may be charged to the same foreign state as the accompanying parent or of either accompanying parent if such parent has received or would be qualified for an immigrant visa, if necessary to prevent the separation of the child from the accompanying parent or parents, and if the foreign state to which such parent

has been or would be chargeable has not exceeded the numerical limitation set forth in the proviso to subsection (a) of this section for that fiscal year; (2) if an alien is chargeable to a different foreign state from that of his accompanying spouse, the foreign state to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the foreign state of the accompanying spouse, if such spouse has received or would be qualified for an immigrant visa and if the foreign state to which such spouse has been or would be chargeable has not exceeded the numberical limitation set forth in the proviso to subsection (a) of this section for that fiscal year; (3) an alien born in the United States shall be considered as having been born in the country of which he is a citizen or subject, or if he is not a citizen or subject of any country then in the last foreign country in which he had his residence as determined by the consular officer; (4) an alien born within any foreign state in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien's birth may be charged to the foreign state of either parent.

(c) Any immigrant born in a colony or other component or dependent area of a foreign state *overseas from the foreign state* unless a special immigrant as provided in section 101(a)(27) or an immediate relative of a United States citizen, as specified in section 201(b), shall be chargeable for the purpose of *the* limitation set forth in section [202(a), to the foreign state, except that the number of persons born in any such colony or other component or dependent area overseas from the foreign state chargeable to the foreign state in any one fiscal year shall not exceed 1 per centum of the maximum number of immigrant visas available to such foreign state.] *201(a), to the hemisphere in which such colony or other component or dependent area is located, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed six hundred in any one fiscal year.*

(d) In the case of any change in the territorial limits of foreign states, the Secretary of State shall, upon recognition of such change issue appropriate instructions to all diplomatic and consular offices.

SECTION 203(a) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 203. (a) Aliens who are subject to the numerical limitations specified in section 201(a) shall be allotted visas or their conditional entry authorized, as the case may be, as follows:

(1) Visas shall be first made available, in a number not to exceed 20 per centum of the number specified in section [201(a)(ii)] *201(a) (1) or (2)*, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

(2) Visas shall next be made available, in a number not to exceed 20 per centum of the number specified in section [201(a)(ii)] *201(a) (1) or (2)*, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence.

(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section [201(a)(ii)] *201(a) (1) or (2)*, to qualified immigrants who are members of the professions, or who because of their exceptional ability in

the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States.

(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section [201(a)(ii)] *201(a) (1) or (2)*, plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in section [201(a)(ii)] *201(a) (1) or (2)*, plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States.

(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section [201(a)(ii)] *201(a) (1) or (2)*, to qualified immigrants who are capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

(7) Conditional entries shall next be made available by the Attorney General, pursuant to such regulations as he may prescribe and in [a number] *an amount* not to exceed 6 per centum of the [number specified in section 201(a)(ii),] *limitation applicable under section 201(a) (1) or (2)*, to aliens *who are outside the country of which they are nationals or, in the case of persons having no nationality, are outside the country in which they last habitually resided,* who satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country [, (A) that (1) because of persectution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area, or (II) from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made; or (B) that they are persons uprooted by catastrophic natural calamity as defined by the President who are unable to return to their usual place of abode. For the purpose of the foregoing the term "general area of the Middle East" means the area between and including (1) Libya on the west, (2) Turkey on the north, (3) Pakistan on the east, and (4) Saudi Arabia and Ethiopia on the south: *Provided,* That immigrant visas in a number not exceeding one-half the number specified in this paragraph may be made available, in lieu of conditional entries of a like number, to such aliens who have been continuously physically present in the United States for a period of at least two years prior to application for adjustment of status] *that they (A) are unable or unwilling to return to the country of their nationality or last habitual residence because of persecution or well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group or political opinion, (B)*

are not nationals of the countries in which their application for conditional entry is made, and (C) are not firmly resettled in any country: Provided, That not more than one-half of the visa numbers made available pursuant to this paragraph may be made available for use in connection with the adjustment of status to permanent residence of aliens who were inspected and admitted or paroled into the United States, who satisfy the Attorney General that they meet the qualifications set forth herein for conditional entrants, and who have been continuously physically present in the United States for a period of at least two years prior to application for adjustment of status.

(8) Visas authorized in any fiscal year, less those required for issuance to the classes specified in paragraphs (1) through (6) and less to number of conditional entries and visas made available pursuant to paragraph (7), shall be made available to other qualified immigrants strictly in the chronological order in which they qualify. Waiting lists of applicants shall be maintained in accordance with regulations prescribed by the Secretary of State. No immigrant visa shall be issued to a nonpreference immigrant under this paragraph, or to an immigrant with a preference under paragraph (3) or (6) of this subsection, until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14).

(9) A spouse or child as defined in section 101(b)(1)(A), (B), (C), (D), or (E) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa or to conditional entry under paragraphs (1) through (8), be entitled to the same status, and the same order of consideration provided in subsection (b), if accompanying, or following to join, his spouse or parent.

SECTION 203(e) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 203(e) For the purposes of carrying out his responsibilities in the orderly administration of this section, the Secretary of State is authorized to make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories of subsection (a), and to rely upon such estimates in authorizing the issuance of such visas. [The Secretary of State, in his discretion, may terminate the registration on a waiting list of any alien who fails to evidence his continued intention to apply for a visa in such manner as may be by regulation prescribed.] *The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to him of the availability of such visa, unless the alien establishes within two years following notification of the availability of such visa that such failure to apply was due to circumstances beyond his control. Upon such termination the approval of any petition approved pursuant to section 204(b) shall be automatically revoked.*

SECTION 211(b) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 211. (b) Notwithstanding the provisions of section 212(a)(20) of this Act in such cases or in such classes of cases and under such conditions as may be by regulations prescribed, returning resident immigrants, defined in [section 101(a)(27)(B)] *section 101(a)(27)(A)*,

who are otherwise admissible may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation.

SECTION 212(a)(24) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 212. (a)(24) Aliens (other than aliens described in [101(a)(27)(A) and (B)] *101(a)(27)(A) and aliens subject to the numerical limitation specified in section 201(a)(2)*) who seek admission from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory line, or if signatory, a noncomplying transportation line under section 238(a) and who have not resided for at least two years subsequent to such arrival in such territory or adjacent islands;

SECTION 212(a)(14) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 212. (a)(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that (A) there are not sufficient workers [in the United States] who are able, willing, qualified, and available at the time of application for a visa admission to the United States and at the place [to which] *where* the alien is [destined] to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to [special immigrants defined in section 101(a)(27)(A) (other than the parents, spouses, or children of United States citizens or of aliens lawfully admitted to the United States for permanent residence), to] preference immigrant aliens described in section 203(a)(3) and (6), and to nonpreference immigrant aliens described in section 203(a)(8)[;]. *The Secretary of Labor shall submit quarterly to the Congress a report containing complete and detailed statements of facts pertinent to the labor certification procedures including, but not limited to, lists of occupations in short supply or oversupply, regionally projected manpower needs, as well as up-to-date statistics on the number of labor certifications approved or denied;*

SECTION 212(d)(9) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 212. (d)(9)(A) *If the Secretary of State shall find that it is in the national interest that all, or any portion, of the members of a group or class of persons who meet the qualifications set forth in section 203(a)(7) be paroled into the United States, he may recommend to the Attorney General that such aliens be so paroled.*

(B) Upon receipt of a recommendation pursuant to subparagraph (A) of this paragraph and after appropriate consultation with the Congress, the Attorney General may parole into the United States any alien who establishes to his satisfaction, in accordance with such regulations as he may prescribe, that he is a member of the group or class of persons with respect to whom the Secretary of State has made such recommendation and that he not firmly resettled in any country. The conditions of such parole shall be the same as those which the Attorney General shall prescribe for the parole of aliens under paragraph (5) of this subsection.

(C) Any alien paroled into the United States pursuant to this paragraph whose parole has not theretofore been terminated by the Attorney General and who has not otherwise acquired the status of an alien lawfully admitted for permanent residence shall, two years following the date of his parole into the United States, return or be returned to the custody of the Immigration and Naturalization Service and shall thereupon be inspected and examined for admission into the United States in accordance with the provisions of sections 235, and 237 of this Act.

