

REORGANIZING THE IMMIGRATION FUNCTION: TOWARD A NEW FRAMEWORK FOR ACCOUNTABILITY

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OVERVIEW

A new era of large-scale immigration calls for new forms of governance and management. As we negotiate these demands it is important to ask ourselves a number of critical questions. First, are the intentions of the immigration system clear to all who engage with it? Second, are our institutional structures equal to the task of managing the responsibilities implied by large immigration numbers and ever more complex functions? Third, are various components of the immigration function rationally organized into a set of interrelated elements whose whole is clearly larger than the sum of its parts? Fourth, is the system we have in place-both in terms of its organization and of its location within our public administration apparatus-capable of delivering all the programs we expect of it? Fifth, can the system satisfy Americans that increasing public investments in the immigration function have in fact improved its two main elements: compliance with the law and provision of services in a timely, fair, and courteous manner? Finally, is the system flexible enough to learn from experience, embrace change, and meet the financial and programmatic criteria of accountability that the public has a right to expect?

These questions are very much at the core of this study's purpose: to examine whether the institutional framework that has been created to manage our immigration function meets fair and reasonable expectations of program integrity and delivery and-if it does not-to offer appropriate alternatives.

Our starting premise is that immigration can best be managed in the context of laws grounded in a realistic policy vision, an appreciation of immigration's relationship to other major domestic policy priorities, and a high degree of clarity about the international objectives and obligations of the United States. Effective day-to-day management, in turn, has three primary ingredients: regulations that make sense, are transparent, and are consistently applied; programs that

emphasize an uncompromising commitment to accountability; and an institutional culture that understands and internalizes the agency's mission and priorities while embracing and rewarding personal integrity and professionalism.

In addition, the effective discharge of the immigration function requires strong leadership that adopts an uncompromising stance that favors rules-based procedures, emphasizes program integrity, and holds officials at all levels responsible for upholding the public trust. It also requires a leadership whose own actions clearly reflect unmistakable values and priorities. Finally, effective management must be vigilant enough to identify and fix small problems before they become big ones, while adapting constantly to changing real circumstances that may require adjustments in policy and law.

SOURCES

This report is based on consideration of material from four types of sources. First, we have reviewed the work of more than a century of study groups, commissions, task forces, congressional committees, blue ribbon panels, and a handful of researchers. Their attempts to come to terms with issues that are remarkably similar to those with which we are grappling today teach us a lesson in modesty, even humility; we found little in today's debates and proposed solutions that has not been recommended before. In fact, both our principal recommendation-to consolidate all immigration functions in an independent agency-and, in the absence of the political will to do so, our "second best" recommendation-to reorganize the immigration function in a fundamental way by incorporating it directly within the Department of Justice-have received strong support among study panels going back to the earliest days of the century. These include two of the last three major commissions this country mandated to study this issue-in the late 1970s and the late 1980s.

Second, we have benefited from the observations of many knowledgeable and thoughtful people from a variety of federal agencies-at all levels of responsibility-congressional offices, public sector study groups, and private sector institutions. These individuals-whose affiliations appear in Appendix 1-gave us important

critiques of the current structure and extremely well considered explanations of their perspectives and recommendations. Their knowledge and passion have left an indelible mark on our own views of how to approach the immigration function—most compellingly, in the need to address prevailing weaknesses in service delivery.

Third, we have learned a great deal from people whose constituencies have regular contact with the INS. Some of them are the Washington representatives of ethnic and advocacy communities, and their well-reasoned concerns resonated with us as we drafted this report. Others are front-line service providers. Among these, we are particularly indebted to the many fine people of the CLINIC (the Catholic Legal Immigration Network, Inc.) service network who responded generously to CLINIC Director Don Kerwin's time-consuming questionnaire about problems with and recommendations about the delivery of immigration services at the local level.

Finally, we have relied on our own knowledge and experience with immigration systems in the United States and abroad. This includes extensive conversations with senior officials from the Canadian and Australian governments who have thought deeply about these same issues.

THE IMMIGRATION FUNCTION

The immigration function is multifaceted and multi-layered. It involves deterrence of unlawful entry, facilitation of lawful entry and residence, naturalization, and termination of unlawful residence. Effective performance of the function requires a large array of skills in a variety of domains: central office policy, program development, program coordination between headquarters and field offices, face-to-face provision of services, and enforcement encounters. Immigration authorities adjudicate applications based on family relationships, verify the unavailability of U.S. workers for certain jobs, and certify the skill levels of and wage offers to prospective foreign workers. They hear claims of asylum-seekers, apprehend unlawful entrants, check employers' compliance with immigration laws and investigate employers suspected of hiring unauthorized workers. They

inspect the roughly half a billion persons who cross U.S. borders each year, assess fines against airlines that transport foreigners who lack proper papers, detain criminals and transport tens of thousands of deportable aliens a year, and grant citizenship to large numbers of immigrants (more than a million persons per year in recent years). They grant or deny visas to millions of applicants around the world, and handle tens of millions of requests for extensions of stay, work authorization, stays of deportation, advance permission to reenter the United States, and the replacement of lost "green cards." Simultaneously, immigration authorities are in close contact with a wide variety of state, local, and foreign officials and respond to thousands of communications from members of Congress. Successful performance of these roles requires a complex and integrated records system that can link overseas and domestic units, combine civil and criminal files, be accessible to the federal, state, and local authorities without violating confidentiality rules, and (most recently, in some circumstances) verify the immigration documents shown to employers.

The importance and complexity of the function has led to repeated congressional efforts to study, modify, and reshuffle it. Since Congress first began to centralize control over immigration in 1864, the immigration function has been moved from department to department; substantial internal reorganizations have been even more frequent.

In an important sense, there is no single "right answer" to the question of where the immigration function should be located or how it should be organized. The system is big, complex, and asked to do many discrete things. An optimal location and structure for offices that grant benefits, and must thus be accessible and "user-friendly" to customers, may not be the same as those which optimally serve the needs of officers who investigate immigration violations and arrest and detain people. A system of records that maintains accurate and easily accessible files of lawful immigrants may not be the same system that tracks criminal aliens most efficiently. While form should follow function, flexibility should also be an

important organizational principle when "on-the-ground" conditions demand it; a picture with neat boxes may be pretty to look at but difficult to implement.

In this study, we identify some major areas in which form appears to impede function, or in which an important function lacks a location. We then ask how the current structure might be modified to enhance policy coherence, public accountability, and customer service. We neither start from scratch, nor do we simply suggest changes at the margins. There are some major problems and gaps that demand major changes.

We begin with a brief history of the development of the existing structure and some recent proposals for structural change. We then identify a number of important systemic problems. Remarkably, we find that the immigration bureaucracy has been plagued by many of the same problems and challenges throughout its history despite numerous congressionally mandated changes and internal restructurings. This finding implies that the questions regarding the most appropriate location and the most effective organization of the immigration function are larger than simply the politics of the moment, U.S. immigration policies, or an administration's management of the agency. Finally, after evaluating several possible changes of placement and structural reform, we conclude that the salience of migration and citizenship policy today argues in favor of consolidating virtually all immigration functions in a single, independent, Cabinet-level agency. A second-best, but still fundamental, change would be to elevate the immigration function within the Department of Justice through the creation of an Associate Attorney General for Immigration.

Under either alternative, we recommend the complete separation of service and enforcement functions, each with its own career path, chain of command, and system of accountability for the complete delivery of its function. Both functions, however, would ultimately report to the same high-level administrator who also would be charged with the formulation of immigration policy for the Executive Branch. By doing so, we believe that two of the central weaknesses of the management of immigration as it is presently structured—lack of overall policy

coordination and unequal attention to the agency's two main activities (enforcement and service)-are addressed with clear gains in the accountability of each activity and the consistency of program delivery. We also believe this structure avoids the loss in overall functional synergy and coherence that would occur with a dispersal of the agency's functions.

HISTORY OF THE IMMIGRATION FUNCTION

Location of the Immigration Service

For nearly a century after independence, Congress enacted no general immigration laws and established no federal bureaucracy to oversee immigration. Inspections of arriving immigrants were carried out by state officers; state courts were responsible for naturalization. In 1864, the position of Commissioner of Immigration was established within the State Department. The Commissioner was charged with protecting new immigrants from fraud and overseeing their transportation to their final U.S. destination.