(D) Notwithstanding the numerical limitations specified in this Act, any alien who, upon inspection and examination as provided in subparagraph (C) of this paragraph or after a hearing before a special inquiry officer, is found to be admissible as an immigrant as of the time of his inspection and examination except for the fact that he was not and is not in possession of the documents required by section 212(a)(20) shall be regarded as lawfully admitted to the United States for permanent residence as of the date of his arrival in the United States.

SECTION 241(a)(10) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 241. (a)(10) entered the United States from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory transportation company under section 238(a) and was without the required period of stay in such foreign contiguous territory or adjacent islands following such arrival ([other than an alien who is a native-born citizen of any of the countries enumerated in section 101(a)(27)(A) and an alien described in section 101(a)(27)(B)] *other than an alien described in section 101(a)(27)(A) and aliens subject to the numerical limitation specified in section 201(a)(2)*);

SECTION 244(d) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 244. (d) Upon the cancellation of deportation in the case of any alien under this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date the cancellation of deportation of such alien is made, and unless the alien [is entitled to a special immigrant classification under section 101(a)(27)(A), or] is an immediate relative within the meaning of section 201(b) the Secretary of State shall reduce by one the number of nonpreference immigrant visas authorized to be issued under section 203(a)(8) for the fiscal year then current.

SECTION 349(1) OF THE IMMIGRATION AND NATIONALITY ACT

SEC. 349. From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by—

(1) obtaining naturalization in a foreign state upon his own application, upon an application filed in his behalf by a parent, guardian, or duly authorized agent, or through the naturalization of a parent having legal custody of such person: *Provided*, That nationality shall not be lost by any person under this section as the result of the naturalization of a parent or parents while such person is under the age of twenty-one years, or as the result of a naturalization obtained on behalf of a person under twenty-one years of age by a parent, guardian, or duly authorized agent,

unless such person shall fail to enter the United States to establish a permanent residence prior to his twenty-fifth birthday: *And provided further*, That a person who shall have lost nationality prior to January 1, 1948, through the naturalization in a foreign state of a parent or parents, may, within one year from the effective date of this Act, apply for a visa and for admission to the United States as a nonquota immigrant under the provisions of [section 101(a)(27)(E)] *section 101(a)(27)(D)*; or

SECTION 21(e) OF THE ACT OF OCTOBER 3, 1965

SEC. 21. [(e) Unless legislation inconsistent herewith is enacted on or before June 30, 1968, in response to recommendations of the Commission or otherwise, the number of special immigrants within the meaning of section 101(a)(27)(A) of the Immigration and Nationality Act, as amended, exclusive of special immigrants who are immediate relatives of United States citizens as described in section 201(b) of that Act, shall not, in the fiscal year beginning July 1, 1968, or in any fiscal year thereafter, exceed a total of 120,000.]

THE ACT OF NOVEMBER 2, 1966

That, notwithstanding the provisions of section 245(c) of the Immigration and Nationality Act, the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least two years, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. Upon approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission for permanent residence as of a date thirty months prior to the filing of such an application or the date of his last arrival into the United States, whichever date is later. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

SEC. 2. In the case of any alien described in section 1 of this Act who, prior to the effective date thereof, has been lawfully admitted into the United States for permanent residence, the Attorney General shall, upon application, record his admission for permanent residence as of the date the alien originally arrived in the United States as a nonimmigrant or as a parolee, or a date thirty months prior to the date of enactment of this Act, whichever date is later.

SEC. 3. Section 13 of the Act entitled "An Act to amend the Immigration and Nationality Act, and for other purposes", approved October 3, 1965 (Public Law 89–236), is amended by adding at the end thereof the following new subsection:

"(c) Nothing contained in subsection (b) of this section shall be construed to affect the validity of any application for adjustment under section 245 filed with the Attorney General prior to December 1, 1965, which would have been valid on that date; but as to all

such applications the statutes or parts of statutes repealed or amended by this Act are, unless otherwise specifically provided therein, continued in force and effect."

SEC. 4. Except as otherwise specifically provided in this Act, the definitions contained in section 101 (a) and (b) of the Immigration and Nationality Act shall apply in the administration of this Act. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization.

SEC. 5. The approval of an application for adjustment of status to that of lawful permanent resident of the United States pursuant to the provisions of section 1 of this Act shall not require the Secretary of State to reduce the number of visas authorized to be issued in any class in the case of any alien who is physically present in the United States on or before the effective date of the Immigration and Nationality Act Amendments of 1973.

ADDITIONAL VIEWS OF THE HONORABLE PETER W. RODINO, JR.

I am in complete agreement with the major objectives of H.R. 981 and with one significant exception I strongly support this legislation. The 1965 amendments to the Immigration and Nationality Act abolished the national origins quota system and also imposed for the first time a numerical limitation of 120,000 on immigration from the Western Hemisphere. This limitation was added in the later stages of consideration of the 1965 legislation and it was not fully integrated into the basic design of the Immigration and Nationality Act since it failed to provide an adequate mechanism for selecting immigrants from the Western Hemisphere (i.e. preference system).

Therefore, when the Western Hemisphere ceiling took effect in July, 1968, there was an imbalance between the immigration provisions dealing with the Eastern and Western Hemisphere and this imbalance was directly attributable to the omission of a preference system for the Western Hemisphere. This omission has caused considerable hardship for citizens and lawful permanent residents of the United States as well as for many intending immigrants. The need for such a preference system has been universally recognized and the enactment of H.R. 981 will remedy this serious and unintended defect in our immigration laws.

Although this legislation will significantly advance the desirable goal of adopting uniform provisions for the Eastern and Western Hemisphere, this legislation deals very unjustly and unwisely with Canada and Mexico by imposing a numerical limitation of 20,000 on immigration from each of these countries.

We must not fail to recognize that both Mexico and Canada stand in a relationship to us that is unique. We share common borders, we occupy the same continent. We cannot ignore these facts, even if we might wish to. It has been said that the same kind of argument was used to justify the national origins quota system which discriminated in favor of certain countries such as Great Britain, Ireland and Germany. It may well be that the same words were used, but their meaning was vastly different. The unique or special relationship which existed between us and those other countries was based on historical and sentimental considerations, combined with elements of racial prejudice. The uniqueness of our relationships with Canada and Mexico lies not merely in historical or sentimental factors, but more importantly in the practical day-to-day process of living together on the same continent.

Our dealings with Canada and Mexico are of a kind that merit the term "unique". There are reciprocal agreements concerning manufactured goods; many unions in the United States have locals in Canada; many American firms have branches in Canada and/or Mexico and many Canadian firms have branches in the United States. In addition, there are many cultural and social and other economic ties between our countries which link us together on a daily basis.

Canada is our most important trading partner and we are theirs. Graduates of Canadian medical schools are eligible to seek licensure in the United States without the additional requirements that graduates of medical schools in other countries must meet.

Certainly this cooperative pattern has been mutually beneficial in promoting friendly relationships with our two contiguous neighbors. Recognizing the special relationship, the Administration in their bill, H.R. 9409, proposed separate immigration allotments of 35,000, annually for Canada and Mexico. Representatives of the Departments of State and Justice and the vast majority of public witnesses who testified before the Subcommittee on Immigration, Citizenship, and International Law supported an increased allotment of visa numbers for Canada and Mexico. However, the bill now reported by this Committee has rejected this recommendation. Instead, as I have noted, H.R. 981, as amended, imposes an annual limitation of 20,000 on immigration from all Western Hemisphere countries, similar to the present per-country limitation on Eastern Hemisphere countries.

On its face, this provision has the appearance of fairness since each country is treated in a uniform manner. While I am most sympathetic to the concept of equal treatment for all countries with respect to immigration, I feel that this equitable principle may have led us into an unfortunate situation in this particular case.

First of all, I agree that we cannot and should not attempt to solve any population or employment problems e ther country might have through our immigration policies nor do I believe that Canada and Mexico wish us to do so. But, it is very evident that our immigration policies are viewed in these countries as an aspect of our overall attitude toward them. Prior to 1968 there was no numerical limitation on immigration to the United States from any Western Hemisphere country. However, as a result of the 1965 legislation, all countries of this Hemisphere were subjected to the 120,000 hemispherical limitation. This limitation had a severe impact on immigration from Canada. Interestingly enough, the Canadians were aware of this development from its inception and began to launch diplomatic protests even before the ceiling became operative. Since that time the Canadians have discreetly and persistently made their objections known to our government. Mexico, on the other hand, was not adversely affected by the 1965 amendments and, in fact, has been the principal source of Western Hemisphere immigration for the past five fiscal years.