Congress adopted legislation in 1875 barring the entry of convicts and prostitutes, and in 1882 it enacted the first of the Chinese exclusion laws. At that time, Congress placed overall management of immigration in the Treasury Department, although enforcement of laws against arriving aliens was delegated to the states. The resulting inconsistencies and inefficiencies led Congress to give the Treasury Department complete control over immigration in 1891.

The Bureau of Immigration was transferred from the Treasury Department to the newly created Department of Commerce and Labor in 1903 because of the latter's focus on enforcing the laws regarding foreign contract labor. With the addition of the naturalization function three years later, the Bureau became the Bureau of Immigration and Naturalization. A Division of Information within the Bureau was charged with helping immigrants settle throughout the country and compiling a list of employment opportunities for them. In 1913, the Department of Commerce and Labor was split into two departments. The Immigration and Naturalization Bureau went with the new Department of Labor and itself divided into two bureaus, each headed by a Commissioner. The two bureaus were

reconsolidated by an Executive Order in 1933 and renamed the Immigration and Naturalization Service (INS). The INS remained in the Labor Department until 1940 when President Roosevelt's Reorganization Plan transferred it to the Department of Justice as a wartime national security measure. It has remained there since.

Initial Development of Various Immigration Functions

Tracing the history of some of the immigration functions over time enhances our understanding of where they are located today and why. This section reviews the development of inspections, visa issuance, border control, administrative review, naturalization, adjudications, labor, and asylum functions.

Inspections. In the 1880s state officials performed inspections of arriving aliens. The Federal Government took over inspections at the port of New York in 1890 and at all ports of entry in 1891. By 1899, officers were deployed at foreign ports to inspect for likely medical problems, though they could not prevent departures unless an intending immigrant had a communicable disease. The Immigration Act of 1924 effectively transferred the screening function overseas by requiring that aliens obtain entry visas abroad and by allowing the government to examine aliens for admissibility prior to departure. The function was performed by consuls, thus involving the State Department; also present were advisers from the Immigration Service and the Public Health Service. Today, screening of aliens occurs at ports of entry, through certain INS pre-inspection locations overseas, and through the visa process in consular offices where applicants may be judged inadmissible and denied a visa.

Visa Issuance. Consular officers were charged with issuing visas in 1884. A general requirement that aliens acquire visas was established in 1917. Final decision-making authority on visa applications was transferred to the Secretary of State in 1942, because of wartime security concerns. By 1952, INS-approved visa petitions were required by most immigrants, although the State Department retained the function of granting visas overseas. The State Department continues to issue visas overseas, though nationals of some countries do not require visas

under the Visa Waiver Pilot Program and much of the clerical work of visa issuance has been transferred to the National Visa Center.

Border Control. Enforcement of immigration laws on the border began with approximately 75 immigration inspectors patrolling the Southern border by horse in 1904. In response to an increase in illegal entry and smuggling, Congress created in 1924 a Border Patrol within the Immigration Bureau with 450 employees deployed along both the Mexican and Canadian borders. By 1930, the Border Patrol had almost doubled in size. It received additional resources during WWII in response to national security concerns. Rising unauthorized entries in the last two decades have led to the Border Patrol's continuing expansion. Since FY1993, the Border Patrol has doubled from approximately 3900 agents to 7800, the vast majority of whom are located on the Southwest border.

Administrative Review. When the Immigration Bureau was in the Labor Department, it included a Board of Special Inquiry and a Board of Review. The former determined the status of detained immigrants and cases of exclusion and deportation. The latter reviewed appeals from the Board of Special Inquiry and made recommendations to the Secretary of Labor regarding deportation cases. These two functions were transferred along with the INS to the Justice Department and evolved into the Immigration Court and the Board of Immigration Appeals (BIA). The BIA and the Immigration Court were consolidated into the Executive Office of Immigration Review (EOIR) in 1983. Also within EOIR is the Office of the Chief Administrative Hearing Officer, which hears appeals in employer sanctions cases.

Naturalization. Naturalization laws date from the early years of the republic. Initially, any common law court of record was empowered to grant naturalization; federal courts eventually were granted the authority as well, and at one point court clerks provided records of naturalization to the Secretary of State. However, the absence of a federal agency with responsibility for enforcing the naturalization laws led to a lack of uniformity, as courts in various states used

their own procedures for process, standards, records, and investigations. In response, 1906 legislation gave administrative supervision to the federal government by combining oversight of the naturalization function with the immigration bureau to form the Bureau of Immigration and Naturalization. Federal courts retained the authority to grant or deny naturalizations. In 1909, naturalization fieldwork was transferred from representatives of the U.S. attorneys to a special corps of examiners in the Bureau. In 1913, naturalization became a separate bureau within the Department of Labor, but in 1933 it was recombined with the immigration bureau. The naturalization function moved to the Department of Justice along with the rest of the INS in 1940. Due to an increasingly perfunctory role for the courts in naturalization, the Immigration Act of 1990 changed the process to an administrative one under the Attorney General's authority, though courts can still administer the citizenship oath and review denied petitions. Special naturalization offices were opened by the INS in 1995 to handle a large and growing backlog of applications.

Adjudications. In the 1950's, adjudications were primarily handled by staff at INS headquarters, though some work occurred at the district level. Backlogs caused by increased filings during the 1960's led INS to send some cases to inspectors at ports of entry as stand-by work. When backlogs began occurring there too, INS initiated Up-Front Processing at local offices to process walk-in applications and petitions. While efficient for some cases, this process also led to more clerical work for adjudicators, longer waiting lines for applicants, and a perception that cases filed in person received preferential treatment. INS created its first Remote Adjudications Center in 1979 away from the public with staff dedicated only to adjudications. After seeing increased efficiency and higher quality decisions, INS opened additional remote sites. In the 1980's, INS began a Direct Mail Program to further reduce costs and provide better service.

The Adjudications and Nationality Division currently is part of the Examinations Branch of the INS. Among its many duties are immigrant and non-immigrant visa

petitions, adjustments of status, green card applications, and waivers of excludability. The work is split between those applications and petitions that require interviews, and thus take place in the district offices, and those that do not and are handled by the Service Centers (which evolved from the Remote Adjudications Centers described above). The Service Centers have proven able to process large volumes of work and eventually will handle initial processing for all applications and petitions.

Foreign Workers. Labor Department involvement in immigration began with the Department's creation in 1913 and has continued to this day. Even prior to the creation of the Department, the Immigration and Naturalization Bureau compiled a list of job opportunities in the United States for arriving immigrants. DOL helped mobilize and import labor during World War I and also was involved in the Bracero programs for agricultural workers that lasted from 1942 to 1964. Through the Employment and Training Administration (ETA), the Department of Labor has been involved in the certification of permanent, as well as some temporary, foreign workers. Additional responsibilities were imposed on the Labor Department following passage of the Immigration Reform and Control Act of 1986 (IRCA), particularly on the Employment Standards Administration (ESA), which was required to check work authorization forms. Other changes in Labor Department responsibilities have come from legislation enacted in 1989, 1990, and 1991 regarding immigrant nurses and employment-based immigration. A section of the Bureau of International Labor Affairs (ILAB) focuses on developing immigration policy and conducting research. The Office of the Assistant Secretary for Policy (ASP) usually coordinates Department-wide policy positions, most directly with regard to agricultural and nursing worker issues. The Office of the Solicitor (SOL) provides legal support for all of the Department's immigration-related functions.

Asylum. Even in the late 1800s, Congress understood that aliens who were otherwise excludable or deportable may deserve exemptions if they were political enemies of the government to which they would be returned. Though such

exemptions were present in 1950s legislation and in regulations and guidelines issued by the INS and State Department in the 1970s, asylum status formally came into existence with the Refugee Act of 1980. The Act allows the Attorney General to grant asylum to aliens arriving in the United States who prove that they have a well-founded fear of persecution if returned to their countries of origin. Originally handled by INS examiners, asylum cases were transferred to a specially trained corps of asylum officers by 1990 regulations. Asylum officers report directly to INS headquarters and their field offices are totally separate from INS district offices. Later regulations streamlined the process to reduce the backlog and prevent abuse of the program.

REORGANIZATION AND RESTRUCTURING

Structural reform proposals date back to the first decades of the 20th century. Studies consistently have focused on INS'S multiple missions (particularly the tension between service and enforcement), the overlap of INS functions with those of other agencies, and INS management. More specifically, they commonly have looked at raising the profile for immigration policy development, consolidating border agencies, consolidating the DOS and INS visa responsibilities, and improving efficiency and management. We attach as Appendix 2 an annotated list of the most important government reports on structural reform from the early 1900s to the present.¹ We discuss below the relevant recommendations of migration-related commissions created by Congress over the past two decades.