Consequently, at the present time we have a situation in which one of our neighbors has been drastically affected by existing legislation but the other one has not. H.R. 981, as amended, would have the unfortunate, dual result of failing to alleviate the adverse impact on Canadian immigration and at the same time creating a new restriction on Mexican immigration.

For example, the last annual report of the Immigration and Naturalization Service shows that during fiscal year 1972 there were 64,040 immigrants from Mexico, of whom 41,707 were subject to the Western Hemisphere numerical limitation. Enactment of the 20,000 ceiling would thus result in an immediate reduction of over 50% in lawful immigration from Mexico.

It seems to me that this drastic reduction in lawful immigration from Mexico is unsound and undesirable. In a bill designed to deal fairly with Western Hemisphere countries, it operates restrictively

against our friendly neighbor, without any apparent justification. All of us are familiar with the enormous problem currently posed by illegal immigration from Mexico. In seeking to control that problem it seems essential to retain opportunities for legal immigration. Indeed, in its Final Report of January 15, 1973, the Special Study Group on Illegal Immigration from Mexico, appointed by the President after discussions with the President of Mexico, urged that there be no reduction in the present level of lawful immigration from Mexico. Yet H.R. 981 would accomplish an immediate reduction of over 50% in the number who could immigrate lawfully. By curtailing the opportunities for lawful immigration from Mexico, H.R. 981 would unfortunately give further impetus to the pressures for illegal immigration.

It is necessary for us to take into account also the effect of this measure on our foreign relations, particularly with Mexico. Since the actual effect of the 20,000 limitation would be a marked reduction in immigration from Mexico, the Government of that country might well regard this legislation as an affront to its people.

The difficulties that I have mentioned could be avoided by providing a separate visa allocation of 35,000 each to Canada and Mexico; or alternatively, by providing for the issuance of special visas to natives of these countries. The additional immigration that would be involved is insignificant and separate treatment for these countries can be justified because of the special relationship which exists with our neighboring countries. Through the simple expedient of increased ceilings or special visa allocations, we would demonstrate to our neighbors our awareness of their problems and our desire to deal with them in a constructive and cooperative manner. I believe that such a provision would greatly assist in promoting friendly relationships with Canada and Mexico and would certainly further our national interests.

PETER W. RODINO, JR.

O

Excuses

May 20

THE WHITE HOUSE
WASHINGTON

Russ --

Mr. Marsh would like you to discuss this with Phil Buchen.

Thanks.

donna

Called Russ B
on 5/21/75
P.

Evacuees

THE WHITE HOUSE

WASHINGTON

May 14, 1975

MEMORANDUM TO: JACK MARSH

FROM: RUSS ROURKE R

SUBJECT: TELEPHONE CONVERSATION WITH JACK REITER (WORLD AIRWAYS) (PH: 297-7107)

Reiter advises that World Airways has just been given notice by the District Director's Office, Immigration and Naturalization Service, San Francisco, that World Airways is being fined at a rate of $1,000 per head ($1,000 times 248, for each of the refugees brought back by Ed Daly's World Airways (there were three separate flights with a total of 248 illegal aliens).

Reiter has spoken with I&NS and Department of Justice officials, all of whom merely quote the "letter of the law" to him. Obviously both Reiter and Daly are aware that the "letter of the law" was violated but they contend that the spirit that prompted that violation should certainly permit the avoidance of any fine...more to the point, Daly says, "he'll go to jail before ~~using~~ [illegible] a penny in fines". Reiter is "sure the President would not countenance this 'by the book' action by I&NS".

Naturally they seek your assistance in obtaining appropriate relief.

Called A.S. Levi 5/20/75 who will report back.

P.

Received return call 5/21/75 from A.S. Levi who advised that World Airways has opportunity to [illegible] response in [illegible] but [illegible]

P.

May 20

THE WHITE HOUSE
WASHINGTON

Russ --

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Thanks.

donna

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THE WHITE HOUSE

WASHINGTON

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Naturally they seek your assistance in obtaining appropriate relief.

Called A.S. Levi 5/20/75
who will report back.
J.

Received return call from A.S. Levi 5/21/75 who advised that World Airways has opportunity to present its grounds in writing to protest the notice of fine. J.

B Hayes
Cong

Friday 5/23/75

5:00 Max Friedersdorf just brought in a copy of the attached letter to the President which they have just received; it has been sent to Eloise Frayer for acknowledgment.

NORTH CAROLINA

United States Senate

WASHINGTON, D.C. 20510

May 23, 1975

The President
The White House
Washington, D.C.

Dear Mr. President:

Information which I believe to be reliable has come to me indicating that an estimated 42,000 South Vietnamese refugees were evacuated to Phou Quoc Island and left stranded about 50 miles from Vietnam and 30 miles from Cambodia. As of 8:00 AM Tuesday, I am informed, this group included at least 17 clergymen, 300 nuns, and 1,000 orphans (including hundreds of mixed Vietnamese-American blood who stand marked for slaughter). There are also a number of high South Vietnamese officials.

I am also told that there are about 3,000 South Vietnamese regular troops on the island (about two battalions) armed with machine guns, mortars, and bazookas. A handful of Vietcong have been contained in one corner of the island. The South Vietnamese flag still flew over the island on May 12, according to the captain of a South Korean freighter who picked up 216 of the refugees on May 12. The South Korean ship was beseiged by about 3,000 refugees in small boats, but could only take the above number. The latest reports, as of Tuesday, say that the free South Vietnamese still control the island.

You have the facilities to check the accuracy of the present situation. I suggest that you contact Admiral George Anderson of the Foreign Intelligency Advisory Committee for the information he has on the matter. U.S. policy can in no way allow these refugees to receive retribution from the Communists, when they eventually establish control over the island. I am told that the Secretary of the Navy has indicated that the U.S. Navy has the logistical capability to remove the refugees. There is also a large air strip on the island.

A strong diplomatic campaign should be instituted to find other countries to share the burden of resettlement. I am told that South

Korea has indicated that she will take 1,000 more, in addition to the 1,000 taken already. I am told that the Counselor of the Chilean Embassy here has recommended that Chile take 5,000. Private negotiations are under way with Brazil to take 20,000. Furthermore, the Dominican nuns of Louisville, Kentucky, have said that they will assume responsibility for the support of the 1,000 orphans. I think that the resettlement problem could be solved; but the urgent need now is to take action to remove any refugees who want to leave Phou Quoc. I urge you to take whatever steps are necessary to do so.

Sincerely,

Jesse Helms

JESSE HELMS:ls

THE WHITE HOUSE
WASHINGTON

6/3/75 FYI

Eva: Mr Buchan

NSC has finalized for Max Friedersdorf's signature the letter to Senator Helms re: Phu Quoc Island. Attached is the memo and letter. I indicated that we had no problems with the letter's content nor in Max signing the letter. I sent a copy to Ted Marrs.

Barry

Refugees

NATIONAL SECURITY COUNCIL

June 3, 1975

TO: Barry Roth

FROM: Les Janka (x3116)

Please review the attached as soon as possible.

MEMORANDUM

NATIONAL SECURITY COUNCIL

June 3, 1975

MEMORANDUM FOR: MAX FRIEDERSDORF

FROM: Jeanne W. Davis

SUBJECT: Response to Senator Helms Regarding Vietnamese Refugees on Phu Quoc Island

On May 23 Senator Helms sent the letter at Tab B to the President calling to his attention information regarding 42,000 Vietnamese refugees stranded on Phu Quoc Island which was still in the hands of loyal ARVN troops. The Senator also reports that he has information that South Korea, Chile, and Brazil are willing to receive these refugees and calls upon the President to take strong diplomatic moves to find other countries to share the resettlement burden.

Subsequent investigation by the Interagency Task Force at State has turned up no intelligence to support the claim of any continuing resistance on Phu Quoc. The Task Force has also been unable, working with Helms' staff, to translate the reported willingness of several Latin American countries to accept refugees into firm offers to do so.