Summary of Recent Proposals

Select Commission on Immigration and Refugee Policy (SCIRP). In 1981, the Select Commission recommended maintaining the basic structure of the immigration system, with responsibility for visa issuance in the State Department and for domestic operations with the INS. Within this structure, however, SCIRP recommended a clear budgetary and organizational separation of the service and enforcement functions of INS. SCIRP also recommended upgrading the

Commissioner within the Justice Department to the level of Director and having the Commissioner report directly to the Attorney General.

SCIRP considered proposals to transfer visa issuance from the State Department to INS or to an independent agency with both domestic and overseas functions. It decided against them, however, for reasons that included sensitivity to departmental jurisdictions and existing expertise (SCIRP members included the Cabinet Secretaries of the agencies that would be affected by such reorganization), as well as personnel and operational disruptions. (Some Commissioners, however, supported the idea of a single immigration agency because of likely improvements in the efficiency, effectiveness, and status of U.S. immigration policy.) SCIRP also considered the idea of dividing INS into two separate agencies (one for service and one for enforcement) or into interior and border agencies, but concluded that efficiency and effectiveness would not improve as both functions include elements of the other and are linked by law and administrative support. According to SCIRP, separating service and enforcement into two separate agencies could increase inconsistency, duplication, and delay.

Commission for the Study of Migration and Cooperative Economic Development (Asencio Commission). This Commission's 1990 report concluded that reorganization of the immigration function was "urgently needed." It recommended creating an independent Agency for Migration Affairs (AMA) that would centralize immigration and refugee issues and give migration a higher profile on the domestic and foreign policy agendas through such means as coordination with other agencies and provision of immigration impact statements. The new agency also would eliminate costly and overlapping activities. AMA would have incorporated the INS (except for Border Patrol and interior enforcement), the Bureau of Consular Affairs (except assistance to Americans abroad), the Bureau of Population, Refugees, and Migration, and the asylum office of the Bureau of Democracy Human Rights and Labor.

In effect, the Commission recommended splitting the service and enforcement functions because of its concerns about such issues as competition for resources between the two, lack of coordination and cooperation between programs, conflict between INS district offices and Border Patrol sectors, personnel practices, and confusion about mission and responsibilities. The Commission had considered, but rejected, other proposals such as the appointment of a "Migration Czar," a Migration Coordinator in the Executive Office of the President, an Undersecretary of State for Migration Affairs, and a separate Cabinet department.

U.S. Commission on Immigration Reform (CIR). In its 1997 final report, CIR recommended a fundamental restructuring of immigration responsibilities according to function. It identified the primary functions as follows: border and interior enforcement; enforcement of immigration-related employment standards; adjudication of immigration and naturalization applications; and administrative appeals. The Commission's proposal would eliminate the INS and parcel out its functions. It would create a Bureau for Immigration Enforcement within the Justice Department for border and interior enforcement; establish an Undersecretary of State for Citizenship, Immigration, and Refugee Admissions within the State Department for benefits adjudication; and transfer enforcement of immigration-related employment standards to the Labor Department. The Commission also recommended creation of an Agency for Immigration Review that would hear independent appeals of administrative decisions.

The Commission identified a number of deficiencies in the structure of the immigration function. These included the large number and potentially conflicting nature of INS'S responsibilities, mission overload, overlap with other government agencies, and the lack of a single accountable authority because of diffused responsibilities. The Commission argued that its proposal would increase coherence and consistency in enforcement, improve the environment for adjudication of applications, provide fair review of decisions, increase

accountability, improve customer service orientation, and use fees more effectively.

Commissioner Warren Leiden agreed with the majority's views of the problems of the INS and with the need to separate the enforcement and adjudications functions but recommended folding the separated functions into the Department of Justice (along with the appeals function). In the Leiden proposal, each function would have its own leadership with a single, focused chain of command while a senior-level office would provide policy and strategic coordination. Commissioner Leiden emphasized that such a change would clarify the mission of each function, and establish accountability at a smaller cost in dollars and disruption than the Commission's majority proposal. Further, he noted that the Justice Department has experience and expertise in both the enforcement and adjudications functions and "epitomizes the values of due process and the rule of law."

Recent INS Reorganizations

As early as the 1890's, the Commissioner-General of the Bureau of Immigration discussed organizational problems faced by the Bureau, such as increasing immigration regulations and restrictions without sufficient means for enforcement. Other issues of concern at that time included separation of the customs and immigration functions, a desire for better emigration statistics, and interest in dispersing immigrants around the country. In addition to the proposals for reform of the immigration function described above and listed in Appendix 2, there have been numerous internal INS reorganizations, each primarily trying to fix the problems of the last reorganization. This section will focus on the most recent reorganizations.

Until 1954, the INS had District Directors who were under the direct supervision of the Commissioner. In 1954, INS decentralized by creating four regions to supervise the district offices and perform general functions such as accounting and records management. INS hoped to provide faster service and closer supervision, place authority for routine matters in the field, and free the time of

headquarters staff from case review, administrative work, and district supervision.

1991 Reorganization. Based on concern about inadequate coordination and oversight in the field, this plan aimed to improve the management and operations of the INS through re-centralization. Among other changes, Executive Associate Commissioner positions were created with responsibility for day-to-day management, so as to allow the Commissioner to focus on oversight and other larger issues. Further, the powers of the heads of the regional offices (who were political appointees at that time and had their own power bases) were reduced. These changes came after many critical reports of INS had been issued, such as a General Accounting Office (GAO) report that focused on a lack of clearly defined goals and priorities, inconsistent leadership and weak management systems, and overlapping and inconsistent programs.

1994 Reorganization. Following continued criticisms and the appointment of a new Commissioner, another major reorganization was instituted in 1994. This reorganization restored the power of the regional offices by charging them with responsibility for day-to-day management of the District offices, reduced the number of regions from four to three, separated field operations from programs, and upgraded the function of policy development and strategic planning.

PROBLEMS WITH THE CURRENT STRUCTURE

Weak Coherence in Policymaking and Agency Stature

Considering the issue's importance and the lack of a single central location for the routine and ongoing formulation and review of migration policy, one might suppose that the Executive Branch would establish a standing policy group to consider U.S. immigration policies. One might also expect a coordinated policy effort that examines the impact of migration on a variety of domestic and foreign policy realms. That, however, is not the case.

A variety of agencies have various pieces of the overall responsibility for immigration. These tend to be viewed narrowly, and they are principally operational: the INS is charged with most day-to-day program delivery tasks; the

State Department deals with visa issuance and most refugee policy issues (the program is delivered by the INS and the Department of Health and Human Services); the Department of Labor weighs in on some work visa issues and helps enforce workplace immigration rules; the Department of Defense gets involved in high-seas interdictions and off-shore safe havens; and the Department of Health and Human Services manages refugee resettlement programs with the assistance of the states and private service providers. When confronted with a major migration crisis, control and coordination shifts to the National Security Council, which seeks information from and gives direction to the relevant departments.

Major immigration initiatives typically are vetted through the Domestic Policy Council, which in recent years has served more of a coordinating role than a policy formulation function. Routine coordination of agency perspectives on specific issues is handled by a few staff persons at the Office of Management and Budget (OMB). OMB is also responsible for coordinating government-wide responses to congressional requests for an administration position on pending legislation. Impasses at staff level are typically "kicked upstairs" to the relevant agencies' political management. Because of the way in which responsibility for the function is dispersed among agencies, vetting differences typically does not start until it is very late in the process and consensus is often reached at the last moment-leaving both principals and staff exhausted and congressional committees frustrated. The lack of a central location and a formal structure for policy development are thus highly problematic.