A Presidential response is not required or advisable given the strange nature of Helms' information and our response telling him in effect he is wrong on several counts.

We, therefore, recommend that you send Senator Helms the response at Tab A based on a Task Force draft, expressing our appreciation that we have investigated the Phu Quoc reports but cannot substantiate them, and outlining the efforts we are making to get other countries to accept refugees.

Les Janka concurs.
Philip Buchen's office concurs.

THE WHITE HOUSE

WASHINGTON

Dear Senator Helms:

The President has asked me to respond to your letter of May 23 passing along the reports that have come to your attention regarding the refugee situation on Phu Quoc Island. The publicity accorded to similar reports has aroused public curiosity but a thorough canvass of our own intelligence community reveals no evidence to substantiate claims of continued resistance on that island, or elsewhere in Vietnam. Refugees from Danang, Hue, Nha Trang and other northern cities of South Vietnam appear to be scattered throughout the more southern areas, including Phu Quoc, but most of the former soldiers among them, who fled before the American departure on April 29, are known to have left their arms in the north. Those that did not do so were disarmed on the refugee ships that carried the fleeing population south.

We appreciate your concern for the tragic plight of these people and the President is grateful for your suggestions regarding diplomatic overtures to induce other countries to accept numbers of Indochinese refugees. This has been a matter of high priority for us since the creation on April 18 of the Inter-Agency Task Force concerned with the resettlement of the refugees from Vietnam and Cambodia, and has recently been the subject of two international appeals from the United Nations High Commissioner for Refugees as well. The response has not yet reached the level that we hope to attain, although Canadian, French and Australian immigration officials have visited several of the reception sites. Canada has thus far been the most receptive; 1,396 Vietnamese have already gone to that country and an equal number are expected to follow. While there are indications that a few Latin American countries may accept a small number of refugees, no official word has yet been received. Our efforts to seek additional countries to share the resettlement burden will continue.

Because of your interest in the area, I would like to share with you information which has not as yet become public knowledge and which

you may find useful in light of the information you were good enough to bring to our attention. An early assertion by the new Saigon authorities of control over all of Vietnam's offshore islands was reiterated as recently as May 23, when the so-called Peoples' Revolutionary Government "Liberation Radio" took note of the American press reports purporting to describe conditions on Phu Quoc, flatly rejecting these reports, and warning against any attempts to intervene in Vietnamese affairs.

Once again, let me express our thanks for your concern and readiness to help in this matter.

Sincerely,

Max L. Friedersdorf
Assistant to the President

The Honorable Jesse Helms
United States Senate
Washington, D. C. 20510

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

VIA LDX 741

May 24, 1975

MEMORANDUM FOR:

Mr. George S. Springsteen
Executive Secretary
Department of State

SUBJECT: Letter from Senator Helms on Refugees on Phou Quoc

Will you please have a draft reply prepared to the attached letter for signature by a White House staff member. We would like to have the draft no later than noon on Tuesday, May 27.

You should include either in the reply or the covering memo a status report on any efforts by the UNHCR to investigate or alleviate the situation on Phou Quoc.

Jeanne W. Davis
Staff Secretary

Attachment

United States Senate
WASHINGTON, D.C. 20510

May 23, 1975

The President
The White House
Washington, D.C.

Dear Mr. President:

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I am also told that there are about 3,000 South Vietnamese regular troops on the island (about two battalions) armed with machine guns, mortars, and bazookas. A handful of Vietcong have been contained in one corner of the island. The South Vietnamese flag still flew over the island on May 12, according to the captain of a South Korean freighter who picked up 216 of the refugees on May 12. The South Korean ship was beseiged by about 3,000 refugees in small boats, but could only take the above number. The latest reports, as of Tuesday, say that the free South Vietnamese still control the island.

You have the facilities to check the accuracy of the present situation. I suggest that you contact Admiral George Anderson of the Foreign Intelligency Advisory Committee for the information he has on the matter. U.S. policy can in no way allow these refugees to receive retribution from the Communists, when they eventually establish control over the island. I am told that the Secretary of the Navy has indicated that the U.S. Navy has the logistical capability to remove the refugees. There is also a large air strip on the island.

A strong diplomatic campaign should be instituted to find other countries to share the burden of resettlement. I am told that South

Korea has indicated that she will take 1,000 more, in addition to the 1,000 taken already. I am told that the Counselor of the Chilean Embassy here has recommended that Chile take 5,000. Private negotiations are under way with Brazil to take 20,000. Furthermore, the Dominican nuns of Louisville, Kentucky, have said that they will assume responsibility for the support of the 1,000 orphans. I think that the resettlement problem could be solved; but the urgent need now is to take action to remove any refugees who want to leave Phou Quoc. I urge you to take whatever steps are necessary to do so.

Sincerely,

Jesse Helms

JESSE HELMS:ls

Tuesday 5/27/75

2:20 Barry will be checking on these letters; he didn't have the May 21 letter and we have sent him a copy.

What has Barry done.

THE WHITE HOUSE
WASHINGTON

Eva:

Check to see if Barry has copies of both these letters, and ask if he is and ask if he has found out how and by whom they are being handled

P.

Friday 5/23/75

5:00 Max Friedersdorf just brought in a copy of the attached letter to the President which they have just received; it has been sent to Eloise Frayer for acknowledgment.

JESSE HELMS
NORTH CAROLINA

United States Senate

WASHINGTON, D.C. 20510

May 23, 1975

The President
The White House
Washington, D.C.

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Sincerely,

Jesse Helms

JESSE HELMS:ls

LARRY P. McDONALD
7TH DISTRICT, GEORGIA

WASHINGTON OFFICE:
1541 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-2931

DISTRICT OFFICES:
191 LAWRENCE STREET
MARIETTA, GEORGIA 30060
TELEPHONE: (404) 422-4420

301 FEDERAL BUILDING
ROME, GEORGIA 30161
TELEPHONE: (404) 235-1111

ROOM 202 POST OFFICE
ROSSVILLE, GEORGIA 30741
TELEPHONE: (404) 866-2222

COMMITTEE:
ARMED SERVICES

SUBCOMMITTEES:
RESEARCH AND DEVELOPMENT
SEAPOWER

Congress of the United States

House of Representatives

Washington, D.C. 20515

May 21, 1975

Advance copy to Phil Buchen

The Honorable Gerald R. Ford
President of the United States
The White House
Washington, D. C.

Dear Mr. President:

We, the undersigned, having witnessed your forthright action in the rescue of the MAYAGUEZ and its crew, call upon you to again exercise your constitutional role of Commander in Chief of our Armed Forces and chief architect of our foreign policy. In this regard, we refer to the deplorable situation of the refugees on Phu Quoc Island off South Vietnam.

Our understanding is that there are approximately 42,091 refugees on the island, two thirds of them Catholics, including some 300 nuns. It is our further understanding that these refugees were brought here by our Navy when South Vietnam began to crumble. We are informed that these people are almost out of food, but will forcibly resist any North Vietnamese landing. Our feeling is that you may already be aware of this matter, but that Congressional sentiment on the issue has not been expressed.

Increasingly, the question of who will forcibly repatriate to Communist control comes up and it is our strong feeling that the United States should take the lead in this, following the grim lessons of World War II and Korea in that regard. We should not repeat the horrible blunder of World War II. Therefore, we strongly recommend that you take whatever steps necessary to rescue and resettle these unfortunate people. South Korea, Taiwan, Chile and Canada, we are informed, would accept them as immigrants. Trust territories in the Pacific might also be considered as a haven for these people.

The number of Members signing this letter is small, but since time is of the essence attempts to get additional signatures, which we feel we could secure, were not made.

Your very serious consideration of our views will be greatly appreciated.

Richard C. White

Carroll Hubbard

Gene Taylor

Kenneth L. Holland

F. Edw. Hebert

?

Elwood Hillis

Joe D. Waggonner, Jr.

Jim Lee Howell

Jim Martin

6/11/75

Mr. Hills

handed this to

Jane —

was it signed Not used

THE WHITE HOUSE

WASHINGTON

May 31, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP BUCHEN
JOHN MARSH

SUBJECT: Transfer of Interagency Refugee Resettlement Task Force

We concur in the recommendation of the Secretary of State (at Tab A) calling for the transfer of prime responsibility for the resettlement of refugees from State to HEW, while maintaining the interagency Task Force at the White House level.