Inadequate Customer Service

The budget of the INS has increased by 153 percent in the past five years; during the same period, staff levels have grown by 51 percent. Administration requests for fiscal year 1999 seek to increase budget and personnel by an additional 11 and 9 percent respectively (see Appendices 3 and 4). If the recent past is any guide, appropriations may even exceed Administration requests. The vast majority of the increase in appropriated funds has gone to enhanced border

enforcement, detention and deportation, investigations, land border inspections, and technology improvements. Services-including adjudication of applications, issuance of documentation, and provision of information-are largely funded out of fees paid by persons filing applications with the INS. Fee-based accounts have also grown significantly in recent years due to a dramatic increase in the number of applications. These funds have been used by the INS primarily to hire additional personnel in order to keep up with the increase in applications. While there have been some noteworthy improvements in service and more are slated for the future-most importantly, a "re-engineered" naturalization process-the day-to-day service to immigrants and U.S. citizens at immigration offices around the country does not appear to have materially improved despite the enormous increase in agency funding. Lines at district offices remain long, telephones go unanswered, files continue to get misplaced or lost, information about particular cases and general policies remains difficult to obtain, and the public's experience with INS service personnel continues to be the agency's number one image problem.

Poor service has consequences beyond the frustrations experienced by individual clients. It implicitly sends a message to U.S. citizens and corporate entities that petition for a foreign-born person, as well as to immigrants who seek a service, that their needs and interests are not valued-a message that may eventually impede integration efforts and may also find reflection in public attitudes. Inadequate service also erodes support for the INS and undermines the credibility of agency policy initiatives. Finally, poor service breeds a self-reinforcing culture among agency personnel who, because they receive daily complaints, come to view their customers as adversaries.

In short, attention to service is not an act of altruism. It is crucial to the overall health of the system.

Service and Enforcement Functions Receive Unequal Attention

In recent years, public attention has focused primarily on the problem of illegal immigration; Congress and the Administration have turned the immigration

portfolio strongly toward enforcement. This has only served to accentuate the INS'S dominant profile as an enforcement agency. (There have been a few notable counter-examples to this characterization, such as the legalization efforts of the late 1980s, and the recent creation of an asylum corps.)

While the overall diagnosis of the relative neglect of service is clear, its causes are in some dispute. As a result, the proposed remedies vary. Many observers believe that the service problems stem from a fundamental conflict between the agency's core functions of deterring illegal immigration and facilitating legal immigration. In its Final Report, the Commission on Immigration Reform stated this viewpoint forcefully:

Immigration law enforcement requires staffing, training, resources, and a work culture that differs from what is required for effective adjudication of benefits or labor standards regulation of U.S. businesses. While some argue that enforcement and benefits are complementary functions, we agree with the (Asencio Commission) that placing incompatible service and enforcement functions within one agency creates problems: competition for resources; lack of coordination and cooperation; and personnel practices that both encourage transfer between enforcement and service positions and create confusion regarding mission and responsibilities. Combining responsibility for enforcement and benefits also blurs the distinction between illegal migration and legal admissions²

The combination of enforcement and service functions has also been criticized on the ground that enforcement goals always seem to take precedence over service goals. For instance, money will be made available for expediting removals but not for expediting adjudication of immigrant petitions. Another criticism posits that the culture of the agency has bred an "enforcement mentality" that "infects" INS personnel undertaking other tasks. As a result, many adjudicators are thought to begin their tasks with a predisposition to doubt applicants and to deny applications.

Whatever the causes, the current INS structure appears to engender conflict and confusion in the performance of the agency's central functions. Those charged with implementing immigration law lack clear guidance on their core missions, how to balance priorities, or how to assign personnel. District Offices bear the brunt of this lack of clarity. They are microcosms of the immigration world: handing out documents, interviewing applicants, interrogating those they arrest, and detaining and transporting deportable aliens. They tend to be located in large cities, but their location is frequently neither convenient for lawful immigrants nor near prime areas for enforcement-such as major transit routes for undocumented aliens. District Directors are responsible for oversight of multiple functions, including adjudication, investigation, detention and deportation, and records maintenance. They are charged with accomplishing the agency's many priority tasks, as well as responding to day-to-day crises and special cases. Effective management under these circumstances is not impossible; it has, however, proven to be very difficult. Almost invariably, it has been the service side of the agency's functions that have suffered.

Agency Overload

The tasks assigned to the INS have grown dramatically in recent years. The basic functions-border inspection, adjudication of a variety of immigrant applications, asylum processing, naturalization, and deportation of unauthorized aliens-have become remarkably complex. They require policies on such diverse areas as the management of the border, arrests and interrogation, detailed regulations on complicated substantive rules of immigration law, a records systems that includes millions of entries, the production of documents requiring the use of ever more advanced technologies, knowledge of political conditions in foreign countries, the maintenance of a 12,000 bed detention program, and appearances before tens of thousands of immigration court proceedings a year. IRCA greatly expanded the INS'S duties by creating a set of amnesty programs that legalized the status of about 2.8 million undocumented persons and put in place a complicated regime of employer sanctions. The latter function effectively

makes the hiring of any person-citizen or alien-anywhere in the United States of concern to the INS.

Legislation in 1996 charged the INS with, among other things:

- responsibilities relating to immigrants seeking access to social benefits;
- the deportation of immigrants who may have in the past committed rather minor crimes that as of 1997 make them deportable;
- the creation of several "verification" pilot programs (to test the authenticity of documents shown to employers to prove the right to work in the United States);
- the development of a plan for the inspection of every alien departing the United States;
- the production of documents with "biometric" features;
- and the establishment of expedited exclusion procedures at the border.

This disparate and increasingly complex array of tasks has been imposed on an infrastructure long ignored by the Congress and most administrations. To quote again from the Commission on Immigration Reform:

Some of the agencies that implement the immigration laws have so many responsibilities that they have proved unable to manage all of them effectively. . . . Such a system is set up for failure, and with such failure, further loss of public confidence in the immigration system.³

The assertion that the number of tasks assigned to the INS are more than "any one agency can handle" requires critical evaluation. On the face of it, surely, the INS has no more priorities than the Defense Department, the Department of Justice, Health and Human Services, or the Treasury Department. And a number of other governmental departments have both enforcement and service components: the State Department issues visas and prosecutes visa fraud; the Department of Labor grants labor certifications and enforces wage and hour laws; the Department of Justice enforces the drug laws and gives grants for drug treatment programs; and the Department of Defense plans for war and is responsible for humanitarian peace-keeping missions. Indeed, any large institution is likely to perform a range of tasks in pursuit of both enforcement and service values.

Moreover, it is frequently overlooked that combining functions actually produces synergies that serve broader public policy goals. For example, attention to potential for fraud properly balances service goals of completing adjudications as quickly as possible and safeguards the integrity of the system. Indeed, it is difficult to see how, without both sides participating, effective policy could be crafted and carried out on a range of issues-such as the development of documents that both facilitate entry and employment and protect against fraud, or the establishment of an asylum program that can recognize bona fide cases and deter abusive claims.

We therefore conclude that the case for dispersing enforcement and service functions among agencies may reflect frustration with INS performance in the service area-which is understandable-rather than a fundamental incompatibility between the agency's two main functions.

Lack of Accountability

The American people have a right to expect far greater accountability from the immigration system than they now get. Accountability has two dimensions. The first dimension-we call it external accountability-is based on the public expectation that important governance functions will be consistent and supportive of each other, and that agencies will deliver their principal functions effectively, both by committing resources in a manner consistent with policy priorities and by achieving publicly announced goals. The second dimension-we call it internal accountability-demands that agency personnel be held responsible for the effective performance of their duties.

External accountability has suffered in the performance of the immigration function. Policies regularly seem to be in tension-such as the conflict between admissions policies that seek to enhance our competitiveness and those that seek to protect U.S. workers. Furthermore, a strained overall relationship between the executive and legislative branches has made it more difficult to perform the immigration function well. Poor relations between the two branches on immigration issues, in turn, have produced a congressional tendency to

micromanage the issue and undervalue the expertise and experience of the agency's managers and analysts.

Internal accountability is also inadequate in the performance of the immigration function. Policies and practices vary from district to district, headquarters-to-field communication is notoriously poor, and managers are rarely-if ever-held accountable for neglecting the service side of the agency's work or for tolerating enforcement practices that are at variance with agency policies. These problems have persisted whether INS has adopted a centralized or decentralized organizational structure.

Internal accountability demands that an agency develop rules and deliver programs in a fair and consistent manner, and with the highest commitment to personal integrity and professionalism. Whether in the enforcement or service component of a function, nothing undermines an agency's credibility and, gradually, its effectiveness, than repeated failure in accountability.

PRINCIPLES AND ELEMENTS OF REFORM

The most appropriate placement of any major function is in an agency whose primary mission is fully consistent with the function's core purposes. The present placement of the immigration function fails this simple test, in part because of the complex and cross-cutting nature of the immigration function-part service, part enforcement, part regulations, intersecting with policy realms and program domains that are close to the missions of many other agencies. More than any other single reason, and there are many, this is the explanation for the imbalance which characterizes the conduct of our immigration responsibilities. It is also the reason that the INS (and its precursors) shifted location so many times as one or another of its core purposes became paramount. For instance, at the turn of the century, regulating foreign labor was seen as the most important purpose of the immigration function. As a result, the function was located at the Department of Commerce and Labor. When that department was split, immigration was attached to the Department of Labor. In 1940, when national security was the

nation's paramount concern, and immigrants from enemy countries were seen as a possible internal threat, the function was moved to the Department of Justice. As a function changes parent agencies the performance of the function is affected in basic ways. That element of the function that is consistent with the parent agency's mission becomes dominant; other elements atrophy or are de facto delegated to agencies whose mission is more consistent with that purpose. This is the genesis of many of the immigration service's current predicaments; it also provides the guideposts for resolving them.

If the immigration function were a relatively inconsequential one, as it was during the first three decades of its location within the Department of Justice (1940-1970), the case for dispersing it among agencies-the proposal of the Commission for Immigration Reform-might be compelling. But even then, the logic of the Commission's proposal would hold true for only part of its implicit conclusion: that police functions are done best by police officers. The other major part of that conclusion-that service functions should be located within the State Department-strains credibility in two significant ways. It requires the belief, first, that placing the immigration service function in the State Department would be consistent with that agency's mission and with the world view and career aspirations of its foreign service professionals and, second, that delivering immigration services would necessarily be improved-and within a reasonable time-by such relocation. As we have already stressed, the immigration function is exceedingly important today. It has become an integral part of the country's ability to put into effect some of its highest policy priorities: enhanced economic competitiveness, consistent social and human resources policies, humanitarian aspirations and obligations, law enforcement and national security responsibilities, and a variety of foreign political and economic policy objectives. Structural reform must correspond to and reflect the function's increasing significance. What, then, might be some key elements of reform?

A. The immigration function must be organized in a manner and at a level that is commensurate with its importance to our society. The importance of the

immigration function, its cross-cutting nature, and the need for coherent policy development and execution argues strongly for the consolidation of its component parts and its elevation within the Executive Branch. Consolidation will give the immigration function the common purpose it lacks. It will also allow top management to articulate a coherent vision of the agency's mission (and make explicit the values that must undergird that mission), and hold agency personnel appropriately accountable. Elevating the function will go a long way toward giving it the attention it deserves within the Executive Branch and will help the agency attract the talent it needs to perform its tasks effectively; it will also strengthen its hand in its dealings with the Congress.

B. The government must improve the timeliness, fairness, and efficiency with which it delivers services to immigrants and the many U.S. citizens involved in the immigration process. Structural reform must make improvement of service a top priority. In recent years, Congress and the administration have tended to measure the effectiveness of our immigration policy by such factors as border apprehensions and detention and deportation numbers. It ought also to be measured by declines in waiting times at INS district offices, increases in the timeliness and accuracy of information provided, and the courtesy and efficiency with which the agency's customers are treated.

C. The service and enforcement sides of the immigration system ought to be totally separated along the full continuum of each function-though staying within a single agency. To ensure better performance and greater accountability, the enforcement and service functions should be separated. This would mean replacing the current District Office structure with two distinct entities, operating under separate chains of command. We will call them Enforcement Sectors and Service Areas. These entities need not (and probably should not) be geographically coterminous. Rather, they would be defined by their respective missions. The boundaries of Enforcement Sectors would be drawn to reflect the location of undocumented populations, transit routes, the location of detention facilities and the like. Service Areas would be constructed around the location of

their clientele. Under this conception, immigration officers assigned to one division would not be loaned or detailed to the other; nor would line managers have to guess at the best distribution of resources between enforcement and service priorities.

This proposed separation is not a panacea. In a world of limited resources, top managers within each function would still face difficult choices, e.g., whether to devote additional resources to employer sanctions enforcement or increased detention; whether to reduce the backlog of naturalization applications or adjustment of status cases. But at least they will be making these choices among options that are of a fundamentally similar character and can be costed and evaluated in fairly similar ways (i.e., overall number of removals, or numbers of cases completed) rather than attempting to weigh enforcement apples against service oranges.

Creating separate lines for the two functions can also address many of the issues of accountability we have identified without sacrificing the important synergies that each function brings to the other (including that of safeguarding the integrity of benefit programs)-as long as they are both situated within a single agency. A single agency allows the immigration function to benefit from the input of those who give priority to efficient and customer-friendly procedures as well as those whose primary concern is preventing abuse.

PROPOSALS FOR CHANGE

We are convinced that change is needed. Yet, change must be manageable-and capable of responding effectively to the ills of the current system. Structural change is deeply disruptive both to organizations and the people who work in them. Consequently, proposals must be evaluated not just on the basis of how neat they look in charts, but also on whether the benefits of the proposed change promise to outweigh the costs of getting from here to there. Indeed, because of a general tendency to underestimate the intangible costs of reorganization, we believe that the benefits should substantially outweigh its costs before any particular proposal is adopted.

A number of the proposals we discuss below have been made before. This may be good news or bad news. On the one hand, it may reflect a growing consensus on the direction of needed change; on the other hand, it may represent the familiar scenario of good ideas chasing inertia and entrenched interests. We need to stress at the outset that in our view there is no silver bullet here. The immigration function is too complex to have a simple structural solution.

Create a New Independent Immigration Agency

The structure best suited to address the concerns and sustain the principles we have identified above is a new, independent agency at the Cabinet level that consolidates the functions currently scattered among a number of federal agencies. This agency would not itself constitute a Cabinet department, however. In this regard, the Environmental Protection Agency is our model: it took the head of the EPA 23 years to gain a seat in the Cabinet, and that may be temporary, reflecting this Administration's interest in the issue. A new immigration agency would combine the immigration functions of the Justice Department; the visa, passport, and most refugee, asylum, and migration functions of the State Department; labor certification from the Labor Department; and refugee resettlement programs from the Department of Health & Human Services.⁴ Simply stated, an independent or Cabinet-level agency would give the immigration function its due. The current structure is plainly inadequate. The Domestic Policy Council, as noted above, serves more to coordinate and cajole than make policy. It does not have the staff or the expertise to perform serious policy analysis and development. OMB, which has access to more resources, is also hamstrung by the parameters of its role and by the fact that its organization reflects that of the government itself—the immigration function is also scattered among different divisions. The policy branch of the INS is located well down in the Justice Department structure, and the influence of migration-related policy offices at the Departments of State and Labor are generally not viewed as central to their Departments' missions. Much as environmental policy took a big step up with the creation of the EPA (established in 1970 by the consolidation of 11

programs dealing with the environment⁵), the creation of an immigration agency would, for the first time, fully focus the resources of the Executive Branch on the important (and difficult) issues of immigration and citizenship. Such an agency would be best able to develop and implement migration and citizenship policy in a coherent fashion and to provide high levels of both internal and external accountability.⁵

The INS currently is larger than several Cabinet-level agencies in terms of personnel, while its budget is comparable to that of several others (see Appendices 5 and 6 for the relevant graphs).

TABLE 1

Personnel Full Time Equivalents (FTEs) of Selected Federal Agencies and Departments, 1997-1999

	1997	1998 (estimated)	1999 (proposed)
Commerce	32,600	38,300	44,200
INS	25,600	27,800	30,200
State	22,400	22,900	23,200
EPA	17,000	18,000	18,400
Energy	17,300	17,100	16,600
Labor	15,900	16,700	17,000
HUD	11,000	10,400	10,000

TABLE 2

*Budget Authorities (in billions) of Selected Federal Agencies and Departments,
1997-1999*

	1997	1998 (estimated)	1999 (proposed)
EPA	\$6.5	\$7.2	\$7.8
State	\$5.2	\$5.5	\$5.6
Commerce	\$3.8	\$4.1	\$5.0
INS	\$3.2	\$3.8	\$4.2

Combining these duties with the other responsibilities identified above would produce an agency with a budget approximately the size of the Commerce Department's FY 1998 budget.

Beyond coherent policy development, a new agency offers the following advantages:

- It would attract talented executives at an assistant secretary rank and also mid-level managers and analysts with a range of governmental experience. An infusion of new management and analytical talent would aid policy development, engender greater accountability, and stand the best chance of changing institutional "culture."
- It would have a chance to develop proper relationships with its Congressional oversight Committees, which would now have to deal with a single set of officials. In this scenario, both the agency's responsiveness and its officials' accountability would be expected to improve.
- It would separate enforcement and service functions most completely and with less obstruction from entrenched institutional interests.