To date, the Task Force has served as an excellent vehicle for not only coordinating actions by the concerned agencies, but also in resolving the disputes that have arisen as the result of overlapping jurisdictions and the interests of individual agencies. We remain unconvinced that any of the options offered by Secretary Weinberger (at Tab B) would be in improvement upon that of Secretary Kissinger:

> Operational activity of this nature, even at the Task Force level, should not be placed within the White House. (Ted Marrs and Barry Roth of our staffs have provided White House overview and guidance to the Task Force, as necessary.) OMB remains available to assist in resolving disputes that might arise, most disputes can continue to be handled by the Task Force. Finally, in view of our mutual goal that a White House Task Force be terminated by the end of this calendar year, it would be unnecessarily burdensome and bureaucratic to formalize it as a special agency.

If you agree with Secretary Kissinger, the central decision remaining is who should be the Director of the Task Force. Upon

his resignation, Ambassador Brown designated Julia Taft, Deputy Assistant Secretary for Human Development, HEW, who had been serving as his deputy, to be the Acting Director of the Task Force. Due to her relative inexperience and her lesser stature than Ambassador Brown, some persons have questioned whether you should appoint her as the new Director.

In view of Secretary Weinberger's request to meet with you concerning the transfer of the Task Force, we recommend if such a meeting is necessary that it be held as soon as possible next week. It should be attended by Secretaries Kissinger and Weinberger, ourselves, along with Ted Marrs and Barry Roth. At such a meeting, Secretary Weinberger should be asked to recommend either Mrs. Taft or someone else for this position, in order that you can make a decision and the necessary announcement by week's end.

DECISIONS

(1) Follow recommendation of Kissinger, Buchen, Marsh and Marrs to transfer task force operation to HEW _____

(2) Follow recommendation of Weinberger to transfer task force operation to --

White House _____

OMB _____

a new agency _____

(3) Schedule meeting to discuss _____

THE SECRETARY OF STATE

WASHINGTON

May 14, 1975

~~CONFIDENTIAL~~

MEMORANDUM FOR: THE PRESIDENT

From: Henry A. Kissinger HK

Subject: Transfer of Indochina Task Force

The evacuation of refugees from Indochina has been essentially completed and, as the flow of refugees enters the United States, the national security aspects of the operation are receding.

The time has come to focus on the long term resettlement issues which could be with us as long as one year. I believe that new organizational arrangements must be established to deal with this different set of problems, once Congress has completed action on your request for funds.

Specifically, I recommend that the Department of Health, Education and Welfare assume overall responsibility for the resettlement operation, and the operations of the present Task Force be physically moved to that Department. In order to ensure high level attention and inter-agency cooperation in the days ahead, I would further recommend that the new Task Force remain at the White House level. This arrangement could be reexamined in six months.

The new Inter-Agency Task Force would include the interested Departments and Agencies which are presently working on the problem -- DOD, Justice, INS, Interior, Labor, HUD, AID and State. State would be charged with handling the international aspects of resettlement and State/AID/USIA would continue to provide personnel support to the reception centers and the Task Force, as determined by the Director of the Task Force.

If we take this step, I am confident we will have created the proper mechanism for coping with the resettlement of refugees, which has become an essentially domestic issue and concern.

Should you agree to my recommendation, I will instruct Ambassador L. Dean Brown to make arrangements for the transfer directly with Secretary Weinberger with the understanding that HEW will request White House approval for the new Director of the Task Force.

Recommendation:

That you approve the transfer of responsibility for the resettlement to the Department of Health, Education and Welfare, while maintaining the Task Force at a White House level.

Approve_____ Disapprove_____

Attachment:

Draft Presidential Announcement.

PRESIDENTIAL ANNOUNCEMENT

I am today appointing _____ as my Special Representative and Director of the Inter-Agency Task Force for the resettlement of refugees from Indochina. The Task Force, which will be located in the Department of Health, Education and Welfare, will be responsible for all aspects of the domestic and international resettlement of refugees from the states of Indochina. The Task Force director will work under my direction and in close coordination with the Secretary of Health, Education and Welfare. His responsibilities will involve all interested departments of government.

The new Task Force will continue the work which Ambassador L. Dean Brown launched under my direction. The resettlement problem now has a decidely domestic orientation and is no longer primarily a subject of national security concern.

I wish to congratulate Ambassador Brown and the Task Force which worked for him for their achievements. In the short period of a month they successfully supervised the evacuation of our Mission in Viet-Nam and almost 50,000 endangered Vietnamese. About 60,000

other refugees were rescued at sea. Staging areas in the Pacific were constructed; three reception centers in the United States prepared; a program of United States' and third country resettlement was launched. I would like to express my particular gratitude to Ambassador Brown and his Task Force and to our armed forces which responded so quickly and effectively, often in the face of great danger.

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D. C. 20201

May 17, 1975

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Indo-China Refugee Resettlement Task Force (Memorandum on the same subject to you from the Secretary of State).

The Secretary of State has proposed to you that in view of the essentially domestic character of the resettlement effort which must now be made through the summer and fall, the State Department is no longer the appropriate agency to lead the task force which has been developed to deal with this subject. He suggests that HEW instead assume the responsibility for leading the task force; the director of the task force would remain as a Presidential appointee, under the Secretary's proposal, though I understand that a replacement for Ambassador Dean Brown will have to be found.

I agree with Secretary Kissinger that a domestic orientation of the task force is now appropriate. I also join him in recommending that a Presidential appointee lead this effort. I understand that the staff of the task force is already in place and that logistical support is ongoing: what is needed is only a change in leadership. I believe careful consideration should be given to identifying a new director and a new lead agency responsible for coordinating the task force's activities.

Certainly, Secretary Kissinger's suggestion that HEW take the lead is one option. We are an agency with direct operating responsibilities across the nation, and our programs have special relevance to the needs of the refugees and the concerns of the communities receiving them. While we do not deliver many services directly, we give financial support to virtually every entity that does. If we were given this responsibility, we would, of course, do everything we could to carry it out effectively, as we have attempted to give all the support needed to the existing task force under State's leadership.

There are, however, other options which have advantages of their own and which should be considered. Three in particular suggest themselves.

- The White House. Obtaining the effective cooperation of many agencies and the needed assistance from private organizations can best be done at this level. Also, the need to act quickly and the temporary nature of the program would be emphasized.

- The Office of Management and Budget. This office has experience in coordinating government-wide activities. It is in a good position to arbitrate differences between operating agencies.

- A Special Agency. On the model of the Energy Agency, this office would have a single mission to which it could devote all its efforts.

Our objective in this effort is to place virtually all the refugees in ongoing communities by year's end. By far the largest number of these placements will be in the United States. Each of the options presented, including the HEW option, has its advantages and drawbacks in achieving this objective. I believe that all should be considered before a decision is reached. I would like to discuss this with you or your staff prior to a final decision.

Secretary

bcc: Honorable Theodore Marrs

Refugees
Atty Gen's
Parole
Authority

THE WHITE HOUSE

WASHINGTON

July 14, 1975

MEMORANDUM FOR

The Honorable Edward H. Levi
The Attorney General

Referencing your letter to me of July 11, 1975, your proposal to initiate consultation with the House and Senate Judiciary Committees with respect to your authorizing parole for a limited number of Laotians and new categories of Vietnamese and Cambodians is consistent with the President's program for refugees from Southeast Asia. This has been checked with the appropriate offices in the White House.

Thank you for your inquiry.

P.W.B.

Philip W. Buchen
Counsel to the President

bcc: Paul O'Neill
Jim Cavanaugh
General Scowcroft
Ted Marrs
Bob Wolthius

Office of the Attorney General
Washington, D. C. 20530

July 11, 1975

The Honorable Philip Buchen
Counsel to the President
The White House
Washington, D. C.

Dear Mr. Buchen:

As you know, I have in the recent past exercised the parole authority vested in the Attorney General to authorize the entry to the United States of up to 150,000 Vietnamese and Cambodian refugees who meet certain criteria, with the understanding that not more than 130,000 of them were likely to be permanently resettled in the United States; the present eligibility criteria for parole is set forth at Tab A. I am informed that approximately 131,000 refugees have now entered the United States refugee system, about 114,000 of whom are expected to be permanently resettled in the United States.