- It could establish most easily a database that would create a single file for an individual as he or she moves through the immigration process—from the filing of a visa petition and admission to naturalization and the issuance of a U.S. passport.

Some might argue that creation of a new federal agency is not a politically viable option in these times. Committees of Congress charged with oversight of the immigration function have expressed exasperation with current INS operations. Thus, it has been suggested, they will be reluctant to "reward" what they view as ineffective management with the elevation of the function to Cabinet level. We believe that this would be a shortsighted approach to the current problems. Other high-immigration countries such as Australia and Canada have established independent agencies to deal with immigration and citizenship. An appropriately funded and staffed agency could resolve the problem of "mission overload" currently attributed to the INS. Indeed, experience has shown that large federal agencies are capable of carrying out a variety of tasks, provided that they have the appropriate leadership, management and resources. The consolidation, integration, and elevation of immigration functions are crucial steps to effective planning and program implementation.

This proposal is also consistent with the need to propose "manageable change." The various functions currently scattered among the Executive Branch departments are fairly discrete; their transfer to a new agency would not undermine the missions of the departments in which they are currently located. Furthermore, consolidation would reduce the government's transaction costs in both policy development and implementation, and would eliminate the substantial duplication that now exists between the INS and the Justice Department in a variety of areas.

Finally, it might fairly be asked how change at the top levels of the Executive Branch will produce the needed changes at the lower levels—in the day-to-day interactions of government officials and the public. The answer, we believe, is that we are proposing change all along the way: at the top (in the formulation of coherent immigration policy), at the middle (with many new managers and a new

emphasis on accountability), and in the field (with the separation of service and enforcement functions).

The following page contains a sample organizational chart for an independent immigration agency.

[Click here to view the organizational chart](#) (PDF) You must have Adobe Acrobat Reader to open the chart. [Download Adobe Acrobat Reader for Free](#)

Elevate the Function Within the Department of Justice

The INS is *in* but not really *of* the Department of Justice. Traditionally, the Department has exercised supervisory authority over the INS, but it has frequently ignored the agency's day-to-day functioning unless an issue has hit the front page of the newspapers or has come to the attention of a congressional office. More importantly, there is no office at the Justice Department specifically charged with immigration policy development. Such matters have been handled when handled at all-by staff members of the Associate or Deputy Attorney General. Until 1993, the general attitude of most Attorneys General toward the INS has been one of benign neglect.

This uneasy bureaucratic relationship does not well serve the formulation and implementation of immigration policy. The Department of Justice clearly has the clout to serve as a major forum for policymaking, but it rarely exercises such authority. The office of the INS Commissioner does not occupy a position high enough in the Executive Branch to fill such a role effectively-the Commissioner ranks at about the Assistant Attorney General level. (And although the INS is now larger than the FBI, both in terms of personnel and budget, the Commissioner has a lower rank than the FBI Director.⁷)

Immigration policy development needs a higher level bureaucratic home. If our first preference-a new, independent immigration agency-is not in the cards, then policymaking should be elevated within the Department of Justice. Arguably, this option could be carried out simply by the creation of an Office of Immigration Policy within the Justice Department, perhaps akin to the Office of Tax Policy in the Treasury Department (which has no day-to-day oversight of the IRS.) But we

think more is needed. We would propose the elevation of the immigration function within the Department of Justice through the creation of an Office of the Associate Attorney General for Immigration (AAGI). The AAGI would be charged with the formulation of immigration policy and also the supervision of immigration enforcement and service functions. In short, the functions currently performed by the INS would be folded into the Department of Justice. The Executive Office for Immigration Review and the Office of Immigration Litigation also would report to the Attorney General through the AAGI, thereby combining oversight of all the department's immigration functions within one office.

Though less desirable than an independent, Cabinet-level agency, this change would still offer a number of advantages over the current structure. First, an Associate Attorney General—a position that ranks substantially higher than an INS Commissioner—would be better able to call upon and coordinate policies and services with sister agencies that have immigration-related responsibilities. To make clear the importance we attach to this aspect of the overall role, we propose that the Associate Attorney General for Immigration chair a standing inter-agency group on migration issues. Departmental policymakers would also be better situated than the INS is now to get the attention of, and to persuade, the White House on important immigration issues.

In keeping with our analysis above, we would recommend the separation of the enforcement and service functions into different divisions established fully within the Department of Justice. Each would be headed by an Assistant Attorney General and would report to the AAGI.

Folding these functions into the Department of Justice would also permit the upgrading of pay and benefits for immigration officers—an issue which may not generate much interest outside of an agency but one that is crucial to an organization's esprit de corps and motivation. As noted by the Commission on Immigration Reform, "[a]t present INS personnel performing the same functions as FBI or Drug Enforcement Agency personnel are often at a lower-pay grade."

⁸It also would provide a modest opportunity for an influx of new talent at mid-level

management and analytical positions in the new Offices. (The establishment of the Executive Office for Immigration Review, for example, produced an important upgrading of the immigration court and the Board of Immigration Appeals.) Finally, placing these functions directly within the Justice Department might also spark needed "cultural" change in the manner in which immigration laws are implemented and enforced, while creating substantial cost savings and efficiencies by eliminating several levels of overlapping bureaucracy that exist within the current INS/DOJ structure.

We supply a possible organizational chart for this proposal on the next page.

[Click here to view the organizational chart](#) (PDF) You must have Adobe Acrobat Reader to open the chart. [Download Adobe Acrobat Reader for Free](#)

Reorganize the INS

A more modest proposal-but one consistent with some of the principles identified above-would be to separate enforcement and service responsibilities within the existing INS. This change would mean the end of the current District Office structure and its replacement with the geographically based Enforcement Sectors and Immigrant Service Areas described above.

There are two major drawbacks to this proposal. First, it does nothing to elevate and coordinate immigration policymaking within the Executive Branch. Second, by primarily reorganizing the boxes at the local level, it is unlikely to provide opportunities for an upgrading of the pay and benefits of immigration officers or for bringing in new "blood" in the form of new managers and analysts.⁹

Disperse the INS's Functions

The Commission on Immigration Reform proposed the dissolution of the INS and the parceling out of its functions to the Labor Department, State Department and Justice Department. The Commission's motivation was to find a way to overcome the "mission overload" of the INS and to reallocate tasks to agencies that already had experience with related responsibilities. The aim of these recommendations was to improve the overall performance of immigration functions. But we believe that, if adopted, they would likely have the opposite result.

The American people have recently invested billions of new dollars in the INS. As a result, the Service has undertaken massive hiring and training efforts, improved its data systems, and established measurable performance goals. Breaking up the agency at this point would derail these on-going reform efforts before they have had a chance to succeed. It would also mean assigning functions to Departments whose defined missions are far removed from immigration and whose own immigration-related units have never been seen as core departmental programs. The Commission's recommendation runs directly counter to both of our recommendations. ¹⁰

Recommendations

We conclude that our first proposal deserves most serious consideration: creation of a new Cabinet-level agency for immigration. Absent the will to do so, our second proposal-establishment within the Department of Justice of an Office of Associate Attorney General for Immigration-might accomplish many, though not all, of the same goals. While further work remains to be done in fleshing out both proposals, our second proposal is clearly a second best solution because it leaves the immigration function-and therefore immigration policymaking-fragmented.

For example, the development of policy on the admission of temporary skilled workers (such as computer programmers) involves the expertise of the Labor and State Departments and the INS. The distinct and separate missions of these agencies have in the past made coordination difficult. Currently, the resolution of differences must occur at the White House level by staff that lacks the preparation and expertise to do so. Similarly, the admission of an immigrant on an employment-based visa also requires the input of the Labor Department (which must issue a "labor certification"), the INS (which must approve a visa petition), and the State Department (which must grant a visa). Although in recent years coordination and cooperation among the agencies may have improved, those attempting to navigate the system still must confront different attitudes, separate forms and records systems, and different administrative procedures and

avenues of appeal. There is little doubt that environmental policymaking and policy implementation was significantly enhanced by the consolidation of functions brought about by the creation of the EPA.

CONCLUSION

Twenty-seven years ago, President Nixon proposed establishing a new agency charged with administering U.S. environmental laws. His reasoning is worth quoting at length here because it parallels closely our own reasoning for calling for a new, Cabinet-level immigration agency.

In proposing that the Environmental Protection Agency be set up as a separate new agency, I am making an exception to one of my own principles: that, as a matter of effective and orderly administration, additional new independent agencies normally should not be created. In this case, however, the arguments against placing environmental protection activities under the jurisdiction of one or another of the existing departments and agencies are compelling.

In the first place, almost every part of government is concerned with the environment in some way, and affects it in some way. Yet each department also has its own primary mission—such as resource development, transportation, health, defense, urban growth or agriculture—which necessarily affects its own view of environmental questions.

In the second place, if the critical standard-setting functions were centralized within any one existing department, it would require that department constantly to make decisions affecting other departments—in which, whether fairly or unfairly, its own objectivity as an impartial arbiter could be called into question.

Because environmental protection cuts across so many jurisdictions, and because arresting environmental deterioration is of great importance to the quality of life in our country and the world, I believe that in this case a strong, independent agency is needed.¹¹

We believe that circumstances call for another exception to the extreme skepticism with which proposals for creating new federal agencies are received. If the immigration function is central to sound public policy across a variety of

policy domains; if consistency and accountability in program delivery is as weak as many observers argue; if the service function is as much of a stepchild within the INS as even the agency's friends acknowledge; and if re-arranging organizational boxes within the agency-however, radically-will satisfy neither the agency's critics nor its friends; then, creating a new, independent agency, and giving it the authority, resources, and support it requires to do its job properly becomes a compelling choice.

A POSTSCRIPT ON THE ROLE OF CONGRESS

For years, members of Congress have expressed frustration over the Executive Branch's performance of the immigration function. That frustration has now reached a point where key members are saying that "something drastic" must be done. Our suggestion is-to rework the old adage-"if it's broke, don't break it worse." We support careful restructuring efforts that respond directly to real problems. We do not support wholesale change either for change's sake or as a way to vent unhappiness with an agency's leadership.

Change at the INS cannot effectively be brought about by micro-management of the agency by congressional committees. Congressional oversight is a vital responsibility, but directions on day-to-day operations (such as how to deploy border patrol agents or in which county jails to locate INS investigators) distract both the Congress and the agency from the big picture. Similarly, limiting the number of political appointees at the INS to four-as will be the case by the end of this fiscal year-is a shortsighted measure with long-term adverse consequences. The Service needs an influx of talented managers and policymakers, both from inside and outside government. It is not good government to arbitrarily restrict the pool from which talent may be drawn.

Furthermore, the Appropriations Committees ought to rethink current rules on reprogramming. At present, the INS must return to the Committees for authority to spend any additional resources resulting from an increase in the number of persons filing applications and paying fees-even if the proposed expenditure is simply for processing the higher number of applications. These efforts are time

consuming and needlessly delay the ability of the agency to meet customer demand for services.

Finally, Congress must recognize its responsibility for many of the "conflicting roles" under which immigration authorities labor. A decade ago, Milton Morris noted:

Because the government's objectives with respect to the enforcement of immigration policy are varied and sometimes contradictory, the work of the immigration bureaucracy is considerably more difficult than it might otherwise be. Although this problem was recognized as long ago as 1903 in the annual report of the Bureau of Immigration, little has been done to change the situation. Instead immigration policy has evolved to reflect a wide array of competing interests, and in consequence enforcement responsibilities have multiplied and central purposes have become blurred.¹²

These words remain true today. Witness some recent examples: Congress insists on the removal of illegal aliens but affirms "family unity" programs that permit the continued residence of undocumented family members of lawful residents; Congress seeks to deter the entry of unauthorized workers but adopts legislation granting permanent resident status to any Nicaraguan or Cuban who entered the United States before December 1, 1995; Congress enacts severe inadmissibility grounds for persons who have lived unlawfully in the United States and subsequently return home but it has long permitted undocumented aliens residing in the United States who had not departed to adjust their status to that of permanent resident alien.

Performance under even the most perfect structure will be rendered less effective when administrators are faced with conflicting legislative mandates. The dispersion of immigration functions is not an appropriate response to this problem. It simply makes coordination and policy coherence that much more difficult.

¹One important non-government study on this issue is Milton Morris's 1985 book *Immigration: The Beleaguered Bureaucracy* (Washington, DC: Brookings

Institution, 1985). Morris argued for comprehensive reform and a redistribution of responsibilities after finding a fragmented administrative structure, a lack of stature within the government, a lack of clear policy objectives, and varied and contradictory work with many competing interests. He noted the failure of policymakers to make critical policy choices and the failure of Congress to appropriate adequate funds. Morris proposed consolidation of all immigration functions into an independent agency as well as the idea of elevating INS within the Justice Department to enhance its visibility and voice. Other options had included creating an interagency unit and increasing cooperation between the INS and state and local law enforcement. Many of the more modest changes recommended by Morris have since been implemented. They include drastic INS budget increases; quicker installation of automated data processing and storage systems; creation of a strong planning and research unit; a community outreach program; an increased Border Patrol presence along the borders; computer-assisted screening of visa applicants and machine-readable visas; and a high-level task force to recommend improvements in the structure of the immigration bureaucracy and in the distribution of responsibilities.

²U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy*. 1997:148-49.

³ *Id* at 148.

⁴Of course, considering the fact that the departments whose functions would now be incorporated within this new agency will continue be interested in the setting of migration and citizenship policy in some way, they should continue to be prepared to offer their expertise and perspectives by developing or retaining a policy capacity located in the office of each department's top management.

⁵The EPA was created through a Presidential reorganization plan under the reorganization authority in chapter 9 of title 5 in the U.S. Code. The DEA was also created through a Presidential reorganization plan under the same authority but in 1973. Creation of the DEA consolidated all anti-drug functions from the

numerous agencies within the Departments of Justice and Treasury. See also the discussion in this study's conclusion.

⁶This option has been recommended by Morris (1985:141-42) and former INS Commissioner Gene McNary ("No Authority, No Accountability: Don't Abolish the INS. Make it an Independent Agency," 74 Interpreter Releases 1281-89 [August 25, 1991].)

⁷Appendices 7 and 8 show that INS's budget and personnel now exceed that of both the FBI and DEA.

⁸CIR 1997:155.

⁹Another proposal worth considering independently of the final placement of the overall function is the establishment within the INS of a national detention and deportation program. Currently, the detention of an inadmissible or deportable alien is largely a function of the availability of local detention space. Whether or not an alien apprehended in Los Angeles, Chicago or New York is detained should depend on national criteria. A national program could also better monitor and supervise conditions of detention.

¹⁰A recommendation of the Commission in which we concur is the proposal to transfer employer sanctions enforcement from the INS to the Department of Labor. Under the current system, both agencies check I-9s, although DOL conducts many more such inspections as part of its general auditing of employers for compliance with labor laws. Enforcement, however, resides with the INS: DOL refers suspected violation to the Service for further action. The INS does not view such work as a core task; its investigators would rather work significant criminal cases than fine employers. And the Labor Department is generally unsatisfied with the response it receives from the INS in referred cases (indeed, in most cases it gets no response from INS).

¹¹Richard Nixon, Public Papers of the President, July 9, 1970, p. 582.

¹² Morris 1985:92 (emphasis added).

¹³This anomaly was taken care of by the sunseting of INA §245(i).

Appendices

Appendix 1

LIST OF CONSULTED ORGANIZATIONS

American Bar Association
American Immigration Lawyers Association
Catholic Legal Immigration Network
Council of Jewish Federations
Domestic Policy Council (the White House)
Hebrew Immigrant Aid Society
Immigration and Naturalization Service
Immigration and Refugee Services of America
Lutheran Immigration and Refugee Services
National Asian Pacific American Legal Consortium
National Council of La Raza
National Immigration Forum
Office of Congressman Mollohan
Office of Congressman Reyes
Office of Congressman Rogers
Office of Congressman Smith
Office of Congressman Watts
Office of Senator Abraham
Office of Senator Kennedy
Swartz and Associates
Union of Needle Trades, Industrial and Textile Employees
U.S. Catholic Conference
U.S. Commission on Immigration Reform
U.S. Department of Labor

U.S. Department of State

Appendix 2

SELECTED GOVERNMENT REPORTS ON STRUCTURAL REFORM

1912 *President's Commission on Economy and Efficiency* proposed abolishing the Revenue Cutter Service and dividing its responsibilities among other services and agencies.