We have recently received several requests to expand the categories of Indochinese refugees eligible for parole. The Department of State has requested that parole be granted for up to 3,000 Laotian refugees (Tab B). The Interagency Task Force for Indochina Refugees has, with the approval of the Department of State, asked that parole be granted for a substantial portion of the approximately 20,000 Vietnamese and Cambodian refugees stranded abroad and not presently eligible for parole (Tab C). Senators Mansfield and Scott have made a similar request (Tab D). We are informed that if parole is authorized for these groups, the number of refugees entering the United States system will remain below 150,000 and the number being permanently resettled is expected to remain within the range of 130,000 contemplated earlier.

The Department of Justice is favorably disposed toward the foregoing proposals with several clarifications and modifications which we understand are acceptable to

the Interagency Task Force and the Department of State. However, they are in essence requests for parole of classes of refugees. As you know, the Department of Justice typically seeks policy guidance from the President and consults with House and Senate Judiciary Committees prior to making a decision on such requests. Thus, we would appreciate being advised whether authorizing parole for a limited number of Laotians and expanded categories of Vietnamese and Cambodians would be within or consistent with the President's program for Indochina refugees.

We appreciate your assistance in this matter.

Sincerely,

Edward H. Levi
Attorney General

A

Indochina Parole Authorizations as of July 10, 1975

1. 2,200 orphans from Vietnam and Cambodia (April 2, 1975)

2. 3,000 relatives of U. S. citizens located in Vietnam (April 14, 1975)

3. 3,000 Vietnamese relatives of U. S. citizens and permanent resident aliens for whom petitions had been filed (April 21, 1975)

4. 10,000 - 75,000 Vietnamese relatives of U. S. citizens and permanent resident aliens (April 22, 1975)

5. 1,000 Cambodians evacuated by the U.S. in Thailand (April 22, 1975)

6. 5,000 Cambodians in third countries facing expulsion (April 22, 1975)

7. 50,000 "high risk" Vietnamese who would because of their association with the U.S. be endangered if left in Vietnam (April 22, 1975)

8. 69,000 Vietnamese self-evacuated by sea (May 8, 1975)

9. 3,000 Vietnamese and Cambodians who fled to third countries after the fall of their governments (May 8, 1975)

10. Vietnamese in third countries facing expulsion (May 8, 1975)

Congress was informed that the U. S. was prepared to accept up to 150,000 refugees in the foregoing categories, although it was expected that not more than 130,000 would permanently resettle in the U. S.

B

THE DEPUTY SECRETARY OF STATE

WASHINGTON

CONFIDENTIAL

June 21, 1975

Dear Mr. Attorney General:

As a result of recent communist Pathet Lao moves to increase their power in Laos, over 12,000 Lao, including some 10,000 Meo tribesmen, have taken refuge in Thailand. About 550 of these refugees are key indigenous personnel and US Government employees, who have good reason to fear persecution if they return to Laos and have therefore already requested asylum in the US. Our Embassy in Vientiane estimates that eventually this number may increase to 1500 Lao refugees who seek asylum in the US. There are also Lao diplomats, students and others in the US and third countries, some of whom have similarly expressed fear of persecution if they return to Laos. We estimate that the number in third countries who may eventually apply for asylum in the US will not exceed an additional 1500 persons. At the same time the Royal Thai Government has given some indication of its willingness to resettle the bulk of the 10,000 Meo tribesmen in Thailand if we provide assistance for this purpose.

Most of the Lao who have fled the country are key civilian and military officials of the Provisional Government of National Union who had long been associated with US Government officials and had opposed efforts by the communist Pathet Lao to take over control in Laos. Many are US trained. Some of these officials fled in fear that they might be assassinated or, at the least, would be forced out of their jobs. Others fled after being forced by "people's courts" in several ministries to submit their resignations. The Pathet Lao have already denounced those who have fled as traitors who are plotting a coup to return to power. The PL have also confiscated the property of several leaders who have fled and are conducting "indoctrination"

The Honorable
Edward H. Levi,
Attorney General.

CONFIDENTIAL
GDS

sessions for those who were ousted from their jobs but did not leave the country.

Several key US Government employees, such as the Lao political assistant at the Embassy, have also fled for fear of Pathet Lao persecution. Others who remain in Laos have been warned to stop working for Americans. Several Lao diplomats and military trainees in the US have also asked for asylum here because they fear returning to a communist dominated Laos.

We anticipate that additional Lao leaders and US Government employees will leave Laos in the near future because of continuing harassment by the Pathet Lao.

I believe that the United States has the same obligation to those Lao with whom we were closely associated as we did to Vietnamese and Cambodian refugees. The numbers of Lao are far smaller, however. There are indications that the Government of Thailand may not permit some Lao refugees to remain permanently in Thailand and will move to expel them. Because the Government of Thailand has not signed the Convention or Protocol Relating to the Status of Refugees, it is reluctant to work with the United Nations High Commissioner for Refugees, and that organization has been generally ineffective in resettling refugees located in Thailand.

As a result of this situation, we believe that a limited parole program for Lao refugees is necessary. We do not know how many local employees and key indigenous personnel will succeed in leaving Laos, or how many in other countries will require resettlement in the United States. We estimate, however, that the total number of parolees will not exceed 3000. Therefore, I am requesting that you agree to implement as soon as possible a program to parole into the United States on an individual case by case basis these Lao refugees. To the fullest extent possible, we would attempt to involve other governments and international organizations in the resettlement efforts.

I recognize the desirability of informing the Congress about our plans to parole Lao into the United States. I propose that representatives from our respective Departments jointly appear in executive session before the appro-

priate Congressional committees. During these meetings we should stress the need for confidentiality because of the delicate state of our present diplomatic relations with the Lao Provisional Government of National Union.

Although we recognize that a parole program is likely to become public, we would hope to keep the entire operation as low-key as possible because of our continuing relations with the Lao government. We would depend on the Intergovernmental Committee for European Migration (ICEM) to move these people and on voluntary agencies to assist in their processing and resettlement.

As always, I am appreciative of your cooperation in matters of mutual interest.

Sincerely,

Robert S. Ingersoll

C

HUGH SCOTT
PENNSYLVANIA

United States Senate

OFFICE OF THE MINORITY LEADER
WASHINGTON, D.C. 20510

June 17, 1975

Honorable Edward H. Levi
Attorney General
Department of Justice
Constitution Avenue
Washington, D. C. 20530

Dear Attorney General Levi:

We are writing on a matter of grave concern. In the confusion of flight, many refugees from Cambodia and Vietnam found themselves in Asian countries which were not prepared to assume the responsibility of resettling them.

The Congress properly questioned the unilateral acceptance of refugees. We are satisfied that reasonable attempts were made by the Secretary of State to resettle the refugees in other nations.

While we would like to have seen greater international participation in this great humanitarian undertaking, we think that the overriding concern is the well being of the refugees.

We, therefore, request that you exercise your parole authority to allow the Vietnamese and Cambodian refugees to enter the United States for the purpose of resettlement.

Thank you for your full consideration of this problem.

Sincerely,

Mike Mansfield
Majority Leader

Hugh Scott
Republican Leader

INTERAGENCY TASK FORCE FOR INDOCHINA
DEPARTMENT OF STATE
WASHINGTON, D.C. 20520

July 8, 1975

~~Confidential~~

Honorable Edward H. Levi
Attorney General
Department of Justice
Washington, D.C. 20530

Dear Attorney General Levi:

We are at a point where we should immediately consider the plight of those residual numbers of Vietnamese and Cambodian escapees stranded in third countries in Asia and elsewhere who are unable to enter the United States under the current parole program. These residual numbers, which I shall describe in greater detail below, are those who, unaided by us, escaped their homelands during the period of the general evacuation of Vietnam and Cambodia, who have been unable to find resettlement in the country of first refuge or who have been unable to go on to third countries.

With over two months having elapsed since the collapse of the non-communist governments in Vietnam and Cambodia, we have a clearer appreciation of the total magnitude of the problem since the period when you first authorized the entry of some 50,000 "high-risk" Vietnamese, an equivalent number of relatives of U.S. citizens and permanent resident aliens, 5,000 Cambodians stranded in third countries and several other groups subsumed under a total ceiling of 150,000 refugees to be accepted into the United States. It was understood that an effort would be made to resettle abroad as many as 20,000 of the 150,000 refugees. I believe that with the potential of resettlement and repatriation together we will be able to realize and possibly exceed the promise to resettle 20,000 refugees abroad. Nevertheless, our information indicates there may be as many as 10,000 Vietnamese and an additional 7-9,000 Cambodians among those stranded abroad in addition to the 130,000 that we have accepted into our system and in excess of those accepted already by third countries such as France, Canada, Germany, Holland, Denmark, Australia, New Zealand, Columbia and Taiwan. With the exception of some Cambodians

who fled across the border to Thailand after the fall of Phnom Penh, these residual numbers for the most part appear to have little possibility of being absorbed into the societies where they chanced to land.

I believe that a commitment on our part to take a substantial portion of those who are not now eligible for parole would not add appreciably to the total numbers we now have in our system since they should be offset by the promises of France to eventually take as many as 15,000 and Canada to take as many as 14,000 of the refugees. This would be fully in line with the sentiments expressed by Senators Mansfield and Scott in their letters of June 18 to you and to Secretary Kissinger. Moreover, such a commitment in advance of actual parole would serve to alleviate the harsh physical conditions now being borne by refugees in many internment areas. Further, it could be implemented in such a manner as not to prejudice or inhibit the efforts of other countries to accept a significant share of these refugees.

Briefly, the current distribution of Vietnamese and Cambodian refugees outside the U.S. system is as follows:

Thailand: We estimate that there are some 4,500 Vietnamese in Thailand who arrived by small craft following the collapse of the Government of Vietnam. About one half of these may already be eligible for parole into the U.S. on the basis of previous criteria. There are additionally an estimated 7-9,000 Cambodians who crossed the frontier following the Cambodian Communist-takeover of Phnom Penh. The Royal Thai Government, concerned over the new political-military situation on its borders, has not welcomed the refugees with open arms and, in fact, some Thai officials have exploited them, and in some cases, threatened forced repatriation. The Thai Deputy Prime Minister, however, has recently stated publicly that, since some Cambodians who had returned to their country had been executed, the Royal Thai Government would not force those remaining in Thailand to return. He made no commitment, however, to resettle them in Thailand.

Malaysia-Singapore: A number of Vietnamese who were turned away by Thailand have made their way south along the Malay Peninsula with as many as 3,000 interned off the coast and about 1,000 in Singapore. About one-half of this total, about 2,000, may now be eligible for U.S. parole under present criteria. However, it is quite clear that the local

governments will not absorb the Vietnamese and Cambodians for resettlement and, in fact, they are only barely meeting accepted standards of humane treatment. In the particular case of Singapore, a stream of over 12,000 refugees has been turned away in the past eight weeks and directed elsewhere, principally towards the U.S. base at Subic Bay in the Philippines and toward Guam. Those refugees that remain in this area lack vessels large enough to proceed to U.S. ports.

Hong Kong: As you may know, the INS has screened over 4,200 refugees in Hong Kong and has determined that 1,300 qualify for U.S. parole under current criteria. We understand that France, Belgium, and Canada, among others, will undertake to resettle 2,000, which will leave something less than 1,000 refugees in Hong Kong.

Taiwan: The Republic of China has absorbed 1,400 of its own citizens who carried dual nationality in Vietnam. We have accepted some 300 for parole from those who reached Taiwan.

Korea: The ROK when it evacuated Vietnam carried more than 1,000 Vietnamese refugees to Korea. They have been screened by our Embassy with the result that some 550 have been found eligible for parole, leaving more than 400 who are not eligible under present criteria.

Europe: The bulk of Vietnamese and Cambodian refugees in Europe are in France, a natural haven for those with families there or other ties such as education or business. The GOF has indicated to us that it will accept up to 15,000 Vietnamese and Cambodians but will wish to proceed slowly for internal political reasons.

Germany, the United Kingdom, Greece and Italy have indicated that Vietnamese and Cambodians located there at the fall of the governments will be able to remain. Belgium and the Netherlands, for example, have committed themselves to accept refugees (The Netherlands may take 200; Belgium will take increments of 150 and will accept all Vietnamese with family ties.)

Canada: In addition to permitting the entry of those Vietnamese and Cambodians with relatives in Canada, the GOC has

stated that it will take 3,000 more refugees now within an overall ceiling of 14,000. Canadian immigration and consular officials are working within U.S. reception centers.

Latin America-Africa: Several Latin American countries have made direct commitments to receive small numbers of Vietnamese refugees. We believe the ultimate prospects as well as in several former French West African territories are good. However, these may materialize only after a period of time has elapsed, governments have had a chance to prepare plans and the international political ramifications of the migration have become clearer.

Other Countries: Several other countries have indicated their willingness to accept those Vietnamese and Cambodians who were caught within their borders. This may total in excess of 1,000.

I believe that there is significant public and Congressional support for broadening the criteria for parole. In addition to the letter to you and Secretary Kissinger from the joint leadership of the Senate, a significant number of public queries have come to our attention through Congressional offices. This channel has particularly expressed concern for the reunification of students in the U.S. and their refugee relatives not now eligible for parole. You are also aware of the interest of the representatives of the National Conference of Catholic Bishops who mentioned the issue of refugees stranded abroad to President Ford on June 18.

Therefore, for compelling humanitarian reasons, fully consistent with our actions in the past two months and consistent with our traditional international posture concerning refugees, I recommend that you authorize the entry of additional numbers of Vietnamese and Cambodians now outside their countries who have not been accepted thus far for resettlement in other countries. We understand, from our informal discussions with General Chapman, that it would be preferable to have two basic criteria, those who are vulnerable or have family relationship, for selecting those additional refugees to be brought in. We believe the interpretation of vulnerable and relationship should include the following:

-- Refugees with relatives in the United States, including members of extended families without regard to current citizenship or residence status.

-- Refugees with sponsors in the United States.

-- Refugees who were civil servants or officers or non-commissioned officers in the armed forces of Vietnam and Cambodia.

-- Refugees whose political support for the former regimes of Vietnam or Cambodia would cause them to suffer reprisals if returned home or who are a political liability to the country of refuge.

-- Refugees with former U.S. educational connections or who were employees or agents of American firms.

-- Third country nationals, who were residents of Vietnam or Cambodia who have Vietnamese or Cambodian families in the U.S. system.

-- Refugees who worked for the U.S. Government or its agents within the last five years.

These criteria would be restricted to Vietnamese and Cambodians who left their countries in the period March 15-July 1, 1975, and their relatives who were stranded abroad by the collapse of the governments of Vietnam and Cambodia. Those who apply following the July 1, 1975, cut-off would be reviewed under the standard refugee asylum procedure available for normal circumstances. Furthermore, all statutory and administrative requirements for clearance would be followed except for those of public charge, labor certification, birth, marriage and police certificates from Indochina and travel documents. All processing would be accomplished abroad and each case would be reviewed on a case-by-case basis.

Because of our experience in this effort to date, it should be understood that it will not be required that individuals will have attempted to settle in the country of first refuge or sought other international assistance before being entitled to parole. On the other hand, it is understood that an individual who has been accepted by a third country for refuge will not be eligible for the parole program.

The additional numbers of refugees admitted under these broadened criteria would not, however, mean an increase in the

~~CONFIDENTIAL~~

in the number of refugees being permanently resettled in the U.S.

If you concur in this recommendation, the Task Force staff, in concert with INS, will work out the implementation in such a manner as not to impair potential resettlement by other governments but in a way that will alleviate human suffering. I suggest that we consult jointly with the appropriate bodies of Congress in order that we may move to resolve this problem as quickly as possible.

In conclusion, we will, in consultations, be able to note that the numbers of refugees that we will receive under the present parole criteria, as well as the 3,000-5,000 refugees we will accept from Laos, should not exceed significantly the total of 130,000 we originally informed Congress we expected resettle in the U.S. I am enclosing a statistical estimate which supports this conclusion.