1930 *House Interstate and Foreign Commerce Committee* proposed a border patrol in the Treasury Department that would include the relevant functions of the Bureau of Immigration and the Bureau of Customs.

1931 *Wickersham Commission Report* found that there is an internal conflict when the same agency that adjudicates applications also has to deport aliens and concluded that the functions should be separated.

1932 *President Hoover's Reorganization Plan* proposed merging the border patrol forces of Customs and Immigration and transferring them to the Coast Guard in the Treasury Department.

1937 *Byrd Committee Report* (a reprint of a Brookings Study) proposed a joint study of the Bureau of Customs and the INS to examine possibilities of local consolidation and local interchanges of personnel and work.

1940 *Bureau of the Budget* recommended consolidating the patrolling and inspections functions of Customs and Immigration.

1948 *Customs Management Improvement Survey* recommended the establishment of a Border Enforcement Agency (combining the relevant INS and Customs functions).

1949 *Hoover Commission on the Organization of the Executive Branch of the Government* proposed transferring the State Department's visa function to the Justice Department.

1950 *Senate Judiciary Committee Report* recommended consolidating Customs and Immigration functions in certain instances and noted the duplication of DOS's

and INS's visa function but felt that the visa process should be separate from the immigration process.

1953 *President's Commission on Immigration and Naturalization (Perlman Commission)* suggested consolidating the State Department and Justice Department immigration functions into a new independent agency and also recommended having formal administrative review of denials of visas by consular officers.

1957 *Commission on Government Security (Wright Commission)* repeated the recommendation of transferring the visa function from the State Department to the Justice Department (except for diplomatic and official visas) so that the INS would have the responsibility from application to entry and allowing offices and personnel overseas for the visa function.

1962 *Citizens Task Force* recommended that Immigration, Customs, Public Health, and Agriculture be authorized to perform the services of all agencies for the preliminary screening process.

1964 *Stover Report on Customs Mission Organization* endorsed recommendations of Citizens Task Force.

1968 *Bureau of the Budget Study* on inspection at ports of entry recommended improvements in interagency cooperation, including cross-designating inspectors and testing one-stop inspections. It also suggested consideration of a single agency for all passenger and baggage inspections currently engaged in by four agencies and cited a need for improvements in the management of INS activities.

1973 *Nixon Reorganization Plan # 2* consolidated all anti-drug functions into a new agency, the DEA, and also would have transferred INS inspectors to Customs to improve the detection of illegal aliens and processing of persons entering U.S. The plan was passed but with the understanding that the INS part would be repealed by separate legislation because of opposition by INS labor unions. Also, a GAO study recommended that OMB and the four relevant cabinet agencies implement single agency management of port-of-entry inspections.

1974 *OMB Report* proposed a single-agency management strategy along the border (House Government Operations Committee Report on Border Law Enforcement and Problems of Customs-INS Coordination). This proposal came about as a result of resumption of Customs redeployment of patrol officers along the border and reports of friction between them and other law enforcement agencies.

1977 *Office of Drug Abuse Policy* report recommended merging all of Customs and INS into a new multi-purpose border management agency that would do inspections at ports-of-entry and also patrol in between them.

1978 *President's Reorganization Project*, based on findings that INS's service and enforcement missions were incompatible, recommended creation of a border management agency consolidating the INS inspection and patrol functions into Customs (Treasury Department) and also transferring the visa function from the State Department to the INS (Justice Department). The Carter Administration held off on submitting its plan because of criticism from Hispanic groups and INS labor unions. In particular, the Hispanic groups were concerned that the changes would undercut the authority of the first Mexican American head of INS and that the Department of Treasury would lack INS's sensitivity to dealing with Mexicans and immigration problems. Further, the union feared losing members to an independent union in Treasury and diluting the already limited effort at stopping illegals. The State Department reportedly opposed the plan too because it "would allow a police agency to make decisions that...should more properly be handled as foreign policy and concerns."

1980 *Report of the U.S. Commission on Civil Rights* recommended a separation of INS's service and enforcement functions, as well as transfer of the enforcement function to a new border management agency in the Treasury Department. Further, they recommended that the immigration laws specify that the Secretary of State has visa-issuing authority and suggested creation of an independent board for visa appeals.

1981 *Report of the Select Commission on Immigration and Refugee Policy* recommended maintaining the current system of divided responsibility, though separating the service and enforcement functions within the INS, upgrading the level of the Commissioner to Director, and creating an Article I immigration court. A 1980 staff report noted that if a new immigration system were to be set up, they would recommend a new independent agency, but observed that there were too many jurisdictional and practical problems, such as personnel, that would preclude serious consideration of such an option.

1981 *Report of the Attorney General's Task Force on Violent Crime* recommended consideration of transferring the Border Patrol to the Department of Treasury.

1982 *Proposal for FY 1984 budget* included an OMB attempt, based on a Customs proposal, to transfer INS's primary inspections function to Customs. INS and DOJ appealed and tried to argue for consolidation within Justice. The Administration dropped the plan and restored INS resources in the budget.

1983 *Grace Commission Task Forces on the Departments of Treasury and Justice* proposed consolidation of Customs-INS border inspection. The same recommendation was made by the Cabinet Council on Management and Administration.

1986 *President's Commission on Organized Crime* recommended improvements in border interdiction and intelligence.

1988 *Omnibus Antidrug Abuse Act and Coast Guard and National Border Coordination Revitalization Act* proposed merging Customs, Coast Guard, and/or INS into a new Treasury Office of Enforcement and Border Affairs and setting up a Southwest Border InterAgency Task Force. The President's Council on Management Improvement Project 2000 Report on Border Management also called for consolidating border inspection operations.

1990 *Report of the Commission for the Study of International Migration and Cooperative Economic Development* recommended an Agency for Migration Affairs that would centralize immigration and refugee issues and give migration a

higher profile on the domestic and foreign policy agendas. AMA would include INS (except for Border Patrol and interior enforcement), the Bureau of Consular Affairs (except assistance to Americans abroad), the Bureau of Population, Refugees, and Migration, and the asylum office at the State Department.

1991 *General Accounting Office* [GAO] report on immigration management concluded that strong leadership and management reforms were needed to address service problems. It found INS lacked clearly defined priorities, control over regional commissioners, and reliable financial information. They also found poor internal communications, budget management, and resource allocation.

1993 *National Performance Review* recommendations included improving the coordination and structure of Federal law enforcement agencies, improving border management, and reinventing the INS's organization and management.

1993 *Report of the General Accounting Office* on Customs and INS stated that the dual management structure for border inspections should be ended. GAO considered three options: improving coordination within existing framework of joint staffing of primary lanes at port-of-entry; establishing one agency as the lead for primary inspections; and creating a border management agency by merging Border Patrol and Inspections with Customs. Rejecting all three, they proposed an independent immigration and customs agency that would have a focused mission and accountability.

1997 *Report of the U.S. Commission on Immigration Reform* recommended a Bureau for Immigration Enforcement within the Justice Department for border and interior enforcement; an Undersecretary of State for Citizenship, Immigration, and Refugee Admissions within the State Department with responsibility for benefit adjudication; an Agency for Immigration Review for independent appeals of administrative decisions; and a transfer of the immigration-related employment standards enforcement to the Labor Department. This fundamental restructuring of the immigration responsibilities according to function, which would eliminate the INS in its present form, was

meant to address INS's mission overload, conflicting responsibilities, and poor performance of its responsibilities.

1997 National Academy of Public Administration report studied INS's strategic planning, priorities, performance measures, budget formulation, and budget execution. It found that with increasing demands to control the flow of illegal aliens and serve those seeking citizenship, the Immigration and Naturalization Service must rethink and redesign its budgeting process.

1997 General Accounting Office [GAO] report following up on INS's management problems found that INS had made a good deal of progress but that much work remained. GAO recognized development of a strategic plan, improved resource allocation and priorities management, and an improved organizational structure. However, they noted that clear guidance for policy implementation and clear channels of communication continue to be needed. In particular, GAO recommended further clarification of the role of EACs, milestones for issuance of manuals, a strategy to periodically evaluate the planning process, and lessening the risks of a new financial management system.

1997 Border Security and Enforcement Act of 1997 (HR 2588), proposed by Congressman Reyes, would establish the Office of Enforcement and Border Affairs within the Department of Justice and include Border Patrol, detention and deportation, intelligence, investigations, and inspections.