Sincerely yours,

Julia Vadala Taft

Julia Vadala Taft
Director
Interagency Task Force

Attachment

Attachment A

~~CONFIDENTIAL~~

Present Estimate of Refugee Flow

130,616	Currently in US System
-2,325	Repatriation
-4,536	Moved already to Third Countries
123,755	
-10,000	Estimated potential from US to Third Countries
113,755	
+12,000	Estimated Intake from S.E. Asia and Third Countries
125,755	
+3,000 - 5,000	LAO
128,755	TOTAL
Total expected range	128,500 - 131,500

~~CONFIDENTIAL~~

THE WHITE HOUSE

WASHINGTON

July 17, 1975

MEMORANDUM FOR: JIM CONNOR

FROM: PHIL BUCHEN P.W.B.

SUBJECT: Memorandum from Henry Kissinger and James Lynn re: Indochina Refugees in Thailand dated July 16, 1975

With respect to the above-described memorandum, the only question requiring the President's attention at this time is the Presidential Determination (the first paragraph of the memorandum and the first recommendation). The budget revision does not require the President's approval. As to support for the Meo tribesmen, NSC should request the appropriate agencies to develop the necessary plan by August 15 without bringing the issue to the President at this time.

I also recommend the addition of the following paragraphs at the end of the Presidential Determination:

> "The Secretary of State is requested to inform the appropriate Committees of the Congress of this Determination."
>
> "This Determination shall be published in the Federal Register."

The NSC staff has informally advised my office that they have no problem with these additions. NSC also indicated that the initial Presidential Determination, 75-13, does not require continued classification, and they will make sure that it is published prior to or concurrently with the new Determination.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: July 16, 1975 Time:

FOR ACTION: cc (for information):

Jack Marsh
Phil Buchen

FROM THE STAFF SECRETARY

DUE: Date: July 17, 1975 Time: NOON

SUBJECT:

Memorandum from Henry Kissinger and James Lynn re Indochina Refugees in Thailand dated July 16, 1975.

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

__X__ For Your Comments

__X__ For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

This is a HIGH PRIORITY item --- please give it a quick turn-around.

SECRET ATTACHMENT

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please Jim Connor

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 01296

Collection/Series/Folder ID	:	001900566
Reason for Withdrawal	:	NS,National security restriction
Type of Material	:	MEM,Memo(s)
Creator's Name	:	Henry Kissinger and James Lynn
Receiver's Name	:	President
Description	:	re Indochina refugees in Thailand
Creation Date	:	07/16/1975
Volume (pages)	:	2
Date Withdrawn	:	06/27/1988

sanitized 10/98 Let.

GDS

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 16, 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: HENRY A. KISSINGER
JAMES T. LYNN

SUBJECT: Indochina Refugees in Thailand

Deputy Secretary Ingersoll requests that you determine that refugees from Laos be eligible to receive U.S. assistance under the authority of the Migration and Refugee Assistance Act. The State Department would utilize up to $3 million of the $5 million you authorized on April 8, 1975, to be devoted to Cambodian and Vietnamese refugees for use in resettling up to 3,000 ethnic Lao refugees, some in the United States. This determination is necessary to provide funding flexibility for these ethnic Lao.

However, you should be aware that this group is only part of a larger problem of refugees in Thailand. In addition to the ethnic Lao there are Vietnamese, Cambodians, and an estimated 23,000 Meo tribesmen from Laos now in Thailand. [redacted] You may wish to discuss this problem with John Marsh. However, [redacted] direct U.S. Government grants to voluntary agencies or the Thai Government or to the UN High Commissioner for Refugees) have not been systematically explored within the U.S. Government or with the Thai.

E0 12958 1.6(d)(1)>10<25Yrs (C)

[redacted] the U.S. has a clear moral obligation to assist these people. However, we believe that a definitive plan for the permanent resolution of the Lao refugee problem is urgently needed in view of the potential problems which may arise.

E0 12958 1.6(d)(1)>10<25Yrs (C)

Recommendations

(1) That you sign the Presidential Determination which will permit the resettlement of up to 3,000 ethnic Lao. (Tab A)

GDS

(2) Approve [redacted] up to $2 million for interim support to the Meo pending development of the definitive plan.

E0 12958 1.6(d)(1)>10<25Yrs (C)

Approve_____

Disapprove_____

(3) Request that the Secretary of State, in consultation with other affected agencies, prepare by August 15 a plan for the resettlement of the Meo refugees in Thailand.

Approve_____

Disapprove_____

Presidential Determination
No._____

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR: THE SECRETARY OF STATE

SUBJECT: Determination pursuant to Section 2(b) (2) of the Migration and Refugee Assistance Act of 1962 as amended (The Act) to authorize assistance to Lao refugees as a class with funds made available under Presidential Determination No. 75-13 April 8, 1975.

In order to meet unexpected urgent refugee relief needs arising in connection with events in Laos, I hereby determine pursuant to Section 2(b) (2) of the Act that assistance to the following categories of persons will contribute to the foreign policy interests of the United States:

(i) persons who because of a well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group leave Laos, and are either Lao nationals, non-Lao aliens habitually resident in Laos, or other non-Lao aliens not habitually resident in Laos but present there as direct or indirect employees of the United States Government or its allies; and

(ii) Lao nationals who are outside Laos and cannot return because of a well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group.

I further determine that funds made available to the Department of State under Presidential Determination 75-13 can be used for assistance to Lao refugees.

THE DEPUTY SECRETARY OF STATE

WASHINGTON

June 21, 1975

~~CONFIDENTIAL~~

MEMORANDUM FOR: THE PRESIDENT

From: Robert S. Ingersoll RSI

Subject: Presidential Determination to Assist Lao Refugees

As a result of the recent communist Pathet Lao moves to increase their control in Laos, over 12,000 Lao have taken refuge in Thailand. About 10,000 of these are Meo hill tribesmen whom the Royal Thai Government has indicated that it might be willing to resettle in Thailand, if the United States Government provides financial assistance to do so. There are also about 550 former key civilian and military officials and employees of the United States Government and their families in Thailand who have already requested asylum in the United States. Our Embassy in Vientiane expects that this number may eventually rise to 1,500. We also anticipate that there may be up to 1,500 Lao diplomats, students, and others in other countries who will also eventually request asylum in the United States. This would bring the total of those throughout the world requesting such asylum to 3,000.

These refugees will require temporary subsistence, transportation and resettlement assistance. We propose that the U.S. be generous in helping these people. Because of the sensitivity of U.S. relations with the Lao Provisional Government of National Union, we plan to provide assistance to the Lao refugees through international agencies such as the International Committee of the Red Cross or an international voluntary agency, such as the Catholic CARITAS, the World Council of Churches, etc. Assistance to this category of refugees will help improve our relations with the Royal Thai Government and contribute to the foreign policy interests of the United States.

Presently there are no funds appropriated nor available to assist Lao refugees. Both Presidential Determination 75-13 and the Indochinese Migration and Refugee Assistance Act of 1975 limited assistance to refugees from Cambodia and South Vietnam. Initial assistance of up to three million dollars

($3,000,000), however, can be provided through a Presidential Determination under the Migration and Refugee Assistance Act, Section 2 (b) (2) to authorize assistance to Lao refugees as a class. Additional requirements which should be minimal when compared to needs for Vietnamese refugees can be addressed by a future Presidential Determination in Fiscal year 1976 or by a separate appropriation request.

In addition, in order to permit the entry into the US of the Lao who have requested asylum here, I have sent a letter to the Attorney General requesting that he approve the parole into the US on an individual basis of up to 3,000 Lao refugees.

Recommendation

That you sign the attached Amendment to Presidential Determination 75-13 authorizing the Department of State to use up to three million dollars of funds made available by that Determination for refugees from Laos.

Attachment:

Presidential Determination

THE WHITE HOUSE

WASHINGTON

August 25, 1975

Dear John:

Thank you very much for sending me materials concerning the case on appeal in the Ninth Circuit which deals with the rights of Vietnamese children transported to the United States in "Operation Babylift." The papers have been reviewed by Mrs. Kilberg on our staff. While we are sympathetic to the points raised by the appellants in this case, we do not think it appropriate to urge from the White House a change in policy for proceeding differently from the requirements imposed by the Federal District Court.

I realize that this answer will not satisfy the man who has been communicating with you on the subject, but I believe it is the only appropriate answer I can provide.

Sincerely,

Phil

Philip W. Buchen
Counsel to the President

The Honorable John Steketee
Judge of Probate
Kent County Juvenile Court
1501 Cedar Street, N. E.
Grand Rapids, Michigan 49503